

# There was no more to be had

**EUROPEAN WORKS COUNCILS** The new version of the EWC directive, achieved after a difficult struggle, certainly includes some improvements, but it falls a long way short of union demands.

By **MATTHIAS HELMER**, journalist, Göttingen

“In fact, we wanted to reject the draft because it didn’t include some of our central demands. But then we decided to go for a pragmatic solution.” So says Jan Cremers, a Dutch member of the Party of European Socialists in the European Parliament, who was one of the key negotiators on the employee side. In his view the new version is a significant improvement, but in the end has achieved far too little.

The unions in Europe and their political allies struggled for almost 10 years to improve the 1994 EWC directive and to strengthen rights on employee involvement at European level. Among their demands were improved information and consultation rights, an enhanced position for the unions, a strengthened legal status for the EWC itself and the removal of a number of legal uncertainties. In the course of the negotiations there were also disagreements within the union camp on the extent to which concessions should be made.

Disappointing proposal: Jan Cremers is not alone in having an ambivalent attitude to the text that was finally agreed by the European Parliament by 411 to 181 votes, with 181 abstentions, in December 2008. Ralf-Peter Hayen, the department head responsible for EWCs in the DGB, says: “The new law is not brilliant; our demands went much further. Last year, the European Commission came forward with a disappointing proposal, but at least the European Parliament was finally able to push through the improvements that were possible, given the circumstances.” Overall therefore, Hayen is pleased that the new law actually made it to the statute book.

After all, the new text widens the areas where the EWC can demand to be informed and consulted and calls on member states, when the implementing the directive, to provide effective and dissuasive sanctions where employers break the rules. In addition, EWC members now have the right to training without loss of pay. There is also the possibility of adapting existing EWC agreements in certain circumstances, such as when there has been restructuring.

However, there are also some less satisfactory elements. According to Hayen, these include the fact that the sanctions against employers who fail to comply with the EWC directive have not been included in the main body of the revised directive but are left to a sort of additional protocol. “We have the European Commission to thank for that,” Hayen says. “It was prepared to make concessions to the employers on this point.”

In the view of Aline Hoffmann from the EWC team in IG Metall, the new version defines the work of EWCs more precisely in some areas. “Until now, the EWC negotiations always had to establish what was meant by ‘information’; what was meant by ‘consultation’; and what falls within the responsibility of the EWC.” Now the European Commission has given the EWC the task of clarifying the relationship between European and national representative bodies. “These new rules will give a significant push to the development of EWC practice,” Hoffmann says.

The employment lawyer Thomas Blanke, who advised the European Trade Union Confederation in Brussels in the negotiations, also now has a more positive view of the changes, although initially he had expressed himself as being pretty disappointed. Blanke considers that there have been real improvements in the way that ‘information’ and ‘consultation’ in particular are now defined. “The rights of employee bodies and the unions have also been strengthened,” he says. In addition, important decisions of the European Court of Justice have been included, such as making the management’s duty to provide information more precise. In the light of the conservative/ ►

## STATEMENT



photos: Jörn Bretholz

## “Sometimes risk a dispute”

**HEIDRUN SCHENK** is the chair of the European Forum at Vorwerk, which makes carpets and vacuum cleaners and has around 4,000 employees in 11 European countries. The EWC has existed since 1996.

“Unfortunately the employee side can only insist on changes to the existing European Works Council agreement if there is restructuring. Despite this we want to try to get our management to agree improvements on the basis of the new EWC directive. We have already succeeded in doing that on several occasions. It is good that sanctions are now possible when the employer does not consult on closures and restructuring. But it needs to be really expensive, so that the employer thinks twice before taking a decision without involving us. We need to play our part in ensuring that the EWC is taken more seriously and sometimes risk taking a dispute to the courts if we

are bypassed. That’s somewhere where we could learn from our colleagues in the south of Europe: if there’s a conflict they get down tools, whether they get strike pay or not.

“At Vorwerk, we have an employer representative in the EWC as my deputy. We also have distribution centres with only 10 to 15 employees, and the EWC delegates they send are often the assistants to the management. That’s a problem. Overall both the way we understand one another and the way we appreciate one another has improved. The English courses and the inter-cultural training courses we have done together have had an impact.”

## “Now let’s push through improvements”

**PETER NOWACK** is the deputy chair of the Group Works Council and a member of the European Works Council at Deutsch Bahn, the German railway company. Since 2005 it has had a 28-strong EWC, with 14 members from Germany, home to 194,000 of the total 226,000 employees.



“The new EWC directive offers us new possibilities as we have established a revision clause in our EWC agreement. So as Works Council members we can push through improvements, such as in central management’s duty to provide information. This is urgently needed in order that we can influence planned projects at an early stage. My experience has been that it is easier to achieve things if there is a ‘direct agreement’ with the employer, rather an ‘anonymous’ legal text. This is like the phrase: ‘If anyone says to you their word is as good as their signature – ask for their signature.’ Secondly, I hope that we can implement the

sanctions that are now possible when employers do not fulfil their obligations. We have done our homework on the employee side. We had have workshops on teambuilding and joint language course in England. Our ‘English speaking table’ in the evening after the EWC meeting, where we talk about personal things, has been a big success. It has contributed enormously to increased team spirit. What continues to be difficult is the very different amounts of information available to EWC members at Deutsche Bahn. Some get almost no information from their national employers, while others are overwhelmed by it.”

- liberal mainstream in the EU, it wasn’t to be expected that much attention would be paid to the concerns of the unions and the socialist group in the European Parliament, Blanke argues.

Commission forced to act: Without ongoing pressure from MEPs, particularly from the socialist group, the revision of the existing directive would have been a complete failure. This is the view of Karin Jöns, a German SPD MEP, which she set out to a recent conference in Hamburg. The 1994 directive included a review clause which meant that its revision was due in 1999, but the Commission allowed the date to pass. It was only the Airbus crisis in 2007 and the closure of the Nokia plant in Bochum in 2008 that forced the Commission’s hand, she says. After the failure of the social dialogue process, because the employers’ side – Business Europe – refused

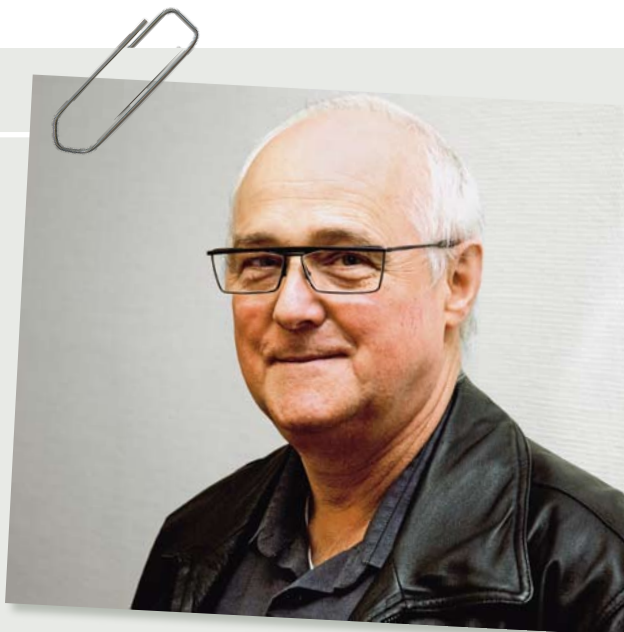
to commit itself to speedy negotiations with the union side, the European Commission had to produce its own draft of the directive. “Unfortunately, it didn’t grasp the nettle,” Jöns complains. She finds it incomprehensible that the ETUC was then willing to discuss the Commission’s draft with the employers when it left out key trade union demands.

Reiner Hoffmann, the ETUC’s deputy general secretary, says the reason for its strategy of negotiation was that it absolutely wanted to reach a solution by the end of 2008, during the French EU-presidency and before the European elections in 2009, as it feared that the chances at a later stage would be considerably worse. “It would have been irresponsible not to have used this window of opportunity, despite the many weaknesses of the final result,” the ETUC deputy says. It was therefore that much more satisfactory, Karin Jöns told her audience in Hamburg, that the European Parliament was finally successful in improving the directive. She emphasised: “That was a major success, particularly in the light of the conservative-liberal majority in the Parliament and the extreme difficulty of reaching agreements between the party groupings.”

## STATEMENT

## “I am disappointed”

**GOTTFRIED H MEYER** is the chair of the EWC at the Valliant Group. The EWC has been in existence since 2002 and has 11 members from seven countries. It represents around 10,000 employees in 15 European countries. There are additional plants in Turkey and China.



“I don’t have a very positive view of the new version of the European Works Council directive as our working structures continue to be inadequate. I am also just disappointed. The draft that was originally put forward by the social partners was an absolute disgrace in terms of the ETUC. So I am pleased that the MEPs managed a few improvements. Getting more rights would have been particularly useful for those EWCs, whose employers are unwilling to make any concessions at all. The ETUC’s references to different cultural backgrounds are of no help here.

What we as Germans need unfortunately are rules laid out in minute detail that we can subsequently insist on. And be-

cause more binding rules relating to the work of European Works Councils are missing from the new version, Europe will continue to be very distant from the minds of the vast majority of our colleagues. EWCs will therefore remain more for show than for substance. You can’t use a single successful example, like the EWC at General Motors as a yardstick. However, we must not be discouraged. We have to keep on trying to create realities that the employer will finally have to accept. House to house combat goes on.

We find it difficult to involve workforces in Eastern Europe; often there is no union organisation in the company. But our main problem is the employer’s lack of acceptance.”

Cutting back the wilder growth: Despite the plus points, it is a source of concern that only some European Works Councils will benefit from the new legislation. “The improvements do not apply to the so-called ‘voluntary’ Article 13 agreements – those that were signed before September 1996. And these account for 40% of all of the valid EWC agreements in IG Metall’s organising area,” Hoffmann says.

EWCs whose agreements were signed after September 1996, under Article 6 of the previous directive, also need to take care. “Unless there are legally watertight safeguards to the contrary, anyone who signs a new Article 6 agreement or makes changes to an existing one during the two year period while the directive is being implemented into national law will be automatically excluded from being covered by the new directive,” Hoffmann warns.

Despite this, her recommendation to all EWCs is that they should use the improved legislation politically. European Works Councils will continue to have to enforce these new rights politically and, if necessary, in the courts, Hoffmann says. “Having a stronger claim to employee involvement is just a

start. We need to be able to enforce these rights in a political way, taking legal cases where necessary,” she adds.

Recast not revised: Non-experts are left baffled by the details of a procedural trick used by the European Commission. The directive has not been subject to ‘revision’ but ‘recasting’. “This is a particular legislative procedure that, in reality, is intended to enable the rapid adoption of legal texts that are frequently changed,” the DGB’s expert Hayen explains. However, in the case of the 1994 directive, which has remained unaltered since 1994, the words “rapid” and “frequent” hardly seem to apply. But perhaps now they do. “The real revision of the EWC directive still hasn’t happened”, is Ralf-Peter Hayen’s conclusion. Well now! ■