

## **CEEP response to the first stage consultation of the Social Partners by the European Commission on the possible review of Directive 2001/86EC supplementing statutes for a European Company with the regard to the involvement of the employees**

### **Introduction**

On 4 July 2011 the European Commission issued a communication and a first stage consultation to the European Social Partners concerning a review of the supplement statute directive 2001/86 with regard to the involvement of employees.

In its consultation document (C(2011) 4707 final) the Commission sets out a brief historical background to the Directive. The Commission also stresses the issues related to employee involvement and points out the complexity of the procedure, the lack of legal certainty on certain aspects of the negotiation procedures, the lack of use of European Company and the effect of the rights of employees' involvement.

In the end the Commission specifies eight supplementary questions in four groups for the European Social Partners to answer in this first stage consultation.

### **Historical background**

CEEP also takes its outset from the historical background. However, CEEP recognises that the adoption of the directive is closely connected to the adoption of the directive 94/45 on European Work Councils.

The directives 94/45 and 2001/86 had been negotiated and discussed for more than 20 years before they were adopted. It was only through the adoption of directive 94/45 on European Work Councils that a solution was found regarding directive 2001/86. Shortly after the approval of both these directives it was also possible to adopt directive 2002/14 on information and consultation of employees.

All three directives concern information and consultation of employees but under different circumstances and these directives are very much linked together when one considers the development of the "acquis communautaire".

CEEP is not against reviewing existing European legislation to see whether it fits its purpose. However, CEEP is of the opinion that the best solution is reached if the assessment takes place as part of a holistic approach.

### **The Complexity of the procedure**

The European Commission thinks the procedure is complex and it seems like the Commission regrets that we have not seen any court cases in the Court of Justice of the European Union. CEEP does not share this view and regards the lack of court cases as an indicator of a balanced approach.

### **The lack of certainty on certain aspects of the negotiation procedure**

The Commission seems to hold the opinion that because the directive does not specify in detail the procedure for negotiations, this implies that there exist legal uncertainties. CEEP cannot follow this line of reasoning. CEEP remarks that if any legal uncertainty had been detected - it would have been taken to court somewhere in the EU27 member states.

### **The lack of use of the European companies affects the rights of the employees**

The Commission seems to state that the minimal use of European Companies is a problem with regard to the rights of the employees' involvement and seems to agree with the ETUC's opinion on this question. CEEP takes note of all three directives on employees involvement (94/45, 2001/86 and 2002/14) and cannot see that this opinion is borne out by evidence.

### **Aim of consultation**

Article 154 TFEU has a slightly different formulation compared to the former article 138 TEC. The article 138 TEC had a clear separation between first stage and second stage consultation and their respective purposes. This separation was sometimes difficult to maintain in practice and this may explain the new formulation in article 154 TFEU.

CEEP still thinks that the first stage consultation should reflect upon whether it would be useful to initiate a Union action in this field. In this connection we draw attention to the fitness check launched by the Commission last year, which includes consideration of whether directive 2002/14 should undergo any changes. CEEP believes that any initiative regarding directive 2001/86 should await further action and should be reopened at a time when the result of the fitness check can be seen. The three directives (94/45, 2001/86 and 2002/14) are in the real world closely linked together so that an isolated approach to directive 2001/86 seems fruitless.

### **Specific questions from the Commission:**

1a. What is your opinion as regards the analysis contained in this paper regarding employee involvement in the SEs?

1b. Are there any further issues that you consider should be added?

**CEEP answer:**

A brief reflection on the analysis is stated above. A holistic analysis of all three directives concerning employees' involvement should have been done.

**Specific questions from the Commission:**

2a. Do you think that the Commission should launch an initiative to amend the directive in parallel with a possible review of the SE statute?

2b. If so, what do you consider should be its scope?

**CEEP answer:**

The SE statutes should be taken into account if the Commission launches an initiative to amend directive 2001/86. However, for the moment CEEP is of the opinion that no initiative should be taken.

**Specific questions from the Commission:**

3a. Do you think that, apart from and/or instead of legislative measures, other action concerning employee involvement at European Union level merits consideration?

3b. If so, what kind of action should be taken, and on what issues?

**CEEP answer:**

Legislative measures or negotiation measures between Social Partners should await the end of the fitness check exercise.

**Specific questions from the Commission:**

4a. Would you consider initiating a dialogue under article 155 TFEU on any of the issues identified in the consultation?

4b. If so, which?

**CEEP answer:**

In CEEP's view it is much too early to answer such questions. It has to await the result of the fitness check exercise.