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) - 14/05/2018 - Follow-up document

This report reviews the implementation by Member States of Recast Directive 2009/38/EC on the establishment of a European Works Council and sets out the follow-up action the Commission intends to take.

Objectives of the evaluation: social dialogue at all levels must be a core part of Europe's response to processes that deeply affect the world of work such as digitalisation, globalisation and demographic change. European works councils improve communication between workers and the central management of multinational companies. They help to prevent or mitigate the negative effects of restructuring on employment and working conditions, through the decisive role they play in anticipating and managing change.

The recast directive allows **European works councils** to be set up to inform and advise on transnational matters in multinational companies with at least 1000 employees in the European Economic Area (EEA) and at least 150 employees in each of at least two Member States.

The purpose of the evaluation is to assess the transposition and implementation of the recast Directive in Member States, and the effects of these on: (i) the creation of European Works Councils; (ii) the effectiveness of employees' transnational information and consultation rights; and (iii) improvements to the legal framework.

The evaluation also assesses the relevance, coherence, efficiency and EU added value of the recast Directive.

Main findings: the Commission examined the implementation of the recast Directive in all Member States and EEA countries and conducted an assessment on the basis of data and information gathered from various sources, including an external study, EU and national social partners, European works councils' practitioners, research institutes and labour law experts.

In particular, the report notes the following:

- the large majority of Member States have **properly transposed the EU legislation**. Most stakeholders and practitioners who were consulted considered that the recast Directive has improved the clarity of the legal framework. Some challenges remain in practice, in particular when negotiating or applying the provisions of the European works councils agreement at company level;
- the recast Directive provided **some impetus** for setting up European works councils and renegotiating existing European works councils agreements while it did not stop the declining trend of creation of European works councils. The evaluation observed that around 20 European works councils have been created per year since the implementation of the recast Directive, mainly in companies headquartered in France, Sweden and the US. Globally, **France, Germany and United Kingdom** host most of the European works councils due to the size of the companies at stake but also the development of industrial relations in those countries. The average size of companies

setting up European works councils since the recast Directive's adoption is smaller than under the previous legislation;

- the recast Directive improved the **information for workers** in terms of quality and scope but as regards **consultation**, it has been less effective. European works councils are perceived by employers as useful tools. The assessment shows a variety of situations in Member States regarding the capacity of European works councils to act in justice;
- the evaluation concludes that the recast Directive does **not impose administrative, financial and legal obligations** in a way which would constitute an unreasonable burden for companies. It is considered relevant by all stakeholders, and the need to develop further transnational dialogue is acknowledged by social partners;
- lastly, the recast Directive provides a **legal framework at EU level** for fostering the organisation of transnational information and consultation within companies, which would otherwise have a purely voluntary character and take place in a legal vacuum.

Policy responses at EU level: according to the report, the following challenges that require action at EU level were identified: (i) the limited number of new European works councils; (ii) the effectiveness of the consultation procedure; (iii) the need to share and exchange existing good practices; and (iv) shortcomings in implementing and enforcing some of the Directive's provisions.

The following recommendations were made:

Improving the establishment and functioning of European Works Councils by means of a practical handbook: the Commission proposes to create and disseminate a practical guide for European works council practitioners. It intends to prepare this guidance document in **2018**, in cooperation with the social partners and with the support of experts and practitioners. In doing so, it will collect examples of good practice and specific examples of agreements concluded in multinational companies that could be shared across the EU.

Mobilising EU funding instruments to support European works councils: each year, the Commission launches a call for proposals to fund activities to develop employee involvement in companies. A specific priority relating to European works councils will be included in the first call for proposals issued following publication of the handbook. It will offer financial support to social partners for setting up projects to publicise and support the use of this practical guide among stakeholders. It may also finance initiatives that support the implementation of the existing legal requirements.

Ensuring the implementation of the Recast Directive in the Member States: the Commission will continue to support Member States' work to improve implementation of the Directive's provisions, and will facilitate exchanges between Member States, notably on the design of 'effective, proportionate and dissuasive' sanctions in the event of infringement of the Directive's provisions.