



The European Parliament sets out new rules on European Works Councils

MEPs adopted an agreement at first-reading on the recast directive on European Works Council following a vote of the Employment Committee on the 17 November. The recast of the directive, proposed by the Commission in July as part of a new social agenda, is aimed at tightening up the definitions of information and consultation of workers. MEPs abolished the threshold of 50 employees for setting up special negotiating bodies (as a first step to constituting European works councils)

The amendments to Directive 94/45/EC proposed by the Commission are designed to ensure that employees' transnational information and consultation rights are effective, and cover the restructuring of firms, increasing the proportion of European works councils in firms, (currently established in only 36% of businesses, to which the directive applies), increasing legal certainty and ensuring better linkage between the directives on information and consultation of employees.

The Committee on Employment and Social Affairs had proposed 17 amendments to the draft last November. Council and the European Parliament reached an informal agreement on 4 December.

Amendments relating to the social partners

The compromise text includes proposals on the social partners taken up in the report by Philip **Bushill-Matthews** (EPP-ED, UK). They were forwarded to French Minister Xavier Bertrand, who chairs the Council on Employment and Social Affairs in a letter on the 29 August.

The directive defines the general principle and norms for information and consultation. The amendments state that information transmitted from employer to employees' representatives must be "given at such a time, in such a fashion" 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".

The text stresses that members of the European Works Council must have the means required to apply the rights stemming from this Directive and to collectively represent the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.

Moreover, the obligations arising from this Directive do not apply to Community-scale undertakings or Community-scale groups of undertakings in which there was already

an agreement, or in which an agreement is signed or an existing agreement is revised during the two years following the adoption of this Directive, or in undertakings in which such agreements exist.

Other provisions

The directive also states 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. Following the court judgments in the *Vilvoorde*, *British Airways* and *Marks and Spencer* cases, MEPs also adopted amendments to clarify where a situation is "transnational". They decided that where a decision of closure or restructuring is taken in one Member State but affects the workers in another, it must be considered transnational.

They also abolished the threshold of 50 employees for setting up special negotiating bodies (as a first step to constituting European works councils) so as not to discriminate against small Member States which would have difficulty reaching this threshold.

For the purpose of the negotiations, the special negotiating body may request assistance with its work from experts of its choice, who may include representatives of the competent recognised Community-level trade union organisations. Such experts and trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

Finally, Member States must ensure that measures taken in the event of a failure to comply with this Directive are "adequate, proportionate and dissuasive".

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