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Briefing Note on the adoption of the European Parliament report on the revision of the European Works Council Directive



On 2 February 2023, the European Parliament adopted the legislative initiative report by MEP Dennis Radtke (EPP) on the [Revision of the European Works Council Directive](#).

Although this report does not mean a legislative change per se, it is the first step that may lead to legislative improvements of the EWC Directive.

The special procedure of the legislative own-initiative report enables the European Parliament to suggest proposals for new laws or amendments to EU laws. In her inaugural address in July 2019 and in her Political Guidelines, Commission President Ursula von der Leyen committed the European Commission to responding with a proposal for a legislative act whenever Parliament, acting by a majority of its members (353 out of 705), adopts a resolution requesting that the Commission submits legislative proposals.

The adopted report calls on the European Commission to propose a revision of the EWC Directive by 31 January 2024 at the latest.

The European Commission now has to respond to the Parliament's demands in writing within three months. According to our latest information, the Commission intends to do so around the beginning of March. It seems that the Commission intends to respond positively and thus prepares to put forward its own legislative proposal.

However, before launching this legislative proposal, the Commission is obliged under the EU Treaty (Articles 154-155 TFEU) to consult the European social partners in a two-stage consultation procedure. Whereas in the first stage the Commission consults the European social partners on the possible direction of an initiative, in the second stage the focus is on the content of an initiative. On average, each consultation phase takes about 6 weeks (i.e. between date of launch and deadline for the social partners to reply; but not including the possible time in between the end of the first phase and the launch of the second one)

In the second phase consultation, the European social partners can decide to enter into European social dialogue negotiations, thus suspending the Commission initiative. Should the European social partners decide not to enter into bipartite negotiations, and should the Commission still consider that Community action is desirable, the Commission will (continue to) undertake the preparation of a legislative proposal.

If, on the other hand, the European social partners express their wish to negotiate an agreement to be incorporated into a Directive they have in principle nine months to reach such an agreement. If successful, the European social partners can then jointly request the Commission to prepare a proposal for Directive to which the agreement is annexed. This proposal has then

to be presented to the Council which can only accept or reject it; the European Parliament has no co-decision competence in this procedure and is only informed about the agreement reached.

All the above underlines that the adopted European Parliament report marks just the beginning. However a very important beginning that trade unions have been advocating for since more than 5 years!

What changes does the European Parliament demand?

The European Parliament is not calling for a complete revision of the Directive but is focusing on some targeted changes aimed at defining existing rights more clearly and improving their enforcement. The current EWC [Directive 2009/38/EC](#) already defines important information and consultation rights of EWCs but leaves too much room for interpretation and offers no effective provisions to enforce these rights.

In its [position for a modern European Works Council Directive](#) from 2017, the ETUC defined ten demands to improve the EWC Directive. The result of the vote in the European Parliament can be seen as a great success. The European Parliament has taken up nine of the ten ETUC demands:

1. The Parliament calls for a better and clearer definition of "**transnational character**". It proposes a clarification in Article 1 by:
 - a. ensuring that even a matter that could have only a **potential impact** on the company shall be classified as transnational,
 - b. taking the level of management and representation into account,
 - c. thus, independently of the number of member states involved,

In addition, the Parliament followed the ETUC demand to move the definition of transnationality from the recitals into the legal body of the directive and therefore make it legally binding. The Parliament proposes a broad definition in Article 1 (4a):

*"In order to determine the transnational character of a matter, **the scope of its possible effects and the level of management and representation involved shall be taken into account. This includes matters which are of concern to workers, irrespective of the number of Member States involved, because of the scale of their possible effects, as well as matters involving the transfer of activities between two or more Member States. Establishments or undertakings in different Member States shall be deemed to be affected if it is reasonable to assume that a matter concerning an establishment or an undertaking has, or is likely in the foreseeable future to have, effects on establishments or undertakings in other Member States, even if the decisions envisaged by an undertaking or a group of undertakings are taken in a Member State other than that in which those effects occur.**"*

2. **Information and consultation rights are to be defined more precisely.**

A consultation **shall** take place *"in such a way as to enable the employees' representatives to receive a reasoned reply from the central management in good time before the decision is adopted"*.

In addition, Article 9 now states: *"An information and consultation procedure shall be initiated within a timeframe and in a manner which enables the European Works Council to carry out meaningful consultation with relevant employee representatives at local and*

***national level** in order to be able to give its opinion before the conclusion of the consultation procedure at the relevant level."*

3. **On access to justice and better enforcement** the European Parliament requests that Member States provide **effective procedures** to enable EWCs to claim their rights to courts. The legal costs should be borne by the central management.

In order to enforce the rights effectively, the European Parliament calls for deterrent penalties of up to EUR 20,000,000 or 4% of worldwide turnover of the company.

The proposal to introduce a **right to injunctive relief** if a company disregards the consultation rights of the EWC is particularly noteworthy. Accordingly, Article 11 states:

*" Member States shall establish effective judicial procedures, that can be accessed in a timely manner, to apply for and terminate including the possibility to request a **preliminary injunction for the temporary suspension of decisions of the central management** where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto. The effects of the challenged decisions on employment contracts or employment relationships of the affected employees shall be suspended accordingly."*

4. Concerning the definition of **confidentiality**, which is often interpreted too broadly by employers, which massively hinders effective EWC work, the European Parliament demands that matters subject to confidentiality shall be based on **objective criteria**. In addition, the Member States must provide for effective administrative or judicial procedures for the EWC to challenge the obligation of confidentiality in a timely manner.
5. Concerning the rules for **negotiations with the special negotiating body** the European Parliament calls for improvement of the work of the special negotiating body, that should meet for its first meeting within six months. Should the deadline not be met, the subsidiary requirements should apply.
6. The **role of the trade union representative** is recognised. The European Parliament calls for EWC and the special negotiating body to be given the right to invite a trade union representative to their meetings in addition to at least one expert. At the request of the EWC or the special negotiating body, the trade union representative shall be allowed to attend meetings with central management. The central management should not be able to refuse this.
7. EWCs shall have the **right and the necessary resources** to consult with employee representatives at national and regional level.
8. The EWC should be able to meet at least twice a year.
9. The new rules should be applied to all EWC agreements, regardless of the law under which they were concluded (pre-directive agreements, Directive 94/45/EC, Directive 2009/38/EC). Renegotiations should not be necessary.

In addition to the central demands of the ETUC, the European Parliament is also calling for the additional supporting measures:

- A high-level conference in 2023 to promote the establishment of new EWCs;

- The creation of a platform to exchange structured "best practice" examples and to improve the visibility of EWCs.
- The financial resources for EWC training should be increased at European and national level.

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