



NFU response to the Consultation of the European social partners on the revision of Council Directive 94/45/EC of 22 September 1994 on the 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

About NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 155 000 employees in the Nordic financial market.

General remarks

NFU would like to draw the Commission's attention to the reply sent by NFU's affiliate, the Swedish Financial Sector Union, as well as the joint reply sent by the unions in Nordea, Danske Bank Group and IF. These unions represent some of the best practices in the said companies, which could be of great interest for the future work with the revision of the directive.

Additionally, NFU would like to highlight a number of specific matters that are of particular importance to the employees NFU represents, namely the employees in the banking, finance and insurance sectors in the five Nordic countries.

Content of the planned community initiative

1.1. Concepts of information and consultation

NFU would like to emphasise how consultation is understood in the Nordic context. A consultation should be interpreted as a mandatory exercise instigated on the initiative of the employer before any major changes in the company, regardless of the nature of the change.

The consultation procedure shall ensure that the enterprise presents the EWC with sufficient information with the aim of getting a response which the enterprise will take into account before making the relevant decisions.

The legal framework

In the opinion of NFU it is of crucial importance that the EWC agreements are applied and respected in practice. It is necessary to address some of the legal uncertainties that have arisen in practice, which in some cases has led to lack of respect of the role of the EWC in circumstances where the employees indeed needed a voice to raise their concerns.

Nordisk organisation för bank, finans och försäkring

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU)

Danske Forsikringsfunktionærers Landsforening, Danmark
Finansforbundet, Danmark
Fackförbundet SUORA, Finland
Försäkringsmannaförbundet FMF rf, Finland

Samband Islenskra Bankamanna, Island
Finansforbundet, Norge
Finansförbundet, Sverige
FTF, Sverige



In accordance with recent national rulings regarding consultations (British Airways, Gaz de France), the revised Directive should ensure that any decision taken without proper consultation should be declared null and void by national courts or the European Court of Justice. If management decides not to act in accordance with the opinion expressed by the EWC during the consultation, the EWC should have the right to a further meeting with management with a view to seeking agreement before the decision is taken.

1.2. Content of subsidiary requirements

NFU wants to point out that employers will only gain from a well functioning EWC. Hence the provision in paragraph 4 in the subsidiary requirements for meetings without management should be amended to provide for network meetings for the employee representatives. These meetings should encompass all representatives and experts involved in the EWC, and be arranged at least once per year on the initiative of the employees. These meetings could work as networking and educational meetings, focusing on increasing the knowledge of the national labour law systems concerned as well as an exchange of experiences regarding employee influence structures. In accordance with paragraph 7 in the subsidiary requirements, the management should cover the costs for these meetings. NFU also supports the idea presented by the Commission to increase the number of ordinary meetings in the subsidiary requirements from one to two.

1.3. Role of trade union organizations

In its proposal for revision, the Commission states that it would appear appropriate to recognize explicitly the special role which trade union organizations can play in negotiations and support for European works councils. NFU of course supports this idea. It should however be pointed out that it is crucial that the members of the EWC truly represent the employees of the company concerned, and should therefore, as a general rule, be employees in said company. The members should be appointed by trade unions representing a majority of the employees in the country concerned in accordance with national procedures. If this is not the case, the employees of the company should elect or otherwise appoint the representatives in a well-documented procedure, ensuring the legitimacy of the representatives.

1.4. Role and competence of employees' representatives

Though it has been emphasized many times before, it should also be noted that proper training – including language training - is the precondition for any effective progress within the EWC's.

2. Measures designed to resolve problems encountered in the practical application of the Directive and to rectify gaps in legal certainty

Confidentiality

The revised directive must ensure that the European legislation on information and consultation for workers is properly applied. Today, too often US SEC rules are used to withhold information from employees.

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Thus, legal provisions allowing management to withhold information from the EWC or defining them as confidential should be interpreted narrowly, and the burden of proof should rest with the company. The EWC agreement should clearly define objective criteria on this taking account of applicable legal provisions. Employee representatives should be aware of the appeal procedures that are provided for by law. Employee representatives should have the right to transfer confidential information to the body which appoints/elects them and to officials in their union as well as other legal advisers, provided that they inform the recipients at the same time that the information is confidential and may not be disclosed to anyone else.

3.2. Transnational competence of European works councils

NFU agrees with the Commission that the Directive establishes a right to information and consultation on transnational issues. Transnational issues should however be interpreted broadly, taking into account that seemingly national issues may well have indirect transnational effects. In line with SE legislation, NFU is of the opinion that the EWC should be responsible for all issues that are not strictly limited to a particular country. In principle, decision-making of the top management level should always be regarded as transnational. The burden of proof that an issue is not transnational should rest with management. This also means that the EWC should have the right to demand information and consultation on issues that the EWC judges may have transnational implications presently or in the future.

This position is not in contradiction to the general position of the trade union movement; namely that collective bargaining is the responsibility of the national trade unions. Merely, the point is that some issues affect the enterprise at national as well as transnational level – and need to be addressed accordingly.