

EESC opinion on European works councils – Breathing new life into revision of the EWC Directive 94/45?

After exhibiting a disappointing inertia regarding the long overdue revision of Directive 94/45 on European works councils (EWC Directive), in September 2006 the European Economic and Social Committee (EESC) helped to revive public consultation on this issue. On 13 September, at its plenary session, the EESC adopted an opinion prepared by the SOC Section – **‘EWC: a new role in promoting European integration’** – with **144 votes in favour, 76 against and 15 abstentions**. This EESC policy statement has the potential to bring the topic of EWCs back onto the European agenda and to break the current stalemate between the social partners and the Commission.

Resuscitation of the revision process will nonetheless be difficult. This is because, on the one hand, the Commission is by no means bound by the position of the EESC and, on the other hand, reaching a consensus between the employers’ and employees’ organisations seems harder than ever. One indication of the latter is the extremely tense discussions on various versions of the opinion laboriously developed by the working group. The task force allotted this task was chaired by Renate Hornung-Draus representing Group I (employers, UNICE), with Edgardo Iozia, of Group II (employees), as rapporteur. Since the two Groups have strongly divergent positions on the revision the fact that this task force managed to adopt a common position is a major success in itself. All in all, it was possible thanks to the support from Group III (other stakeholders) who acknowledged the grounds for revision, the rapporteur’s willingness to compromise and the moderate character of the demands made on the Commission.

Bones of contention [LEVEL 2]

The hot debate in the working group stemmed from the adversarial positions of Groups I and II. The first point of discord is the very need to revise the EWC Directive. UNICE claims the EWCs are functioning well and that, if there are any weaknesses in the legal framework, they should be resolved by the relevant EWCs and company managements without interference from European law-makers. The ETUC and its affiliates have been calling for the improvement of numerous clauses of the Directive since 1999. This mainly involves bringing the EWC Directive into line with other legal instruments, including: workers’ representation (Directive 2002/14, SE Directive 2001/86/EC), especially in regard to definitions of (timely) information and consultation; acknowledgement of national and international trade union organisations; and adjusting the Directive to the changed reality and the needs of new EU members after enlargement in 2004, as well as the prospective accession of Romania and Bulgaria.

In its opinion the EESC acknowledged all these demands and some additional arguments of Group I and called upon the Commission to get on with the public consultation and revision of the Directive. These reasonable and fact-

based arguments, however, were taken by the UNICE representatives as a 'declaration of war' and 'political crusade' against entrepreneurs. Dissenting from Groups II and III the employers' delegates at the plenary session at the very last moment submitted a counter-proposal stating that EWCs are functioning well and that legal amendments were neither necessary nor desirable. This curious *votum separatum* was rejected by the EESC, yet it reflects the challenge facing revision of the EWC Directive.

The ball is in the Commission's court [LEVEL 2]

The next move must be made by the Commission. Since no agreement is foreseeable between employers' and employees' representatives we might soon be faced with a situation similar to the one that the Commission faced in 1998 in the process of negotiating the Directive on Information and Consultation with the social partners. At that time, due to a stalemate and UNICE's withdrawal from negotiations, the Commission was forced to come up with its own draft. It remains to be seen whether the Commission will be willing and strong enough to take the same route again.

There is, however, an additional factor that makes the current situation different. In May 2006 the Commission presented a study on an optional legal framework for transnational collective negotiations in which more and more EWCs have been engaging lately (see Keune and Warneck, in this issue). The apprehension is that this initiative might be used by the Commission as a 'smoke screen' to distract attention from revision of Directive 94/45. However, such a substitute for a precisely and effectively revised EWC Directive would be undoubtedly highly disappointing.

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