



TOGETHER FOR A FAIR DEAL FOR WORKERS



06 May 2024

Joint EU Trade Union statement toward the Council negotiation on the revision of the European Works Council Directive

The revision of the European Works Council Directive was proposed by the European Commission at the request of the European Parliament. Regrettably, the European employers' organisations do not seem to appreciate this democratic practice. There is no other way to understand the public statement published on 22 March by Business Europe, Hotrec, EuroCommerce, European Banking Federation, ECEG and CEEMET and sent to the Employment Committee of the European Parliament and the Council. The cross-sectoral and sectoral employers' organisations stressed several issues in a manner which demonstrates both a lack of understanding of the letter and spirit of the EWC Directive and a lack of effort to support policy-making based on evidence as called for in the La Hulpe Declaration.

Rather than being misled by what employers' organisations call 'the overwhelming feedback' that EWCs operate well, the Commission's proposal is based on scientific facts, the vast majority of which support the same conclusion: There is a lot going wrong with the application of the EWC Directive. Four EWCs out of five are either not consulted at all or consulted far too late, although the basic principle of consultation is that it only makes sense if it is open-ended, i.e. the final decision has not yet been made.

Furthermore, the employers' organisations do not seem to be too particular about terminology, otherwise they would not claim that the Commission's proposal would turn EWCs into a co-decision-making body. At no point in the proposal is the EWC given a right of co-determination or veto; as in the past, it would have at most consultation rights.

1. On enforcement and the right to request preliminary injunction:

Rights that are not enforceable are not rights, but at most guidelines. To date, violations of the directive have hardly had any consequences. In Germany, a



multinational company with more than 1000 workers faces a fine of just EUR 15,000. These ridiculously low penalties literally invite companies to disregard the rights of EWCs. The European Parliament's proposal

to set the penalties at 4% of turnover would indeed have a deterrent effect. Better, however, would be non-financial sanctions, such as the injunction with a national trade union prerogative that can suspend a management decision until a proper consultation is carried out. EWCs and we trade unions want our rights respected. And it is still true that if everything went as well as the employers' organisations believe, then where is the problem? Businesses that comply with the law need not fear any sanctions.

2. On transnational matters:

The Commission wants to ensure legal certainty in the definition of transnational matters by incorporating an existing provision from the recitals into the body of the Directive. The world in which there are no overlapping competences between different levels of workers' involvement has been abolished by the employers themselves with their complex cross-border corporate constructs. Different levels of workers' representation are confronted with decisions from a distant company headquarters. It is precisely the task of the EWC to connect these levels with each other and to establish a proper exchange. The decision to close down a production site in Member State A by the head office in Member State B can have also serious consequences for the workers and their working conditions in Member States A and C. The EWC is often the only information and consultation level that workers' representative have to be consulted on an envisaged decision with an impact on workers' interests in their country. In short, today's world is complex and the Europeanisation of workers' representation, including a broad definition of transnational matters, is one response to this complexity. Any weakening of the definition, in particular by adding terms such as 'substantially', 'significantly' or 'immediate and severe consequences', must be avoided.

3. On reinforced consultation procedures:

It is not true that the obligation for management to provide a reasoned written response to an opinion adopted by an EWC does not correspond to any legal requirement or usual practice as it is already foreseen in the Subsidiary Requirements of the current Directive and laid down in a number of existing EWC agreements. It is only logical that this existing legal condition is added to the generally applicable definition of consultation. Corporate decisions on transnational matters made quickly without proper EWC involvement, including enough time for worker representatives to carry out an in-depth assessment of the potential impact of a planned decision in order to prepare for consultation proved detrimental on both jobs and competitiveness as illustrated by infamous cases, such as IAG, GKN, and Whirlpool, to name but a few. In times of new challenges which lead to unprecedented pace and scale of transformations, quality strategic-decision making



must prevail. Trust the science! Studies show that companies with good workers' participation perform better in the market in the long term.

4. On confidentiality:

Up to now, EWC information and consultation have often been hindered by management simply categorising everything as confidential. The Commission has acted correctly by demanding that the reasons for such a categorisation must be comprehensible and communicated in writing according to objective criteria. In addition, all workers' representatives, whether local, regional, national or European, are bound by a duty of confidentiality. Therefore, an exchange between them must be possible, since otherwise effective consultation cannot be guaranteed. In addition, the categorisations of information as confidential must be subject to judicial review in order to prevent arbitrariness.

5. On the role of mediation and conciliation for EWCs disputes:

Several Member States have developed non-judicial dispute resolution mechanisms based on the experience of their existing mediation and conciliation structures for social partners disputes. Those national procedures must be respected as long as they do not substitute for court rulings as it would otherwise infringe the fundamental right to an effective remedy and access to justice anchored in article 47 of the Charter of Fundamental Rights of the European Union.

6. On resources

Whilst entire teams of experts advise the management on the company side, most EWCs currently only have one external expert at their disposal. In addition to securing the permanent support by a trade union representative, an EWC also needs experts, whether legal or financial, in order to be able to provide a proper consultation contribution. As the EWC has no income of its own, the external experts must be paid by the company. In its impact assessment, the Commission correctly categorised the costs of EWCs as subordinate at an average of 0.009% of turnover. Thus, the question of costs, as raised by the employers' organisation, is a bogus argument.

7. On pre-existing agreements:

As trade unions, we have always been in favour of all companies over 1.000 workers, including franchise companies, falling within the scope of the directive and we therefore welcome the fact that the Commission has removed the exemption for so-called pre-directive agreements. The deletion of the exception does not automatically end the existing agreement, if these agreements work as well as the employers' organisations claim, neither side will apply to replace them with new ones in accordance with Article 5 of the Directive.



8. On representatives of workers:

We deeply regret that employers' organisations have decided to call into question an elementary point of our European model of industrial relations and must recall that trade unions are and remain legitimate and recognised organisations to defend and represent workers' interests.

Furthermore, it is important to bear in mind that even if there is no EWC under national law in a Member State, the reform of the Directive is important for the workers in that country. For them, it is the only chance to enter into dialogue with the management from the distant headquarters located in another member state and to ensure their right to be heard by those preparing a decision which may impact them.

We call on the Council not to be blinded by false arguments and to finally ensure that European Works Councils are given sufficient and enforceable rights and have the necessary resources to exercise them. If companies operate on a European and global scale, we must also Europeanise workers' representation at the very least. EWCs are a glowing example of the Europeanisation of industrial relations.
