

# 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) - 16/12/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 411 votes to 44, with 181 abstentions, a legislative resolution approving, with amendments, the proposal for a recast of the directive of the European Parliament and of the Council (as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission) on the establishment of 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.

The report had been tabled for consideration in plenary by Philip **BUSHILLMATTHEWS** (EPP-ED, UK), on behalf of the Committee on Employment and Social Affairs.

The main amendments – adopted in first reading under the codecision procedure – are the result of a compromise between Parliament and Council.

**Continuous functioning of existing agreements:** the compromise supports maintaining existing agreements. In this context, the Directive must be modernised with a view to ensuring the effectiveness of employees' transnational information and consultation rights, **while enabling the continuous functioning of existing agreements**. A series of additional provisions have therefore been introduced in order to confirm that the obligations arising from this Directive shall not apply to undertakings in which an agreement or agreements providing for the transnational information and consultation of employees have already been concluded or between the entry into force of this Directive and its transposition into Member States' law (two years after). When the existing agreements expire, the parties to those agreements may decide jointly to renew or revise them. Where this is not the case, the provisions of this Directive shall apply. In any event, this Directive does not establish a general obligation to renegotiate agreements concluded pursuant to Directive 94/45/EC between 22 September 1996 and the date provided for the transposition of this Directive.

**Definitions:** the concepts of information and consultation of employees have been clarified:

- **“information”** means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings, without slowing down the decision-making process in companies;
- **“consultation”** means the establishment of dialogue and exchange of views between employees' representatives and central management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking.

**Transnational issues:** given that, pursuant to the Directive, the competence of the European Works Council and the scope of the information and consultation procedure for employees shall be limited to transnational issues, the report specifies that matters shall be considered to be transnational where they concern the undertaking or group of undertakings as a whole or at least two Member States and if they include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.

**Adaptation:** it is provided that, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly (and either in the absence of provisions established by the agreements in force or in the event of conflicts between existing agreements), the central management shall initiate the negotiations referred to in the Directive on its own initiative or at the written request of **at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.**

**Negotiating with recognised trade union organisations:** the report highlights the role of **recognised** trade union organisations. In order to enable them to monitor the establishment of new European Works Councils and promote best practice, trade union organisations, **recognised as European social partners**, shall be informed of the commencement of negotiations. These organisations shall be consulted by the Commission, under Article 138 of the Treaty, and the list of those organisations shall be published by the Commission.

**Taking national practice into account:** the report also highlights that national practice should be taken into account in terms of employees' information and consultation rights.

**Sanctions in the event of non compliance with the provisions of the Directive:** a new recital states that, in line with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on the Directive.