

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

2008/0141(COD) - 02/07/2008 - Legislative proposal

PURPOSE: to establish a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (recast).

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: this proposal for recasting is intended to amend Council Directive 94/45/EC on the establishment of a European Works Council. Fourteen years on from the adoption of Directive 94/45/EC, approximately 820 European Works Councils are active, representing 14.5 million employees with a view to providing them with information and consultation at transnational level. They are vital to the development of transnational industrial relations and help to reconcile economic and social objectives within the Single Market, particularly through the decisive role they play in anticipating and managing change responsibly. However, there are some problems with the practical application of Directive 94/45/EC. The right to transnational information and consultation lacks effectiveness, as the European Works Council is not sufficiently informed and consulted in the case of restructuring. European Works Councils have been set up in only 36% of undertakings falling within the scope of the Directive. There are legal uncertainties, particularly with regard to the relationship between the national and transnational levels of consultation, and in cases of mergers and acquisitions. In three cases referred to it for preliminary ruling, the Court of Justice also interpreted the provisions of the Directive with regard to the communication of the information required to set up a European Works Council. Lastly, the consistency and linkage of the various directives on the information and consultation of employees are insufficient.

The objective of this proposal is to ensure that employees' transnational information and consultation rights are effective, increase the proportion of European Works Councils established, increase legal certainty and ensure that the directives on information and consultation of employees are better linked.

The proposal for recasting comprises the following substantive changes to Directive 94/45/EC:

- the introduction of general principles regarding the arrangements for transnational information and consultation of employees, the introduction of a definition of information, and making the definition of consultation more precise;
- the limitation of the competence of European Works Councils to issues of a transnational nature and the introduction of a link, defined as a priority by agreement within the undertaking, between the national and transnational levels of information and consultation of employees;
- clarification of the role of employees' representatives and of the opportunity to benefit from training, as well as recognition of the role of trade union organisations in relation to employees' representatives. The proposal introduces the obligation to inform the trade union and employers' organisations of the start of negotiations on setting up a European Works Council and explicitly mentions the trade union organisations among the experts on whom employees' representatives may call for assistance in the negotiations;

- clarification of the responsibilities regarding the provision of information enabling the commencement of negotiations and rules on negotiating agreements to set up new European Works Councils. In order to resolve legal uncertainty and simplify the composition of the special negotiating body, it is modified to one representative per 10% portion of the employees in a Member State in which at least 50 employees are employed. The right of employees' representatives to meet without the employer being present is clarified.

- adaptation of the subsidiary requirements applicable in the absence of an agreement to developing needs. The Annex draws a distinction between fields where information is required and those where consultation is required, and introduces the possibility of obtaining a response, and the reasons for that response, to any opinions expressed. With a view to anticipating such eventualities, the exceptional circumstances requiring information and opening the possibility of a select committee meeting are extended to include circumstances in which decisions are envisaged that are likely to affect the employees' interests to a considerable extent. In order to enable the select committee to perform this more important function, its maximum number of members is set at five and a provision is added stipulating that the conditions enabling it to exercise its activities on a regular basis must be met.

- introduction of an adaptation clause applicable to agreements governing European Works Councils if the structure of the undertaking or group of undertakings changes and, unless the adaptation clause is applied, continuation of the agreements in force.