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Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)

Response of CEC European Managers

Preliminary remarks: Although stated as respondent to the consultation and despite arguments shared by CEC covered in the consultation document, there is no explicit mention of CEC's positions as legitimate representation of managers at EU-level.

1. What are your views on the objectives of possible EU action set out in Section 5.1?

For CEC European Managers, EU action on European Works' Councils (EWCs) should aim at improving the scope, effectiveness, and quality of the work of EWCs. Considering that, according to available data, only 1000 of 3678 multinational undertakings have either an EWC agreement or a 'voluntary' pre-Directive agreement, the overall objective for EU action should also include the growth in EWC creations.

Regarding the specific objectives, CEC would like to highlight:

- EWCs should promote diversity within social dialogue by encouraging the representation of different occupational categories, through gender equality provisions and through the involvement of relevant stakeholders in the work of EWCs.

- The same set of rules needs to be applied to all undertakings and their workforce to overcome the existing exemption of certain undertakings from common minimum requirements to provide a level playing field across the Union.
- The process of employees' request to set-up an EWC as set out in the recast Directive needs to be further streamlined. Action must include provisions to eliminate any risk of unnecessary delay or lack of resources on the part of employee representatives during the negotiation process, to ensure that EWCs are set up effectively and efficiently.
- It is essential that the new directive protects the more protective measures that may already be in place in some European Works Councils, through negotiation. Implementation must not be an opportunity for certain companies to reduce certain gains.
- Workers representatives' information and consultation rights shall be enforced by addressing the challenges hampering the practical effectiveness of these rights. The application of non-disclosure clauses should be justified by employers.
- In case these rights are not effectively implemented, judiciary measures, including sanctions, should be foreseen for companies that fail to apply the rules.
- As regards legal remedies, the question of legal costs is one of the main obstacles to legal action by EWC members. Indeed, the European directive does not provide for company management to cover these expenses. A provision to this effect should therefore be included in the revised directive, in order to make access to legal remedies truly effective.

2. What are your views on the possible avenues for EU action set out in Section 5.2?

CEC supports the possible avenues for EU action set out in Section 5.2 and agrees that any possible EU initiative needs to be designed in full respect of national competence, the diversity of national industrial relations and above all the autonomy of social partners.

In addition to the identified avenues for EU action, CEC would like to add relevant considerations:

- EWCs should promote diversity of representation in social dialogue by establishing a distinct and specific representation of managers. It is essential to have managers at the negotiating table to bridge the gap between employee

and employer representation and to have a 360° view of the interests of all stakeholders. This representation can be ensured through regular company elections. If not, it should be ensured that there is at least some form of managers' representation. Representatives could be nominated at European level by the European sectoral federations of managers or, in their effective absence, by the cross-sectoral social partners representing managers.

- The notion of « controlling undertaking » is imprecise and can be subject to restrictive interpretation. In case there is no dominant company in control of the other entity, the dispositions on employee representation do not apply, particularly the duty to inform and consult EWCs. This can be a particularly difficult in cases of restructuration and reorganisation. The revised directive should extend the scope of eligible companies to include other juridical forms, particularly joint ventures. This is also highly relevant to promote transnational social dialogue in the context of the platform economy.
- Employers should be obliged to open negotiations for the creation of a EWC once the set-up criteria are met. A sanction mechanism must be put in place if this obligation is not respected. In addition, the negotiation period should be limited. The European Parliament's recommendation of 18 months to conclude an agreement seems to be a reasonable timeframe given the available evidence.
- Key notions such as transnationality, confidentiality or information/consultation procedures should be clearly defined to avoid excessive room for interpretation.
- Regarding transnationality, it is important to ensure that the definition in the directive is not limited to the number of member states concerned, but also includes the question of the expected potential effects of the issues addressed, including in operations outside the EU. This may prove all the more crucial in the case of company restructuring, where the EWC can play a decisive role.
- One meeting a year is not enough to deal with information concerning the entire life of the company, such as last year's financial results and the financial and economic forecasts for the coming year. That is why at least two meetings should be legally foreseen per year. These two annual meetings should be attended by all participants, to enable both formal and informal exchanges of a high quality. Beyond two meetings, a hybrid mode may be envisaged to increase the frequency of discussions while limiting costs. However, this should be the exception rather than the rule, to preserve the added value of the EWC.

3. What are your views on the possible legal instruments presented in Section 5.3?

CEC considers that it is not sufficient to adopt non-legislative and non-binding instruments of EU action on EWCs. To effectively achieve the objectives mentioned,

CEC welcomes an Amending Directive justified by minimum social requirements at EU level under Article 153(1)(e) TFEU on the information and consultation of workers.

Most of the new elements aimed at improving the legal regime of European Works Councils should be included in the Directive as a matter of priority to reduce the discrepancies between the needs and expectations of workers and the actual functioning of EWCs in a harmonized way in the Member States.

It is essential to consolidate the harmonization of the EWC legal regime to limit the circumventions that companies might be tempted to implement by establishing the EWC under the regulations most likely to serve their own interests, which can often be the least protective legal regime for the body and its operation.

Thus, recourse to the adoption of a recommendation and/or a communication should be limited to providing additional elements aimed at shedding light on interpretation of the directive.

4. Are the European social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in Section 5.1?

CEC European Managers favours negotiations among European Social partners under Article 154(4) TFEU, over a Commission initiative on EWCs.