



Dialogues on Social Europe: Trade Unions' Role and Perspective on the new EWC Directive with the ETUC

by Emanuele Ligas

In January 2024, the **European Commission** proposed a [new revision of Directive 2009/38/EC](#) on the establishment of the European Works Councils (on this topic see: *E. Ligas, La Direttiva sui Comitati Aziendali Europei: una revisione all'insegna del dialogo sociale*, in *Bollettino ADAPT* of 4 March 2024, in Italian). An initial assessment of the 2018 draft and a resolution on the matter by the European Parliament in 2022 highlighted the following **critical aspects** of the **2009 legislation** on EWCs: 1) the low rate of creation of new EWCs; 2) the ineffectiveness of consultations between workers and companies; 3) the obstacles that EWCs have in accessing the courts; and 4) a lack of corrective measures and effective sanctions in some EU member states.

For these reasons, and to respond to the critical issues that emerged from the evaluation, a double round of **consultation with the social partners** at the European level took place, as a result of which the Commission drew up its proposal to update the directive, taking into account the issues **raised** by the **trade unions** during the consultation phase.

The interview with **Stefan Gran** - senior policy advisor and member of the Company Policy team of the **European Trade Union Confederation (ETUC)**, with a key role in the development of the ETUC position on the EWC Directive and in advocacy work vis-à-vis the European institutions – aims to widen the role of trade unions at European level in the process of policy formulation and proposal, from their lobbying strategies on the European institutions to their relationship with employers' associations, as well as the trade unions' point of view on the questions addressed by the proposed revision of the Directive.

Lobbying and advocacy activities

Reconstructing the process of creation of the draft directive, Stefan Gran starts by stating that the **ETUC adopted a position in favour of a revision as early as 2017**, i.e., when the **Commission** began the **evaluation phase** of Directive 2009/38/EC. However, the 2019 **European elections** provided a concrete opportunity for trade unions to include the revision of the law in the agenda of the European Parliament and the new Commission. The **ETUC started to address the political groups in 2019** by formulating a proposal with the cooperation of the ETUI to ensure solid research, and the ETUFs to accompany the report with examples on issues concerning the functioning of EWCs. The initiative was included in the work programme of the Parliament's *Employment Committee*.

The interview also reveals the **need to finalise the proposal** formulation process before the **2024 European elections**. The problem emerges because of the halt in work on the report due to Covid in 2020: *'The initial plan was to prepare the proposal well in advance so that the Commission would have enough time to come up with something that could be concluded in this legislative term. Now you can see where we are. The proposal came very late (...)'*. The report was only adopted by the Parliament at the beginning of 2023 thanks to [Nicolas Schmit](#), European Commissioner for Employment and Social Rights, and from there *'the process accelerated'*. In just a year, the Commission carried out the consultations with the social partners and

the impact assessment “*in record time*”, stresses the policy advisor, and adopted the proposal on 24 January 2024. **The work will subsequently be finalised by the next European Parliament**, following the European elections in June 2024.

"In all this time we always addressed the employers when it came to negotiations. We, as trade unions, normally opt firstly for negotiations if we have the feeling that the other side is a fair negotiation partner and has an interest in entering into negotiations to come to an agreement" says Stefan Gran introducing the issue of **social dialogue** and the **lack of agreement** between trade unions and employers' associations, adding that *"the work on the first report (...) started and it was already clear that the employers' associations were not prepared, since we had the hearing organised by Dennis Radtke it was noted that BusinessEurope, which I highly respect but you could see that they did not develop a position"*. "Are you willing to negotiate?" was the question that needed to be answered following the consultation phase. Indeed, after two meetings between the social partners in order to find common ground, **the trade unions decided not to start negotiations** precisely because of a **lack of response** from the employers' associations on the issues raised by the ETUC and the Commission.

The attitude of the employers' associations showed the unions that this was a “*strategic move that tried to play on time*” since the negotiation would have taken months before it was clear it wouldn't become a proposal anymore in this mandate, and it would come very late". This is also accompanied by the **parallel negotiations** between the social partners, which **failed after long periods of negotiation** due to the employer organisations' failure to sign, such as the telework negotiations and the [La Hulpe](#) declaration. "I think they made a bet," comments Stefan Gran, "maybe not even risky, that they will have better cards in the next term of the Commission and Parliament, with a majority which might be more in their direction, that the Commission will put everything on competitiveness so that our trade unions demands on social and employment law would be forced a bit back. It is not a risky bet, but I wouldn't be so sure... they did it in the past and they lost this bet, so I am not sure that they chose a good strategy here"

Themes: EWCs creation rate

According to the text of the proposal, one of the main problems of the 2009 Directive is the low rate of creation of new EWCs due to widespread practices on the part of companies that actually discourage the establishment of new committees. Asked whether this issue has been adequately addressed in the new proposal according to the ETUC and whether, in the light of the new provisions, EWCs could be a preferred instrument of social dialogue at an international level, Stefan Gran replies that: *"the proposal could achieve the creation of new EWCs indirectly, but it is not the purpose of the new proposal (...). If you see our positioning, you won't find any work that we opt for more creation [of EWCs] as a main demand"*. **More quality and rights of the already existing EWCs have been demanded**, to create functioning instruments in which it is not difficult to claim rights such as information and consultation, creating a “*positive impact on other colleagues*”. Stefan Gran also brings up the issue of social dialogue at the national and company levels, stating that German workers, for example, might not want such an instrument, as there are more guaranteed instruments of worker participation at the national level, whereas EWCs only have consultation rights. Therefore, according to the trade unionist, the **added value** of having a common position and struggle with workers from other member states **must be shown**.

The position of the ETUC after the Commission adopted the proposal also showed particular disappointment with the failure to expand the scope of the Directive in the **franchising** sector, thus suggesting that the trade unions were pushing directly for a proliferation of EWCs. In this regard, Stefan Gran replied that this issue is particular and one is not sure that it would drastically increase the scope of the Directive. The situation would be **complicated** mainly by the nature of franchises, where there is a parent company and its affiliates. As these are fragmented into so many franchisees throughout the Member States, the **threshold** requirement of **employees** over several European countries to establish an EWC is not met, even though *"we know that the franchise giver has a huge impact on the working conditions of the franchise taker. So the company claims it's all on the franchise taker, but it's not true since the mother company has rules that you have to follow"*.

Themes: information and consultation

On the issue of the weakness of EWCs in asserting their right to information and consultation and the new provisions on confidentiality, i.e., the possibility for companies not to communicate with EWCs, Stefan Gran says that what the Commission proposes seems to be sufficient, although it is always possible to strengthen the definition of confidentiality with objective criteria, and in this way promote the work of EWCs even more strongly on complex issues.

As regards the question of **sanctions for companies that do not respect the rights of EWCs**: “*We simply need higher financial sanctions, because at the moment they are **ridiculous**. In Germany, for example, you have these ridiculous low fines of a maximum of 15 thousand euros*” so management prefers to pay the fine rather than allow the establishment of an EWC in their company. Working on this point, both the unions and the Commission would have come, according to Gran, to **sanction the company's turnover**, taking its cue from the GDPR, i.e. up to 4% of the annual global turnover: “*That would be a **deterrent sanction***”. However, the Commission would eventually only propose matching the company's financial situation, cutting the turnover part. Nevertheless, the main instrument the ETUC is calling for is the **injunction**, an instrument with which an administrative body or a court can stop a company decision (e.g. restructuring, redundancies) simply for failure to inform and consult the EWCs. This **instrument is favoured by the trade unions** because, as Gran explains: “*it costs the company nothing but it is highly effective, and you see that in the countries where the injunction exists, it is hardly used since management is following the law because it is a strong sword. (...)*”. However, this **instrument was not included in the proposed revision**.

Future developments and strength of trade unions at the European level

The last part of the interview focused on the European **social dialogue**, asking the trade unionist whether the EU is pushing for more **participation of social partners** in the formulation and implementation of proposed directives and regulations. To this question, the ETUC trade unionist responded by saying that he thought “*they have been quite a **good five years** for trade unions and workers*” at the European level, even if there is the question of transposition and implementation at the national level. Stefan Gran then went on to comment on the **employers' associations**, described as being **very involved** in social policy issues even if, he says: “*I have sometimes the feeling that they're not willing to be deeply involved and that they see themselves as more of a **lobbying machine** not interested in meaningful discussions on common position (...)*”. As regards the Commission, the balance sheet seems positive for the trade unions, with a legislature that has seen them involved in work on many issues: the minimum wage directive; the issue of gender-balanced boards; the platform work directive; the Corporate Sustainability Due Diligence Directive, in which workers are seen as important stakeholders.


Returning to the subject of the 2024 European elections, Gran also affirms that **groups in Parliament that try to build an alternative representation** of workers through **yellow trade unions** are “*something we have to monitor, and if these groups, as expected by the polls, are getting bigger it might be a problem for further legislation*”.

EWCs as an aid for companies in times of unprecedented transformation

EWCs are therefore central to a more social declination of company decisions because they propose “***Solutions that managers would never think about** and they're mostly successful because [the workers] know exactly where in the process is the real problem*”. While their **involvement “helps to shape the restructuring process and fund common policies”**, their failure to be consulted leads “*towards a **conflict**, since you may make a decision that is not adapted to the workers' needs, and even to the company*”. With these words, Stefan Gran suggests that there should be more **worker participation** in company decisions, especially because in a crisis, “*you have to find solutions for the long-term success of your company, and that is much easier if you do it in cooperation with your workforce instead of conflict*”.

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