

## **Position**

**on the first-stage consultation of the social partners**

**on the review of the directive on the establishment of a  
European Works Council or a procedure for the purposes  
of informing and consulting employees**

*– BDA position –*

## Summary

- *The European Commission rightly explains the reason for the success of the EWC directive as being the **great flexibility** which the negotiating parties enjoy when concluding an agreement. This flexible approach must continue to be determinant for shaping and applying this directive in the future.*
- *However, the picture painted by the European Commission is **unbalanced and fails to reflect reality**, since the positive role of trade-union organisations is highlighted in a one-sided manner and the central role of management and employees is disregarded.*
- *It is positive that the European Commission does not incorporate the demands of the European Parliament concerning the EWC directive. Nevertheless, it must be pointed out that the **weaknesses of the directive** identified by the European Commission **do not justify a revision**.*
- *In the view of German business, the **aspect of EU enlargement is of particular relevance** with regard to whether or not the directive should be revised. Undertakings must be given the opportunity to involve management and employees from the new EU Member States in their practices and at the same time pass on their experience. They should not be expected to have to cope with changes to the current EWC directive.*
- *Against this background, the potential of European works councils cannot be increased by including further or modified rules in the EWC directive.*
- *Rather, the **parties involved at company level** must be left free to **address their individual problems and requirements on a customised basis** within the existing framework, an approach which is absolutely essential not least in connection with the change processes under way due to EU enlargement.*
- *In order to maintain and increase acceptance of the European works council or the information and consultation procedure, **good examples** and **practice-related guidelines** can be suitable instruments, but not a revision of the EWC directive.*
- *German business advocates the **opening of social dialogue** at EU level on the basis of article 139 TEC with the **objective of reaching agreement on practice-related orientations or guidelines** for undertakings when applying the existing directive.*

## Introduction

On 19 April 2004 the European Commission opened the first stage of social-partner consultation on review of the directive on establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (EWC directive).

The social partners are invited to take a stance on the following points:

- How best to ensure that the potential of European works councils to promote constructive and fruitful transnational social dialogue at the level of the undertaking, which will benefit both undertakings and their employees, is fully realised in the years ahead.
- The possible direction of Community action in this regard, including, as the case may be, the revision of the European works councils directive.
- The role they believe the social partners themselves can play in addressing the issues that arise having regard, as appropriate, to their recent reflections on related issues in the context of managing change and its social consequences.

A debate on revision of the EWC directive has already been in the air for several years. In its 2000 report on review of application of the EWC directive, the European Commission clearly did not argue for a revision of the directive. This was not least the result of the social-partner conference organised in 1999 by UNICE and ETUC on practical experience with the EWC directive.

By contrast, ignoring experience from practice in undertakings, in 2001 the European Parliament called for a wide-ranging revision of the directive. This included points such as:

- a halving of the three-year period for negotiations on establishment of a European works council to eighteen months;
- a lowering of the threshold above which undertakings fall within the scope of the directive, from 1,000 to 500 employees in total and from 150 to 100 in at least two countries;
- a change in participation rights, especially in the cases of corporate mergers and restructuring operations;
- an extension of the list of themes on which information and consultation is required;
- an increase in resources for training of EWC members;
- a strengthening of the rights of trade-union organisations.

## Comments

### A. How can the potential of European works councils be fully realised in the years ahead? What direction could the Community take in this regard?

In its consultation document the European Commission examines a number of areas that are relevant for this question. These are the progress made with application of the directive, changes in several areas affecting future application of the directive and the role of EWC, and enlargement of the European Union with the attendant challenges and problems.

#### 1. Progress with application of the directive

*The European Commission recognises the very considerable progress made in the field of EWC. It points out that the great flexibility that the directive provides for the shaping of agreements on European works councils has made a great contribution to the directive being so successfully implemented. The role of trade unions at European level is highlighted in connection with the successful development of European works councils. Despite these successes, the Commission cannot deny that the directive also exhibits a number of weaknesses. It says that criticism of application of the directive has been levelled by both trade unions and the European Parliament.*

a. In the years since adoption of the European works councils directive, a multitude of EWC agreements have been concluded in the undertakings<sup>1</sup>. As a result, it is clear that undertakings in particular have made considerable efforts in connection with transnational information and consultation of employees. It is positive that the European Commission **applauds this commitment**. Nevertheless, it is questionable to place one-sided emphasis on the role of the trade-union organisations at European level in this regard without examining possible problems in undertakings and the views of management and employees. The concept of European works councils has only been able to take root in so many undertakings because both sides – employers and employees alike – have worked together successfully. It is true that the European Commission mentions this aspect, but does not give it the central position it deserves.

b. The European Commission rightly explains the reason for the success of the EWC directive as being the **great flexibility** which the negotiating parties enjoy when concluding an EWC agreement or other information and consultation procedure. Practice on the ground has shown that the possibility to find customised solutions in undertakings can increase the acceptance and efficiency of this instrument. This flexible approach must continue to be determinant for shaping and applying the EWC directive in the future. Inclusion in the directive of statutory requirements, as demanded in 2001 by the European Parliament, e.g. in the field of themes on which information and consultation are required or for the issue of training, stand in the way of this flexible instrument. The success which the European Commission traces precisely to the great flexibility, would be jeopardised by such statutory requirements.

c. Furthermore, the European Commission examines **weaknesses in the directive** and refers in this context to its own 2000 report and the 2001 European Parliament resolution. It is positive that the European Commission does not

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<sup>1</sup> This position speaks of “undertakings”. Although it does not refer explicitly to “groups of undertakings”, these are also covered.

incorporate the demands of the European Parliament concerning the EWC directive. Nevertheless, it is important to look at the criticisms it raises.

aa. The European Commission refers to criticisms aired about the information and consultation procedure in connection with **restructuring cases**. These criticisms should be firmly rejected. The cases referred to in the consultation document related to application of national law. These problems have been solved in the meantime. It cannot be concluded from this that a revision of the EWC directive is necessary. In this regard, it should be pointed out that very problematic behaviour by the trade unions in a series of cases (e.g. calls for boycotts) was not conducive to finding the constructive solution sought by the undertaking. In order to promote application of the information and consultation procedure in restructuring operations, in 2003 the social partners drew up orientations based on practical experience, which contain principles for successful and constructive completion of restructuring operations for both sides – for employees as well as for employers.

bb. The European Commission addresses the role of the trade unions as employee representatives. German business believes that the role which **trade-union organisations** play in the framework of information and consultation processes must be oriented on the relevant national situation, in order to take full account of different traditions in Member States of the European Union. In addition, it is exclusively the right of the employees employed in the undertaking in question to decide who is to be involved in this area. Against this background, any discussion on the rights of trade unions as organisations in the framework of European works councils and of the special negotiating body, as demanded by the European Parliament, must be ruled out.

cc. The European Commission also refers to the demand of critics that European works councils should be established more promptly and more often. In this it is following the lead of the European Parliament in particular, which wants to reduce the **thresholds** from which undertakings fall within the scope of the directive from 1,000 to 500 employees, and from 150 to 100 in at least two countries. A reduction of the current threshold values would not reflect the actual situation in undertakings. The establishment of European works councils in undertakings with fewer than 1,000 employees would result in an administrative and financial burden disproportionate to the size of these undertakings, given that many of the associated costs are independent of company size. None other than the European Commission once more explained in the joint employment report 2003/2004 that more needs to be done to improve the climate for enterprises. To that end, as the Employment Task Force establishes in its autumn 2003 report, improved conditions for undertakings are necessary. If the objectives of Europe in this area are genuinely to become reality and we are to move closer to the Lisbon goals, undertakings should not have further financial burdens imposed on them. Europe must prove that objectives and action on the ground are coordinated and do not contradict each other.

At the same time, the European Commission's statements examine another demand made by the European Parliament, that the **three-year period for negotiations** on establishment of an EWC or creation of some other procedure for information and consultation should be halved to eighteen months. Practical experience in undertakings has shown that, even in negotiations which take place in a constructive atmosphere and in which there are only few points of contention, a maximum

negotiating period of eighteen months is too short. Elements such as coordinating meetings of members of the special negotiating body and lead times for translation activities expand the negotiating process, which can exceed the required time frame. For this reason, the maximum period for negotiations should remain unchanged at three years.

## 2. Changing context

*The European Commission looks at a number of areas which it believes will have an impact on the future direction as well as the role and importance of the EWC: developments in EWC agreements, the changing economic context and developments in relations between the social partners at EU level.*

a. The European Commission then examines three **legal instruments** which have been adopted in the area of **information and consultation** in recent years. These are the directives on employee participation in the European company and the European partnership as well as the directive establishing a general framework for employee information and consultation. These directives, adopted in 2001, show how intensively the European Union has debated the issue of employee participation and how extensive the provisions in this area already are today. In the framework of these directives, as the European Commission rightly recognises, some of the provisions put in place are relevant for the problems addressed in connection with application of the EWC directive. An example is the timing of information and consultation, which is covered in the directive establishing a general framework for employee information and consultation. EWC agreements or other information and consultation agreements could be guided by these provisions on a voluntary basis, if the employer and employee sides so wish, without any need for a modification of the EWC directive.

b. The **dynamic development of agreements** and European works councils themselves is discussed by the European Commission. There is a tendency to examine particular points previously discussed as problem areas in EWC agreements (e.g. extent of transnational information and consultation, themes discussed in European works councils). The success of the approach taken by the directive, whereby great flexibility is allowed at the level of the undertaking, is underlined by developments in the content of EWC agreements described by the European Commission. Any problems are solved at the level of the undertaking, without the need for a restrictive legislative framework.

c. According to the European Commission, stagnation in **establishment of new European works councils** and the total number of agreements in existence represents a problem. Around 65% of the employees covered by the directive work for undertakings in which an EWC agreement applies. Each undertaking has its specific structures. This is also the case in particular for employee information and consultation. As the European Commission rightly points out, the EWC directive does justice to the resulting need for flexible provisions in this area. However, flexibility must also mean no establishment of an EWC if the employees see no need for one. Employees themselves have the initiative for starting the process leading to establishment of an EWC or other information and consultation procedure, by submitting an application for creation of a special negotiating body. In this respect, they have a particularly strong negotiating position, since the EWC provisions automatically enter into force in the event of negotiations breaking down. The

circumstance that an EWC is not established in an undertaking therefore shows that employees often see no need for such a body because the undertaking takes sufficient account of employees' need for information and consultation even without establishment of an EWC.

d. In the area of the **changing economic context**, the European Commission examines the theme of restructuring and mentions in particular the social partners' orientations. In this respect, please refer to the comments above.

e. The joint multi-year **work programme of the social partners** represents a very positive development in the area of social-partner relations, as the European Commission recognises. In this respect, reference must be made to the autonomy of the social dialogue, which is one of the cornerstones of this dialogue. If the social partners decide to deal with a theme in this framework, it is a condition for the success of the discussions that the European Commission abstains from taking any action on this theme.

### **3. Enlargement of the European Union**

*The European Commission addresses the challenges that will arise for the work of the EWC as a result of EU enlargement. However, it says that the associated problems will have to be solved independently of any modifications to the EWC directive. It examines the increased number of undertakings that will fall within the scope of the directive as well as inclusion of employee representatives from the new Member States in the EWC.*

For German business, the aspect of EU enlargement is of particular relevance for the question of a possible revision of the directive. The European Commission rightly points out that it is particularly important for representatives from the new Member States to become familiar with the tasks they will have to carry out in European works councils. At the same time, however, it states without further explanation that the associated problems will have to be solved independently of any revision of the directive. Inclusion of employees from the new Member States in the information and consultation process requires far-reaching adjustments, not least because of cultural differences. Stable conditions are needed, so that undertakings have the possibility to involve management and employees from the new Member States in their practices and at the same time pass on their experience. It can also be objected that some of the new Member States have only just transposed the directive on European works councils into their national law. A revision would place too heavy a burden on legislators, undertakings, employees and European works councils themselves.

### **4. Conclusion**

These comments demonstrate that the potential of European works councils cannot be increased by modifying the EWC directive and extending its scope, especially against the background of the very recent EU enlargement. Rather, the parties involved at company level must be left free to address their individual requirements on a customised basis. This is only possible in the most flexible framework possible, not through further restrictive legislative provisions. In order to pursue and enhance the successful work done to date, good examples such as practice-related orientations or guidelines for applying the current directive are suitable instruments, but not a revision of the EWC directive.

## **B. Social dialogue**

German business welcomes the European Commission's objective of exploiting the potential of the EWC directive in such a way that a maximum contribution can be made to achieving the Lisbon goals. This outcome can only be secured on the basis of the current directive. It is not necessary and, for the reasons set out above, would be counterproductive to carry out a revision of the EWC directive. Rather, German business advocates the opening of social dialogue at EU level on the basis of article 139 TEC with the objective of reaching agreement on practice-related orientations or guidelines for undertakings when applying the existing directive.

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