

EPSU Legal Fund for EWCs

Rules for its use

This paper was first discussed by the EPSU EWC Coordinators on 29 October 2007. . Information was provided to the EPSU standing committee utilities (30 October) and the EPSU Executive Committee 26-27 November 2007. Comments were integrated in the text and the paper was extensively discussed 2 April 2008. The EPSU EWC Coordinators then forwarded the paper to the EPSU Standing Committee which recommends it for approval to the Executive Committee.

EPSU Legal Assistance Fund for cases involving EWCs

The number of EWCs grows bringing forward legal cases against their companies. For an overview see for example http://www.worker-participation.eu/company_law_and_cg or <http://www.ewcdb.eu/> and the section on legal provisions.

EWCs in the area of EPSU are also concerned (such as GdF), and recently the issue of financial assistance in a Court case was raised in the Suez EWC.

Legal systems are different in the EU. In some countries the EWC can bring a case to Court and the employer pays for it, while in other countries the trade unions have to bring the case to Court and pay for it.

EPSU has created a financial provision to support EWCs and unions in case of conflict and proceedings before a Court. It is important to establish a set of clear rules for the use of the funds, especially since the funds are limited and Court cases are expensive. (Indications range from 8.000 to several ten thousands of Euros).

Our colleagues in EMF have done already some work on this. Their handbook on restructuring is available at:

http://www.emf-fem.org/areas_of_work/company_policy/restructuring/emf_handbook_on_how_to_deal_with_transnational_company_restructuring. This handbook exists in EN, FR, DE, NL, SV, CZ, ES. Pages 41-48 deal with legal cases.

The coordinators are asked to consider the following:

European Works Councils coordinated by EPSU EWC Coordinators (EPSU affiliated trade unions) will have access to the legal fund established to support Court cases when the following **circumstances** apply:

- A company does not respect Information and Consultation rights (including sufficient time to consider alternatives) of an EWC, in the case of restructuring, leading to significant job losses and changes such as relocation and disinvestment of activities;
- Or in case of mergers/ acquisitions that have an effect on workers concerned.

This implies that cases related to a EWC, pursuing a case around infringements of provisions of the EWC agreement, other than those related to not respecting information and consultation rights, and demands for extra-ordinary meetings in case of restructuring (closures, dismissals, relocation,...), mergers and acquisitions, will not be entitled to receive support. Also when a company establishes an SE (European Company), and does not respect procedures to negotiate a SE EWC and participation of workers' representatives on the Board, this can be supported if EPSU is party to the case.

There might be specific circumstances which would merit support. These would have to be justified extensively.

European Works Councils, coordinated by EPSU EWC Coordinators (EPSU affiliated trade unions), will have access to the legal fund established to support Court cases, when the following **conditions** are met:

- An important condition for EPSU to intervene financially would be that EPSU is a signatory party of the EWC agreement.
- There should be a history of EPSU involvement with the EWC. A legal case should be part of a longer process in which the EWC and unions have asked EPSU to intervene (for example by writing to management, or coordinating cross-border actions). A legal case should be part of a strategy and not a stand alone action.
- The union of the coordinator, or one of the (national) unions concerned, should provide the legal expertise underpinning the case, and why the case would stand up in Court and be winnable. In some cases the EWC might have access to legal expertise as well. Without such national perspective, and in the absence of a coordinated view in case more unions are involved , it will not be possible for EPSU to support a case.
- The EPSU EWC coordinator should explain the background and reasons for the case to EPSU.
- A further condition is that the EWC has provided a clear mandate for legal proceedings. This mandate can be given to the EWC secretary, workers' side president or other person to pursue the case. Such a mandate is needed, as without it legal obstacles can be raised. Cases of individual members will thus not be considered.
 - Examples of an EWC which has given a clear mandate are:
 - EWC of Suez http://www.epsu.org/IMG/pdf/Comm_Press_BARCA.pdf
 - EWC of GdF <http://www.epsu.org/a/2551>
- Legal systems are different in the EU. In some countries EWCs can bring cases (and chose its lawyer) and the employer/ company will pay the costs. In many other cases it will be the trade unions that carry the costs. The EPSU fund can be requested to support the Court case in such situations.
- Unless given a clear mandate to do so by the EWC and national unions concerned (and when it is clear that EPSU would be an eligible party to the case), EPSU will not *bring* a Court case itself. It will *support* cases brought by national unions and contribute... The costs of a case might (far) exceed what is available from EPSU, see below, and especially when the trade union side does not win, these costs will have to be picked up by the unions concerned.
- EPSU support seem especially appropriate for unions that are financially on the EPSU index system of affiliation.
- As the funds are limited and can not be replenished quickly, any intervention will be limited. It is suggested that there is a maximum of 10.000 Euros EPSU can contribute to the financing of a Court case.

Procedure

How should EPSU decide to provide support in the case of the above conditions and circumstances?

- Each case will be judged on its individual merits and characteristics.
- When a request is made, the EPSU Secretariat is to make a briefing, detailing if the different conditions and circumstances are met. It should end with a recommendation.
- This will be sent to the EPSU EWC coordinators for their views. These will be taken into account.
- EPSU will consider if a panel of legal experts (2-3), for example those used by ETUC, can be drawn upon to assist in making a judgement.
- Due to the often *urgent* nature of the case (to obtain an injunction to stop a company proceeding with restructuring, merger, disinvestment for example), it will in many cases not be possible to ask for the endorsement of the Executive Committee. The EPSU Secretariat takes the decision and will report back to the EPSU EWC Coordinators and EPSU Executive Committee.

Revision

These conditions and procedures can be revised on the base of experience. As experience lacks with these rules, it is prudent to interpret them in a restrictive way in the first instance.