

## Reform of the EWC Directive must not compromise business competitiveness and decision-making



On 24 January 2024, the Commission adopted a proposal for the reform of the European Works Council Directive (COM/2024/14 final). The proposal is still under discussion in the EU Parliament and the EU Council.

The Commission's proposal makes a number of changes to the Directive, such as extending the scope of the EWC procedure, increasing the rights of workers to be consulted and extending the financial responsibility of companies for the costs of setting up and running an EWC. The proposal would not only entail significant regulatory changes in Finland, but would also, taken as a whole, significantly complicate the functioning of the EWC's and undermine the competitiveness of companies.

The Confederation of Finnish Industries (EK) believes that the amendments to the EWC Directive should aim to support the competitiveness of European companies, reduce the administrative and financial burden on companies and promote the ability of companies to adapt their operations in changing economic and labour market situations. Cooperation between the social partners and a good working culture must not be jeopardised by overly formalistic and bureaucratic regulation that does not promote open cooperation and mutual trust between management and employees.

### FINNISH INDUSTRIES EK'S MESSAGES TO DECISION-MAKERS

- Any regulatory changes should create a clear and predictable environment and should not compromise the ability of businesses to take decisions and operate in accordance with binding national rules and practices.
- The Directive must not hamper the implementation of national information and consultation procedures, and consultations with EWC's must be allowed to run in parallel with national consultations.
- It is vital to protect the ability of companies to maintain the confidentiality of sensitive information. The existing information obligations should not be extended, nor should the range of persons entitled to participate in or be informed about the issues dealt with in the EWC process be extended.
- The administrative burden and costs for businesses arising from EWC negotiations or activities should not be increased. On the contrary, the financial burden on business of EWC negotiations and EWC activities should be reduced and made more efficient by allowing remote meetings in both cases.
- It is important to protect well-functioning European Works Councils by ensuring that regulatory changes do not force to open up existing agreements.
- The provisions on infringements of the obligations laid down in the Directive must leave Member States sufficient flexibility to transpose the obligations arising from the Directive into national sanction systems and judicial or administrative procedures. The Directive should not oblige Member States to provide for additional financial penalties or pecuniary sanctions.

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## Key concerns with the Commission's proposal:

- **Definition of transnational issues:** the Commission's proposal on the definition of transnational issues is very open to interpretation. On the contrary, the definition should be clarified and made more precise so that cases can only be considered transnational if they involve at least two undertakings or establishments of an undertaking or group of undertakings located in two different Member States.
- **Timing of the EWC consultation:** regulatory changes must promote and safeguard companies' decision-making rights, their ability to make decisions and manage their activities. The obligation under the current Directive to schedule the consultation at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings, should not be tightened up in terms of timing.
- **EWC consultation process:** the Commission's proposal to give workers' representatives the right to receive written respond from from the central management at any time during the consultation process will delay company decision-making and implementation. At a minimum, the company must be able to specify the period of time within which employees' representatives have the opportunity to receive a written reply after the consultation.

The Commission's proposal to allow workers' representatives to launch an appeal procedure if a company designates information relating to the EWC procedure as confidential or restricts the disclosure of information would also jeopardise the company's ability to take and implement business decisions.
- **Maintaining the confidentiality of sensitive company information:** it is very important to protect companies' ability to maintain the confidentiality of sensitive information. Under the Commission's proposal, a company should inform employee representatives if certain information is not disclosed on the basis of its sensitivity. We do not consider this obligation to be appropriate. The mere knowledge that significant activities are taking place will inevitably lead to speculation and rumours, which can be very damaging to the company, its employees and other stakeholders. Also, extending the circle of persons who have access to information about the company's activities jeopardises the confidentiality of information and is harmful to companies.
- **Companies responsibility for the costs of EWC activities:** the Commission's proposal would significantly increase the responsibility of companies for the costs of setting up and running an EWC. The increase in the number of EWC meetings from one to two per year, the obligation to cover the costs of training, and the obligation to cover the costs of the use of experts or legal advice would impose a significant additional financial burden on companies. In particular, the obligation for companies to cover the costs of legal representation of employees by EWC representatives and of participation in administrative or legal proceedings is disproportionate and contrary to our national regulations and our legal system.

On the contrary, the financial burden on companies for the costs of the Special Negotiating Body or the European Works Council should be reduced by allowing meetings to be held remotely in both cases. This would increase the efficiency and accessibility of EWC processes, support international cooperation between social partners and help them adapt to the digital and green transition.
- **Sanctions:** the Commission's proposal to oblige Member States to provide for additional pecuniary sanctions for breaches of national rules under the Directive is very excessive. The risk of pecuniary sanctions or other financial penalties is particularly problematic where the content of the obligations under the Directive is open to interpretation, such as the definition of transnational issues and the content and timing of information and consultation obligations. The Directive should not oblige Member States to provide for additional pecuniary sanctions or financial penalties.
- **Impact on existing EWC agreements:** the impact of the Commission proposal on existing EWC agreements remains partly unclear. The EK considers that it is important to protect well-functioning EWCs by ensuring that regulatory changes do not force to open up existing agreements. It should be possible to maintain agreements intact for as long as they are in force or until the employees request renegotiation of the agreement in accordance with the existing regulation or until the agreement comes up for review as agreed in the EWC agreement.

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