**Follow up to the European Parliament non-legislative resolution on democracy at work: a European framework for employees’ participation rights and the revision of the European Works Council Directive**

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**2. Reference number:** 2021/2005 (INI) / A9-0331/2021 / P9\_TA PROV(2021)0508

**3. Date of adoption of the resolution:** 16 December 2021

**4. Competent Parliamentary Committee:** Committee on Employment and Social Affairs (EMPL)

**5. Brief analysis/assessment of the resolution and requests made in it:**

In its resolution, the European Parliament calls for evaluating, strengthening, extending and harmonising workers’ representation in EU company law and EU collective labour law, including ensuring gender equality. It also issues calls on various social dialogue aspects, on due diligence and regarding sustainable corporate governance agreements.

It calls on the Commission to ensure board-level representation in companies using EU instruments on cross-border mobility as well as European companies (Societas Europeae - SE) and European Cooperative Societies (SCEs), by amending existing rules to introduce minimum rules on worker participation and representation on supervisory boards. At the same time, it calls for a new framework directive on information, consultation and participation for these companies, with minimum standards on issues such as anticipating change. It also calls on the Commission to develop initiatives to raise awareness and improve knowledge of national and EU rules governing employee representation in corporate bodies in the various Member States and to foster exchanges of best practices. Moreover, the Commission is called upon to ensure gender balance on boards by a variety of measures, including a quota.

The resolution furthermore calls on the Commission to explore actions to improve rights of European Works Councils (EWCs) and to better enforcement, if needed by a revision of the Directive. It calls on the Commission to promote strengthening the rights of EWCs to information and consultation, by making the implementation of management decisions conditional upon taking into account the EWC opinion. It calls on the Commission to strengthen enforcement mechanisms.

The European Parliament also calls on the Commission, together with the Member States, to ensure that European companies comply with existing EU and national legal obligations.

The resolution also includes calls to the Commission concerning various social dialogue aspects. They range from respecting agreements between European social partners at cross-industry and at sectoral level, to ensuring the right and the exercise of workers to freedom of association and participation in the workplace, to committing, jointly with the Member States, to reaching collective bargaining coverage of 90 % by 2030 in specific national systems, and to ensuring, when analysing national recovery and resilience plans, that labour reforms involve social partners and do not impede social dialogue rights.

Finally, the resolution calls on the Commission to present a directive on due diligence strategies, and to ensure that 80% of corporations have sustainable corporate governance agreements.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

**Paragraph 5**

The Commission promotes and supports the negotiations of agreements by the European social partners. The Court of Justice has confirmed in its judgement of 2 September 2021 (on case C-928/19 P EPSU v Commission) that the Commission retains its right of initiative when social partners request the implementation of their EU-level agreement through a Council decision. The Court of Justice has confirmed that it is for the Commission to decide whether it is appropriate to submit proposals for legal acts to the Council, also when social partners request to transform one of their agreements into EU law.

As a follow-up to the judgement, the Commission revised Tool #10 on Treaty-based social partner consultations and initiatives as part of the updated Better Regulation Toolbox. Specifically, Tool #10 states that in its ruling of 2 September 2021 the Court points out that the Commission enjoys a discretion, when deciding whether it is appropriate to submit to the Council a proposal seeking such implementation pursuant to Article 155(2) of the Treaty on the Functioning of the European union (TFEU); further details regarding the implementation of this judgement will be set out in the forthcoming Social Dialogue Communication. To feed into the planned 2022 social dialogue initiative, the Commission aims to complement existing practice with a supporting frame for social partner agreements, on which social partners will be consulted. The action was already announced in the European Pillar of Social Rights Action Plan adopted by the Commission in March 2022. The goal is to enhance the Commission support to social partner agreements in such a way that it is aligned with the ruling of the Court of Justice and responds better to social partners’ needs.

**Paragraph 9**

An extensive legal framework is in place at EU level on workers’ involvement in companies. It takes the form of directives that set minimum standards and that Member States have to transpose into national law[[1]](#footnote-1). The enforcement of the EU legal framework is primarily the responsibility of national authorities, also the national courts, as they have to ensure that individual companies comply with national rules that transpose the relevant EU law.

**Paragraphs 6, 8, 10, 22 and 26**

European Company forms (European company (SE) and European cooperative Society (SCEs)) were introduced through EU regulations[[2]](#footnote-2) to further complete the internal market, to facilitate economic cross-border activities in the EU, and to introduce a means for companies to move their registered office from one Member State to another without losing their legal identity.

They are supplemented by rules[[3]](#footnote-3) on workers’ involvement that seek to prevent the use of European company forms to evade national rules on employee participation while not imposing national models of employee participation on other Member States. Finding a compromise took many years of debates between the co-legislators and the main reason for the deadlock was the difficulty to find an agreement on workers’ involvement provisions.

The existing rules build on a principle of negotiation of workers’ involvement before creating the SE/SCE and provide for fall-back standard rules if the negotiations fail. Provisions in the directive according to the ‘before-and-after principle’ seek to preserve involvement rights that already existed prior to the creation of an SE/SCE. The procedures apply when a European Company is formed or undergoes subsequent structural changes.

A legislative initiative introducing horizontal rules on board-level representation in SE and SCE would go beyond the current legal framework, which was based on the principles of subsidiarity and proportionality. In addition, it would face the same challenges that prevented harmonisation of the rules in the past, if not even greater challenges in view of now 27 different systems and the requirement for unanimous adoption in Council (compared to 15 Member States at the time the initiative was adopted).

As regards the recently adopted Directive 2019/2121 on cross-border conversions, mergers and division, the focus is currently on the correct transposition of the new EU rules by the Member States.

It should be stressed that the existing rules are based on extensive consultations with stakeholders, with a clear objective to achieve a balance between enabling companies to carry out cross-border operations and providing proportionate safeguards to employees. They also aim at ensuring that the rules cannot be misused for fraudulent or abusive purposes. In the Commission’s view, the compromise reached in Directive 2019/2121 meets this objective.

Directive 2019/2121 provides clear harmonised procedural rules for cross-border conversions and divisions, and streamlines rules for cross-border mergers, including proportionate safeguards to protect the rights of minority shareholders and creditors in all three operations. It introduces strong mandatory anti-abuse measures to ensure that no operations are authorised if they are carried out for abusive, fraudulent or criminal purposes.

The directive also sets out provisions to ensure that in case of all three operations, employees’ participation rights are preserved and employees are well informed and consulted during the operations.

Efficient and correct transposition of this directive in all Member States is crucial to ensure that these rights are respected and preserved in practice.

Already during the negotiations for this directive, the European Parliament argued for horizontal rules on board-level representation. As a result, Directive 2019/2121 contains a review clause, with an evaluation of the implementation of the directive to be carried out within four years after end of the transposition period (i.e. by February 2027). In the context of this evaluation, the Commission will assess the implementation of employee consultation, information and participation provisions in the context of cross-border conversions, divisions and mergers, and will in particular consider a possible need to introduce a harmonised framework on board level employee representation in Union law. In its analysis, the Commission will also take into account good practices, studies and assessments relevant to the implementation of the provisions on employee information, consultation and participation in the context of cross-border conversions, divisions and mergers.

In addition, as concerns the extensive existing EU legal framework on workers’ involvement in companies, the Commission conducted a ‘fitness check’ on three directives on worker information and consultation at national level[[4]](#footnote-4) in 2013. It led to an overall positive assessment, and confirmed that the three directives are broadly fit for purpose, i.e. that they are generally relevant, effective, coherent and efficient. This general conclusion was shared by the European social partners and the Member States.

In 2015, the Commission followed up the ‘fitness check’ with a first-phase consultation of the EU social partners with regard to a consolidation of the three directives and to two specific substantial aspects (namely, the definitions of the concepts of 'information' and 'consultation', and the existing exclusion of public sector from the scope of application of the directives). Almost all social partners replied that the directives should not be consolidated or recast into one single act. On the substantial aspects, employers and workers’ organisations expressed diverging views. While the workers’ organisations favoured substantial changes to the individual directives in order to extend the existing rights, the employers' organisations were against modifications to any of the directives.

**Paragraphs 23 and 25**

The Commission fully recognises the beneficial effects of gender equality and diversity in decision-making. Academic research shows that having both men and women involved in decision-making broadens the perspectives, boosts creativity and innovation, increases competitiveness and productivity, diversifies the pool of talents and competences, improves the process of decision-making, and may better represent various shareholders.

Gender balance in management and leadership functions, therefore, contribute to the prosperity of the EU. Under this premise, the European Commission has placed gender balance in decision-making as one of the three main pillars of the EU Gender Equality Strategy 2020–2025.

The Commission continues implementing the priorities of the Gender Equality Strategy. In March 2021, the Commission adopted a proposal for a Directive on pay transparency. The Commission is currently preparing a proposal for a Directive on preventing and combatting violence against women and domestic violence. Availability of affordable and high quality care services are crucial for women’s labour market participation and gender equality. To ensure further upwards convergence among Member States in the area of early childhood education and care, the Commission will make a proposal for a revision of the Barcelona targets as part of a European Care Strategy, next to measures on long term care.

As stated in the Gender Equality Strategy mentioned above, the Commission committed to pursue the adoption of its 2012 proposal for a Directive on improving the gender balance on corporate boards of listed companies. The proposal sets a quantified target of 40% non-executive directors of the under-represented sex and. aims to ensure that women and men have the same opportunities to be selected for board positions by ensuring that the selection of candidates is transparent and based on merit and qualification.

**Paragraphs 11 and 12**

The Commission intends to adopt soon the legislative initiative on sustainable corporate governance[[5]](#footnote-5) which may impose a horizontal due diligence duty for human rights and environmental impacts in companies’ own operations and their value chains.

In the process of preparing the sustainable corporate governance initiative, all relevant inputs are being duly considered, including the European Parliament’s own initiative legislative resolution on corporate due diligence and corporate accountability[[6]](#footnote-6), and the European Parliament’s resolution on sustainable corporate governance[[7]](#footnote-7).

In addition, the Commission recalls that the Shareholders’ Rights Directive II explicitly refers in Recital 14 to greater involvement of all stakeholders, in particular employees, in corporate governance as an important factor in ensuring a more long-term approach by listed companies that needs to be encouraged and taken into consideration.

**Paragraph 14**

The right of workers’ representation is enshrined in the International Labour Organisation’s core labour standard Convention 87 on freedom of association, ratified by all Member States. Under the Council of Europe obligations, Member States shall respect the European Convention of Human Rights and the European Social Charter.

Union law comprises directives on workers’ involvement, some of them including provisions for the protection of workers’ representatives for the purpose of implementing the rights for information and consultation set in these texts[[8]](#footnote-8).

While the Commission is fully committed to supporting social dialogue also at national level, the TFEU (Article 153 paragraph 5) indicates that the European Union has no legislative competence on the right of association. The Charter of Fundamental Rights of the European Union recognises the freedom of assembly and association under Article 12 and the right of collective bargaining and action under Article 28, which pursuant to its Article 51(1) applies to Member States when they implement EU law. Thus, it is for the Member States to set the legal framework for social dialogue in their country, including the protection of workers’ representatives against discrimination or abuse due to their status.

**Paragraph 15**

The Commission recalls that the proposal for a Directive on adequate minimum wages in the EU, among other provisions, would require all Member States to take measures with the aim to increase the coverage of collective bargaining such as promoting the building and strengthening of the capacity of the social partners. Moreover, Member States where collective bargaining coverage is under 70% are asked to make extra efforts, in the form of a framework of enabling conditions for collective bargaining and an action plan to promote collective bargaining. The proposal includes provisions concerning the involvement of social partners in statutory minimum wage setting and updating, and makes clear that the Directive will be without prejudice to the autonomy of social partners and their right to negotiation and conclude collective agreements.

**Paragraph 16**

Social dialogue and social partners’ involvement are key for the success of economic and employment policy coordination and implementation. The Employment Guidelines call on the Member States (for example in Guideline 7) to ensure the timely and meaningful involvement of the social partners in the design and implementation of employment, social and, where relevant, economic reforms and policies, including by supporting increased capacity of the social partners. The basis for the Commission analysis of the national recovery and resilience plans is the Regulation establishing the Recovery and Resilience Facility. As such, it analyses all aspects that fall under the remit of the Regulation, such as proposed labour reforms, thus contributing to the implementation of the European Pillar of Social Rights.

**Paragraphs 29 and 30**

The Commission evaluated the European Works Councils Directive (Recast) in 2018. In light of this evaluation, the Commission decided not to launch a revision of the directive. It concluded rather to implement actions supporting the implementation of the existing rules on the ground, including a Handbook for practitioners and a separate discussion with Member States on their enforcement systems, which could lead to enforcement actions initiated by the Commission on a case-by-case basis.

The Commission focuses its efforts on proper implementation and enforcement of the existing rules, and continues the legal investigation of the national enforcement procedures in Member States in which systemic weaknesses have been identified.

The proposed non-legislative initiative, involving social partners, to establish a Handbook for EWC practitioners was put on hold following the refusal of trade unions to participate.

The Commission will examine this issue in the light of the upcoming legislative own initiative report of the European Parliament “Revision of the European Works Councils Directive” (2019/2183(INL)).

1. Directive 98/59 on collective redundancies; Directive 2001/23 on transfer of undertakings; Directive 2001/86 on workers’ involvement in European Companies (SEs); Directive 2002/14 establishing a general framework for information and consultation; Directive 2003/72 on workers’ involvement in European Cooperative Societies (SCEs); Directive 2009/38 on European Works Councils (EWCs). [↑](#footnote-ref-1)
2. Regulation 2157/2001 on the Statute for a European Company (SE); Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE). [↑](#footnote-ref-2)
3. Directive 2001/86, Directive 2003/72. [↑](#footnote-ref-3)
4. Directive 98/59, Directive 2001/23 and Directive 2002/14. [↑](#footnote-ref-4)
5. <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en> [↑](#footnote-ref-5)
6. European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), P9\_TA(2021)0073. Vice-President Šefčovič replied to the European Parliament on behalf of the Commission by letter addressed to President Sassoli on 8 June 2021. [↑](#footnote-ref-6)
7. European Parliament resolution of 17 December 2020 on sustainable corporate governance (2020/2137(INI), P9\_TA(2020)0372. [↑](#footnote-ref-7)
8. Article 7 of Directive 2002/14; Article 10 of Directive 2001/86 ; Article 12 of Directive 2003/72; Article 10 of Directive 2009/38. [↑](#footnote-ref-8)