



Democracy at Work matters. For a European Works Council Directive that delivers for workers!

Adopted at the Executive Committee of 26-27 March 2023

With only one in five European Works Councils (EWC) being effectively informed and consulted before a transnational decision is made in their company, the European Trade Union Confederation (ETUC) keeps on advocating for a change to the European Works Council Directive (EWCD). The ETUC set out ten clear demands in its 2017 position for a modern EWC Directive in the digital Era and in its comprehensive responses to the first and second social partner consultations. In its legislative own-initiative resolution (2019/2183(INL)), the European Parliament backed the ETUC position by a large majority. The ETUC therefore expressly welcomes the fact that the European Commission, in its proposal for a Directive amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights of 24 January 2024 (COM(2024) 14 & Annex), has taken on board a substantial part of these demands which will help providing legal clarity and a level-playing field.

These include, in particular the definition of transnationality that has been sharpened by referring not only to workers expected to be affected by an intended measure in at least two countries, but also workers expected to be affected by the consequences of such a measure in one or several other countries. Access to justice has been improved and the legal costs have been included in the catalogue of costs to be borne by management. The subsidiary requirements have been strengthened, in particular through a second annual meeting, the removal of the limitation to a maximum of one expert and the explicit reference to the trade union expert. The requirement that the Special Negotiation Body (SNB) must hold its first meeting within 6 months has been taken on board. The requirements for confidentiality have also been better specified incl. clear criteria and a valid justification to avoid management declaring issues confidential at random. However, it would be important to require that information declared as confidential can be exchanged with workers' representatives at national and local level, as meaningful consultation cannot take place without this exchange. As a result of these and other improvements, the ETUC considers the proposal to be a sound basis. However it needs to be further strengthened in order for EWCs to effectively exercise and enforce their rights.



Although the European Commission has identified enforcement as a key ground for its proposal, it has inadequately addressed it: infringements by management are currently punished with ridiculously low "penalties", which are not proportionate, nor deterrent. The ETUC calls for financial penalties based on turnover, building on the 2% of total worldwide annual turnover demanded by the European Parliament. In addition, the ETUC considers the introduction of injunctive relief in respect of national trade union prerogatives to be the most effective measure, with the effect that a management decision must be suspended until the information and consultation rights of the EWC have been respected. National examples show that the injunction has the desired deterrent effect and leads to companies complying with the law. In order to counter false allegations, the ETUC points out that the introduction of the injunction in no way introduces elements of co-determination. It simply ensures compliance with the law on information and consultation rights, nothing more.

The possibility for EWCs to have recourse to a trade union expert, currently mentioned in the subsidiary requirements as an "optional provision", needs to be a "shall" provision, referred to in the legal body of the directive.

The ETUC regrets that the Commission has not followed its proposal to include franchise companies in the scope of the Directive. This results in giant multinationals not setting up an EWC. The ETUC takes note of the Commission's practical concerns. However, it has proposed alternatives to be considered.

The topics listed in the subsidiary requirements, on which the EWC must be informed and consulted, must be matched to today's circumstances. The ETUC emphasises the need of also informing and consulting the EWC on working and employment conditions across subcontracting chains and different business models such as franchising, climate transition plans, skills and training policies as well as on the development and implementation of an effective due diligence policy, plan and strategy as provided for in the Corporate Sustainability Due Diligence Directive (CSDDD).

The ETUC welcomes the deletion of all exemptions. This clears the way for companies with a so-called pre-directive agreement to set up an EWC in accordance with the EWC Directive. However, the Commission has not proposed any measure to ensure that these pre-directive agreements do not fall into a legal vacuum, creating de facto legal uncertainty and unpredictability. The ETUC calls therefore for provisions so that pre-directive agreements are maintained under national law in the event of mutual consent and that there is a directly applicable obligation of subsequent effect, should negotiations pursuant to Article 5 of the Directive be requested.

The European Commission is of the opinion that the new requirements in the amended Directive cannot be automatically applied to all EWC agreements and that consequently all 750 agreements currently under its scope would therefore have to be renegotiated. The ETUC strongly disagrees with this view, in particular as this is not a legal necessity. The ETUC underlines that after the Recast in 2009, the Commission and the Group of Experts appointed by it expressly took a different legal view, according to which the



improved provisions of the new Directive are automatically applicable to all agreements. The ETUC considers the argumentation still valid today.

Although the ETUC recognises the benefits of virtual meetings in certain situations, the importance of face-to-face meetings over virtual meetings has been demonstrated, in particular for a body where trust, while important, is not a given and needs to be built over time. The principle that meetings must take place in person must be maintained. The EWC must have the right to decide on the form of the respective meeting according to its needs. The Commission proposal for more virtual meetings should therefore be rejected. The ETUC calls for a standing tripartite monitoring committee to identify problems with transposition into national law at an early stage and to develop joint solutions.

The ETUC actively supports the legislative process, working in close coordination with its affiliates in the upcoming European election campaign to ensure that the current and future Members of the European Parliament support a strong and effective EWC Directive that meets the ETUC demands and delivers for workers.

In this context, the ETUC strongly supports the European Parliament in its intention to finalise its report with a trilogue mandate in the current 9th parliamentary term. The ETUC calls on the Belgian Presidency and the Council to finalise the mandate of the Council so that the trialogue can start immediately after the 10th European Parliament has been constituted.