

Opinion of the European Economic and Social Committee on 'Employee involvement and participation as a pillar of sound business management and balanced approaches to overcoming the crisis' (own-initiative opinion)

(2013/C 161/06)

Rapporteur: **Wolfgang GREIF**

On 12 July 2012 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Employee involvement and participation as a pillar of sound business management and balanced approaches to overcoming the crisis

(own-initiative opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 February 2013.

At its 488th plenary session of 20 and 21 March 2013 (meeting of 20 March) the European Economic and Social Committee adopted the following opinion by 85 votes to three with eight abstentions:

1. Summary

1.1 The financial crisis has reached businesses. Overcoming this crisis in the interests of all stakeholder groups, investors, employers, employees and regions (multi-stakeholder approach) requires joint efforts and shared goals (such as long-term business development), the existence of a good social dialogue in a climate of confidence as well as a positive attitude. The EESC would like to encourage the exploration of new paths in this area, not least in connection with the EU corporate governance framework.

1.2 The EESC is convinced that "good" and thus "sustainable" business management must be built on the internal market's tried and tested legal structures and practices of employee involvement based on information, consultation and, where applicable, co-determination too.

1.3 Sustainability is to be based on reconciling economic efficiency with social and environmental goals. A requirement for this is that a business must be understood as an institution in which the various stakeholders work together and in which all stakeholders jointly pursue a long-term business outlook, economic competitiveness and social balance and gear their activities towards this. To this end, the EESC is launching a discussion on the "sustainable company" as a business management concept. This entails, among other things, that the "voice" of employees is respected in business decisions.

1.4 Businesses can be run successfully using this concept if their system of business management is based on the principle of a "fair relationship" between employees, management and owners and thus guarantees all stakeholders the possibility of having a guaranteed say in any changes, adopting a targeted and problem-solving approach and without any attempt to interfere with the management's right to issue instructions. To this end, a set of tools already exists for the obligatory involvement of employee representatives at national and European level,

which should be used effectively. This approach has proved effective in enabling restructuring in businesses to be dealt with and anticipated better, especially in times of crisis.

1.5 In order to establish this principle in practice and to consolidate it, the EESC feels it is also incumbent on European policy-makers, within their remit for shaping the internal market, to create appropriate incentives and to improve the requisite European legal framework, without interfering with national competences. The EESC is therefore putting forward proposals for implementing the current basic European right to employee involvement in national law and for formulating it more effectively in European law.

1.6 In this connection, possibilities for employee involvement in the strategic orientation of businesses should become a universal element of European company law, which the European Commission plans to develop in the near future. In addition, the provisions on obligatory employee involvement should be consolidated and applied generally in EU law, on the basis of standards already achieved, and in particular definitions of information, consultation and participation should be standardised.

1.7 A provisional new stage in this debate is marked by the European Parliament's resolution of 15 January 2013. By a large majority, the resolution calls for a legal framework with minimum standards for restructuring in order to minimise social and economic costs and promote anticipation. It is to include obligations for strategic planning as well as preventative measures concerning initial and further training. It will also entail measures geared towards maintaining jobs and the workforce and provisions which encourage businesses to engage in preventative cooperation with regional offices (mainly government and job centres) and local supply chains, in the event of restructuring.

2. Introduction

2.1 This EESC opinion seeks to highlight how businesses and investors can work together with their employees in order to find balanced and sustainable approaches to overcoming the economic and financial crisis and to dealing with climate change. It will also highlight what social and legal conditions these stakeholders need in order to achieve this and where the European legal framework will have to be improved, while respecting the diversity of situations and different arrangements that exist at national level.

2.2 Business management that is geared towards long-term development is underpinned by legally assured dialogue based on trust between management and employees. The EESC sees a political consensus for this between governments, the social partners and civil society which is deeply rooted in the history of European integration. As established in numerous European directives, the obligatory involvement of employees in economic activities is an indispensable element of socially responsible economic management. The thousands of stakeholders in European businesses and companies as well as the 17 000 or so stakeholders in around 1 000 European works councils show that this principle of participation-based business management is applied in practice.

2.3 This political consensus is reflected in various European legal sources dating from different historical periods. Informing and consulting employees is not only provided for at national level – including in the area of SMEs – on the basis of EU law ⁽¹⁾, but also at transnational level ⁽²⁾, where the possibility of employee involvement at company level, which is standard in European companies (SE) and European cooperative societies (SCE), is also used ⁽³⁾. Numerous other EU directives ⁽⁴⁾, including in the area of health and safety and European company law, provide for information and consultation. Article 27 of the EU's Charter of Fundamental Rights makes the individual fundamental right to information and consultation into a binding component of Community law. There is no doubt therefore that obligatory employee involvement in economic activities is part of the legal framework of European democracy.

2.4 In the interests of economic success, but also especially in the interests of European social cohesion, it is important to strengthen this established and efficient everyday economic resource as a means of overcoming the current crisis. Businesses - which are not only there for their investors but are also supposed to contribute to society - are nowadays exposed to more uncertain conditions:

— Given the need to be competitive in world markets, value-added chains have become more transnational in nature.

This makes businesses harder to manage. Restructuring and relocations are more difficult to understand for those affected, especially workers.

- Corporate financing by pure financial investors is predominantly geared towards short-term profit and restricts businesses' long-term future planning. This makes it enormously difficult for company managements to maintain a relationship with their employees based on trust and partnership.
- Ambitious climate goals require innovation and in principle new products and services. In many cases, this demands radical structural change, which puts the employees and enterprises concerned under considerable strain and presents them with new development responsibilities.
- Supported by European company and financial market law, companies nowadays move with increasing ease across borders within the European internal market. National rights on board-level participation and cooperation practices based on trust could fall by the wayside if they do not also move across national borders.

2.5 All this underlines the need for corrective action against the distortion of corporate values through short-term thinking. It is necessary to map out ways in which EU policy can redirect the current trend for one-sided corporate transparency in the interests of shareholders towards a broader understanding of the business as a "sustainable company", which is in the interests of long-term corporate development ⁽⁵⁾.

2.6 Crisis management, a long-term focus, sound business management, the ability to innovate and trust-based cooperation between employers and employees underpinned by obligatory involvement rights are all part of the same framework for Europe's future. As the new model, the EESC proposes anchoring and consolidating the concept of the "sustainable company" in European policy. The idea is to open up new horizons for legislation as well as operational and policy measures with a view to providing the relevant practitioners with the motivation and guidance needed to carry out sustainable business management. There must be agreement on the various elements of the "sustainable company". Their practical implementation must correspond to the respective situation in each business. In practice, this will vary from country to country.

3. The model sustainable company

3.1 The model sustainable company ⁽⁶⁾ is capable of translating the requirements of European policy into a comprehensive business management method, in which economic efficiency targets are fused with social and environmental goals to form a coherent concept. The "sustainable company" is based on the idea that businesses are "social organisations" in which

⁽¹⁾ Directive 2002/14/EC.

⁽²⁾ Directive 2009/38/EC on the European Works Councils.

⁽³⁾ Directive 2001/86/EC and Directive 2003/72/EC (on employee participation in SE/SCE).

⁽⁴⁾ Including Directive 77/187/EEC (mass redundancies) and Directive 2001/23/EC (transfers of businesses).

⁽⁵⁾ See also Michel Barnier, Commissioner for Internal Market and Services: "We need to reduce harmful short-term tendencies. Sound corporate governance can help achieve this." Opening Speech at the 11th European Corporate Governance Conference, Warsaw, 15.11.2011.

⁽⁶⁾ Vitols, Sigurt/Norbert Kluge (eds) (2011) *The Sustainable Company: a new approach to corporate governance*. Brussels: ETUI.

the "voice" of employees must be respected. Business decisions are therefore predictable for both sides, and for customers too. They are less susceptible to outside intervention geared purely towards short-term expectations of profit.

3.2 The "sustainable company" is characterised by the following key elements (7):

- 1) The concept is based on a multi-stakeholder approach: owners of a business jointly work together with other important stakeholders like employees and authorities of the region in which the business operates.
- 2) The description of the businesses' objectives and their implementation are the result of the joint efforts of employees and management without any attempt to interfere with the management's right to issue instructions; to this end, various forms of employee involvement exist which have proved to be successful in practice.
- 3) Business management is geared toward the long term. The business's statement of goals is consistent with its sustainability objectives.
- 4) In order to run a sustainable company, the management needs to have a complete picture of the business. Requirements for the system of reporting must include the various aspects of sustainable business management (8).
- 5) Management and executive pay must be linked to efforts to implement sustainability goals successfully. This includes social measures, for example in the area of health and safety, vocational education and training and equal opportunities.
- 6) The sustainable company needs investors who are more interested in long-term profit targets.

3.3 The "sustainable company" can function successfully only if it follows a specific management principle: the "fair relationship" principle. This principle gives all stakeholders (management, employee representative bodies, investors and relevant regions) the possibility to have a say in any changes to the business, adopting a targeted and problem-solving approach and without any attempt to interfere with the management's right to issue instructions. In this way, restructuring can be dealt with and anticipated more effectively, especially in times of crisis.

3.4 The "fair relationship" concept is based on binding agreements between the parties concerned about long-term business prospects as well as the social dimension, which ensures as much as possible the maintenance of business sites

(7) See Vitols, S. (2011): "What is the Sustainable Company?" Vitols, S. and N. Kluge (eds): *The Sustainable Company: a new approach to corporate governance*. Brussels, pp. 15-37.

(8) An ambitious example is the 2011 sustainability report of Volkswagen AG <http://www.volkswagen.de/de/Volkswagen/nachhaltigkeit.html>.

and jobs in the event of business sales and acquisitions. Especially in the case of purchases and sales of businesses or parts of businesses across national borders and in the event of restructuring, the following key points serve as a basis:

- a clear long-term management and industrial approach,
- contractual assurances about investments, maintenance of business sites and employment,
- in the event of restructuring, examination of all alternatives to redundancies,
- the retention of acquired social entitlements and collective agreements,
- the possibility of examining whether agreements and pledges are being met.

3.5 The creation of a sustainable company goes hand in hand with the obligatory involvement of employees through information, consultation and, where applicable, through participation in company boardrooms at national and transnational level. Experience has shown that countries with strong employee involvement rights and effective relations between the social partners have emerged from the recent crisis more effectively than others. In order to harness this process for long-term business development, European policy-makers, acting within their remit to shape the internal market, must create relevant incentives and legal obligations within the corporate governance framework.

4. The need for action at European level – policy recommendations

4.1 *Improving the legal framework in line with the concept of the sustainable company*

4.1.1 Work, investment and entrepreneurship must prove worthwhile in Europe. The sustainable company offers a suitable model for this. It pursues economic, social and environmental goals on an equally long-term basis. This kind of enterprise is run according to the "fair relationship" principle, under which change is viewed as a challenging and worthwhile business task and the social entitlements and rights of their employees are not called into question in this process.

4.1.2 The EESC feels that it is incumbent on European policy-makers to continue to lay a firmer foundation, allowing the most important groups in the economy to work together. Building on the standards of employee involvement already achieved in Europe, the Committee would welcome fresh initiatives from the European Commission aimed at adapting the rights of employees and their representative bodies to current conditions in the European internal market and at consolidating these rights. This also includes legislative initiatives aimed at improving the framework for implementing the new model outlined above.

4.1.3 Businesses in which the "fair relationship" principle is applied are especially good at anticipating and shaping structural change. It therefore also makes economic sense to strengthen the role of employees in shaping and anticipating change. The European legal framework for this must be improved. In accordance with the sustainability strategy of the Europe 2020 strategy, such measures would help ensure that the most important groups in the economy are working together in the interests of European democracy and the competitiveness of Europe's economy.

4.2 Consolidation and implementation of European employee involvement rights

4.2.1 In order to improve businesses' freedom of establishment and mobility within the internal market, European company law is being continually developed. Corporate governance rules are increasingly being made at European level. The EESC feels that it is incumbent on European policy-makers to grant all relevant stakeholders - firms, investors and employees - the same legal status for their activities at national and transnational level⁽⁹⁾. The "fitness check" of European directives on obligatory employee involvement announced by the European Commission must not be used as an excuse for not carrying out major political initiatives. In this connection, the EESC agrees with the European Parliament that new political efforts are required with the aim of strengthening opportunities for employee involvement in the workplace and in businesses at transnational level.

4.2.2 In this connection, the EESC feels it is necessary for the basic European right to employee involvement to be implemented in national law and for it to be formulated more effectively in European law. In particular, rules on obligatory employee involvement should be consolidated in European legislation, on the basis of rights already acquired⁽¹⁰⁾.

— The European Parliament recently commissioned a report that proposes amending the EU directive on informing and consulting employees (2002/14/EC) generally to include the presence of employee representatives in company boardrooms.

— Existing directives on involving employees in the event of transfer of undertakings and acquisitions⁽¹¹⁾, on standards for informing and consulting employees⁽¹²⁾, on the establishment of European works councils⁽¹³⁾ and on participation of employees in a European company/European cooperative society (SE/SCE)⁽¹⁴⁾ came about at different times. The EESC suggests that serious consideration be given to the extent to which consolidation in a single European framework directive could at least ensure greater

standardisation of the various definitions of information and consultation and, where applicable, participation in company boardrooms as well.

4.2.3 Such measures would improve the European legal framework. It would become easier to invest, produce and work in Europe. The EESC therefore welcomes these recommendations wholeheartedly and expects the European institutions to take steps to implement these proposals without delay.

— By default, existing obligatory involvement rights would also be applied generally within the framework of future legislation, and would have to be implemented in national law⁽¹⁵⁾. There would also be more legal certainty for businesses.

— Furthermore, the proposals could help achieve a breakthrough in establishing the necessary consistency in European law. The principle of employee involvement has found expression in several EU directives. These were drawn up at different times and contain varying definitions of information, consultation and, where applicable, of employee participation in company boardrooms as well.

4.2.4 The EESC is in favour of consolidating the provisions on employee involvement throughout EU law, taking into account the different issues involved. Regarding the substance of these rights, the following legal acts must serve as a benchmark: the revised Directive 2009/38/EC on European works councils, especially with regard to the definition of information and consultation as well as structural changes, and Framework Directive 2002/14/EC (participation of employees in the European company) in connection with participation on company boards.

4.2.5 With all of these measures, the EESC feels that European law must safeguard and consolidate existing national involvement rights and existing European provisions. This applies in particular to employee participation in company boardrooms. However, due to the diversity of the situations and the different arrangements that exist at national level, it would be inadvisable and counterproductive to impose a single European model of employee participation.

— European law, which regulates the cross-border transfer of a registered office or mergers and creates types of European company, must not bring about a move away from board-level participation.

— There are good reasons for a general introduction of obligatory employee participation as a standard feature in European company law, although the diversity of national company laws must be respected.

⁽⁹⁾ European Parliament Resolution of 14.6.2012 on the future of European company law.

⁽¹⁰⁾ See also EP 2012/2061.

⁽¹¹⁾ (Directive 2001/23/EC).

⁽¹²⁾ (Directive 2002/14/EC).

⁽¹³⁾ (Directive 2009/38/EC).

⁽¹⁴⁾ (Directive 2001/86/EC and Directive 2003/72/EC).

⁽¹⁵⁾ See study on Relations between company supervisory bodies and the management. National systems and proposed instruments at the EU level with a view to improving legal efficiency. (European Parliament (2012) PE 462.454), <http://www.europarl.europa.eu/committees/en/juri/studiesdownload.html?languageDocument=EN&file=75509>.

4.3 Setting binding minimum standards for restructuring

4.3.1 Given the increasing pace of restructuring⁽¹⁶⁾ and a corporate financing climate which has become more aggressive, the EESC believes that innovative approaches are required at national and European level which signal Europe's openness and attractiveness to investors, while also – as stressed in the Committee's opinion on the Green Paper entitled *Restructuring and Anticipation of Change* – preparing both companies and employees for new challenges ahead in order to minimise the negative social impact of the changes and maximise the chances of successful restructuring⁽¹⁷⁾.

4.3.2 The financial crisis has shown that a new approach is needed in order to ensure that in businesses the goal of sustainable value creation takes precedence over short-term profit. In order to ensure an effective policy response to the challenges of restructuring, an integrated approach covering several policy areas (e.g. employment, education, innovation and industrial policy) is required. The interests of employees should also be taken into account if they are affected by business decisions. The concept of the "sustainable company" is geared towards the long term and provides a practical response to the European policy requirement of supporting businesses in creating "sustainable growth".

4.3.3 The EESC believes that anticipating change can happen only if a climate of mutual trust is created and the social

partners and organised civil society are closely involved⁽¹⁸⁾. This means, among other things, that employees can play a part in the run-up to business decisions by exercising their information and consultation rights and using them to ensure effective problem-solving at local level⁽¹⁹⁾. In this connection, the 2009 directive on European works councils also allows timely involvement in cross-border matters.

4.3.4 The right approach to restructuring has long been the subject of debates at European level, in which predominantly the European social partners, the European Parliament and the EESC have played an active role, alongside the Commission.

4.3.5 A provisional new stage in this debate is marked by the European Parliament's resolution of 15 January 2013. By a large majority, the resolution calls for a legal framework with minimum standards for restructuring in order to minimise social and economic costs and promote anticipation⁽²⁰⁾. It is to include obligations for strategic planning as well as preventative measures concerning initial and further training. It will also entail measures geared towards maintaining jobs and the workforce and provisions which encourage businesses to engage in preventative cooperation with regional offices (mainly government and job centres) and local supply chains, in the event of restructuring.

Brussels, 20 March 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁶⁾ Eurofound 2012 Report from the European Restructuring Monitor (ERM): After restructuring: labour markets, working conditions and life satisfaction.

⁽¹⁷⁾ EESC opinion of 11 July 2012 on *Restructuring and Anticipation of Change*, (OJ C 299, 4.10.2012), point 1.3.

⁽¹⁸⁾ EESC opinion of 11 July 2012 on *Restructuring and Anticipation of Change*, (OJ C 299, 4.10.2012), point 1.3.

⁽¹⁹⁾ European social partners: orientations for reference in managing change and its social consequences, adopted on 16.10.2003, <http://ec.europa.eu/social/BlobServlet?docId=2750&langId=en>.

⁽²⁰⁾ European Parliament Resolution of 15.1.2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring, P7_TA-PROV(2013)005.