

EXECUTIVE COMMITTEE
Brussels, 4 and 5 December 1997

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Item 6 on the agenda:

Participation in a European Company (SE)

The Executive Committee is requested to approve the orientations expressed in this paper. The text will serve as reference for the ETUC interventions with the various European Institutions and in the public debate.

This document has been elaborated in consideration of the discussions within the working group “Democratisation of the Economy”.

Participation in a European Company (SE)

1. The sixth ETUC Congress held 1988 in Stockholm already demanded in its resolution on “Democracy in economy and society, for the extension of the right of workers”, that workers should have the right to participate at the level of the undertaking in all decisions which are of concern to them. The Congress further demanded a clear distinction between those bodies in an undertaking which are responsible for management and those which supervise and control the management. The Congress stipulated equal rights for workers concerning the composition of the supervisory and controlling bodies and asked for the possibility of workers and their representatives to have seats on these bodies. The Stockholm Congress demanded that European supervisory bodies should be established for all the European undertakings which operate in more than one member country of the European Union. These demands, which were reinforced by subsequent congresses of the ETUC, are still up-to-date.
2. The proposed Council regulation for a statute of the European company and the proposed directive on the position of workers in the SE have made no progress since the last draft was presented in 1991. Different facts bear responsibility for this. The difficulty to reach agreement over the participation issue is but one, however, important problem which is hitherto unsolved.
3. On 14 November 1995, the Commission issued a “communication on worker information and consultation”. With this Communication, the Commission intended to take stock of the present situation, regarding the proposals concerning worker participation at European level, and to explore whether new ways of moving forwards could be found. The ETUC criticised the Commission for continuously mixing up information and consultation with participation. In sharp contradiction with the Commission’s communication, the ETUC stated that European Works Councils are bodies for providing information and consultation. They do not deal with participation and can therefore not be regarded as substitutes for employee participation arrangements at company level.
4. The ETUC suggested that a high-level expert group should be created with the mission to take stock of the present situation and to present a critical analysis, upon the basis of which social partners could start talks. This group was set up by the Commission in November 1996 and presented its final report in May 1997.

5. The expert group has made serious efforts to find a new approach towards solving the issue of participation in the European company. The group's final report provides a good basis for further discussion of the status of the European company and the participation of workers in this company. The ETUC supports the approach of the expert group: negotiations between the founders of the EC and workers' representatives on the more detailed form which participation should take. Should the negotiations fail, there are reference provisions at European level.
6. The expert group rightly stresses in its conclusions (point 18), that the challenge of global competition can "only be pursued through co-operation between all actors involved", in other words by means of the social dialogue. We can only agree with the expert group when it stresses that the future of the European company depends above all on ensuring that workers are "closely and permanently involved" in the decision-making process at all levels of the enterprise (point 19).
7. In its further comments on the economic and social context of the debate on the EC (point 11-22), the group stresses how detrimental it is for the image of the European Union that no solution has yet been found to the issue of participation by workers in the SE. Against the background of the events surrounding the closure of the Renault plant in Vilvoorde, we can only agree with these comments.
8. In its analysis, the expert group focused on three different possibilities for founding an SE: founding a holding company, merger, or founding a joint subsidiary. The group did not consider the possibility of establishing an SE by transforming a national company. This solution would "have given rise to particular concern." (point 35).

The ETUC can only congratulate the group on this decision, even if the formulation in the final report sounds too diplomatic and guarded. The possibility of founding an SE by transforming a national company does indeed give serious cause for concern, as the aim would be to avoid national regulations on participation.

In the case of an SE set up by way of merger of two or more undertakings from different Member States, there are still serious concerns that this might lead to a flight from national provisions on participation. The concerns arise because merger means that the national undertakings disappear as independent undertakings. Thereby national provisions on participation could become obsolete. A solution for this should be found before the possibility of setting up an SE by way of merger is considered.

9. The expert group reached the conclusion “that its job at this stage was to identify solutions which could be applied whatever the number of employees involved” (point 39). The group thus shows that it has indeed approached the problem of participation in companies with expert knowledge. For in the current economic system, in which companies often cooperate through networking, the strategic significance of a company no longer depends on the number of people it employs.
10. The group’s central conclusion is that in view of the variety of different systems, “the best and most appropriate way of establishing the system of worker involvement for each SE can be sought through negotiation” (point 40). The ETUC can only emphasise this central conclusion. However, a solution should be found which recognises the essential role that the European industry federations play in transnational negotiations. The experience gained from the negotiations on the establishment of European works councils, which now comprises 430 cases, emphasises the indispensable role of the European industry federations.
11. The expert group “has carefully examined the possibility of the failure of negotiations”. In this case, it recommends reference rules (point 40). The ETUC shares this view. The group rightly points out that in the case of failure of an agreement on participation, access to the SE should, on the one hand, not be blocked up, but on the other hand, a settlement regarding the involvement in decision-making must be found.
12. The group rightly insists that negotiations on participation in the SE must take place as soon as possible (point 50). As the group recommends, these should begin **at the latest** when the executive committees or Boards of Directors of the companies involved adopt a merger or foundation plan for an SE. Practical experience gained from national situations shows that it is entirely possible to begin negotiations earlier.
13. The ETUC stresses the principle of the “transnational dimension of negotiations” (point 58). It also shares the scepticism of the expert group regarding a compulsory and formal role for European works councils in the negotiations (point 62). However, the group did not draw any firm conclusions from the recognition of the transnational dimension of the negotiations. It suggests leaving it up to national legislation and customs to determine “the role to be given to national and European trade union organisations” (point 62). However, the transnational dimension of the negotiations on the one hand and practical experience on the other call for the European industry federations to be given a formal role in the negotiations.

14. Of course, over and above this formal role, as the group suggests, the right of individual workers' representatives "to call upon experts of their choice" should be recognised (point 64).
15. The reference clause suggested by the group in the case of failure of negotiations comprises both provisions for information and consultation and for participation. The group is in favour "that workers' representatives should be members of the management board or supervisory board with full status" (point 81). These workers' representatives should hold one fifth of the seats on the management board or supervisory board, with at least two members (point 83). The full status of workers is an extraordinarily important recommendation by the expert group. As the group emphasises, everyone should hold equal responsibility. Whether the principle of equal status and equal responsibility can be reconciled with the restriction to 20% of the seats on the supervisory board seems doubtful to the ETUC.
16. The expert group rightly stresses the need "to ensure the independence of the employees' representatives" and to establish basic guarantees such as protection against dismissal and discrimination (point 91).
17. The Luxemburg Presidency has presented a discussion document on participation in the SE which is based on the recommendations of the Davignon Group. Unfortunately the proposal does not change the composition of the special negotiating body. The Davignon-report suggests to leave it up to national legislation to define the role of trade unions in negotiations and in the composition of the special negotiating body. The transposition of the EWC Directive into national law illustrates that this way of proceeding is perfectly possible, Davignon said. This does not correspond with the real situation.

There is one country only, Belgium, which mentions European Industry Federation in a footnote to its transposition law. The proposal of the presidency takes the respective paragraph from the EWC Directive without any change at all. There is no reference to European trade union organisations.

18. The Presidency's document defines information and consultation in a way which comes too close to the mere possibility for workers to give an opinion. The lesson from Renault seems to be inexistant, i.e. the opportunity for workers to be consulted with a view to come to an agreement, the consultation before decisions are made.
19. The Presidency suggests to have a two-fold procedure for negotiations. One for SEs set up as a holding and a second one for SEs set up by way of

merger or creating a daughter company. The need for two procedures is not obvious.

20. The Presidency suggest that, in the case of an SE set up as daughter company, negotiations on information and consultations need not take place. The system of the country where the daughter company is located, could be adapted. Here the Presidency starts from the assumption, that a SE set up as daughter company has no transnational activities, which is in no way self-evident. Negotiations should take place on information and consultation as well.
21. The document of the Presidency speaks of workers' representatives in the supervisory council or board. While it is true that workers have a right to be represented in this body, it should be noted that they are in it as full and ordinary members who have a say in all matters to be discussed.
22. The ETUC calls upon the Commission and the Council to take a position which acknowledges the right of workers to be involved in all decision-making at the level of the SE which takes into consideration the concerns expressed by the ETUC. The ETUC calls upon Council, Commission and Parliament to do everything possible for a quick adoption of the directive on participation of workers in the SE. At the same time, social partners must be fully consulted on the reglementation on the statute of the SE itself, as this reglementation will be of utmost importance for the participation of workers.