
ΚΑΝΙΓΓΟΣ 31
106 82 • ΑΘΗΝΑ
ΤΗΛ: 2103304120-1
FAX: 2103825322
e-mail: obes@obes.gr
<http://www.obes.gr>

31 KANIGOS STR
106 82 • ATHENS
TEL: 2103304120-1
FAX: 2103825322
e-mail: obes@obes.gr
<http://www.obes.gr>

NEW EWC DIRECTIVE- NEW PERSPECTIVES
CONFERENCE SINAIA 17-18.2.12
NEW MONTANA HOTEL

MINUTES

Introduction.

The aim of the transnational Conference was:

- to inform trade unionists on the new Directive 2009/38 about the EWCs as well as on Regulation 2157/2001 and Directive 2001/86 about the SE.
- to exchange views and experiences between trade unionists and EWC members on the perspectives of the new Directive and how EWCs can best take advantage of its provisions.

Proceedings

1st session. Morning 17 February

The President of OBES Mr Zisis Trakaniaris has thanked Vice president Puiu of the Romanian Metal Workers' Federation for the co-organisation of the Conference and the opportunity to exchange experiences on the common problems.

Mr Puiu has welcomed participants from Greece in Romania and wished a good stay. He thanked the EU and OBES for this opportunity to speak and discuss their problems, to exchange views and learn more about the EWC and the European company.

Mr Hatzisavvidis, ex President of OBES and Mr Florentin Iancu, President of young trade unionists of CARTEL ALFA presented their greetings as well.

Each participant has presented him or herself and his/her organization.

Mr Katsampanis, scientific collaborator of OBES has started presenting his power point presentation inviting participants to interrupt him at any time in order to

exchange experiences and have a fruitful learning experience. Main topics of the discussions are the following:

Katsampanis. There are different models of workers' representation in Europe. For example, there is the German model previewing workers' representation in the supervising body and dualistic system. The British model on the other hand is a new-liberalistic one dating since the Thatcher period, which tries to inhibit any participation of workers' representatives in decision making. The South European model, which is under formation at the moment, we would like to be characterized by the stressed participation of trade unions. The question is: wouldn't it be better to have a common European model aiming at the dignity of workers universally? Collaboration is a prerequisite to this end, but even so there are many problems and obstacles to overpass and the result is by no means guaranteed. For example, in Greece even the most fundamental workers' rights such as the right to trade-unionism and the right to free collective bargaining are actually put under question.

The right to information and consultation are recognized by both European (Directive on information and consultation) and national laws and have to be used for the benefit of workers. What for example may be the use of consultation after mass redundancies?

Company management generally, both in the case of EWC and of the SE, try to control workers' representatives.

Let us see what is an EWC. EWCs have limited role in a limited number of issues, namely information and consultation (not negotiation, which however is in the DNA of workers). Could for example according to your opinion the management of a multinational company suggest to its EWC to freeze salaries/wages instead of closing a plant?

Verner. With the new EWC Directive there are improvements as far as the right of consultation, of training etc. are concerned but no collective bargaining is preview.

Papadopoulos. In the AGFA EWC we have the case that we raised to the Spanish President of the EWC the subject of the threat we envisage in Greece about the cut of the 13th and 14th salary. The President intends to introduce this subject in the next meeting of the EWC with the management to be held in March 2012.

Katsampanis. The main conclusion is that the EWC has to be flexible and accept, suggest or form conditions for the benefit of workers.

Verner. A government has the right to reduce salaries in the public sector but not so in the private sector.

Hatzisavvidis. You are right. The international Law demands that Collective Work Contracts are respected in the private sector. In Greece the troika, puts pressure on social partners but although they have agreed that the 13th and 14th salary has to remain as it is, the government makes authoritarian decisions on that. We see a big operation to demolish the social state that has been achieved in Europe in the 20th century. In Greece there is undergoing an experiment of transferring wealth from the workers to the capital and this we think will then be done in all countries. The workers have to resist to this plan by their struggles.

Fabiu. The question is whether the freezing of salaries and wages may be considered as a subject to be examined by the EWC or not. If it is not an international subject it can't. On the other hand, representatives from western countries should consent to deal with problems faced in eastern countries that maybe will be their own in the future. The capital is globalised. There should be no distinctions and discrimination in the EWC. It is a matter of fact that in western countries legislation is more positive and trade unions are more organized. However, this should not affect the unity of EWCs.

Iancu. In the EWC of ALCATEL/UCENT we learnt recently, in January, the freezing of salaries and the intention of the group to proceed to 1200 redundancies in Europe. We were informed about this intention and tried to face the situation in a coordinated way. The group has one billion Euro in profits, yet its target for the next phase is to cut costs. There are demonstrations in Italy (cut of 500 job positions), in France and in Germany. Bulgaria and Romania have been exempted from redundancies as they are considered low-wage countries. This produced a crack in the EWC. The capital is uniform; instead we have representatives from many countries. It is very difficult to have one voice when we are divided. We, in eastern European countries, tend to adopt the western consumption model but there is a reaction from the west. For example, the minimum European salary cannot be adopted as western Members of European Parliament are more numerous.

Katsampanis. The EWC has not the right for collective bargaining. Yet, it can either have a defensive position or instead be proactive as with the example of the 13th salary we discussed. When can a EWC be established? There are about 3000 companies that come under the Directive but there are only around 1000 established. We can speak of a case we dealt together recently. It is a multinational, that among other countries, it has subsidiaries in Greece and in Romania. The trade union has contacted us and asked us if they could establish an EWC and if yes, in which way? We have told them that if we prepare a request and we arrange that it is signed by the trade union in Greece, a federation in Romania and a European Federation then the management of the company has to proceed to the establishment of the Special Negotiating Body. In Romania there are many Greek companies. We have a very good opportunity today to know each other and if you wish we can bring you in contact with the respective Greek trade unions.

Fabiu. In our case the management was extremely negative as far as our participation in the EWC before the accession of Romania in the EU is concerned. We have sent a formal request for participating and we have been told that we could not participate as our country was not an EU member. We have been prepared for 2 years and then following the accession of Romania, the European Metal Federation has notified us that we can send our representatives.

Vener. In our case, we joined the EWC before the accession of Romania in the EU. This is because our company is Swedish and there is a culture of participation. Yet, the solidarity between countries is not well-developed. We have proposed to organize a strike in 6 countries, but this was not accepted by the EWC. As a result, there were 12 plants that were closed throughout Europe.

Ilinca. Arcelor Mittal belongs to a French-Indian group. They have decided to reduce the workers in our country and they exploit the fact that people are very poor here;

they have proposed to workers to give them the salaries of 2-3 years if they resign. It has been very difficult for us to persuade them that they should rather not accept as in this way they would lose their job and stay unemployed. It is a very short-sighted decision. We are actually 8000 workers with a tendency to be reduced through these voluntary resigns to 6000 and we can do nothing for that.

Hatzisavvidis. The capital goes where it considers it will earn more. In some countries salaries are still high because there is high surplus value. Solidarity has to be high because it is highly possible that even they will face problems. Technology offers us many chances, e.g. we can communicate through the internet. The percentage of unemployment in Greece has reached 20%, not including the self-employed that have lost their job. As long as unemployment rises, the negotiating power of trade unions decreases. Companies blackmail that they will shut down plants and transfer them in other countries.

Onica. In our case, my company is a Japanese-German joint venture, which had subsidiaries in many countries which it transferred to Romania. In 2008 we asked to meet with Germans in Timisoara and discussed about establishing an EWC, but they then disappeared, so we have lost contact since. We are actually trying to establish the EWC through the Solidaritatea Metal and AEGE Metal.

Katsampanis. The SE has been adopted by the Directive 2001/86. The Directive has provisions about workers' representation (see power point presentation). The main incentive for the establishment of an SE is taxation in a low-taxation country, reduced accounting costs etc. There are two ways of workers' representation. In Germany for example following the 2nd world war, there is a culture of workers' participation (they participate equally in the supervisory board). There are similarities and dissimilarities between the provisions for the EWC and those of the organs of the SE (see table in the ppt presentation). What we have always to have in mind though is that an SE is founded if not only the management wishes it but also the workers agree for that.

Hatzisavvidis. The SE that has been introduced about 10 years ago has not gone far in practice. This has to do mainly with the differentiation of tax regimes. There is not a uniform taxation in Europe. An SE may be established through mergers, as a holding company, as a common subsidiary, established as a new company etc.

Tsardanidis. I would like to say a few words referring to the SEs in Greece. Up to now there are not SEs based in Greece. There are Greek groups that examine seriously the possibility of founding SEs in Cyprus or in Bulgaria, as Greeks seek to find ways to overpass problems such as high taxation and inefficient public sector. I am not sure how workers and trade unions will see this, but this needs to be further studied.

Katsambanis. There are a few examples of SE already established. Alliance, a German insurance group has been established as an SE. SEs are likely to be founded in low-taxation countries and this is the danger. No SE can be established without previous clarification of the role of its workers. The representation body has to defend decisively and effectively the interests of workers.

Ilinca. What exactly is an SE? What are the differences between an SE and a multinational in Europe, as it is actually?

Katsambanis. A multinational company actually has to have in each of the countries it has activities a separate legal entity, a separate statute, a separate capital and a separate name. Each of the subsidiaries is independent. It can be, for example, bankrupt in one country without this fact affecting the subsidiaries in other countries. This independency may also be interpreted as increased costs and increased bureaucracy. The SE offers them a way to reduce them, by having only one balance sheet and being taxed in a country having good taxation terms.

Tsardanidis. The SE is another legal form. It has similarities with the SA company but it is Europe-wide.

Vener. Why, if it suits their interests, multinationals have not been converted into SE since 2001 up to now?

Katsampanis. An SE cannot be established without previous consent of its workers and agreement on their role. Workers have also right to participate.

Tudorache. An Austrian multinational company gathers profits in Austria. How can the EWC act in order to prevent the transfer of profits to another country?

Iancu. In our case the multinational has its headquarters in Cyprus. We offer services to other countries, but the contracts are signed by subsidiaries. About 70% of the contracts are signed within the group and only 30% with customers. So, we lose both ways. There is a tax, I think in France, to prevent money to go to off shore companies. Profits are retained in the country as much as required for the subsidiary company to be maintained and not to pay taxes.

Katsampanis. There are three issues put in the discussion, the issue of underrating and overrating, the issue of tobbing and the role of the trade unions.

Tudorache. The transfer of profits to another country is done in various ways. Romanian state does not defend its rights. The trade union movement wants three things: job positions, good working conditions and good salaries. We are not concerned about profits; we want job positions, good working conditions and good salaries. The state on its side should have laws forbidding this practice.

Tsardanidis. The SE up to now has failed. This along with the subject of workers' participation has other reasons as well, namely bureaucratic procedures required in order to be established and tax. The tax regime has not been fully determined yet. Up to now a multinational can transfer resources through overrating and underrating. It is not correct that money goes to the headquarters. It rather goes where there is low taxation.

Iancu. Companies with high profits should pay taxes and the state should collect money. There should be a balance between salaries, the taxes paid by workers and the taxes the state collects from companies in order to improve the general conditions.

2nd session. Afternoon 17 February.

Katsambanis. Main differences between the old and the new EWC Directive are:

- Better definitions of information and consultation
- Better definition what is a transnational matter
- Information and consultation at European level in combination with information consultation at national level (Directive 2002/14)
- A EWC continues existing in the case of merging of two groups having EWCs
- Involvement of European trade unions in the establishment of an EWC
- Training of EWC members
- Requirement for providing facilities to the members of EWC (telephone, fax etc.) and the right to inform workers
- Sanctions effective, persuasive and proportionate to the seriousness of the offence (to be determined by member-states).

Vener. When an EWC is established, it follows the legislation of the country of its headquarters. The Law in this country may preview sanctions. If there is an offence in another country you have to pursue the case in the courts of this country, which is difficult.

Katsampanis. I agree. This is a handicap of the law. Let us examine the changes in the definitions of information and consultation. In the old Directive there was no definition of information. As far as consultation is concerned the new directive previews that workers' representatives have the right to express their opinion for "proposed measures". This means that consultation has to precede the measures.

Tudorache. In our case measures precede consultation. Decision has been made long ago and at a certain instance we learn the countries that will be affected from it.

Katsapanis. Is this procedure legal?

Papadopoulos. They may have made the decision and call you for consultation. They may even not announce the whole decision but call the trade union or the EWC for consultation without them knowing the whole plan and finally succeed into making the trade union or the EWC jointly responsible.

Iancu. In the ALCATEL group steps are respected, yet decisions are pre-made. The result is the same. It is very difficult to hinder redundancies but with the agreement of workers there may be some compensation (transfer to another country, incentives, change of job).

Tudorache. In Thiessen group I have lived the following experiences. The situation required re-structuring and the central management has studied and announced measures. It didn't explain the whole plan but individual measures at national level. So, consultation has taken place at national level according to the national Law. In some countries workers have had better treatment due to a more favourable national Law.

Ilinca. In which way can we hinder decisions? For example, they have studied the subject of staff reserves and they have imposed it to us.

Katsampanis. The main weapon that workers have is strike.

Ilinca. In Romania you cannot strike if you are on suspension, reserve or fired. You can only be on strike during the bargaining of the National Collective Agreement. Strike used to be possible when the state had the majority of shares in companies. Now the Law has changed and it is very difficult to strike.

Hatzisavvidis. When the unemployment rate goes up the possibility to negotiate goes down. Of course the sector has also to do with the possibility to strike. In Greece there was the possibility to sign company Agreements with company based trade-unions. Our main labour law, 1264/82 is the most worker-friendly one in Europe. We also had the right to arbitration which now has been abolished.

Tsardanidis. There used to be compulsory arbitration. If the trade union referred to the arbitration body then the decision of this body was binding for the employer as well. Now there has to be an agreement between the two parties in order to refer to the arbitration body.

Xatzisavvidis. Now possibility to negotiate have some trade unions, for instance that of the Greek Power Company (DEI), which if on strike, the strike will have great impact. On the other hand, even in their case their appeal to the society is reduced, they are rather isolated, because they have high salaries. The mass media play a very important and not always clear role. Possibilities for strikes are really reduced because there is insecurity and fear, especially in countries, where the IMF is present. The trade union movement is in the defensive and solidarity is required at an international level.

Vener. Has flexicurity been imposed in Greece?

Hatzisavvidis. In Greece they tried to apply multi-skilling since 10 years. Usually, multinationals are better organized, have better salaries and have better organized trade unions. For example Heineken in Greece had an average salary of 50.000 Euro and yet it gained very high profits. Consumption is much lower now and so are the profits of the companies. Bank capital produces only profits and cannot help the real economy.

Katsampanis. The concept of flexicurity has been imported from Denmark. I don't know if it can be used in situations of deflation, because it requires investment in people.

Tsardanidis. In Greece there is no application of flexicurity. The model of the state is different than the Scandinavian one and the state does not help in finding jobs when SMEs close. Many companies reduce the working hours, or implement shift work that now, with the new Law is legal. We used to have ankylosis in the labour market, which prevented the renewal of the labour force. Nowadays, there is collapse of the social state. EWCs have been introduced to counterbalance this situation. Measures imposed in Greece are contradictory with the provisions of Lisbon Treaty and ILO conventions. The social model of after-war Europe, coming from Scandinavian countries and Germany, is being abolished.

Katsampanis. The cook that works in a small restaurant can, if the small restaurant closes, go and work in a big restaurant. The same stands also for an accountant. But this is not the case for a technician working in a small specialized workshop. If he is not re-trained, he cannot find else to work. Many companies advertise their social responsibility. Where is social responsibility in this case?

Hatzisavvidis. The General Workers' Confederation, GSEE, has made a legal appeal to ILO. All collective bargaining and collective agreements are being cancelled. We think that Greece is an experiment. Everything is fluid, the crisis is big. We don't know what will be the outcome.

Papadopoulos. The situation described is one of losses of workers, difficult positions in negotiations and de facto annulment of arbitration. We must not be pathetic. What has a trade union pay attention to under these circumstances? It has been said that in many instances the company announces its decisions but does not really put these decisions under consultation. How the trade union could intervene and justify its role?

Hatzisavvidis. The trade union has to negotiate taking into account the situation in the company, its relation with workers, the broader society and the general situation. It is very crucial to negotiate with well prepared arguments. I personally believe it is better to have even a yellow trade union than not to have any trade union at all. Troica has put pressure in order to create such trade unions in order to sign company-based collective agreements. In the past company-based collective agreement have been more positive for workers than the respective sectorial ones. On the other hand, because the company-based trade union is closer to the problems of the company there have been cases, even before the crisis, that the company-based trade union has signed a collective agreement previewing reduced hours of work in order not to lose job positions. We, as OBES, have members that are company-based trade unions. On the other hand negotiations skills, technical knowledge, training seminars, knowledge of the body-language, good and correct information contribute also to effective collective bargaining. OBES has organized such training in the past.

Fabiu. Crisis, to my opinion, has decreased not only the level of living but also the working conditions. Have you witnessed in Greece a drop in the level of health and safety?

Hatzisavvidis. In Greece the law for Health and Safety at work has been introduced in 1985. We have organized seminars and produced a handbook in order that workers are able to assess possible hazards in their job by themselves. It was done through the Safeguide project, co-funded by the DG Employment. Even before the crisis, trade unionists did not prioritise the safety measures, which of course meant a cost for employers. Laws have not changed since with the crisis. Nowadays, I think it would be clever from the part of trade unions to put health and safety issues first, because this would gain the sympathy of the society.

Tudorache. In my town out of a total of 12.000 people living there in the Tsaouseskou period, only 2000 are employed. Employers have followed a tactic of dividing the workers by saying different things to each shift. Workers have resigned from asking any improvement of their salaries out of the fear of losing their jobs.

Fabiu. Of course we have to negotiate and to know the techniques and acquire negotiations skills. Flexicurity means that indefinite time contracts have turned to definite time contracts that may be renewed or may lead to redundancies. The fear of losing their job horrifies poor people. If we are directed towards a South American model, then training would be for nothing. European trade unions and the ILO have to hold a firm position in order that the social state is not ruined. Taking into account the legal framework in Romania, I do not think that trade unions can achieve much.

Iancu. In Romania there can be no more than three consecutive contracts of definite time, which cover a period not longer than 36 months. A worker may have a

prolongation of the contract for one month. This can be bypassed if there are intervals between the contracts. Romania has tried to attract investors not through low taxation but instead through coercion of the labour force.

Katsampanis. In Greece there is a company producing spirits, where all workers have 10 months contracts. They work from the first of February up to the end of November each year.

In the following Mr.Katsampanis presented the impact of the new Directive on existing EWC Agreements.

Puiu. It has really been a useful and fruitful day. We all learnt new things and we are looking forward for tomorrow to learn more.

3rd session. Morning 18 February

First, Mr Katsambanis has reviewed what has been discussed in the first day.

The second day was spent with the examination of 3 case studies. During this examination participants were asked to find the pertinent clauses in the Directives, the Greek laws and the Romanian laws. At their disposition were printed copies of these legal documents as well as direct internet connection linked with the LCD projector in order to find more information or display the clauses.

1st case study.

1st Question.

Participants have studied article 12 of the Directive. In Romania there are company based trade unions having their own legal entity. According to the statute of each of them either, their Managing Board or their General Assembly decides who will be the representative to the EWC. In parallel, they inform about this the trade union Federation.

The Romanian law previews that in order to be able to appoint a representative the trade unions have to be representative. In order to be representative they have to have as members at least 50% of the workers in the company. However, there are in many instances problems, where the employers want to appoint the worker representatives/members of the EWC themselves. For example in the EWC of ALCATEL the employer did not let the trade union appoint the representatives, so they had to address to European Metal Federation and Cartel Alpha to be able to do it.

In Greece, in the past, there have been numerous problems with the appointment of workers' representatives to the EWC, and this is the reason for writing this case study.

Participants have then examined article 2, paragraph 4 of the Directive and article 4, paragraph 3 of the Romanian law.

The Greek law previews that representatives are appointed by trade unions, if there are no trade unions by the working councils (and if there are no working councils by the general assembly of all the workers (which third case is risky, because the representative may be yellow).The trade union may either appoint or elect representatives. Still, many employers, through their lawyers try to interfere in this procedure.

2nd Question.

The opinion expressed was that the procedure described in the case study was not compatible with the EWC Directive. Representatives would be only from the three greatest in number of workers countries, so there would be some countries with no representatives at all. The EWC would not have the right to information and consultation.

Mr. Katsambanis said that the case described is a very bad one for the workers, yet the Special Negotiating Body has decided that with majority vote. This procedure is within the provisions of the Directive. Representatives are free to decide whatever they wish.

Mrs Spiliotopoulou said that if worker representatives in the SNB do not achieve provisions better than those preview in the subsidiary requirements of the Directive

they should better demand the subsidiary requirements. In the opposite case, if they agree to something less and sign the respective Agreement, then the less will prevail and the subsidiary requirements will not be valid in their case.

2nd case study.

There took place a discussion on what the trade union should do. It has also been said that trade unions should prepare themselves for the dialogue because, apart from the information and consultation, in the SE there is the issue of participation.

Mr Katsampanis said that the trade union should first appoint the Special Negotiating Body and if they do not conclude to an Agreement to turn to the reference provisions. There should be coordination with the respective Federation and if needed to ask them for assistance.

3rd case study.

In the case of mass redundancies in a multinational company the second procedure should be followed (first information and consultation with the EWC and then with the local trade union).

In the case of FREMENTAL HOLDING the EWC was first informed about the intention of the group to close the plant in Duesseldorf. The EWC representatives have informed the local trade union. There was a big fuss as the company was in the stock market. The management has suited the representatives on the grounds of confidentiality and they hardly escaped from being in jail. Finally, the plant, which was a 12 million Euro investment, was sold for 1 Euro.

Katsampanis. According to the new Directive, article 2 paragraph 10 the EWC is obliged to inform the local trade union. Confidentiality has to be well defined in terms of whom it covers, for what and for how long.

Iancu. I think that the headquarters of the group plays an important law. Romanian Law for example is valid for companies with headquarters in Romania, which for the time being do not exist.

Katsampanis. This is correct. On the other hand, the Directive is valid throughout the EU. It is illegal to inform the local trade union ignoring the EWC, if there is an EWC in the multinational.

Fabiu. If there is an EWC and it is not informed about the redundancies the national representatives have to ask for an extra-ordinary meeting of the EWC. The EWC has to come to the meeting with concrete arguments and proposals, based on the national laws, after being informed on the circumstances that lead to this decision.

Katsampanis. The EWC may go to court the central management for offending the Directive and national law.

Theodoraku. These actions are necessary in order to cancel decisions about redundancies.

Iancu. I don't think decisions could be annulated, but at least one could succeed in imposing sanctions. However, which law is valid when information is covered under confidentiality?

Katsampanis. The company has to define why this is confidential. A merger for example is something different than the redundancies. For this reason the role of workers' representatives has to be substantial. We should in any case ask for written justification of confidentiality for how long and who can break it.

Papadopoulos. Which is the legislation valid?

Katsampanis. First is valid the EWC Agreement, then the Law of the state of the headquarters, then the national Laws of the representatives (sanctions in case of offence according to the national law) and the labour Law if we are speaking about member of a trade union.

Another important issue is to discuss the subject of what can be done with persons that will be fired.

Closure of the transnational conference by Mr Trakaniaris and Mr Puiu.