



Effective and well-functioning EWCs in post – Covid era

MINUTES

Workshop: Effective EWC in post-Covid era”

Online

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In the first part of the meeting, Barbara Surdykowska pointed out that the survey showed that:

- EWC members identified new challenges emerging after the pandemic as key (energy prices, geopolitical situation);
- pointed to processes that are intensifying and were already underway before the pandemic (decarbonisation, greening, building a circular economy, digitalisation - processes collectively referred to as the *Twin Transition*);
- The overall message from the research is that EWCs 'coped' during the pandemic. However, the presenter pointed out that the metalworking industry was surveyed and that a very different result might be obtained in industries generally more affected by pandemics (hospitality, tourism, retail);

Satisfaction levels were mixed: respondents from Poland and Portugal stressed the need to strengthen the EWC Directive. Surveys in Spain and Slovakia showed higher levels of satisfaction. According to the presenter, this may be due to the composition of the project partners.

In the following part, the processes related to possible changes in the Directive were presented.



In this area it can be noted that:

The European Parliament adopted two resolutions in 2021 and 2023 on employee involvement at company level as a way of promoting democracy at the workplace and, in particular, strengthening the functioning of EWCs. The 2021 resolution on workplace democracy covers the areas of information, consultation and participation of employees, trade unions and works councils, as well as some aspects of company law and corporate governance. It calls for a revision of the EWC Directive.

The 2023 resolution on the revision of the EWC Directive aims to "strengthen EWCs and their capacity to exercise their right to information and consultation and to increase the number of EWCs, taking into account the different industrial relations systems in the Member States".

European Parliament resolution of 16 December 2005 on 'Democracy at work: A European framework for employee participation rights and the revision of the European Works Council Directive' (2021/2005 (INI)).

Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0508_EN.html

European Parliament resolution of 2 February 2023 with recommendations to the Commission on the revision of the European Works Councils Directive (2019/2183(INL)). Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

The resolution of 2 February 2023 includes an annex with proposals for legislative changes to the EWC Directive, including

- A broader concept of "transnational issues" on which the EWC should be informed and consulted;
- a revised definition of "consultation", i.e. the requirement for EWCs to receive a reasoned response to their opinion before management takes a decision, and the assurance that this opinion must be taken into account by management;
- requiring Member States to provide for a court order suspending a company's decision in the event of a breach of information and consultation obligations, as well as fines of up to €20 million or 4% of annual turnover and exclusion from public procurement and grants;
- requiring companies to provide the EWC with objective criteria for determining whether a matter is confidential and for how long, and requiring companies to obtain prior judicial



approval before restricting access to information that they believe could seriously harm the company's business;

- Stricter deadlines for the establishment of EWCs;
- removing the exclusion from the scope of the Directive of companies that concluded agreements before its entry into force and extending the amended provisions to companies that have concluded all types of existing information and consultation agreements.

In a reply to the European Parliament on 1 March 2006, the Commission welcomed the Parliament's resolution based on Article 225 TFEU. In line with the political commitment made by President von der Leyen in her political guidelines regarding resolutions adopted by the Parliament based on Article 225 TFEU, the Commission is committed to follow up with a legislative proposal, in full respect of the principles of proportionality, subsidiarity and better regulation.

The European Economic and Social Committee (EESC) has adopted several opinions stressing the need for an enhanced role for EWCs in the case of large company transformations and in transnational restructuring processes in the context of the twin transitions.

In April 2023. The EESC adopted an exploratory opinion on democracy at work, in which it stressed the need to significantly improve the effectiveness and resources of EWCs: "For example, any circumvention or violation of participation rights in EWCs should be effectively sanctioned and access to justice facilitated". In this context, the EESC welcomes the recent resolution of the European Parliament on the revision of the EWC Directive and calls on the Commission to take legislative action in due course".

Exploratory opinion of 2 December 2020. "Industrial change towards a green and digital European economy: regulatory requirements and the role of social partners and civil society", INT/913-EESC-2020-03642

Opinion of 9 June 2021. "There is no Green Deal without social governance", INT/903-EESC-2020 16 SOC/746-EESC-2022.

During the first phase of the consultation, which ran from 11 April to 25 May 2023, the social partners were consulted on the need for and possible direction of EU action¹⁷.



During the first phase of the consultation, responses were received from 11 recognised social partners, including three trade union organisations (European Trade Union Confederation - ETUC, European Confederation of Independent Trade Unions - CESI, European Managers - CEC) and eight employer organisations (BusinessEurope, SGI Europe, SMEunited, European Chemical Industry Employers Group - ECEG, Council of European Metal, Engineering and Technology Employers - CEEMET, European Cleaning and Maintenance Industry - EFCI, Hotels, Restaurants and Cafes in Europe - HOTREC, European Confederation of Wood Industries - CEI-Bois).

All three responding trade union organisations see the need for a legally binding revision of Directive 2009/38/EC to address its shortcomings. The ETUC strongly supports the Parliament's resolution calling for such a revision and underlines that the information and consultation process at supranational level can only be regulated by an EU legal act that ensures a level playing field through minimum requirements.

While the ETUC welcomes the Commission's intention to take legal action to improve the Directive, it points out that the first-stage consultation document does not address all relevant issues. For example, according to the ETUC, the consultation document does not address the need to ensure more effective coordination between the local, national and European levels.

The ETUC also argues that the right of trade union experts to attend all meetings of the SNB, EWC and select committees and to have access to all sites is a necessary condition for more effective support and coordination of the work of the EWC.

In this respect, the ETUC calls for such rights to be enshrined in Directive 2009/38/EC. Furthermore, the ETUC questions the fact that the Commission's consultation document does not address the issue of clarifying the definition of "controlling undertaking" to clarify the inclusion in the scope of the Directive of undertakings operating through management systems such as franchising and 50:50 joint ventures.

In addition, the EWC notes that the consultation document may have established some links between the EWC and due diligence.

The majority of employers' organisations are opposed to the revision of the Directive as they believe that it is fit for purpose.



In particular, BusinessEurope stresses the need to give the social partners at company level the space to negotiate agreements appropriate to their situation.

According to the ECEG, the heterogeneous landscape of EWCs accurately reflects the original intention of the European co-legislators and should be maintained as a key element of the European system of information and consultation of employees in multinational companies.

CEI-Bois believes that EWC practices must remain flexible to be effectively applied across sectors and companies in Member States and that the Commission should refrain from imposing additional regulatory burdens on companies that have already decided to set up EWCs.

CEEMET warns that at a time when companies are facing unforeseen economic consequences and huge losses in terms of trade and international competitiveness, a revision of the EWC Directive would be a further obstacle to the competitiveness of European companies. However, if the Directive is revised, CEEMET calls for concrete measures to be proposed to reduce the administrative and financial burden on companies and to adapt them to the new reality of online meetings.

The EFCI believes that legislative intervention to increase corporate accountability would undermine the chances of the EWC serving as a common and constructive solution for all parties involved.

HOTREC and CEI-Bois urge the Commission to develop a Commission Recommendation and a Code of Practice/Handbook on this issue instead of revising the Directive. CEI-Bois argues that a revision would create uncertainty for companies and employees to change already well-functioning EWCs and stresses that the Commission should refrain from imposing additional regulatory burdens on those companies that have already decided to set up EWCs. Instead, it should aim to simplify the implementation of existing legislation.

Among the responding employers' organisations, the members of SGI Europe recognise that the Commission has well identified the discrepancies in the implementation of the Directive and that a revision of the Directive may be justified in order to provide more clarity on the rules and to organise regular, genuine ex-ante consultation of employee representatives in EWCs on transnational issues. SMEunited recognises that there is some justification for amending the Directive, without ignoring its current overall good functioning.

After the break, an overview of the EWC performance evaluation tool was presented.



The presentation analysed such questions to employee representatives in the EWC as

Does the EWC meet with central management more than once a year?

Are there working groups within the EWC to deal with specific areas/issues/problems?

Is there always a preparatory meeting of employee representatives before the meeting with central management?

Is there always a meeting after the meeting with central management to summarise the meeting with central management?

Do you see issues related to

- the greening of the economy
- Reducing carbon emissions
- digitalisation
- psychosocial risks
- remote working.

Whether there are any employee representatives from non-EU countries among the employee representatives (of course this question is only relevant if the company has significant sites in non-EU countries). During the contract negotiations/follow-up, have EWC members raised the demand to include non-EU employee representatives (fully or partially) in the work of the EWC and its meetings with central management?

Do employee representatives exchange information on an ongoing basis on issues relevant to their sites (these may be issues that are not/cannot be raised in a meeting with central management because they do not meet the "transnational issue" requirement)?

Do employee representatives respond honestly and fully to questions from other representatives, even on 'sensitive' issues - in simple terms, do you exchange information on wages for particular groups/categories of employees? If there has been local restructuring (e.g. relatively small group redundancies at site X), do you get information from the local employee



representative about what has been negotiated (e.g. information about redundancy payments, etc.)?

Would you agree with such a statement? EWC members work as a team, we just know each other well, communicate and like each other?

Would you agree with the following statement: We are aware that central management may try to play one site off against another, but this automatically raises a red flag for us?

Would you agree with the following statement: All unions are treated equally by central management?

If you ask for it, will you be given a collective agreement/agreement etc. that has been agreed by unions at another site within the company?

And a question to the central management representatives in the EWC

Can you tell us what, in your opinion, is the added value of meetings between central management and the EWC? Do you see it only as the fulfilment of a legal obligation of the company?

Do EWC meetings with central management take place in different locations so that EWC members and central management representatives get to know the different locations?

Can you identify the demands made by EWC members during the rejection of the EWC agreement and do you know why central management rejected them? Was it just because central management did not see the need to go "one step further" than the minimum standards set out in the directive/national law?

Can you point to any provisions in the agreement setting up the EWC that you feel are driven by the specificities of the company you represent?

Does the EWC have working groups on any issues/challenges/areas? Did central management encourage their creation?

Are local employers informed about EWC meetings with central management?

Dr Agnieszka Zwolińska pointed out that information is not a one-way process - employee representatives are also a valuable source of information about what is happening in the workplace, which is particularly valuable now with the introduction of new technologies.



The discussion also focused on sanctions - including a comparison of the sanction mechanism associated with breaches of GDPR standards. The topic of sanctions as a deterrent mechanism was discussed. At the same time, however, it should be kept in mind that the dialogue should continue after their application, which can be extremely difficult.

The need for confidence building emerged from the discussion. In the view of the employers' representative, the focus should not be on cases where the central management of a transnational company has violated a provision of directives or an agreement establishing an EWC, but on situations where cooperation is positive and generates good practices that can be disseminated.

Participants at the meeting agreed to send in their comments and feedback on the "EWC Performance Assessment Tool" by 15 January 2024.

The IPA will then prepare a final document describing the tool.