

# 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) - 06/05/2009 - Final act

**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.

**LEGISLATIVE ACT:** Directive 2009/38/EC of the European Parliament and of the Council 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 (recast).

**BACKGROUND:** pursuant to Article 15 of Directive 94/45/EC, the Commission has, in consultation with the Member States and with management and labour at European level, reviewed the operation of that Directive, with a view to proposing suitable amendments where necessary.

Having consulted the Member States and management and labour at European level on the objectives and effectiveness of the Directive, the Commission considered that a review of the Directive was desirable with a view to:

- modernising Community legislation on transnational information and consultation of employees;
- ensuring the effectiveness of employees' transnational information and consultation rights;
- increasing the proportion of European Works Councils established while enabling the continuous functioning of existing agreements;
- resolving the problems encountered in the practical application of Directive 94/45/EC;
- remedying the lack of legal certainty resulting from some of its provisions or the absence of certain provisions.

Those are the main objectives of this Directive.

**CONTENT:** following a first reading agreement, the Council and the European Parliament adopted a Directive aimed at improving employees' information and consultation rights in Community-scale undertakings and Community-scale groups of undertakings.

**"Community-scale undertaking"** means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States.

**Principles:** information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to **transnational issues** (matters which concern the entire undertaking or group or at least two Member States are considered to be transnational, which 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).

The purpose of the Directive is to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed. To that end, the Directive **provides for the setting up of a European Works Council** or the creation of other suitable procedures for the transnational information and consultation of employees.

**Setting up the European Works Council:** it is for the representatives of employees and the management of the undertaking or the group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances.

**Information and consultation of employees:** these concepts are clarified by the Directive with a view to reinforcing the effectiveness of dialogue at transnational level, permitting suitable linkage between the national and transnational levels of dialogue and ensuring the legal certainty required for the application of this Directive. Therefore:

- **"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 examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives 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;
- **"consultation"** means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of 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 and within a reasonable time.

**Employee information and consultation procedure:** the Directive contains provisions concerning:

- **responsibility for the establishment of a European Works Council:** in principle, the central management shall be responsible for creating the conditions and means necessary for the setting-up of a European Works Council or an information and consultation procedure;
- **special negotiating body:** the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure 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. The special negotiating body shall be established in accordance with the guidelines set out in the Directive;
- **content of the agreement which formalises the information and consultation of employees:** the central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees. A number of provisions provide details on the content of those agreements as well as their duration;
- **compliance with existing agreements:** pursuant to the agreement reached in first reading with the Parliament, the Directive must ensure the effectiveness of employees' transnational information and consultation rights **while enabling the continuous functioning of existing agreements**. A number of additional provisions have therefore been introduced in order to confirm that the obligations contained in the Directive do not have to apply to undertakings in which one or more agreements have already been concluded prior to the entry into force of the Directive and its transposition in the Member States. Upon expiry of the agreements, the parties to those agreements may decide jointly to renew or revise them, in accordance with the Directive;
- **confidential information:** the Directive contains provisions to ensure that certain confidential information of the Community-scale undertaking, revealed to the Works Council as part of the consultation of employees, is not divulged. Moreover, in specific cases, certain undertakings shall

not be obliged to reveal certain information when it could seriously harm the functioning of the undertakings concerned;

- **information of employees when the Community-scale undertaking changes significantly:** 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 the relevant provisions of two or more applicable agreements), the central management shall initiate negotiations 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.

**Operation of the European Works Council:** the Directive contains provisions concerning the arrangements for the operation of the European Works Council as well as to recognise the role and tasks of the employee representatives (including trade unions).

**Maintaining more favourable provisions:** the Directive notes that implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies. In any event, 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 arising from this Directive.

**Report:** no later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

**ENTRY INTO FORCE:** 5 June 2009. Directive 94/45/EC is repealed.

**TRANSPOSITION:** the main provisions of the Directive shall apply from 6 June 2011.