



**COUNCIL OF
THE EUROPEAN UNION**

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PROGRESS REPORT

from : Presidency

to : EPSCO Council

No. prev. doc.: 13126/08 SOC 506 CODEC 1136

No. Cion prop.: 11555/08 SOC 413 CODEC 936 + REV 1 (nl) + REV 2 (en)

Subject : Proposal for a Directive of the European Parliament and of the Council 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 (Recast)

INTRODUCTION

As the European social partners were unable to reach agreement on amendment of Directive 94/45/EC within the framework of Article 139 of the Treaty, the Commission submitted its proposal for recasting on 2 July 2008.

However, during the summer, after the informal meeting of Ministers for Labour in which they participated, the social partners started new talks to draw up joint proposals. They arrived at a joint opinion which was sent to Mr Xavier Bertrand, President of the Council, in a letter dated 29 August. In particular, that opinion contains points with regard to which they would like to make amendments to the text of the proposal.

The Working Party on Social Questions examined the Commission proposal at four of its meetings in July and September 2008¹. All delegations maintained general scrutiny reservations on the proposal at this stage. DK, EE, FR, MT and UK have also entered parliamentary scrutiny reservations.

THE SOCIAL PARTNERS' OPINION

At the outset of discussions on this subject, the Presidency had informed delegations about its efforts to encourage the social partners to give a joint opinion on the text of the proposal, and delegations had asked to be kept informed of the outcome of the ongoing discussions.

On 29 August 2008, in a joint letter sent to Mr Bertrand, President of the Council, and also forwarded to Mr Špidla (Commissioner) and to Mr Andersson (Chairman of the European Parliament Committee on Employment and Social Affairs), the European social partners (BusinessEurope, UEAPME, CEEP and the ETUC) agreed to consider the Commission proposal as the basis for the recasting of Directive 94/45/EC, subject to eight amendments presented jointly. They called on the Council and the European Parliament to take due account of their joint opinion in the adoption process.

During their meeting with the Working Party on Social Questions, the representatives of BusinessEurope and the ETUC emphasised the following points:

- the Commission proposal provided a balanced basis for recasting the Directive, and the European social partners therefore had only eight amendments to suggest;
- the European social partners would like a speedy recasting of the Directive (before the end of the year);

¹ The latest document concerning the proceedings is 13252/08.

- the social partners were prepared to promote European Works Councils so as to increase their number;
- it was important for there to be a new period of two years in which enterprises and employees' representatives could negotiate new agreements or revise existing agreements voluntarily.

Several delegations welcomed the significant work carried out by the social partners and reacted favourably to their joint opinion. However, some delegations queried the scope of some of the suggested amendments, in particular the suggestion of setting a new two-year period for voluntarily (re)negotiating agreements and the extent of possible derogations.

The Chairman concluded that the Working Party would continue its examination of the draft Directive on the basis of the Commission proposal as amended by the suggestions of the social partners at European level.

OUTSTANDING ISSUES

Following the discussions at the three meetings held in September, during which the entire proposal was examined, two points still merit detailed examination by the Working Party on Social Questions:

- **The issue of introducing a threshold of fifty employees per country for participation in the special negotiating body (Article 5(2)(b)) and the Works Council (Annex I).**

Several delegations challenged the introduction of such a threshold whilst others were in favour of it. The Commission considered that the threshold was necessary to avoid excessive fragmentation of workers' representation which would render the information and consultation process less effective. Some delegations considered that reducing the threshold to 20 workers would be a good compromise.

- **The two-year period (Article 13(1))** (with regard to which the social partners should clarify their position).

In their joint opinion, the social partners stated their support for opening a new window of opportunity during the two-year transition period to encourage the conclusion of agreements setting up new Works Councils in the same spirit as the window of opportunity opened between 1994 and 1996 before the date of transposition of the existing Directive (94/45/EC).

The Working Party will continue its discussions concerning these two points.

Similarly, there are still requests for clarification of the scope of the definition of transnational issues falling within European Works Councils' field of competence.

CONCLUSION

At the Council meeting on 2 October, the Presidency would like to inform the Council about the progress of preparatory work, the positive character of the social partners' involvement and the prospects of reaching first-reading agreement with the European Parliament.