

# Establishment and functioning of European Works Councils - effective enforcement

2024/0006(COD) - 06/12/2024 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Employment and Social Affairs adopted the report by Dennis RADTKE (EPP, DE) on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

## *Transnational matters*

Under the proposed directive, transnational matters are those which can reasonably be considered to concern the Community-scale undertaking or the Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

These conditions would also be deemed to be met where the measures envisaged by the central management of the Community-scale undertaking can reasonably be expected to affect employees in a Member State other than that in which the measures are being considered.

In order to determine the transnational character of a matter, the scope of its possible effects on the workforce and the level of management and representation involved shall be taken into account.

## *Definitions*

Members wish to clarify the definition of **‘information’** to mean 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 and is 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 their possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking.

**‘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 a prior 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 is to be taken into account within the Community-scale undertaking. Consultation is to take place in such a way as to enable employees’ representatives to obtain a reasoned written response in due time from the central management prior to the adoption of the decision provided the employee representatives expressed their opinion within a reasonable time.

## *Special negotiating body*

The members of the special negotiating body must be elected or appointed in proportion to the number of workers employed in each Member State by the Community-scale undertaking, so as to ensure a **gender balanced distribution**. According to Members, women and men must make up at least **40%** of the

members of the special negotiating body respectively. If this target is not met, the special negotiating body should explain the reasons in writing.

### ***Information and consultation of employees***

Information on transnational matters will be given at such time, in such fashion and with such content as are necessary and sufficient to enable the European Works Council to:

- consult relevant employees' representatives at national and local level;
- undertake an in-depth assessment of their possible impact, and,
- where appropriate, prepare for meaningful consultations with the competent organ of the Community-scale undertaking.

In duly justified and exceptional cases, where the adoption of a decision requires urgency, management and employees' representatives will carry out an effective information and consultation process as quickly as possible.

If there is a **dispute** between the central management and the European Works Council or employees' representatives as to whether an information and consultation procedure is to be carried out, the central management will provide duly substantiated grounds in **writing** for the reasons why the information and consultation requirements under this Directive or under agreements concluded pursuant thereto do not apply, including the reasons that justify the absence of transnational issues.

In so far as it is necessary for the European Works Council to carry out its tasks, the European Works Council or the select committee may request assistance from experts of its choice.

### ***Compliance with the Directive***

Member States will ensure that adequate **administrative and judicial procedures** are available and easily accessible to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner, to apply for and terminate including the possibility to request a preliminary injunction for the temporary suspension of decisions of the central management where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements. The effects of the challenged decisions on employment contracts or employment relationships of the affected employees should be suspended accordingly.

### ***Sanctions***

These should include:

- **financial penalties** that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected employees;
- **orders** excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including Union funds managed by the relevant Member States, for a period of up to three years;
- orders excluding the undertaking from participating in a public contract.

Member States are encouraged to set up out-of-court mediation procedures enabling both parties to find acceptable solutions.

### ***Monitoring Committee***

To ensure the correct application of the Directive and to address and resolve practical problems arising from its implementation, a Monitoring Committee should be set up. The Monitoring Committee would be composed of one representative per Member State, three representatives from each of the European social partners and the European Commission.

Lastly, the information and consultation procedures within the European Works Council should take place without prejudice to those taking place at national level.