



## **WORKERS' RIGHT TO INFORMATION, CONSULTATION AND PARTICIPATION**

The European Union complements the Member States' activities with regard to workers' right to information and consultation through measures designed to encourage cooperation between the Member States, or by adopting minimum requirements by means of directives.

### **LEGAL BASIS**

Articles 5, 114, 115, 151 and 153 of the Treaty on the Functioning of the European Union (TFEU).

### **OBJECTIVES**

The EU supports and complements the Member States' activities relating to employee involvement with a view to helping to achieve the core objectives of European social policy as set out in Article 151 TFEU, which include improved living and working conditions, proper social protection, lasting high employment and the combating of exclusion.

### **ACHIEVEMENTS**

#### **A. Background**

The right of workers to information, consultation and participation has been a key theme in European debate since the first Social Action Programme was adopted by the Council in 1974. The 1989 Community Charter of the Fundamental Social Rights of Workers (Social Charter) stresses the desirability of promoting employee participation. The Commission's proposals in this area have often encountered resistance, however. A proper legal basis for Community legislation in the field of workers' right to information and consultation was not in place until the Treaty of Amsterdam incorporated the Agreement on Social Policy into the text of the EC Treaty. Previously adopted legislation was based mainly on Treaty articles providing for Community measures aimed at attaining freedom of establishment or the approximation of laws in the common or internal market. The first relevant directive in this field, on the European Works Council (Council Directive 94/45/EC), was adopted in accordance with the Agreement on Social Policy; it was subsequently extended to the United Kingdom in 1997. As regards employee involvement, Article 153 TFEU entrusts Parliament and the Council with the power to adopt:

- measures designed to encourage cooperation between Member States;
- directives setting out minimum requirements for gradual implementation.

The ordinary legislative procedure is applicable in this field, with prior consultation of the European Economic and Social Committee and the Committee of the Regions.

## B. Legislation in force

Although information and consultation systems exist in some national public administrations, to date none of the directives concerning the right of workers to be informed and consulted applies to public administrations (see Court of Justice Cases C-583/10, Nolan and C-108/10, Scattolon), other than that public undertakings are covered where they carry out an economic activity, whether or not for gain. When negotiating the directive on a general framework for informing and consulting employees in the European Community in 2001, Parliament tried to have the scope of the directive extended to the public sector, but this was rejected by the Council. However, in December 2015 the Sectoral Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety. To become binding on all Member States, the agreement has to be implemented by a Council decision on a proposal from the Commission. In accordance with the Commission's practice ([5.10.7](#)), an impact assessment should soon be launched to assess the potential impacts of its transposition. The Commission will further examine in particular the representativeness of its signatories, the legality of the clauses of the Agreement vis-à-vis the EU legal framework and whether it respects the subsidiarity and proportionality principles.

A first group of directives deals with the right of workers to be informed and consulted at national level on a number of important issues relating to a company's economic performance, financial soundness and future development plans which could affect employment:

- Council Directive 75/129/EEC of 17 February 1975 on collective redundancies, as amended by Council Directives 92/56/EEC and 98/59/EC, under which employers must enter into negotiations with workers in the event of mass redundancy, with a view to identifying ways and means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences. The Directive also provides for a notification procedure for public authorities;
- Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (consolidating Council Directives 77/187/EEC and 98/50/EC), under which workers must be informed of the reasons for such a transfer and its consequences; it also contains material provisions on safeguarding employees' jobs and rights in the event of transfer;
- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, which lays down minimum procedural standards protecting the right of workers to be informed and consulted on the economic and employment situation affecting their workplace.

These three directives have undergone a fitness check by the Commission, following which it concluded in July 2013 that they are broadly fit for purpose and their benefits outweigh the costs, but that some gaps remain – notably their application to public service workers, seafarers and SMEs – and certain definitions need further examination and discussion (SWD(2013)0293). A recast of the information and consultation directives (C(2015) 2303) was contemplated, but now seems to be off the table, as neither the 2016 nor the 2017 Commission Work Programmes mention it.

As regards seafarers, Parliament's July 2015 plenary session adopted the report on the Seafarers Directive, on which the social partners conducted negotiations within the framework of the

Sectoral Social Dialogue Committee on Maritime Transport. This directive will put an end to the exclusion of seafaring workers from the existing directives on information and consultation of workers in the European Union.

A second group of directives encompasses the rights of workers to be informed and consulted in situations with a transnational component:

- Council Directive 94/45/EC of 22 September 1994, as revised by Directive 2009/38/EC of the European Parliament and of the Council on the introduction of European Works Councils: this directive contains general rules aimed at ensuring that workers in large multinational companies and merging undertakings are informed and consulted. European Works Councils bring together central management and employee representatives across Europe to discuss matters such as a company's performance, prospects and employment, restructuring and human resources policies. Workers have also been granted certain rights to information and consultation with regard to the working environment. By April 2011, 18 000 employee representatives sitting on European Works Councils were representing the interests of 18 million workers;
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, pursuant to which the employees of the companies concerned, or their representatives, should be given an opportunity to state their views on the foreseeable effects of such a bid on employment; the usual rules on informing and consulting employees also apply;
- Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 on mergers of public limited liability companies (codifying and repealing Directive 78/855/EEC), pursuant to which workers in companies that merge are protected to the same extent as that laid down in the directive on the transfer of undertakings.

In 2017, the Commission will publish a REFIT Evaluation of the European Works Council Directive, and a guidance document concerning the same Directive aimed at improving its implementation and establishing greater legal certainty.

A third group of directives aims to lay down rules applicable to situations with a transnational component, granting partial rights to participation in decision-making:

- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees: the Statute for a European public limited liability company, adopted by Council Regulation (EC) No 2157/2001, is complemented by a directive establishing rules on the participation of workers in decisions concerning the strategic development of the company. Not only are employees informed and consulted through a body similar to a European Works Council, but provision is made for board-level employee participation where this form of participation was applied in the national founding companies, as is the case in the national systems of many Member States (the so-called 'before-and-after' principle);
- Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society (Council Regulation (EC) No 1435/2003) with regard to the involvement of employees: this directive sets rules on the mechanisms to be provided for in European Cooperative Societies (ECSs) in order to ensure that employees' representatives can exercise influence on the running of the undertaking. Cooperatives have a specific governance model based on joint ownership, democratic participation and control by members;

- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies also contains rules on determining the employee participation regime to be applied to the merged company.

Having withdrawn its proposals in 2006, in 2012 the Commission proposed a Statute for a European Foundation (FE). It then withdrew this proposal in March 2015. On 14 March 2013, MEPs asked the Commission to present without delay ‘one or more proposals allowing mutual societies to act on a European and cross-border scale’. This idea is meeting with opposition from some Member States, any of which could block a proposal drawn up under the currently preferred legal basis of Article 352 TFEU (subsidiary powers), which requires unanimity and the consent of Parliament. The Commission therefore decided recently not to carry out the usual public consultation and impact assessment conducted in the case of a legislative proposal. Instead, it has, as announced in the Social Business Initiative ([COM\(2011\) 0682](#)), set up a multi-stakeholder group (GECES) with diverse Member State and external experts to address, within the existing legislative framework, the challenges which mutual societies appear to encounter when seeking to operate cross-border. In October 2016, this expert group finalised a report, making research-based recommendations for concrete actions to boost the development of the social economy and social enterprises that covered aspects such as increasing their visibility, helping them to access finance, providing a favourable legal and regulatory framework and increasing EU funding support.

The fourth group consists of: two cross-sectoral agreements between social partners as implemented by the Council (Council Directives 97/81/EC on part-time work and 99/70/EC on fixed-term work), Directive 2008/104/EC on temporary agency work, and several health and safety directives, all containing implicit **information and consultation** provisions. For example, fixed-term workers have to be informed by their employer about vacancies for permanent positions.

### C. Other initiatives

Companies and workers’ representatives have begun concluding transnational company agreements (TCAs), against the background of the growing international dimension of company organisation and the increasing emphasis on corporate social responsibility, including new approaches to dialogue between management and employees. The texts of TCAs take various forms and are drawn up jointly for application in more than one Member State by representatives of a company or group of companies, on the one hand, and one or more workers’ organisations, on the other. At the end of 2016 there were 265 such agreements in 178 companies worldwide, covering more than 10 million employees. However, this kind of practice can raise legal and political issues regarding the relationship between the different vertical levels of social dialogue (international, European and national) and its horizontal spheres of application (cross-sectoral, sector-specific and company-level). Furthermore, discrepancies can arise between the transnational scope of agreed TCAs and national norms and references, and few dispute resolution mechanisms are in place.

The EU aims to accompany and monitor the development of transnational company agreements by supporting exchanges of experience and research.

In its resolution of 12 September 2013 on cross-border collective bargaining and transnational social dialogue, Parliament proposed that the Commission give consideration to the need, in the interests of greater legal security and transparency, for an optional European legal framework for European TCAs, which would include clauses designed to ensure that the conclusion of a TCA does not result in an evasion of national collective agreements.

Following a public consultation in 2016, the Commission published the European Pillar of Social Rights in April 2017. This entitles all workers in all sectors to be informed and consulted directly or through their representatives on any matter relevant to them, such as the transfer, restructuring and merger of undertakings and collective redundancies. It looks beyond the current Union acquis in that it applies regardless of the staff numbers involved, its material scope encompasses both the restructuring and merger of companies and, with the right being not just to receive information but also to be consulted about any such corporate action, it implies an exchange of views and the establishment of ongoing dialogue with the employer.

## **ROLE OF THE EUROPEAN PARLIAMENT**

Parliament has adopted several resolutions calling for workers to have the right to be involved in company decision-making. The right to information, consultation and participation in decision-making should apply in both national and transnational companies, irrespective of their legal status. Parliament reiterated its call for public-sector workers to be included in the scope of the information and consultation directives in its resolution of 19 February 2009 on the implementation of the General Framework Directive, as a matter of equal treatment of all employees.

Going beyond mere information and consultation, Parliament's position is that workers should also have the right to participate in decision-making on issues such as the introduction of new technologies, changes in the organisation of work, production and economic planning. Currently, an own-initiative report on participation in decision-making in supervisory boards is going through Parliament. Its draft report ([2015/2222\(INI\)](#)) advocates introducing EU minimum rules in existing directives, including the requirement that a company's registered offices must be identical with its actual place of business, to avoid circumvention of employee representation rights on supervisory boards. The draft report calls for standard rules on employee representation on supervisory boards, which could be applied as a universal model to all European corporate law directives. It further recommends minimum standards, e.g. on the equal rights of workers' representatives as compared to management representatives, and gender balance on the supervisory board.

In its resolution of 15 January 2013 with recommendations to the Commission on 'information and consultation of workers, anticipation and management of restructuring', Parliament called on the Commission to submit as soon as possible a proposal for a legal act which should make provision for employee representatives to be fully informed in good time of any proposed restructuring operation, including the reasons for the choice of measures envisaged, and stipulate a meaningful timeframe for consultation. This timely consultation should enable the companies concerned and their workers' representatives to negotiate collective agreements covering the issues arising from the restructuring. Subsequently, on 13 December 2013, the Commission adopted a communication presenting an EU Quality Framework for anticipation of change and restructuring (QFR) (COM(2013) 0882), which requires certain principles and good practices regarding anticipation of change and management of restructuring activities within companies, as well as by public authorities, to be better identified, applied and monitored. However, in its resolution of 22 October 2014 on 'the European Semester for economic policy coordination: implementation of 2014 priorities', Parliament reiterated its call for a legal act in order to ensure economic and socially responsible adaptation to change by EU industry in such a way as to maintain workers' rights without placing an excessive regulatory burden on companies, in particular SMEs.

The Commission will present a report on the implementation of the QFR in 2017, which will take into account the findings of an independent study, the experience of recent restructurings such as the Caterpillar case, and the results of the public consultation on the European Pillar of Social Rights which ended on 31 December 2016, to assess whether stronger action is warranted.

More recently, Parliament, in its resolution of 19 January 2017 on a European Pillar of Social Rights, recalled the value of involving workers in decision-making and company management with a view to making good use of new forms of work organisation and to anticipating economic change, and pointed to social economy enterprises, such as cooperatives, as a good example in terms of creating quality employment, supporting social inclusion and promoting a participatory economy.

In its resolution of 5 October 2016 on the need for a European reindustrialisation policy in light of the recent Caterpillar and Alstom cases, Parliament called on all relevant authorities to ensure that all parties involved comply fully with national and European regulations on information and consultation of workers, especially during restructuring.

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