

Appeal No. UKEAT/0194/18/RN

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 5 April 2019
Judgment handed down on 31 July 2019

Before

THE HONOURABLE MRS JUSTICE SLADE DBE

(SITTING ALONE)

MR HANS-PETER HINRICHS & OTHERS

APPELLANT

ORACLE CORPORATION UK LTD

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR JEFFREY JUPP
(of counsel)
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For the Respondent

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SUMMARY

CENTRAL ARBITRATION COMMITTEE (CAC)

In exceptional circumstances affecting employees' interests to a considerable extent, where paragraph 8 of Schedule 1 to the **Transnational Information and Consultation of Employees Regulations 1999** as amended applies, provided that the employer has given a European Works Council the necessary information on its proposals and engaged in consultation it is not required to wait for an opinion from the EWC before taking and implementing its decision. Nor does the recast **Transnational Information and Consultation Directive 2009/39/EC** warrant reading words into **TICER** Regulation 19E(2) so as to require the employer to give the EWC a reasonable opportunity to provide an opinion to the national representation bodies on any proposal. The Central Arbitration Committee did not err in not so finding when determining a complaint brought by the EWC under **TICER** Regulation 21A(1)(d).

A THE HONOURABLE MRS JUSTICE SLADE DBE

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1. The Appellant brings this appeal as an employee representative on behalf of the Oracle European Works Council ('the Complainant'). The Complainant brought complaints to the Central Arbitration Committee ('CAC') that Oracle Corporation UK Ltd as representative agent of Oracle Central Management ('the Employer') had failed to comply with Regulations 21, 21A, 23 and 24 of the **Transnational Information and Consultation of Employees Regulations 1999** as amended by the **Transnational Information and Consultation of Employees (Amendment) 2010 Regulations ('TICER')**. The Complainant appeals from the decision of the CAC on 12 February 2018 that the allegation under Regulation 21A(1)(d) that national action to dismiss employees should not have been taken by the Employer before the EWC had given an opinion on the proposed action was not well founded. Two grounds of appeal relied upon to challenge the rejections of this complaint were permitted to proceed to a Full Hearing. The Complainant was not represented by a lawyer before the CAC. On appeal the Complainant was represented by Mr Jeffrey Jupp and the Employer by Mr Andrew Burns QC.

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2. **TICER** are the domestic law implementation of the **Transnational Information and Consultation Directive 94/45/EC** as recast in **Council Directive 2009/39/EC** ('the **Directive**'). The **Directive** requires the establishment of a European – level information and consultation procedure and a European Works Council ('EWC') in certain undertakings or groups of undertakings employing at least 1000 workers in the European Economic Area ('EEA') with at least 150 workers in each of at least two member states. In certain circumstances, which applied in this case, the establishment and procedure of the EWC is

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UKEAT/0194/18/RN

A governed by statute, as set out in Regulation 18 and the Schedule to **TICER**. The relevant provisions of **TICER** and the Directive are set out in an Annex to this judgment. The relevant provisions of **TICER** are: Regulation 18A, 19E and Schedule 1 paragraph 8. The relevant provisions of the Directive are: Recitals (14) and (23), Articles 1.1, 2.1(g), 7.1 7.2, 12.1 and **B** 12.3, and paragraph 1(a) of Annex 1.

C **Outline Relevant Facts**

3. Oracle Corporation is a multinational company based in California operating cloud operations and platform services. The Employer employed workers at various sites in Europe.

D 4. An EWC had been established under the Subsidiary Requirements of **TICER** Regulation 18. The Schedule therefore applied.

E 5. In 2016 the Employer decided to centralise its European operations in Romania and in January of that year started recruiting staff to work there. This was to be a reconfiguration of its EMEA Systems Remote Support ('SRS') organisation.

F 6. The first indication of closures of SRS Services in various European countries affecting staff was given by the Employer by email of 30 November 2016.

G 7. In their submissions to the CAC, the Employer stated that they concluded in early 2017 that the SRS Reorganisation fell within the scope of paragraphs 6(2) and 8(1) of the Schedule to **TICER**.

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A 8. In submissions to the CAC the Employer stated that they informed the EWC of the SRS Reorganisation on 21 March 2017 at the annual meeting with them. They stated that they invited the EWC to take part in a conference call on 27 March 2017 to discuss the matter.

B 9. In the conference call on 27 March 2017 the Employer notified the EWC of its intention to undertake the SRS Reorganisation affecting its employees in a number of member states. This concerned the closure of SRS Centres in Western and Central Europe and the relocation of activities to Romania with up to 380 redundancies across Europe. The Employer had already implemented redundancies of SRS employees in Sweden, Ireland, the Czech Republic, Finland and Turkey.

C 10. On 28 March 2017 the Employer announced redundancies in Poland and commenced consultation with the local Polish employee representative body.

D 11. On 5 April 2017 the Employer made some employees in Poland redundant as a consequence of the SRS Reorganisation.

E 12. The EWC asked the Employer to provide information and answers to questions to which it raised. As the EWC considered that the Employer had not provided the information to which it believed it was entitled, on 22 May 2017 it gave notification that it was unable to provide an opinion.

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A 13. On 5 July 2017 the EWC presented six complaints to the CAC under **TICER** arising out of the information and consultation process conducted by the Employer in relation to the SRS Reorganisation.

B 14. The complaints to which Grounds 2 and 3 of the Notice of Appeal which were permitted to proceed to a Full Hearing as summarised by Mr Jupp in his skeleton argument as complaints were:

C (c) that the Employer had taken irreversible decisions about the SRS Reorganisation before the EWC had been consulted and before it had provided an opinion contrary to Regulation 18A of TICER;

D (d) That the EWC had not been informed and consulted in accordance with TICER Regulation 19E(2). In particular decisions were taken at national level to make employees redundant before the EWC had given its opinion on the proposed reorganisation and before it had a reasonable opportunity to do so.

The Decision of the CAC

15. The conclusions of the CAC which are challenged on appeal are that:

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1. TICER do not stipulate that management cannot implement its decision until an opinion has been given by the EWC (decision para 91);
 2. The complaint under regulation 21A(1)(d) as regards regulation 19E(2) was not well founded. The CAC held Regulation 19E(2) only requires that procedures for informing and consulting the EWC and NERBs be linked to begin within a reasonable time of each other. There was no requirement that management could not take action at a national or local level until the EWC had given its opinion. [decision para 89 – 91 and 95].
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The CAC upheld complaints that the meeting of 27 March 2017 did not constitute an ‘extraordinary information and consultation meeting’ within the meaning of **TICER** (decision para 92). They also held that the Employer imposed an unreasonable confidentiality embargo on information given by them at the meeting of 27 March 2017 (decision para 93). They made no determination on whether the information sought by the EWC should have been provided (decision para 94).

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A **The Grounds of Appeal**

16. Grounds 2 and 3 of the Notice of Appeal were permitted to proceed to a Full Hearing. These were summarised by Mr Jupp in his skeleton argument as being concerned with two issues:

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- a.** Whether the CAC should have interpreted reg 18A of the TICE Regulations as requiring the EWC to be consulted and to be given the opportunity to provide its opinion before a final decision on the SRS reorganisation was undertaken.
 - b.** Whether the CAC should have held that reg 19E required that the consultation and provision of information between NERBs and the EWC should be sequenced so that the NERBs have the EWC's opinion on transnational matters before local decisions are taken."

The Submissions of the Parties

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17. Mr Jupp referred to recitals (7) and (12) of the of the recast Directive which emphasise the purpose of ensuring that employees of Community-scale undertakings or groups of undertakings are properly consulted when decisions which affect them are taken in a member state other than that in which they are employed. Counsel also relied upon recital (23) which provides:

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"The definition of 'consultation' needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate."

Counsel drew attention to the definition of 'consultation' in Article 2 paragraph 1(g) which provides that:

"'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management... at such time and 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..."

Counsel also referred to Article 12 which provides:

"1. Information and consultation of the European Works Council shall be linked to those of national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1 (3)."

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18. As for Ground 2 of the Notice of Appeal, Mr Jupp contended that the CAC erred in holding at paragraph 91 that the Employer did not have to wait for the EWC to give its opinion before taking or implementing an irrevocable decision affecting the workforce. Counsel contended that the conclusion of the CAC that **TICER** do not stipulate that management cannot implement its decision until an opinion has been given by the EWC is inconsistent with recital (23) of the Directive to which it referred. Mr Jupp contended that the EWC's opinion cannot influence the Employer's decision, as referred to, if that decision is taken before it is given.

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19. Mr Jupp pointed out that the definition of 'consultation' in **TICER** regulation 2.1 requires an exchange of views. He submitted that this cannot take place until the EWC has had the opportunity to produce its opinion. Counsel contended that **TICER** does not reflect Article 2 (g) of the **Directive** which refers to the expression of an opinion by a EWC preceding 'proposed measures to which the consultation is related.' **TICER** should be construed consistently with the **Directive** which it implements.

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20. By Ground 3 of the Notice of Appeal it is contended that the CAC failed to interpret **TICER** Regulation 19E (2) in accordance with the Directive and in particular with Article 1, 2.1 (f) and (g) and Article 12.1 and 12.3.

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21. Mr Jupp contended that Regulation 19E(2) should be interpreted so as to provide that the EWC is able to give its opinion to National Employee Representation Bodies ('NERBs') before local decisions are taken in order to obtain their views before the employer's proposed measures are implemented. It was submitted that such an interpretation is necessary to reflect

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A the purpose of the Directive which is to ensure that employees of community-scale or groups of
undertakings are properly informed and consulted when decisions which affect them are taken
in a member state other than that in which they are employed. Reliance was placed on the
B judgment of the CJEU in Marleasing SA v La Comercial Internacional de Alimentación SA
[1990] ECR I-4135 para [8].

C 22. It was contended by Mr Jupp that the CAC erred in concluding in paragraphs 89 to 91 of
their decision that as **TICER** were silent on the issue of timing of consultation and the
provision of an opinion before decisions are taken by the employer at national or local level,
D Regulation 19E (2) does not require the employer to wait for the EWC to give its opinion to
NERBs before taking decisions.

E 23. If the interpretation of **TICER** Regulation 19E(2) advanced on behalf of the
Complainant cannot be achieved without reading in additional words, Mr Jupp contended that
this should be done. Counsel submitted that to properly implement the Directive the following
words should be added to Regulation 19E (2) after ‘within a reasonable time of each other’:

F “and so that the European Works Council has a reasonable opportunity to provide an
opinion to the national employee representation bodies on any proposal.”

G 24. The primary submission by Mr Burns QC for the Employer was that the Complainant
needed to rely on the Directive to succeed and to give **TICER** an interpretation which it does
not support. The appeal invites the CAC to read extra words into the national regulations. The
effect of doing so would be to restrict the power of employers to take action on redundancies
before an EWC had given its opinion on the proposals.

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A 25. Mr Burns QC contended that there was no basis for reading words into Regulation 19E (2) of **TICER** as suggested by Mr Jupp. There has been full transposition of the Directive. There is no substantive difference between the Directive and **TICER**.

B 26. Mr Burns QC pointed out that the Directive and the amended Regulation 18A (2) of **TICER** require the employer to give the EWC information and by 18A (4) to consult them on proposed changes in the workforce. The information should be such as to enable the EWC to
C express an opinion on the employer's proposal. However, the EWC is not required to express an opinion nor is the employer required to await an opinion from them before proceeding to implement its proposal.

D 27. Mr Burns QC contended that the CAC did not err in paragraph 91 in stating that management's right to manage was protected by the Directive. The employer is obliged to inform and consult the EWC in accordance with **TICER**. The CAC rightly held that the
E Directive requires management to do all it can in terms of arrangements for information and consultation to facilitate the EWC being able to give an opinion in a timely fashion which 'will be useful to the decision-making process.' However, counsel submitted that it is not required to
F delay taking action until the EWC has given an opinion.

G 28. Mr Burns QC submitted that whilst the requirements for giving information and undertaking consultation were mandatory on the employer there was no requirement that any opinion of the EWC be taken into account in making its decision.

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A 29. Notwithstanding the decisions of the CAC in paragraphs 66 to 71, Mr Burns QC contended that the CAC did not err in holding in paragraph 91 that management were not precluded from implementing its decision before an opinion had been given by the EWC.

B 30. In answer to Ground 3 of the Notice of Appeal Mr Burns QC contended that the Directive does not require that the Employer provide a reasonable time during which the opinion of the EWC can be transmitted to the NERBs before local decisions are taken. Article **C** 10 paragraph 2 places an obligation on the EWC to inform NERBs of the content and outcome of the information and consultation procedure carried out in accordance with the Directive. It does not provide that management is prevented from taking or implementing local decisions **D** before the EWC has communicated to the NERBs any opinion it may have formed.

E 31. Mr Burns QC submitted that **TICER** Regulation 19E (2) cannot be interpreted so as to add a requirement on management to ensure that procedures for informing and consulting the EWC and NERBs are linked ‘so that the EWC has a reasonable opportunity to provide an opinion to the national employee representation bodies on any proposal.’ The Directive does not support reading in such words. Not only does it not specify that national legislation must **F** require the employer to wait for an opinion from the EWC before it takes action but also the Directive does not specify that such action must await the communication of an opinion from an EWC to NERBs. The purpose of the Directive is to improve information and consultation **G** on changes in the workforce of employers operating in multiple European countries. It does not mandate waiting for an opinion from the EWC before taking action. Giving information and engaging in consultation is mandatory. Waiting for an opinion from the EWC is not. Recital **H**

A (22) of the Directive makes it clear that an appropriate examination by an EWC of information given to it should not slow down the decision making process in undertakings.

B 32. Counsel submitted that recital (14) of the Directive makes it clear that the procedure for informing and consulting the EWC making it possible for them to give an opinion does not call into question the ability of undertakings to adapt. Further paragraph 3 of Annex 1 to the Directive which sets out the Subsidiary Requirements provides for information and consultation meetings to be convened at the request of the EWC where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent. The paragraph provides that:

D "This meeting shall not affect the prerogatives of central management."

E 33. Mr Burns QC pointed out that the applicable provisions of the Annex have been transposed almost word for word into **TICER** Schedule 1 paragraph 8.

F 34. Counsel for the Employer submitted that the CAC did not err when it held:

F "89. We do not accept the argument of the Complainants that the requirement to link national and transnational information and consultation processes requires that the Opinion of EWC be awaited prior to management action being taken at national/local level. Regulation 19E(1)(b) states "Where there are circumstances likely to lead to substantial changes in work organisation or contractual relations' management (under 19E(2) "shall ensure that the procedures for informing and consulting the EWC and the national employee representation bodies in relation to the ...(changes) are linked so as to begin within a reasonable time of each other."

G 90. It is a limitation of the subsidiary requirements that nothing further is said concerning the links between the timing of transnational and national I&C processes – something which **TICER** does require EWC Agreements to determine (Reg. 17(4)(c))."

Discussion and Conclusion

H 35. Both grounds of appeal challenge the rejection of the complaint under **TICER** that national action should not have been taken implementing redundancies until an EWC opinion

A had been given. By Ground 2 it is contended that by reason of **TICER** Regulation 18A such
action cannot be taken until an opinion has been given by the EWC to the employer. By
B Ground 3 it is contended that by reason of **TICER** Regulation 19E(2) such action cannot be
taken before a reasonable time has elapsed enabling the EWC to transmit their opinion to the
NERBs. It is said that Regulation 19E(2) has this effect either as it stands or with additional
words read in so as to comply with the Directive.

C 36. **TICER** is the domestic law implementation of the Directive. The objective of the
Directive is set out in Article 1 which provides in material part:

D **“1. The purpose of this Directive is to improve the right to information and to
consultation of employees in Community-scale undertakings and Community-scale
groups of undertakings.**

**2. To that end, a European Works Council or a procedure for informing and consulting
employees shall be established in every Community-scale undertaking... with the
purpose of informing and consulting employees shall be defined and implemented in
such a way as to ensure their effectiveness and to enable the undertakings to take
decisions effectively.”**

E Article 2 paragraph 1(g) provides:

**“consultation’ means the establishment of dialogue and exchange of views between
employees’ representatives and central 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.”**

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G 37. By Article 7, where no agreement between workers’ representatives and management is
reached on procedures for information and consultation the Subsidiary Requirements set out in
Annex 1 are to apply. Annex 1 paragraph 3 provides for the right of EWCs to be informed
where there are exceptional circumstances affecting the employees’ interests to a considerable
extent. At its request the EWC has a right to meet management so as to be informed and
H consulted on the employer’s proposals.

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38. In this case no agreement had been reached between employees’ representatives and management for establishing an EWC or an information and consultation procedure. The Subsidiary Requirements of **TICER** applied. Regulation 18A(2) and (3) imposes an obligation on management to give information to the EWC:

“(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to–

- (a) Acquaint themselves with and examine its subject matter.**
- (b) Undertake a detailed assessment of its possible impact; and**
- (c) Where appropriate, prepare for consultation.”**

Regulations 18A(4) and (5) impose a further obligation on management to consult the EWC in such a way as to enable them to express an opinion on the basis of the information provided to them. By Regulation 18A(6) the opinion is to be provided within a reasonable time after the information is provided to the EWC and may be taken into account by management.

39. Regulation 19E(2) provides that management is to ensure that the procedures for informing and consulting the EWC and the NERBs are linked so as to begin with a reasonable time of each other.

40. Schedule 1 paragraph 8 provides by (1) that where there are exceptional circumstances affecting the employees’ interests to a considerable extent the EWC has the right to meet central management so as to be informed and consulted. By paragraph 8(3) if an exceptional information and consultation meeting is held the EWC may deliver an opinion at the end of the meeting or within a reasonable time. Paragraph 8(4) provides that the exceptional information and consultation meeting shall not affect the prerogatives of central management.

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41. The purpose of **TICER** and the Directive is to improve the right to information and consultation of employees in Community-scale undertakings or Community-scale groups of undertakings in the case of proposals to take action, such as redundancies, affecting employees in at least two Member States. Procedures are to be agreed, or in the absence of such agreement default statutory provisions apply. Both the Directive and **TICER** require the management to give information to the EWC which in its content, the time when and manner in which it is given must be such as to enable the recipient to undertake a detailed assessment of its possible impact and where appropriate, prepare for consultation.

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42. Pursuant to paragraph 8(1) of Schedule 1 of **TICER**, where there are exceptional circumstances affecting the employees' interests to a considerable extent the EWC has a right to be given information. If it so requests it has a right to meet management so as to be informed and consulted. The EWC may but is not required to deliver an opinion at the end of the meeting or within a reasonable time.

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43. The findings of fact made by the CAC are not challenged. They recorded at paragraph 61 that there were exceptional circumstances affecting the employees' interests to a considerable extent and that paragraphs 8 and 9 of the Schedule to **TICER** were relevant. The CAC held at paragraph 63 that the telephone conference on 27 March 2017 did not discharge management's legal obligations. They found that it did not constitute an exceptional information and consultation meeting.

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A 44. The CAC held at paragraph 66 that ‘information’ and ‘consultation’ in Regulation 18A
are not a single all-at-the-same-time event. Information was given in the telephone conference,
B held to be a meeting. Mr Burns QC recognised that the 27 March meeting did not fall within
paragraph 8(1) of the Schedule and so it could not be both an information and a consultation
meeting. Information was given at the meeting. He accepted that what happened at the 27
March meeting did not constitute consultation within the meaning of **TICER**.

C 45. The CAC recorded in paragraph 69 that in May, after it had received further
information, the EWC requested a physical meeting but this was refused. No exceptional
information and consultation meeting within the meaning of paragraph 8 of the Schedule was
D held.

46. Although the CAC was not asked to determine this point, on the findings and agreed
facts the Employer was in breach of its obligation under **TICER** Schedule 1 paragraph 8(1) to
E meet the EWC in an exceptional information and consultation meeting. Therefore, no
consultation as required by **TICER** took place.

F 47. Where there are exceptional circumstances affecting the employees’ interests to a
considerable extent as in this case, the employer is placed under an obligation to inform and if a
meeting is requested to consult the EWC. The EWC may but is not required to express an
G opinion on the employer’s proposals. If it does so, this may be at the end of the meeting or
within a reasonable time. The employer is placed under an obligation to consult. There is no
obligation on the employer to await an opinion from the EWC before taking and implementing
H a decision if such consultation has taken place.

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48. The issue was not raised in this complaint but it may on occasion be said that an employer has not consulted the EWC because they did not engage in consultation in good faith.

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If the employer has complied with the requirement of **TICER** to inform and consult the EWC there is no statutory prohibition on taking decisions or implementing their proposal affecting the workforce before the EWC has given an opinion.

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49. As for Appeal Ground 3, Regulation 19E(2) provides that management shall ensure that procedures for informing and consulting EWCs and NERBs in relation to substantial changes in work organisation or contractual relations are linked so as to be within a reasonable time of each other. Mr Jupp relied upon Articles 12.1 and 12.3 of the Directive to contend that the following words should be added:

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“and so that the European Works Council has a reasonable opportunity to provide an opinion to the national employee representation bodies on any proposal.”

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Articles 12.1 and 12.3 make no reference to the provision of an opinion by the EWC whether after being given a reasonable opportunity to do so or at all. As there is no prohibition in either **TICER** or the Directive on the employer taking or implementing its decision affecting the workforce after it has consulted but before the EWC has produced an opinion there is no basis for reading words into **TICER** Regulation 19E(2) as contended by Mr Jupp. Nor can the Regulation be construed to have that effect.

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Disposal

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50. The appeal is dismissed.

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Annex

Transnational Information and Consultation of Employees Regulations 1999 (as amended)

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18A.– Information and consultation

(2) The central management, or any more appropriate level of management, shall give information to –

(a) members of a European Works Council; or

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...

(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to–

(a) acquaint themselves with and examine its subject matter;

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(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultation.

(4) The central management, or any more appropriate level of management, shall consult with–

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(a) members of a European Works Council; or

(b) information and consultation representatives,

as the case may be, in accordance with paragraph (5).

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(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

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(6) The opinion referred to in paragraph (5) shall be provided within a reasonable time after the information is provided to the European Works Council or the information and consultation representatives and, having regard to the responsibilities of management to take decisions effectively, may be taken into account by the central management or any more appropriate level of management.

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19E.–Links between information and consultation of European Works Council and national employee representation bodies

(1) Paragraph (2) applies where–

B (a) No arrangements to link information and consultation of a European Works Council with information and consultation of national employee representation bodies have been made under regulation 17(4)(c), and

(b) There are circumstances likely to lead to substantial changes in work organisation or contractual relations.

C (2) Subject to regulation 2(4B), the–

(a) Management of every undertaking belonging to the Community-scale group of undertakings;

(b) Central management; or

D (c) Representative agent or the management treated as the central management of the Community-scale undertaking or Community-scale group of undertakings within the meaning of regulation 5(2), as the case may be, shall ensure that the procedures for informing and consulting the European Works Council and the national employee representation bodies in relation to the substantial changes in work organisation or contractual relations referred to in sub-paragraph (b) of paragraph (1) are linked so as to begin within a reasonable time of each other.

E (3) The national employee representation bodies referred to in paragraph (2) are those bodies which are entitled, whether by law, agreement or custom and practice, to be informed and consulted on the substantial changes in work organisation or contractual relations referred to in sub-paragraph (b) of paragraph (1).

F **Schedule 1 Subsidiary Requirements**

8.–Exceptional information and consultation meetings

G (1) Where there are exceptional circumstances 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 in an exceptional information and consultation meeting, at its request, the central management, or any other more appropriate level of management within the within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

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(3) The exceptional information and consultation meeting referred to in subparagraph (1) of this paragraph shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or Community-scale group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

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(4) The exceptional information and consultation meeting referred to in subparagraph (1) of this paragraph shall not affect the prerogatives of the central management.

Council Directive 2009/38/EC

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Recitals

(14) The arrangements for informing and consulting employees need to be defined and implemented in such a way as to ensure their effectiveness with regard to the provisions of this Directive. 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.

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...

(23) The definition of 'consultation' needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate.

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Article 1

(1) The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

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Article 2

1. (g) 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central 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.

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Article 7

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A 1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

– where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

B 2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in Annex 1.

Article 12

C 1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

D 3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decision likely to lead to substantial changes in work organisation or contractual relations are envisaged.

Annex 1

Subsidiary Requirements

E 1. In order to achieve the objectives set out in Article 1(1) and in the cases provided for in Article 7(1), the establishment, composition and competence of a European Works Council shall be governed by the following rules:

F (a) 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.

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