

## **Proposal of a new Employees Representatives Act for Estonia**

It must be stated very clearly that the proposal on the employees representatives act is not in line with the EU Directive 2002/14/EC as evaluated in more detail below. The scope of the Directive has not been respected, the coverage of information and consultation is not congruent with the Directive, the procedure of consultation is much less developed than in the Directive, the idea of timing is not taken over, it would be up to the representatives to ask for consultation possibilities and a general provision on adequate administrative and judicial procedure is lacking.

It is unacceptable that the implementation of EU legislation leads to deregulation at national level. If the proposal would enter into force the trade unions would lose all their rights of information and consultation as foreseen at the moment. This is counter Article 9 paragraph 3 and 4 of the EU Directive laying down the non-regression clause of the Directive.

The idea of the EU Directive is “to establish a general framework setting out minimum requirements for the right to information and consultation of employees”, and this in accordance with national law and industrial relations practices (Art. 1 (2)), but to change the entire system of industrial relations at enterprise level goes bluntly against this idea.

But looking at the proposal of the Estonian Government, this is what is actually happening. The workers participation system of Estonia as it was established by the Employees representatives Act of 1993 would completely change. The Estonian specificity as it stands at the moment is to have the trade union and non-unionised representatives in parallel in a company, with both of them having the same rights. The draft would change this by only having worker representatives and according them all the rights in relation to information and consultation. The trade unions would only keep the right to collective bargaining and the resolution of disputes and that as well in a reduced scope.

### **Implementation of the EU Directive 2002/14/EC**

Chapter 5 of the proposals tries to implement the EU Directive 2002/14/EC in the national legislation of Estonia.

#### **§ 17. Application of information and consultation**

*The information and consultation provisions in this Chapter shall apply to employers who employ at least 30 employees.*

This article is not inline with Article 3 of the Directive as neither the number nor the unit the number is referring to (undertaking, establishment) was taken over.

*1. This Directive shall apply, according to the choice made by Member States, to:*

*(a) undertakings employing at least 50 employees in any one Member State, or*

*(b) establishments employing at least 20 employees in any one Member State.*

*Member States shall determine the method for calculating the thresholds of employees employed.*

## **§ 20. Essence of information and consultation**

Article 20 does not properly implement Art. 4 (2a) of the EU Directive:

*2. Information and consultation shall cover:*

*(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;*

Article 20 of the proposal states the subjects on which information and consultation has to be provided. But no further more detailed provision is to be found on the way consultation shall take place. Therefore the proposal is not in line with the Directive regarding consultation, more specifically with Article 4 paragraph 4 of the Directive. This is especially true as reference to the timing and level is concerned.

*4. Consultation shall take place:*

*(a) while ensuring that the timing, method and content thereof are appropriate;*

*(b) at the relevant level of management and representation, depending on the subject under discussion;*

*(c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;*

*(d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;*

*(e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c).*

## **§ 21. Method of provision of information and consultation**

*(1) The employer shall provide information in a manner which allows thorough examination of the information and, if necessary, preparation for consultations held with the employer. The employer shall provide the information in writing or in a form which enables reproduction in writing, unless otherwise agreed between the parties.*

Nothing is explicitly mentioned about the timing of the given information, paragraph 1 could nevertheless be interpreted in such a way, but it would be clearer if the idea of the EU Directive Art. 4 (3) would be taken over:

*3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.*

Paragraph (2) of the proposal:

*(2) Representatives or, if there is no representative, employees shall notify the employer at least seven working days' in advance of a wish to undertake consultations. Representatives or, if there is no representative, employees shall have the right to present a written opinion on information received from the employer and make suggestions within 15 working days. If the suggestions are rejected by the employer, the employer shall provide reasons therefore at the first opportunity in writing or in a form which enables reproduction in writing.*

This is a very peculiar approach to consultation. It would be the representatives, which have to ask for consultation and the employer could even refuse them. This is not at all in line with the spirit of the Directive.

The demand of the Directive in Article 8 to provide adequate administration or judicial procedure was not at all taken over by the Estonian proposal.

*Article 8*

*Protection of rights*

*1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.*

Detailed remarks on the proposal as such

## **§ 7. Election and removal of representative**

Regulations regarding the election of representatives might be laid down in legislation, to insure the same proceeding in all enterprises.

*(2) The terms and procedure for election of representatives must provide all employees with the opportunity to participate in the election of representatives.*

No difference is made between active and passive right election rights, the right is given globally to all employees.

*(4) By agreement with the employer, several representatives may be elected by the general meeting.*

It might avoid disputes, if the requested number of representatives per workers would be laid down by law.

*(5) The general meeting shall, at the first opportunity, notify the employer of the election or removal of a representative.*

The procedure of removal of a representative is not at all made clear in the draft; under which circumstances would this be possible?

## **§ 9. Rights of representatives**

Collective bargaining rights and the right of representation of employees in labour dispute is given to the worker representatives only if there is no union at the employer or no employees belonging to a trade union.

*A representative has the right to:*

*4) conduct negotiations with the employer for entry into a collective agreement under the conditions and pursuant to the procedure provided by the Collective Agreements Act, if no trade union is operating in the employer's establishment or no employees belonging to a trade union are employed by the employer;*

*5) represent employees in the resolution of a collective labour dispute under the conditions and pursuant to the procedure provided by the Collective Labour Dispute Resolution Act, if no trade union is operating in the employer's establishment or no employees belonging to a trade union are employed by the employer;*

The collective agreements signed by a trade union do they only apply to the trade union members? If that is the case, how would the non-unionised members be covered in enterprises, where there is a trade union and therefore the worker representatives would not have the right to enter into collective bargaining? The same goes for representation in the case of dispute, who would represent non-unionised workers?

*(6) inform an interested trade union and a federation or central federation of employers or trade unions about violations of working conditions by the employer;*

This would mean that the trade unions would only get this kind of information through a third person being the worker representatives. What would happen if they do not forward this kind of information? What means of enforcement would trade unions have? What is meant by "interested" trade union? Who is judging this?

## **§ 10. Duties of representatives**

*3) monitor compliance with the working conditions and give notice of any violations to the employer and, if necessary, the labour inspector of the employer's place of establishment;*

Here the problem gets obvious: to give information to the trade unions on working conditions is a right but not a duty. Therefore one would conclude that the trade unions do not have any means to enforce their demands on information. This would not be acceptable.

*4) upon the request of an employee, represent the employee in a labour dispute with the employer prior to recourse to a labour dispute resolution body;*

This is contradictory to Art. 9 (5), where this is only possible if no trade union is operating at the establishment or no employees belonging to a trade union. To be coherent, this exception would need to be repeated here.

*5) assist in refraining from calling a strike or lock-out if a collective agreement has been signed by the representative under the conditions and pursuant to the procedure provided by the Collective Labour Dispute Resolution Act.*

This can only be possible regarding collective agreements to which the worker representatives are a party. If not they would interfere with trade union internal affairs.

#### **§ 11. Duty of representatives to keep confidential information**

*(3) The duties specified in subsections (1) and (2) shall not apply to a representative's communication with another representative elected in the same employer's establishment and with an expert engaged in consultation.*

It would be better to have this formulated in a broader sense, as in Art. 6 of the EU Dir. 2002/14/EC saying “*others bound by an obligation of confidentiality.*”

#### **§ 13. Time of carrying out representative's tasks**

*(1) The employee shall, by agreement with the employer, carry out the functions of a representative during working time or outside of working time. The employer may allow a representative to carry out his or her functions during the entire working week.*

*(3) Irrespective of the agreement specified in subsection (1), the employer shall allow the representative to carry out his or her functions during working time:*

*1) if the representative represents 5 to 100 employees — minimum 4 hours per week;*

*2) if the representative represents 101 to 300 employees — minimum 8 hours per week;*

*3) if the representative represents 301 to 500 employees — minimum 16 hours per week;*

*4) if the representative represents more than 500 employees — minimum 24 hours per week.*

Do I understand this right, that the employees are counted per representative and not per employer? Would it not be clearer, if it would read e.g.: if the representative in an enterprise employing 5 to 100 employees?

What will happen if the representative takes more time during working time than agreed with the employer? What would happen if the representative uses more hours outside working time without the agreement of the employer?

Under the current law representatives representing more than 500 employees had the right to fulfil their duties as representatives the entire working week.

This change would imply that full-time representatives would only exist with the consent of the employer, while at the moment this is linked to the number of employees and therefore automatic.

#### **§ 14. Training of representative**

*The employer shall allow a reasonable amount of training to the representative for carrying out the representative's functions. The training costs shall be paid by the employer.*

What does “reasonable amount” imply? Is there case-law on this term?

#### **§ 29. Amendment of Republic of Estonia Employment Contracts Act**

Subsection 94 (1) is amended and worded as follows:

*‘(1) Termination of an employment contract on the initiative of an employer with an employee who is elected as an employees’ representative is permitted during the term of authority of the employee and for within one year after termination of the authorisation only with the consent of the labour inspector of the location (residence) of the employer, except on the bases prescribed in clauses 86 1), 9) and 11).’.*

The dismissal protection of worker representatives is not any longer to be found in the proposal, but would only appear in the Employment Contracts Act subsection 94 (1).

The reference to clauses 86 9) and 11) looks worrying, but we are not sure to have the latest version of the Estonian Employment Contracts Act.

*§ 86. Bases for termination of employment contract on initiative of employer*

*An employer may terminate an employment contract entered into for an unspecified or specified term prior to expiry of the term of the contract:*

*9) due to the long-term incapacity for work of an employee;*

*11) upon hiring an employee for whom the position is a principal job;*

What about the dismissal protection for the representatives of the trade unions?