



European Trade Union Confederation (ETUC)  
Confédération européenne des syndicats (CES)

**EXECUTIVE COMMITTEE**  
**Brussels, 15-16 October 2008**  
**181.EC**

**Item 10 on the agenda**

**Workers' representatives in European Companies (SEs):  
proposed regulation for the (partial) transfer of  
supervisory board remuneration**

**- European Workers Participation Fund -**

**ETUC resolution**

**The Executive Committee is requested to:**

- Adopt this resolution



## **Workers' representatives in European Companies (SEs): proposed regulation for the (partial) transfer of supervisory board remuneration**

### **ETUC resolution**

#### **Background**

1. The ETUC Executive considered this proposal at its meeting on 5 and 6 December 2007 and on 24 and 26 June 2008. At the meeting in June the principle was adopted to transfer part of the remuneration of workers' representatives on SE boards to the European Workers Participation Fund established at the European Trade Union Institute (ETUI). At the same time several questions were raised which were to be thought through before the current meeting of the ETUC Executive Committee. Questions were raised regarding the structure of the fund and the practical use of the resources and the proportion which should stay at the national level or rather be transferred to the ETUC.
2. Annexed to the present resolution is a thorough overview of the structure of the funds, the work areas for which the funds should be used and tax treatment of the (partial) transfer of the remuneration of the supervisory board or management board as the case may be.
3. Further practical questions were considered in the draft resolution. These deal with, inter alia, the possible capping of funds that do not have to be transferred and the possibility for member organisations or facilities thereof to transfer more than 50% to the EWPF.
4. Concerning employee participation and co-determination in the European Union, the latest developments on the European Company (SE) and the European dimension referred to can be seen in the presentation to the ETUC Executive meeting of 24-25 June 2008.

#### **Resolution for (partial) transfer of the remuneration of workers' representatives on supervisory boards**

5. The member organisations of the ETUC once again pledge to commit themselves to securing a high level of co-determination in negotiations on worker participation in the European Company (SE). In nominating workers' representatives in supervisory or administrative boards, only those candidates should be supported who belong to an ETUC affiliated organisation. The nomination or appointment procedure for workers' representatives takes place within the framework of national transposed legislation. It is the responsibility of the trade unions to ensure a high level of transparency. In the event the rule is not respected, the trade unions will not support a renewal of the mandate.
6. When nominating workers' representatives to sit on the SE Board, only those candidates from ETUC member organisations will be put forward,

i.e. supported, as have made a binding commitment to adhere to the following regulation on transfer (see para 7).

7. Workers representatives on an SE Board must;

- Transfer 10% of their remuneration if the remuneration is less than or equal to 3,500 euros;
- In addition to the deduction described in the first bullet point above, transfer 90% of any remaining remuneration over and above 3,500 euros;

8. The basis for the amount of the transfer is the value after taxation according to national rules (see explanation on taxation in the annex).

9. Affiliates of the ETUC may decide at national level that the part to be transferred could be higher than 90 per cent.

10. The resources will be given to the corresponding member organisations of the ETUC (or their affiliates) or to trade union institutions (foundations, educational institutions, etc.). These, on the other hand, are obliged to pass on 50 percent of the resources to the European Workers Participation Fund (EWPF) set up by the ETUI. Affiliates may decide that the part transferred to the EWPF may be higher than 50 per cent.

11. The resources thus transferred to the ETUI will be used to support the work of workers' representatives in European Companies (SEs) (for more detail see annex).

12. A Board of Trustees will decide on how the resources are to be utilised.

13. The Board of Trustees made up of the General Secretary of the European Trade Union Confederation and General Secretaries of the European Industry Federations, as well as representatives of the national ETUC member organisations, should be limited to seven members. It can be increased as and when necessary. It should be made up of representatives of organisations mainly concerned by the transfer of remuneration rule. The members of the Board of Trustees will be appointed by the Steering Committee of the ETUC.

14. The General Secretary of the ETUC will report once a year to the ETUC Executive Committee on activities.

15. This arrangement will be valid, for the time being, until the year 2011. The ETUC secretariat is asked to undertake an in-depth audit in 2009 and 2010. On the basis of the assessment the secretariat will make a proposal to the Executive Committee for a renewal of this arrangement.



**Workers' representatives in European Companies (SEs): proposed  
regulation for the (partial) transfer of  
supervisory board remuneration**

**- European Workers Participation Fund -**

**Background document**

- 1. Reflections on a structure for the European workers participation Fund and a European participation competence centre**
- 2. Proposals on a European workers participation work-programme**
- 3. Distribution of the recourses between the national level and the European Workers Participation Fund**
- 4. Taxation treatment**

**Annexes:**

1. List of ETUI activities in the field (2004-2008)
2. Confirmation from the Belgium Minister of Justice to the ETUI from 16 September 2008

## **1. Reflections on a structure for the European workers participation Fund and a European participation competence centre**

The ETUC executive committee has approved the principle of transferring, to the ETUI, part of the net remuneration that SE employee board level representatives receive. The remuneration transferred should serve to support the employee board-level representatives and more generally to promote the concept of workers participation.

ETUI has been identified as the receiver of the funds for two main reasons:

1. The ETUI has a proven track record on the subject (see work program 2006 through 2008);
2. the ETUI can provide the European added value which is vital in order to be able to function in a European environment.

The structure put in place within the ETUI should be able to guarantee a very high degree of transparency and accountability to the contributors and at the same time also monitor and assure that contributions due are paid. Even more importantly the structure should be able to provide the required support and expertise in a very flexible manner. Furthermore the structure should be able to handle large variations in the contributions.

The proposed structure and functioning is depicted in Figure 1 . Figure 1 foresees a structure based on the proposal that:

- the contributions will be transferred to a specific bank account at the ETUI,
- that a proposal for a specific work program will be drawn up by the ETUI,
- that the “board of trustees” is an advisory committee commenting on and approving the proposed work program financed by the European workers participation fund (EWPf work programme).

This structure has been chosen for the reason that it does not imply a change in the statutory functioning of the ETUI and it mimics the current functioning of the ETUI, while at the same time clearly identifying the income and expenditure of the transferred fees.

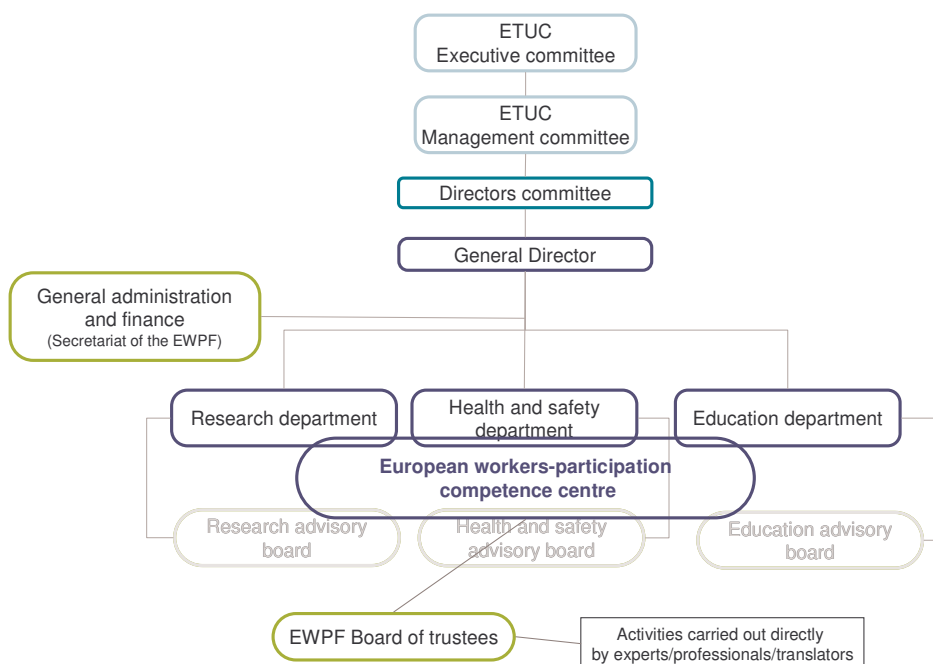
The final approval of the EWPf work programme will continue to follow the existing ETUI structure, namely directors committee, ETUC management committee and finally ETUC executive committee.

In order to clearly identify and manage the contributions, a staff member of the ETUI administration and finance will be selected in order to manage and report on this issue to the board of trustees. The staff member will be responsible for:

- Assuring transparency and accountability for the contributions
  - Monitoring the presence of trade-union members of SE boards (will get information from the research departments database and network)
  - Help to organise fiscal advice for transferral of contributions
  - Check contributions are made
  - Provide a list of contributors and amounts
- Give a full account of spending according to the work programme agreed upon by the advisory committee
- Tracking and administration of activities decided upon by the “board of trustees”.
- Work in close cooperation with the workers participation competence centre.

As concerns the carrying out of the activities decided upon by the board of trustees, two channels are foreseen. The first and most important is to build on the expertise already established within the ETUI. The suggestion is to create a cluster across the three departments (see Figure 1) called the ETUI European Workers Participation Competence Centre (for proposal of activities see later). Many of activities and projects that seem of relevance to support SE employee board level representatives are already being carried out at the ETUI, e.g. training courses, monitoring of EU level legislation and transposition, creation of SEs. However there will probably be specific circumstances where demands of a more administrative or urgent nature - such as translations of documents, fiscal and legal advice - cannot be dealt with directly by the ETUI, in this case the secretariat will make direct requests to outside expertise and build up expert networks that can respond to these specific requests.

Fig. 1:



The proposed structure has the advantage of providing a clear structure within the ETUI to the outside world with a clearly identified contact person in the ETUI administration as well as a clearly identified cluster working on relevant issues (European Workers Participation Competence Centre). A further advantage is that the funds coming from the EWPF will be supported by the structural funding of the ETUI, i.e. the funding from the European communities.

The functioning and quality of the outcome from the EWPF will be evaluated after the first period (2009-2011) and discussed with the board of trustees. The evaluation and discussions will give indications as to how to take the initiative further.

## **2. Proposals on a European workers participation work-programme**

Based on the rich experience and accumulated competence the ETUI already has gathered in the field of workers participation (see annexe 1) a cross-departmental cluster will be set up with a clear mandate to carry out and run special activities under the umbrella of the *European Workers Participation Competence Centre*. In this respect the ETUI will allocate own means and personnel equipped with the required skills and competences to carry out the approved work programme.

The main aim of the work programme should be to support the workers representatives in the European Company (SE) boardrooms. This support can be summarised as follows:

- Organising seminars and training to enable European workers' representatives on supervisory boards and administrative boards, as well as on SE works councils and European works councils, to obtain qualifications and competences;
- Advisory services and setting up of European advisory networks (for legal, social, economic themes, analysis of accounts, profit and loss calculations, job and health protection, gender mainstreaming);
- Research and expertise on the practice and further development of worker participation in Europe;
- Documentation and analysis of proven practices, recording of agreements;
- Publication of brochures, handbooks.

Furthermore, an annual meeting of SE–employee board level representatives is key in favouring exchange of experience.

A first proposal for activities to be carried by the ETUI in 2009 can be found below:

- 3.-6.2.2009: Seminar "A European dimension to the training of employee board-level representatives" in Runö/Sweden: directors of trade union related institutes and training departments (like Hans-Böckler-Foundation, IFAM Austria, PTK-skolan) are invited to discuss a common working program and to design modules and appropriate methods for training. Possible outcome: creation of a network agreement on the division of tasks and clarifying the support and expertise of ETUI to implementing the European dimension of training programs organised by the involved institutions.
- June 2009: Annual meeting of SE- board level representatives of workers in order to exchange experiences, discuss a common topic and for presenting and discussing the work program of the European workers participation work programme.
- Meeting with the European Industry Federations in order to identify topics appropriate to operate under the scope of the competence centre; e.g. development of commonly organized pilot seminars for board level representatives and EWC members on issues such as on how to influence company and industrial policy in selected branches or sectors.
- October 2009: Topical pilot seminar for SE board members on "European Corporate Governance and CSR and its links to a future concept of European Sustainable Company".
- Production of a booklet presenting the European workers participation competence centre.
- Re-editing the existing SE booklet (basic material) in EN and in DE and translating it into French.
- Development of intercultural training courses on learning from each other, based on information on national industrial relation systems (the basic material is already exists : the CD produced by SDA, ETUI and ETUC – in four languages - and the website section on national industrial relations).
- Completing the web service [www.worker-participation.eu](http://www.worker-participation.eu) by an information and interactive exchange desk, mainly to create a pool of contacts, special knowledge and language capacities (based also on already existing tools used by the Education department).
- On requests, support *training* of SE works councils (like already conducted for Allianz, STRABAG, BASF) and EWCs potentially concerned by a SE foundation.
- Continuation with advice and expert activities and prepare a map of typical problems in order to clarify and to classify future activities needed in this field (e.g. Who should do what?).
- Initiating a study on "The conditions and practices of board member insurance and directors' liability in EU member states".
- Analysis of SE agreements concerning training for trade union advisers in different countries in order to prepare a special seminar in 2010 addressed to this particular target group.



The number of activities that can be carried out will of course depend on the level of funding coming from the EWPF.

### 3. Distribution of resources between the national level and the European Workers Participation Fund in the ETUI

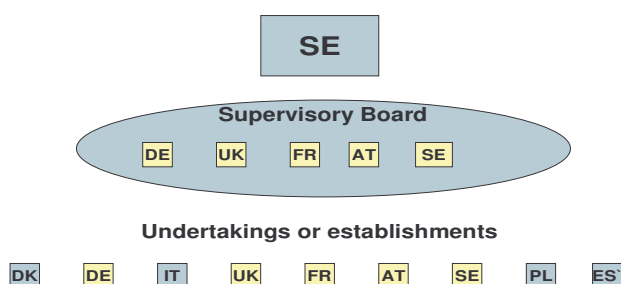
The suggested (partial) transfer of supervisory board remuneration recommends that 50% of the transferred amount be given to the European Workers Participation Fund (EWPF) at the ETUI and 50% remains with the member organisation. In the discussion about the transfer rule some trade unions suggested limiting the amount to the ETUI to one third.

The ETUC secretariat recommends sticking with the original suggestion. The workers' representatives on the boards of SEs represent all the workforce of the company. As the number of workers representatives is limited, there is no guarantee that employees from all countries where the company is active will be represented. At the same time, the representatives have the mandate to represent the interests of all employees. The resources available on the grounds of the transfer rule should be used for activities and exercises which will benefit all employees.

Accordingly, a European usage of the resources is guaranteed in the description of the EWPF's activity. The work benefits all the workforce and should serve to promote worker participation and co-determination.

The resources which remain with the trade unions at national level (50 %) should also be used for work that is relevant to the safeguarding the transnational work of the board or of the works council of the SE. At the same time they should aim for close cooperation with the ETUI and the European industry federations. The aim is not to use the resources merely for local or national activities.

Fig. 2



**4 member states are not represented on the Supervisory Board.**

**But – Supervisory Board represents all employees.**

**Conclusion: The part of the remuneration transferred to the national level should be utilised for activities at European level.**

#### 4. Taxation treatment

For the establishment and the administration of the Fund, the taxation questions are of crucial importance. The objective is to transfer (part of) the remuneration of the members of the boards of European Companies (SE) to the ETUI under the most favourable tax conditions.

The proposed formula looks as follows:

European Company	Board Member	Trade Union or T.U. institution (Foundation, educational institution)	ETUI EWPF
xx Euro remuneration	- Minus income tax (if any)	- 10 % of remuneration less than or equal to 3500 euro/year - 90% of remuneration over 3500 euro	50 per cent of this total amount

The income-tax regulations for remunerations are different from country to country. Therefore it will be necessary to explore in each country concerned the tax rules which apply. The secretariat of the European Workers Participation Fund together with a tax expert and, if necessary, an international accounting expert, will assist the national trade union organisations concerned in clarifying the tax status of the remunerations. Main questions to be examined at national level:

1. Does the board member receive remuneration? What is the gross amount?
2. Is the board member paid as employee or as self employed?
3. Has the company to deduct "at source" an income tax (withholding tax) or is the remuneration not taxed at source or not taxed at all?
4. Is there a difference in tax-treatment between national- and foreign board members? Does a double taxation agreement in those cases exists (between Belgium and the country concerned)
5. Under which (cumulative) conditions (part of) the remuneration can be transferred by the board member to the national trade union or trade union institution without further taxation?

Examples:

- o recognised as deductible professional costs;
- o the transfer takes place to a non profit organisation or foundation of public interest;

- there is a legal basis or a ruling has been obtained from the national tax authorities in the residence country of the board member.

The transfer has to be proved in any case. In order to receive a tax exemption usually an ex-ante written commitment towards the national trade unions to transfer (part of) the remuneration is necessary. This must be given in advance of the nomination for the board.

The transfer of the remuneration from a national trade union to the ETUI should not raise any tax problem (see confirmation from the Belgium Minister of Justice to the ETUI from 16 September 2008 in the annex 2). This transfer could be categorised as a membership fee or could be allocated on the basis of a research, training projects or joint activities.

## **5. Liability**

In EU member states there are different rules on liability for supervisory or governing board members. As a rule the employer will take out comprehensive insurance. Due to the considerable national differences, a European rule is not practical. Insofar as national liability agreements exist, comprehensive solutions must be found with the responsible trade unions.

11. **Annexe 1: ETUI activities in the fields of board level representation (2004-2008)**

ETUI is well prepared for expanding activities in this new field due to its past experience in *numerous relevant activities and projects*. They were conducted within the annual working programs of ETUI and have focussed mainly on:

- Providing *basic material* on SE and worker participation systems throughout Europe presented on [www.worker-participation.eu](http://www.worker-participation.eu), collected and compiled by the experts of the SEEUROPE network encompassing members from all EU- and EEA- Member States;
- Developing and running special courses for EWCs and SE-works councils, see [http://www.etui.org/education/Courses/2008-2009/\(offset\)/15](http://www.etui.org/education/Courses/2008-2009/(offset)/15);
- Developing *proper methods* for further education meant to be appropriate to the needs of this special target group (by education department and research project "worker participation 2030", experiencing with the future scenario method").
- Gathering and analysing *EWC- and SE-agreements*, see [www.ewcdb.org](http://www.ewcdb.org) and SE fact sheets on [www.worker-participation.eu](http://www.worker-participation.eu);
- Having carried out three *special pilot seminars* on the issue on "Trade union education for board level representatives in different EU-MS" (June 2007) TU education seminar report on the Web, "Making companies social responsible and sustainable – the role of workers board level representatives in Europe", addressed to boardroom members from different countries (February 2008) Board level seminar report on the Web and "Exchange among board members in SEs (AU, BE, DK, FR, GE, IT, UK) (June 2008, organized together with German Hans Böckler Foundation);
- The connection between participation rights and information and consultation has also been one important subject in a quite large number of EWC training activities during which case studies were introduced aiming at clarifying the composition of an "SE SNB" and helping the participants to determine participation levels. A training seminar for the Allianz SE Works Council involving the board level representatives from the employee side was realised in June 2008 and further training activities are planned. See [Allianz training report on the Web](#)
- Providing *topical expertise, advice and consultation* on several occasions. Appointed expert of special negotiation bodies.
- Conceptualizing *appropriate subjects for the future debate* on the importance of workers board level representation in the European context by working out a basic understanding on what makes a "European Sustainable Company".

A summary of the activities can be found below.

## ETUI activities in the field of board level representation (2004-2008)

INFORMATION	RESEARCH	ADVICE AND CONSULT	TU EDUCATION	BLR EDUCATION
<p><a href="http://www.worker-participation.eu">www.worker-participation.eu</a>: - basic material on SE, FAQ</p> <p>- basic information on IR systems</p> <p>- SE register/fact sheets</p> <p>- SE case studies</p> <p>SE booklet (EN + GE)</p>	<p><u>SEEUROPE project</u>:</p> <p>- analysis of cases</p> <p>- observation of relevant issues in the national/EU debate</p> <p>Transfer 1/2008:</p> <p>Does good CG need worker participation? Several book and journal publications in several languages</p>	<p>Presentations on SE and related topics to:</p> <p>- EMF company policy com</p> <p>- EMCEF EWC com</p> <p>- UNIEurope com</p> <p>National TUs in BE, DK, NL, UK, PL, MT, IT, GE, AU, SP</p> <p>ETUI/IRES sem with FR reps(12/07)</p> <p>Serving as expert appointed by SNB in BASF SE, GfK SE</p>	<p>- Pilot Seminar on TU education for BLR in different EU-MS (AU, DK, FI, FR, GE, NO, SE, SK), May 07 seminar</p> <p>report on the web</p> <p>Follow up in Runo/SE, Feb 09</p>	<p>- <u>Exchange among board members</u> in SEs (AU, BE, DK, FR, GE, IT, UK), together with HBF, Frankfurt June 08</p> <p>Seminars with SE WC (Allianz, STRABAG, BASF)</p> <p>Allianz training report on the web</p>
	<p>SEEUROPE network</p>	<p>National experts prepared to be contacted</p>		
<p>EU Corporate Law Newsletter (4 times a year)</p>	<p>GOODCORP project: relevance of WP in EU corporate law</p>	<p>Support of trade union related involvement in EU Corp. Gov Forum</p>		<p>- <u>Pilot seminar</u>:: "Making companies social responsible and sustainable - The role of workers' board level representatives", Feb 08, BX seminar report on the web</p>

INFORMATION	RESEARCH	ADVICE AND CONSULT	TU EDUCATION	BLR EDUCATION
	Project European Sustainable Company	Presentation of the concept on several occasion, e.g. to a Portuguese audience in Noc 07, TUAC meeting Oct07		
	EU survey on BLRs			
	Legal aspects on I/C/P from different projects	Support to ETUC/ WPgroup (10 <sup>th</sup> dir, EPC statute, CG position 2006)		
		Company references: - RWE, DEXIA, E-ON, Volkswagen, TÜV/DEKRA, BASF, STRABAG, TK, Elcoteq, MAN Diesel, Fresenius, Allianz, tesa, Ndt Affinerie/Cumerio, Sasol, Ford, GMEurope, NORDEA		
EWC database: collection of EWC and SE agreements Provision of basic material and documentations of seminars	Evaluation of agreements and practices of EWCs and SE WCs; jurisprudence on EWC issues	Initial and continuous advice on several occassions		Seminars for numerous EWCs together with EIFs