

Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) 2008/0141(COD) Directive</p>	Procedure completed
<p>Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast</p> <p>Repealing Directive 94/45/EC 1994/0113(SYN) Repealing Directive 97/74/EC 1997/0238(CNS) Amended by 2013/0390(COD)</p> <p>Subject 4.15.10 Worker information, participation, trade unions, works councils</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	EMPL Employment and Social Affairs	PPE-DE BUSHILL-MATTHEWS Philip	28/05/2008
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	2937	23/04/2009
	Employment, Social Policy, Health and Consumer Affairs2916		16/12/2008
	Employment, Social Policy, Health and Consumer Affairs2893		02/10/2008
European Commission	Commission DG	Commissioner	
	Employment, Social Affairs and Inclusion	ŠPIDLA Vladimír	

Key events			
02/07/2008	Legislative proposal published	COM(2008)0419	Summary
10/07/2008	Committee referral announced in Parliament, 1st reading		
02/10/2008	Debate in Council	2893	
17/11/2008	Vote in committee, 1st reading		Summary
19/11/2008	Committee report tabled for plenary, 1st reading	A6-0454/2008	
15/12/2008	Debate in Parliament		

16/12/2008	Results of vote in Parliament		
16/12/2008	Decision by Parliament, 1st reading	T6-0602/2008	Summary
23/04/2009	Act adopted by Council after Parliament's 1st reading		Summary
06/05/2009	Final act signed		
06/05/2009	End of procedure in Parliament		
16/05/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0141(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	Repealing Directive 94/45/EC 1994/0113(SYN) Repealing Directive 97/74/EC 1997/0238(CNS) Amended by 2013/0390(COD)
Legal basis	EC Treaty (after Amsterdam) EC 137
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/6/65255

Documentation gateway

Legislative proposal	COM(2008)0419	02/07/2008	EC	Summary
Document attached to the procedure	SEC(2008)2154	02/07/2008	EC	Summary
Document attached to the procedure	SEC(2008)2155	02/07/2008	EC	Summary
Document attached to the procedure	SEC(2008)2166	02/07/2008	EC	
Document attached to the procedure	SEC(2008)2167	02/07/2008	EC	
Document attached to the procedure	SEC(2008)2178	02/07/2008	EC	Summary
Committee draft report	PE412.214	22/09/2008	EP	
Amendments tabled in committee	PE415.133	30/10/2008	EP	
Committee report tabled for plenary, 1st reading/single reading	A6-0454/2008	19/11/2008	EP	
Economic and Social Committee: opinion, report	CES1926/2008	03/12/2008	ESC	
Text adopted by Parliament, 1st reading/single reading	T6-0602/2008	16/12/2008	EP	Summary
Commission response to text adopted in plenary	SP(2009)402	29/01/2009	EC	
Draft final act	03731/2008/LEX	06/05/2009	CSL	
Follow-up document	COM(2018)0292	14/05/2018	EC	Summary
Follow-up document	SWD(2018)0187	14/05/2018	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex
Final act	
Directive 2009/38 OJ L 122 16.05.2009, p. 0028 Summary	

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

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 (recast).

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: this proposal for recasting is intended to amend Council Directive 94/45/EC on the establishment of a European Works Council. Fourteen years on from the adoption of Directive 94/45/EC, approximately 820 European Works Councils are active, representing 14.5 million employees with a view to providing them with information and consultation at transnational level. They are vital to the development of transnational industrial relations and help to reconcile economic and social objectives within the Single Market, particularly through the decisive role they play in anticipating and managing change responsibly. However, there are some problems with the practical application of Directive 94/45/EC. The right to transnational information and consultation lacks effectiveness, as the European Works Council is not sufficiently informed and consulted in the case of restructuring. European Works Councils have been set up in only 36% of undertakings falling within the scope of the Directive. There are legal uncertainties, particularly with regard to the relationship between the national and transnational levels of consultation, and in cases of mergers and acquisitions. In three cases referred to it for preliminary ruling, the Court of Justice also interpreted the provisions of the Directive with regard to the communication of the information required to set up a European Works Council. Lastly, the consistency and linkage of the various directives on the information and consultation of employees are insufficient.

The objective of this proposal is to ensure that employees' transnational information and consultation rights are effective, increase the proportion of European Works Councils established, increase legal certainty and ensure that the directives on information and consultation of employees are better linked.

The proposal for recasting comprises the following substantive changes to Directive 94/45/EC:

- the introduction of general principles regarding the arrangements for transnational information and consultation of employees, the introduction of a definition of information, and making the definition of consultation more precise;
- the limitation of the competence of European Works Councils to issues of a transnational nature and the introduction of a link, defined as a priority by agreement within the undertaking, between the national and transnational levels of information and consultation of employees;
- clarification of the role of employees' representatives and of the opportunity to benefit from training, as well as recognition of the role of trade union organisations in relation to employees' representatives. The proposal introduces the obligation to inform the trade union and employers' organisations of the start of negotiations on setting up a European Works Council and explicitly mentions the trade union organisations among the experts on whom employees' representatives may call for assistance in the negotiations;
- clarification of the responsibilities regarding the provision of information enabling the commencement of negotiations and rules on negotiating agreements to set up new European Works Councils. In order to resolve legal uncertainty and simplify the composition of the special negotiating body, it is modified to one representative per 10% portion of the employees in a Member State in which at least 50 employees are employed. The right of employees' representatives to meet without the employer being present is clarified.
- adaptation of the subsidiary requirements applicable in the absence of an agreement to developing needs. The Annex draws a distinction between fields where information is required and those where consultation is required, and introduces the possibility of obtaining a response, and the reasons for that response, to any opinions expressed. With a view to anticipating such eventualities, the exceptional circumstances requiring information and opening the possibility of a select committee meeting are extended to include circumstances in which decisions are envisaged that are likely to affect the employees' interests to a considerable extent. In order to enable the select committee to perform this more important function, its maximum number of members is set at five and a provision is added stipulating that the conditions enabling it to exercise its activities on a regular basis must be met.
- introduction of an adaptation clause applicable to agreements governing European Works Councils if the structure of the undertaking or group of undertakings changes and, unless the adaptation clause is applied, continuation of the agreements in force.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

This paper discusses the EU's contribution to restructuring and employment. It is part of the renewed social agenda: Opportunities, access and solidarity in 21st century Europe. The Communication emphasises the need to prepare the EU to cope with the challenges of globalisation better and to promote social management of change and restructuring. Such management must offer new opportunities to workers and

regions affected by restructuring, must allow the workers access to training or re-training, and must demonstrate real solidarity with them. The EU's action with regard to the management of restructuring operations can only supplement that of the other actors, and in particular the Member States, the regions and, naturally, the companies and employees themselves.

The social management of restructuring, following adaptations to the company's structure, is designed to reduce the negative effects of such adaptations. In 1998 the Commission published a report by the High-Level Group on economic and social implications of industrial change chaired by Pehr Gyllenhammar. The concerns and suggestions presented in the report have subsequently guided the Commission's action to promote the social management of restructuring.

This paper takes stock of the main advances in this area in the wake of the two Communications on the management of restructuring presented by the Commission in

January 2002 and March 2005.

The paper discusses the following, inter alia:

- the key role of social partners and companies;
- the actions already under way that demonstrate the benefit of a wider partnership, the main aim of which is to step up the exchange of good practice in the management of restructuring by emphasising in particular the major role of anticipation, which is complementary to that of partnership;
- cooperation with national authorities, another key area for the management of restructuring operations. It is the job of national governments to simplify the regulatory framework, take action to promote and support investments in production and research and innovation activities, ensure the development of a qualified workforce and use the Structural Funds to anticipate and manage restructuring;
- the visibility of action at European level needs to be increased. The Commission will publish regular reports on restructuring operations in Europe. The first of these, to be adopted before the end of 2008, will outline the main Community policies incorporating a specific dimension on adaptation to change.

The importance of a joint approach by the social partners with regard to the anticipation and management of change is underlined. In view of the social partners' intention to promote and evaluate the guidelines for reference in managing change and its social consequences in their 2006-08 working programme, the Tripartite Social Summit for Growth and Employment to be held in March 2009 could be the right time to present a first assessment of their work in this field. On the basis of that contribution, thought could be given to the advisability of presenting new initiatives to promote principles shared at European level.

Considering the key role played by business in the management of change, a possibility for the future is to encourage companies to include management of change and restructuring, including the relations they develop within their immediate environment (such as with regions or subcontractors), in reports many companies produce on a voluntary basis in connection with corporate social responsibility. Inclusion of restructuring in such reports would encourage the exchange of good practice and could allow the public authorities to gain a better grasp of the issues raised by industrial and technological change.

Taking as a basis a review of the last ten years, and the lessons which can be drawn from it, the main players in the management of restructuring processes are invited to press ahead with and to step up cooperation. In particular, the contribution of the social partners following the adoption of the 2005 Communication is eagerly awaited. For its part, the Commission intends to continue its work and step up its efforts to encourage anticipation of coming changes and the development of partnerships between the players.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

The Commission presents a report on the implementation of the European social partners' Framework Agreement on Telework. It recalls that the Framework Agreement on Telework is the first autonomous agreement negotiated by the European social partners and as such it represents a landmark in EU industrial relations. This report assesses the extent to which the implementation of the Framework Agreement on Telework has contributed to achieving the Community's objectives and whether there is scope for improvement. Respecting the principle of autonomy of the social partners and giving priority to monitoring undertaken by them, it examines in detail the implementing measures taken by the social partners and public authorities in all EU Member States and the EEA countries whose social partners participate in the European social dialogue, i.e. Iceland and Norway. It takes account of the views expressed by the European social partners.

The report states that, at this point the implementation of the Framework Agreement on Telework may be considered a success. Given the objectives and scope of autonomous agreements, the instruments chosen and the level of protection and guidance provided by them are deemed adequate in the majority of EU Member States and EEA countries.

The Agreement's implementation has clearly contributed to the Lisbon goals of modernising labour markets and achieving a more dynamic knowledge-based economy. By ensuring the sound management and organisation of telework, it has also made useful contributions to the goals of the i2010 Strategy, which emphasises information and communication technologies as a driver of inclusion and quality of life, and to the EU's Sustainable Development Strategy.

The Framework Agreement and the autonomous process for its implementation have paved the way for steady, balanced development of telework across Europe and are likely to warrant a high level of ownership and commitment by employers and trade unions.

Analysis has also shown that there is scope for improvement in several Member States in terms of the implementation process, follow-up to implementing measures and/or the content of instruments.

(1) The coverage of the Framework Agreement could be improved by:

- starting or pursuing discussion in countries where the implementation process has not yet been finalised or even started;
- exploring the possibility of a joint instrument being adopted by both employers and trade unions in cases where the only solutions found so far have been unilateral.

(2) The impact of several implementing measures might be enhanced by:

- improving the Framework Agreement's visibility in some countries through additional instruments, such as joint guidelines;
- taking up recommendations from national social partners to counterparts at lower levels in periodic sector-level bargaining;
- strengthening efforts to disseminate non-binding guidelines drafted by social partners in several countries and to raise awareness among individual employers and local trade union officials. Monitoring of company-level developments could be useful in that case.

(3) Lastly, the Framework Agreement's specific objectives could be achieved more successfully in some countries by:

- implementing those aspects of the Agreement still outstanding in countries where it has only been partially implemented;
- clarifying the following content-related aspects: the relationship between traditional home working and telework in national legislation; the protection of teleworkers who are bogus self-employed; the implementing measures' applicability to alternating telework (which concerns the large majority of teleworkers) and permanent telework;
- concentrating special efforts on sectors and professions where there is a high incidence of telework.

At European level, the social partners have played a very important role in promoting the Framework Agreement, coordinating exchanges and cross-border learning, and monitoring the implementation process. Further monitoring and, where appropriate, specific action in the context of sectoral social dialogue could also help in implementing the Framework

Agreement. In addition, where the European social partners decide to conduct a review under Clause 12 of the Framework Agreement, they could usefully consider at greater depth some of the issues that have emerged both in this report and in the social partners' own analysis as a result of monitoring the Framework Agreement, such as bogus self-employment, treatment of teleworking as equivalent to home working, alternating and permanent telework, cross-border situations and coverage of the public sector.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

This document aims to contribute to the Commission efforts to manage the process of globalisation in a balanced way. It emphasises the key role and the potential of transnational company agreements in an increasingly international business environment. It is intended as input for the debate on such agreements and on the contribution of different stakeholders to their development. The growing need to anticipate developments in terms of employment, flanking measures for restructuring, and managing human resources throws down new challenges for both management and workers in transnational companies. Against the backdrop of new approaches to dialogue and corporate social responsibility, companies and workers' representatives have begun agreeing texts in various forms, drawn up jointly for application in more than one Member State. The Commission has listed 147 joint transnational texts in 89 companies. Most of these have been concluded since 2000. Such initiatives help to create a climate of trust and dialogue that allows balanced company policies to be developed through an approach based on partnership, in particular as regards anticipation of, and accompanying measures for, change.

The paper examines the following issues:

- the purpose of transnational texts and transparency: the Commission looks at existing texts and discusses their subject matter. It states that the drafting of transnational texts should observe certain principles where the parties wish them to produce effects other than declaratory;
- actors in transnational company organisations: the European trade-union organisations, who believe the role of the trade unions cannot be circumvented, highlighted their special concern regarding the issue of the actors in the negotiation. The type of actors involved and the process followed in concluding transnational texts also pose a problem for the company negotiators, who need to innovate to ensure the text agreed is accepted as widely as possible and has the biggest impact. The issue of the actors is thus crucial for the development of transnational company agreements;
- effects of transnational texts: the Commission discusses whether such texts are collective agreements;
- dispute settlements: in cases where a signatory party, employee, local employer or third party seeks to have rights under transnational texts recognised by the courts, the situation as determined by the rules of international private law is particularly complex and unclear today.

The paper concludes that the conclusion of transnational company agreements is a key factor in the development of the European actors' future capacity to conduct a social dialogue in keeping with the increasingly transnational nature of company organisation and the need to anticipate change and have strategies to deal with it. Yet actors wishing to conclude transnational agreements today encounter uncertainties and difficulties that may prevent or at least reduce the impact of such agreements. These relate to the determination of the parties to conclude an agreement, its effects and the settlement of any disputes that may arise in its interpretation and implementation.

With a view to promoting social dialogue and supplementing the action of the Member States as regards the representation and collective defence of the interests of workers and employers, the Commission will support initiatives to conclude transnational company agreements without prejudice to compliance with the applicable national or Community provisions.

To that end the Commission will set up an expert group on transnational company agreements whose mission will be to monitor developments and exchange information on how to support the process under way, and it will invite the social partners, governmental experts and experts of other institutions to take part.

The Commission will provide the expert group with its initiatives and work on the subject, which will focus on:

- developing a data base of transnational texts;
- organising exchanges of experience and analyses;
- reviewing the effects produced by company agreements and the way norms relate to each

other in the Member States;

- clarifying the rules of international private law in connection with transnational texts.

The Commission will also propose that support for the conclusion of transnational company agreements be among the priorities in the budget headings on social dialogue. In this connection the Commission will consider projects to:

- identify ways of ensuring the texts agreed are more transparent;
- facilitate the identification of the actors, approaches or mechanisms that could be promoted in this area;
- determine conciliation or mediation mechanisms that could be promoted with a view to facilitating dispute settlement.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

The Committee on Employment and Social Affairs adopted the report drafted by Philip BUSHILL-MATTHEWS (EPP-ED, UK) and made some amendments to the proposal for a directive 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).

The main amendments adopted in committee (in 1st reading of the codecision procedure) can be summarised as follows:

Transnational issue: MEPs consider that matters which concern the entire undertaking or group or at least two Member States, or which exceed the powers of the decision-making bodies in a single Member State in which employees who will be affected are employed, are considered to be transnational.

Definitions: MEPs clarify the terms 'information' and 'consultation'. 'Information' shall mean the 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. It 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 consultations with the competent body of the Community-scale undertaking or Community-scale group of undertakings in question. 'Consultation' shall mean 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, about the proposed measures to which the consultation relates, without prejudice to the responsibilities of the management.

Special Negotiating bodies: deletion of the 50 worker threshold for the setting up of a Special Negotiating Body: MEPs consider that the introduction by the Commission of the 50 worker threshold in setting up Special Negotiating Bodies is discriminatory against smaller Member States which will find it difficult to reach this threshold. The number of 50 employees as a threshold is random, and according to the committee, it does not represent an indicator for the output of the particular undertaking. MEPs have deleted this measure.

Dissolution of previously existing Works Councils: MEPs do not consider it necessary to dissolve previously existing European Works Councils when the new European Works Council is established. They have deleted the paragraph concerning this issue.

Revision of the Directive: MEPs consider that 3 years (and not 5 as suggested by the Commission) after the date of entry into force of this Directive, the Commission shall present a full revision of this Directive to the European Parliament and the Council.

Penalties for non-compliance: a new recital is added stipulating that Member States should ensure that measures taken in the event of a failure to comply with this Directive are adequate, proportionate and dissuasive.

Annex: changes have been made to the Annex to enable the European Works Councils to have a say in the economic and financial future of their company rather than just being passively informed about it.

Comment on the recast of the Directive: in addition to the aforementioned amendments, the committee considered the issue of recasting the directive. Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance. As a consequence, the Committee on Employment and Social Affairs, with the support of the Committee on Legal Affairs, calls on the Parliament to approve the proposal as adapted by the recommendations made by the Consultative Working Group of the Legal Services of the Parliament, Council and the Commission.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

The European Parliament adopted by 411 votes to 44, with 181 abstentions, a legislative resolution approving, with amendments, the proposal for a recast of the directive of the European Parliament and of the Council (as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission) 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.

The report had been tabled for consideration in plenary by Philip BUSHILL-MATTHEWS (EPP-ED, UK), on behalf of the Committee on Employment and Social Affairs.

The main amendments adopted in first reading under the codecision procedure are the result of a compromise between Parliament and Council.

Continuous functioning of existing agreements: the compromise supports maintaining existing agreements. In this context, the Directive must be modernised with a view to ensuring the effectiveness of employees' transnational information and consultation rights, while enabling the continuous functioning of existing agreements. A series of additional provisions have therefore been introduced in order to confirm that the

obligations arising from this Directive shall not apply to undertakings in which an agreement or agreements providing for the transnational information and consultation of employees have already been concluded or between the entry into force of this Directive and its transposition into Member States? law (two years after). When the existing agreements expire, the parties to those agreements may decide jointly to renew or revise them. Where this is not the case, the provisions of this Directive shall apply. In any event, this Directive does not establish a general obligation to renegotiate agreements concluded pursuant to Directive 94/45/EC between 22 September 1996 and the date provided for the transposition of this Directive.

Definitions: the concepts of information and consultation of employees have been clarified:

- ?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 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, without slowing down the decision-making process in companies;
- ?consultation? means the establishment of dialogue and exchange of views between employees' representatives and central 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 about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking.

Transnational issues: given that, pursuant to the Directive, the competence of the European Works Council and the scope of the information and consultation procedure for employees shall be limited to transnational issues, the report specifies that matters shall be considered to be transnational where they concern the undertaking or group of undertakings as a whole or at least two Member States and if they 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.

Adaptation: it is provided that, 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 existing agreements), the central management shall initiate the negotiations referred to in the Directive 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.

Negotiating with recognised trade union organisations: the report highlights the role of recognised trade union organisations. In order to enable them to monitor the establishment of new European Works Councils and promote best practice, trade union organisations, recognised as European social partners, shall be informed of the commencement of negotiations. These organisations shall be consulted by the Commission, under Article 138 of the Treaty, and the list of those organisations shall be published by the Commission.

Taking national practice into account: the report also highlights that national practice should be taken into account in terms of employees' information and consultation rights.

Sanctions in the event of non compliance with the provisions of the Directive: a new recital states that, in line with the general principles of Community law, 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 based on the Directive.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

The Council adopted a revised directive on European Works Councils, following a first reading agreement with the European Parliament.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

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.

Information and consultation of employees: establishment of a European Works Council or a procedure in Community-scale undertakings and groups of undertakings. Recast

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 Directives 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 Directives 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 Directives 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.