



European Trade Union Confederation (ETUC)
Confédération européenne des syndicats (CES)

EXECUTIVE COMMITTEE
Brussels, 5-6/12/2007
178.EC

Agenda Item 8

Revision of the European Works Council Directive

The Executive Committee is asked to:

- Approve this document

John Monks, General Secretary
Boulevard du Roi Albert II, 5 • B - 1210 Bruxelles • Tel: +32 2 224 04 11
Fax: +32 2 224 04 54 / 55 • e-mail: etuc@etuc.org • www.etuc.org

Revision of the European Works Council Directive

Background note

1. The secretariat gave the ETUC Steering Committee an overview on the current debate on the revision on the EWC Directive at the meeting on 15 November. (see annex 1). At that meeting it was agreed to set up an ad-hoc working group to deal with the revision in more depth and to up-date ETUC demands if necessary. A first meeting of the ad hoc working group took place on Wednesday 28 November 2007.
2. The members of the group were concerned about the Commission's roadmap for the revision, which foresees that the draft proposal will be submitted in July 2008. This timescale will make it impossible for a political agreement on the revision to be reached in the second half of 2008 under the French presidency.
3. The Commission has announced that the launch of the second stage consultation will be in December 2007. Their preference is for the ETUC to reach an agreement with the employer organisations in the framework of the social dialogue (article 139). However, a lot depends on the good will of BusinessEurope to make real progress on the issue. Until now the employers have been entirely against the revision, although it seems that they are starting to reconsider their position, and at least some national employer organisations could be more in favour of negotiations.
4. In view of the announced Communication of the Commission the ETUC has to carefully reflect on the possibility for a negotiated solution. The objective must be the adoption of a revised Directive by the Council before the end of 2008.
5. For the time being it is difficult to assess the extent to which BusinessEurope accepts the process of revision and then whether it will be able to get a mandate for negotiation. If this is not the case, the ETUC should urge the Commission to accelerate the procedure, in order to make sure that the European Parliament can make an early start on their report which should be finished immediately after summer 2008.
6. If BusinessEurope accepts negotiations, we must consider the possibility that this could be purely for tactical reasons in order to delay the procedure, which would make it impossible to get the Revision done under the present term of the Parliament and of the Commission. To guarantee serious negotiations, the ETUC must ask for a clear timetable to ensure that the Council can approve the social partner agreement before the end of 2008. Therefore, a common understanding has to be reached with the employers on the scope and contents of the revision. It will also be important to clarify the extent that the social partners will be able to make the Directive coherent with the recent jurisprudence of the European Court of Justice. Finally, the ETUC has to be aware that, according to its constitution, BusinessEurope must reach consensus with all its member organisations in order to adopt the result of any negotiation.

7. The ad-hoc group recommends that affiliates should carefully assess the position of their employer organisations carefully and in parallel urge their governments to support the revision of the directive vis à vis the Commission and in the Council.

8. The ad-hoc working group examined in detail the ETUC demands for the revision agreed by the Executive Committee in December 2003, and the Steering Committee in February 2004. It was proposed to reorganise the ETUC demands under five political priorities:

- a) Harmonisation of information and consultation rights with the *acquis communautaire*
- b) Elimination or at least reduction of the barriers to setting up EWCs
- c) Improvement of working tools and conditions for EWCs and SNBs
- d) Recognition of the role of trade unions
- e) Resolution of legal uncertainties and inconsistencies.

9. On the basis of the ETUC's demands approved in February 2004, the ad-hoc working group identified a number of suggestions to update and amend the previous demands. The suggestions take into consideration the Charter of Fundamental rights, the EU Directives 2001/86 and 2002/14, jurisprudence of the ECJ and practical experiences of EWCs (see summary in annex 2).

10. Concerning the next steps, it was agreed to submit a report to the meeting of the Executive Committee on 5–6 December 2007 for further consideration. A next meeting of the ad-hoc working group should take place after the Commission has issued the Communication on the second phase consultation (the meeting will take place most probably on Tuesday 15 January 2008). The group should make concrete recommendations for the revision on the basis of the current directive and for a possible mandate for negotiations. The Executive Committee will have to decide on the possible mandate at the meeting in March 2008 or agree on a written procedure if necessary.

Annex 1

STEERING COMMITTEE
Brussels, 15 November 2007
115.SC

Agenda item 4

Revision of the
European Works Councils Directive

The ETUC Steering Committee is asked to

- Discuss and approve this document
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Revision of the EWC directive

1. On 12 October we informed all affiliates that the Commission will launch soon the second phase consultation on the revision of the EWC directive. On 23 October the Commission adopted the legal work programme for 2008 which includes the revision of the EWC directive.

2. On 19 October an informal consultation with the cabinet of Commissioner Spidla, BusinessEurope and ETUC took place, in which the employers repeated their view that they do not see the necessity for a revision. At the same meeting they announced that they will have a meeting mid November with their affiliates to consider their position. ETUC urged the Commission to accelerate the process and to come up with the Communication soon.

3. BusinessEurope is obviously trying to delay the process by any means possible, since they are unable to stop it.

4. The objective of the ETUC should be to get the revision completed under the present term of the European Parliament and the Commission by the end of 2008. The upcoming French presidency (second half of 2008) seems to be ready to put the issue on the agenda for the Council. The timetable is very tight and ETUC has to consider its approach.

5. If the Commission issues the Communication on the revision by the end of November, the social partners would have 6 weeks to respond. The crucial question is to accept possible negotiations within the framework of the social dialogue, in case BusinessEurope would be able to accept this. Negotiations could start in February/March at the earliest and would not be finished before October 2008. Only in the event that negotiations were successful could the Council adopt a revised directive under the French presidency. Without negotiations the Commission could only come up with a concrete proposal for the revision by the end of the year at the earliest. In this case a first reading of the revision by the European Parliament must be finished in September. Otherwise it will not be very likely that the procedure will be successfully completed by the end of 2008.

6. The Steering Committee is asked to reflect on the present situation carefully.

7. The ETUC secretariat proposes to establish an ad-hoc working group to deal with the issue in more depth and to up-date ETUC demands on the revision. A first meeting should take place as soon as possible. ETUC cannot provide reimbursement for this ad-hoc working group.

8. At the meeting of the Executive Committee in December the secretariat will give a follow up report and submit proposals for decision if necessary.

Annex 2

Priorities and suggestions to up-date ETUC demands

The numbers in brackets refer to the annex of the final resolutions adopted at the Steering Committee on 13 February 2004

1. Harmonisation of information and consultation rights with the *acquis communautaire*

The ETUC considers that it would be reasonable to incorporate the following definitions of information and consultation, taken from Article 2 of Directive 2001/86/EC (the SE Directive), into the EWC Directive (see 1):

"information" means the informing of the EWC on questions which concern the undertaking ... in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the undertaking;

"consultation" means the establishment of dialogue and exchange of views between the EWC and the competent organ of the undertaking, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the undertaking;

2. Elimination (or at least reduction) of the barriers to setting up EWCs

It is questionable in view of the charter of fundamental rights (article 27) that workers can be excluded from transnational information and consultation rights on the basis of the number of workers in their undertaking. The ETUC should either move to remove the threshold or stick to the demand that the threshold should be reduced to 500 employees with at least 100 employers in 2 different member states. (see 25)

Some sectors have been excluded from the scope of the Directive ("ideological guidance" undertakings and commercial shipping) (see 22 and 23). These provisions should be completely removed.

3. Improvement of working tools and conditions for EWCs and SNBs

A number of concrete proposals have been made in order to improve the conditions for EWCs and SNBs to operate adequately. These have been regrouped, with some amendments, under this new heading.

- **Training** (see 14)

The EWC Directive should ensure that workers' representatives under its provisions are given the skills to carry out the tasks which it gives them efficiently. This means asserting their right to a training programme at EWC level and the right to appropriate time off. (The importance of training also underlines the importance of the 03 budget line – which should be properly managed in cooperation with the trade unions).

- **Two meetings a year for EWCs** (see 18)

The subsidiary requirements should be altered so that they prescribe two meetings a year with the possibility of further meetings in exceptional circumstances.

- **Provisions for exceptional meetings** (see 5)

The directive should make provisions for exceptional meetings as necessary.

- **Preparatory and follow-up meetings for SNBs and EWCs (in the subsidiary requirements)** (see 13)

SNBs and EWCs constituted under the subsidiary requirements must be able to hold follow-up meetings after (as well as preparatory meetings before) each meeting with central management.

- **Experts (EWC)** (see 15 &16)

Provisions in the directive have to be made to entitle workers in EWCs to at least one paid expert at every meeting and more when necessary.

The Directive must make it clear that the experts for SNBs can participate in all meetings and every part of the process at the request of the workers representatives.

The entitlement of SNBs and EWCs to experts should not be affected by the presence of a European trade union representative (see below).

- **Select committees** (see 17)

The subsidiary requirements must provide that EWCs with more than 9 members need a select committee in order to function properly with appropriate time and resources to carry out their

work. Select committees should consist of not more than 5 members.

- **Interpretation and translation of documents** (see 19)

The Directive must ensure that the agreement and all information given in writing should be provided in all necessary languages and that there is adequate interpretation provided for all meetings including preparatory and follow-up meetings.

- **Additional topics for EWCs** (see 20)

The issues of health and safety, training and education, data protection, environment and equality (as it relates to gender, disability, race, nationality and religious and sexual orientation) should be included among the topics listed in the subsidiary requirements of the Directive as of particular relevance for EWC meetings.

- **Gender balance in EWCs** (see 21)

Women are still under-represented in all aspects of EWC work. So the preamble and the subsidiary requirements should express the importance of taking gender balance into account during the composition of SNBs, EWCs and their sub-groups.

- **Access to workforce and workplaces** (see 8)

EWC members must have the right to communicate and meet with the workers they represent and to have access to all the sites in the company where they represent workers. This right must include the access to all material and financial resources necessary to exercise it.

Substitutes (new)

The Directive should reflect the entitlement of all EWC members to have a substitute who can deputise for them or replace them if necessary.

4. Recognition of the role of Trade Unions

In order to ensure proper support and coordination for workers representatives in EWCs and SNBs, the European industry federations must have the right to appoint at least one representative who will have the entitlement to participate in all SNB and EWC meetings (with accommodation, subsistence and travel expenses covered by management as if they were a member of that body). This entitlement should exist separately from the entitlement to experts.

5. Remedy the legal uncertainties

- **Better definition of “control”** (see 7)

The definition of control in the Directive should be changed so that it clearly covers joint ventures and gives workers in franchised operations and other dependent suppliers (controlled through monopoly) the right to participate in the EWCs of the undertaking which controls them.

- **The maximum number of persons in SNBs and EWCs (in the subsidiary requirements)** (see 3)

The maximum number of members for the SNB and (in the case of the subsidiary requirements) the EWC have to be removed. The number of members from each country should be defined in accordance with article 3 of the Directive 201/86.

- **The procedure for renegotiating agreements** (see 4)

The procedure for the renegotiation when EWCs are involved in restructuring or merger processes has to be clarified.

In view of the revised directive EWCs (no matter whether they have article 6 or article 13 agreements) should have the entitlement to trigger renegotiations if their agreements do not meet the criteria set out in article 6 of the directive.

The involvement of the European industry federations in these negotiations must be ensured.

The renegotiation period and minimum frequency of meetings should be the same as with new EWC negotiations (see below) and the new subsidiary requirements should come into effect if negotiations are not concluded in that timeframe.

- **Negotiation period** (see 6)

The negotiating period should be reduced to 12 months with the possibility of a mutually agreed prolongation of 6 months. SNB negotiations should take place as a continuous process, with meetings at least every 4 months. If no meeting takes place for 4 months or if agreement can't be reached within the negotiating period, the subsidiary requirements should come into force.

- **Confidentiality** (see 9)

ETUC continues to call for a clearer definition of confidentiality, properly defining it so as to limit its use to information that is of clear commercial or personal sensitivity.

- **Penalties** (see 10)

The Directive must ensure adequate sanctions in the event of violation of its provisions and/or resulting agreements by undertakings.

- **Legal challenges** (see 11)

Workers representatives must be ensured of the entitlement and resources to legally challenge breaches of the Directive or their EWC agreement by management, if necessary, Member states must ensure swift legal proceedings for EWC cases.

- **European Industry Federations** (see 12)

It must be made clear that the European industry federations are representatives of workers with the entitlement to relevant information about undertakings and the possibility to trigger negotiations where more than 100 workers in 2 countries are members of their affiliates.

- **The 'transnational' criterion** (see 24)

The burden to prove that an issue affects only one country should rest with the management of the undertaking.

- **Registering agreements** (see 26)

Undertakings should be obliged to send a copy of their latest EWC agreement to a neutral and mutually acceptable body, such as ECOSOC or The European Foundation for Living and Working Conditions, where they would be made publicly available.

- **Articulation of national and European consultation (new)**

Following contradictory legal rulings in France on prioritisation of information and consultation procedures, it should be made clear that where consultation must take place at national and European level it should happen simultaneously and with the possibility for the concerned worker representation bodies to agree a common position.