



WORKERS' RIGHT TO INFORMATION, CONSULTATION AND PARTICIPATION

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

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 achieving the core objectives of European social policy (Article 151 TFEU), which include improved living and working conditions, proper social protection, lasting high employment and combating 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 in 1974. The 1989 Community Charter of the Fundamental Social Rights of Workers ([Social Charter](#)) stresses the desirability of promoting employee participation. However, the Commission's proposals in this area have often encountered resistance. A proper legal basis for Community legislation did not exist until the Agreement on Social Policy was incorporated into the [Treaty of Amsterdam](#) 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 applies, with prior consultation of the European Economic and Social Committee and the European Committee of the Regions.



B. Legislation in force

A first group of directives deals with the right of workers to be informed of conditions applicable to the contract or employment relationship and the right to be informed and consulted on redundancies or transfers:

- Council Directive 75/129/EEC on collective redundancies, as amended by Council Directives 92/56/EEC and [98/59/EC](#), requires employers to enter into negotiations with workers in the event of mass redundancy, with a view to identifying ways of avoiding collective redundancies or reducing the number of workers affected;
- [Council Directive 2001/23/EC](#) 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) stipulates that workers must be informed of the reasons for any transfer and its consequences; it also contains material provisions on safeguarding employees' jobs and rights in the event of transfer;
- [Directive 2002/14/EC](#) establishing a general framework for informing and consulting employees in the European Community lays down minimum procedural standards protecting the rights of workers to be informed and consulted on the economic and employment situation affecting their workplace;
- [Directive \(EU\) 2019/1152](#) of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. This directive establishes new rights (such as limitations on probationary periods, a ban on exclusivity clauses, and advance information on work schedules) for all workers in all forms of work, including those in the most flexible non-standard and new forms of work such as zero-hour contracts, voucher-based work or platform work.

The Commission carried out a fitness check, which concluded in July 2013 that the directives 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 that 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 the Commission Work Programme has not mentioned it since 2015.

In January 2018, a [Council directive transposing an agreement between social partners in the maritime transport sector](#) was adopted, putting an end to the exclusion of seafaring workers from the directives on information and consultation of workers.

As regards public sector workers, none of the directives concerning the right of workers to be informed and consulted applies to public administrations (see Court of Justice of the European Union Cases C-583/10, Nolan and C-108/10, Scattolon). When negotiating the General Framework Directive in 2001, Parliament tried to have the scope extended to the public sector, but the Council rejected this. In December 2015, the Sectoral Social Dialogue Committee for Central Government Administrations signed a sectoral agreement on common minimum standards of information and consultation rights for central administration workers and requested implementation



by way of a Council directive. On 5 March 2018, the Commission informed the social partners that it would not propose this agreement to Council for implementation.

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, as revised by [Directive 2009/38/EC](#) on the introduction of European Works Councils (EWCs). EWCs 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. The EWC legislation covers multinational companies with no less than 1 000 workers in the EU/EEA and at least 150 staff in two or more Member States. A [dedicated database](#), maintained by the European Trade Union Institute (ETUI), provides data on EWCs;
- [Directive 2004/25/EC](#) on takeover bids, under 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](#) on mergers of public limited liability companies pursuant to which workers in companies that merge are protected to the same extent as that laid down in the transfer of undertakings directive.

On 14 May 2018, the Commission published a [REFIT evaluation](#) of the European Works Council Directive and concluded that information for workers has improved in terms of quality and scope, but the directive has not increased the rate at which new EWCs are set up. The Commission proposed to draw up a practical handbook for EWC practitioners and provide funding to social partners to support the implementation and effectiveness of EWCs.

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](#) supplementing the Statute for a European company with regard to the involvement of employees establishes rules on worker participation in decisions on 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 (the so-called 'before-and-after' principle);
- [Council Directive 2003/72/EC](#) supplementing the Statute for a European Cooperative Society with regard to the involvement of employees ensures that employee representatives can exercise influence over the running of European Cooperative Societies;
- [Directive \(EU\) 2017/1132](#) relating to certain aspects of company law also contains rules on determining the employee participation regime to be applied to cross-border mergers of limited liability companies.



The fourth group consists of: two cross-sectoral agreements between social partners (implemented by [Council Directive 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 of which contain implicit information and consultation provisions.

C. Other initiatives

Companies and workers' representatives have begun concluding transnational company agreements (TCAs), a form of social dialogue in multinational companies, against the background of growing internationalisation of companies. TCAs take various forms and are drawn up jointly for application in more than one Member State by company representatives and workers' organisations. 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 the horizontal spheres of application (cross-sectoral, sector-specific and company-level). Furthermore, TCAs may clash with national norms and references, and few dispute resolution mechanisms are in place.

The Commission stated its intention to accompany and monitor the development of transnational company agreements by supporting exchanges of experience and research. It maintains a [database](#) on transnational company agreements.

In April 2018, the Commission presented a package of proposals concerning the reform of EU company law, including a proposal to amend the 2017 directive as regards cross-border conversions, mergers and divisions.

In line with the [European Pillar of Social Rights](#), which entitles all workers in all sectors to be informed and consulted on any matter relevant to them, one of the aims of this proposal is to upgrade employee protection by providing for enhanced information on cross-border conversions, mergers or divisions. Each company will have to provide employees with a report addressing the impact that any such an operation may have on them. The employees' opinion should then be taken into consideration during the general meeting. Specifically for cross-border conversions and divisions, employees will also be able to submit their views on the draft terms of the proposed operation.

As regards the protection of employee participation rights, specific rules already exist concerning mergers and these will remain unchanged. For cross-border conversions and divisions, it is proposed that companies should in principle follow the rules of the destination Member State.

The proposal is the subject of ongoing interinstitutional negotiations.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has adopted several resolutions calling for workers to have the right to be involved in company decision-making and for this right to apply in both national and transnational companies, irrespective of their legal status. Parliament has also called ([resolution of 19 February 2009](#)) for public-sector workers to be included in the scope of the information and consultation directives.



In its [resolution of 15 January 2013 on information and consultation of workers, anticipation and management of restructuring](#), Parliament called on the Commission to submit a proposal for a legal act making provision for employee representatives to be fully informed of any proposed restructuring and stipulating a meaningful timeframe for consultation.

It repeated this call for legislation in its [resolution of 22 October 2014 on the European Semester for economic policy coordination](#) and again in a [resolution of 13 June 2017 on cross-border mergers and divisions](#).

Following the announcement of extensive restructuring plans at Caterpillar and Alstom in 2016, Parliament adopted a [resolution on 5 October 2016 on the need for a European reindustrialisation policy](#), in which it 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.

In its [resolution of 19 January 2017 on a European Pillar of Social Rights](#), Parliament recalled the value of involving workers in decision-making and company management 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.

Aoife Kennedy
11/2019

