

Reports

Are European Works Councils necessary and welcome in the new EU Member States?

Report from National Hearing in Warsaw (Poland) in the context of the international ViVe Project, 30 September and 1 October 2004

On 30 September and 1 October 2004 Warsaw hosted a national hearing on employee participation and consultation practices as part of the ViVe Project. ViVe stands for *Examining Vice-Versa Effects between Workers' Participation Practices and Making Use of the European Legal Framework in the Czech Republic, Hungary and Poland*. This project is funded by the European Commission and aims to assist national governments in incorporating EU legislation in the area of workers' participation in a feasible and effective way.

The main aim of the project is to provide in the Czech Republic, Hungary and Poland a platform for the exchange of experiences, perspectives and examples of good practice regarding the implementation of the EU legislation in the area of workers' participation. In addition, the project aims to evaluate the implementation of EU directives concerning information, consultation and employee participation at the company level as well as to identify barriers and needs from the point of view of local actors.

The coordinator of the project is Eckhard Voss from the consultancy Wilke, Maack and Partner (Hamburg) with outside support from Bela Galgoczi and Norbert Kluge from the ETUI in Brussels. Both institutions carry out this initiative with the mandate of the European Trade Union Federations

EMF and EMCEF. The project is carried out in close cooperation with national authorities as well as social partners, experts and organisations from both the EU level and the individual countries. It comprises three national modules for Poland, Czech Republic and Hungary, each to be summarised at a national hearing. The project ends in December 2004 and its outcomes will be presented in a joint report.

The hearing in Warsaw took place in the Centre for Social Partnership 'Dialogue' and was organised by Wilke, Maack and Partner in cooperation with the ETUI. The meeting was organised in close cooperation with national authorities represented by the Undersecretary of State (Deputy Minister) Piotr Kulpa from the Ministry of Economy and Labour of the Republic of Poland and Dagmir Dlugosz, Chief Adviser at the Chancellery of the Prime Minister. Other social partners included trade unions (NSZZ Solidarnosc, OPZZ, Forum), private employers' organisations (Polish Confederation of Private Employers, Polish Confederation of Employers), NGOs (Friedrich Ebert Stiftung), scholars (ViVe experts Prof. Wieslawa Kozek from the Higher School of Management and Finance in Warsaw, University of Lodz) and European Works Council (EWC) members as well as managers from Polish and foreign companies.

The core subject of the meeting was the incorporation of EU provisions on European Works Councils into the legal order of Poland. The hearing was devoted to information and consultation practice in Poland and took place in the context of the experiences with transposition and implementation of EU legislation. The meeting was opened by Deputy Minister Kulpa, who stated that, although social dialogue was nothing new in Poland, it was still relatively rare as some 90% of companies did not make use of it. According to Kulpa, Poland has nowadays by far the weakest system of workers' representation among the ten new EU Member States, which is due to the predominance of political parties as a form of social organisation. Therefore the ViVe Project is a very useful instrument to provide knowledge to all social partners within the Tripartite Commission and to encourage greater trust and yet closer collaboration among the partners. Similarly, Eckhard Voss stressed the importance of a comprehensive dialogue for successful implementation of EU legislation in this area. He emphasised that in the 'old' Member States works councils have been an effective platform for consultation and expressed the belief that this would also be the case in Poland. One should, however, be aware that Poland had its own traditions and characteristics of trade unionism and hence European provisions could not simply be copied. The main difference was that in western Europe trade unions represent whole sectors rather than individual plants as is the case in Poland. Subsequently, Dagmir Dlugosz pointed out that the debate on EWCs in Poland is strongly influenced by two theories: pluralism (employers' and workers' interests are contradictory and irreconcilable) and unitarism (the common denominator for both groups is the interest of the company); each of these approaches conditions the attitude to workers' participation. He stressed that

social dialogue in the workplace is not only a question of expressing one's interests but, more importantly, remains tightly interlinked with the quality of democracy. The latter, said Dlugosz, can nowadays by no means be restricted to the non-professional sphere of human activity so as to become an 'after hours democracy'. In this respect a serious weakness of the Polish system of workers' representation is the low rate of affiliation to trade unions, especially in small and medium-sized enterprises (SMEs) where employees' rights are often infringed. This statement by Dlugosz was a starting point for a presentation by Bela Galgoczi (ETUI), who emphasised the benefits of EWCs for countries with a low union density. A key factor in making a EWC a successful instrument of social dialogue is the quality of its implementation – it needs to be adjusted to local conditions and to respect national characteristics. In this regard, Galgoczi presented three models of employee representation existing in new Member States: monistic (Poland, Cyprus, Lithuania, Estonia), monistic with a complementary channel (Czech Republic, Bulgaria, Romania) and dual-channel (Slovenia, Slovak Republic, Hungary).

In the free debate that followed, an officer of NSZZ Solidarnosc from the Opel plant in Gliwice voiced the doubts and strong scepticism of his colleagues from other trade union organisations regarding the introduction of EWCs in Polish companies. He argued that EWCs represent a serious threat for traditional trade unions, in that they lead to unnecessary dualism and that Polish government support for EWCs was intended to weaken trade unions. According to numerous statements by other trade union militants, the Polish Act on European Works Councils of 5 April 2002 (which came into force on 1 May 2004) is a contradiction of dialogue and solely a bone of contention

among social partners. Deputy Minister Kulpa replied that, according to Article 20 of the Polish Constitution, the competence to pass collective agreements lay exclusively with the employers' organisations and trade unions and thus, since works councils are deprived of these powers, they pose no competition for the trade unions. It appears, however, that the trade unions fear they may be deprived of their monopoly in putting forward candidates to the EWCs and that they will not only have to compete against each other but also against independent candidates put forward by the non-affiliated staff.

Likewise, representatives of employers' associations levelled their charges. First, and most importantly, they complained that the provisions of the draft law on the implementation of the European Directive on Works Councils, which is foreseen to come into effect in the first half of 2005, would force them to pass collective agreements only via EWCs. Such a solution divests them of the possibility to enact these arrangements directly with the workers and so will complicate often straightforward relations whose regulation would be much easier without this rule. These reservations of both the employers and trade unions were deemed unfounded by Clemens Rode from the Friedrich Ebert Stiftung (FES). He stressed that EWCs are necessary for modern European industrial relations and that the EU is inconceivable without them. In a similar vein Dagmir Dlugosz pointed out that EWCs may indeed pose a threat but only for weak and illegitimate trade unions. In fact, EWCs may represent a great benefit: they may provide for more legitimacy and clarity on the Polish trade union scene by demonstrating their actual support among the workforce and thus legitimise their bargaining position to a greater extent than it is the case nowadays.

Successful implementation of EWCs depends furthermore on at least two additional factors: managerial techniques and corporate culture. This was the conclusion drawn by Prof. Wiesława Kozek, ViVe expert examining the practice in multinational companies in Poland affected by the EU directive. She emphasised that the quality of dialogue would depend on whether managers would head towards quality or towards low production costs. Kozek envisages that in the latter case consultation and workers' participation would not be respected. She also underlined that establishing consultative bodies such as a EWC was a learning process in the course of which both the employer and employees must arrive at the conviction that it is of common benefit for them. Unfortunately, this was still not the case, since on the one hand employers disapproved of regulations securing extensive and allegedly exaggerated legal protection of the EWC members (protection against dismissal) whereas on the other hand trade unions criticised employers' supposed enmity towards the unions.

The debate was followed by a presentation of cases of best practice and successful cooperation within a EWC. The first case was that of the Volkswagen plant in Polkowice, where local trade unions had from the beginning strived for effective cooperation with the management. With the assistance of the Friedrich Ebert Stiftung the initial 75 members of the local trade union were increased to more than 750 members (75% of the total staff) thereby becoming a reliable partner for the management. The leading motto of both partners was always to allow the other party to 'save its face'. Another positive example was that of GlaxoSmithKline Poland. As was the case with VW the implementation of the EWC contributed to better internal relations and created mutual trust. These dialogue-

oriented and respect-based approaches gained both companies the title of best employer in Poland in the last few years.

Disappointing in this regard was the fact that trade union officers seemed unconvinced by these examples. They expressed a deep-rooted scepticism as to the capacity of the independent EWC members to represent workers' interests without the necessary training provided by the trade union structures. Such an approach to the matter drew a decisive reply from Norbert Kluge (ETUI) who pointed to the fact that the introduction of EWCs is no longer an option but a legal obligation and thus one should focus on resolving how to benefit from such a situation rather than opposing the idea as such.

The hearing was concluded by a round table debate chaired by Clemens Rode (Friedrich Ebert Stiftung), in which representatives of all social partners participated. It aimed at communicating the Polish government's suggestions regarding the draft of the Act on information and consultation with the workers along with similar working versions of the acts implementing EU Directives 86/2001 (supplement to the European Company Statute) and 14/2002 (general terms of information and consultation with the workers). On the whole, the picture that emerged from the discussion was one of deep confusion and lack of consensus among the different trade union organisations as well as employers' organisations. A positive approach in this context was demonstrated by Andrzej Matla, International Secretary of NSZZ Solidarnosc, who stressed that his trade union was the first in the new Member States successfully to apply for EU funds for training future EWC members. At the same time, however, he expressed disappointment that the Polish government, in the course of

preparing the Polish Act on European Works Councils, had consulted the social partners to such a limited extent that it had led to present controversies. According to Matla, there is still scope for international organisations such as the ILO or the ETUC to play a more active role in curtailing double standards of remuneration, working time, etc. that are still different for 'old' and 'new' Member States. Moreover, he spoke of the responsibility of the employers to avoid playing one trade union against another and acting by the principle *divide and rule*. On the other hand, Piotr Wójcik, the managing director of the Confederation of Polish Employers, criticised the tendency present in the government's drafts to push the Polish regulations far behind restrictions and standards set out in the EU directives.

In the concluding statement, Deputy Minister Kulpa expressed the belief that, despite all the controversy and differences regarding the introduction of EWCs into Polish industrial reality, these bodies would contribute to improved relations between the social partners and create the foundation for a genuine implementation of modern consultation and participation practices. In this context, the beneficial role of the ViVe Project in creating a platform for a content-related exchange of views and experiences could not be overestimated. It can only be hoped that it will indeed spur the social partners to reconsider matters of contention and to arrive at a commonly accepted consensus. The project's contribution to removing prejudices about EWCs is expected to prove even greater as further hearings in Prague and Budapest on implementation of EU directives on EWCs in the Czech Republic and Hungary will take place in the months to come.

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