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DRAFT REPORT

with recommendations to the Commission on Revision of European Works
Councils Directive
(2019/2183(INL))

Committee on Employment and Social Affairs

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(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))

The European Parliament,

- having regard to Article 3(3) of the Treaty on European Union,
- having regard to Article 9, Article 151 and Article 153(1)(e) and (f) and Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Rules 47 and 54 of its Rules of Procedure,
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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 employees¹,
- having regard to 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 Community²,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees³,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁴,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁵,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁶,
- having regard to Council Directive 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful

¹ OJ L 122, 16.5.2009, p. 28.

² OJ L 80, 23.3.2002, p. 29.

³ OJ L 207, 18.8.2003, p. 25.

⁴ OJ L 225, 12.8.1998, p. 16.

⁵ OJ L 303, 2.12.2000, p. 16.

⁶ OJ L 82, 22.3.2001, p. 16.

acquisition, use and disclosure⁷,

- having regard to Parliament’s European Added Value Assessments of November 2012 entitled ‘European added value of an EU measure on information and consultation of workers, anticipation and management of restructuring processes’ and of January 2021 entitled ‘European works councils (EWCs) – legislative-initiative procedure: revision of European Works Councils Directive’,
- having regard to its resolution of 16 December 2021 on democracy at work: a European framework for employees’ participation rights and the revision of the European Works Council Directive⁸,
- having regard to the study of the European Economic and Social Committee of 31 August 2020 on an EU legal framework on safeguarding and strengthening workers’ information, consultation and participation,
- having regard to the University of Leuven research project of May 2016 entitled ‘European Works Councils on the Move: Management Perspectives on the Development of a Transnational Institution for Social Dialogue’,
- having regard to the Commission’s study of 16 November 2018 on monitoring the application of the EU Quality Framework for anticipation of change and restructuring,
- having regard to the Commission’s report of 14 May 2018 on the implementation by Member States of Directive 2009/38/EC 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),
- having regard to the Commission’s Staff Working Document of 14 May 2018, entitled ‘Evaluation, accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC 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)’,
- having regard to the Commission communication of 4 March 2021 on the European Pillar of Social Rights Action Plan (COM(2021)0102),
- having regard to Articles 12, 27, 28, 30 and 31 of the Charter of Fundamental Rights of the European Union
- having regard to the European Council’s Porto Social Commitment of 7 May 2021 and its Porto Declaration of 8 May 2021,
- having regard to the report of the Committee on Employment and Social Affairs (A9 0000/2022),

⁷ OJ L 157, 15.6.2016, p. 1–18.

⁸ Text adopted, P9_TA(2021)0508.

- A. whereasthe number of multinational companies with assets or plants in several countries in 2015 was around 45 times higher than during the 1990s⁹;
 - B. whereas around 1 200 European Work Councils (EWCs) currently exist in the Union, with 18 000 individual representatives¹⁰;
 - C. whereas despite having the right to express an opinion, EWC members seem to have little influence in the decision-making process in their companies, in particular in cases of restructuring¹¹;
 - D. whereas penalties for failure to consult in most Member States consist of financial penalties that range from 23 EUR to 187 515 EUR¹² and therefore in many cases fail to be effective, dissuasive and proportionate;
 - E. whereas EWCs do not have direct access to justice in many Member States¹³;
 - F. whereas EWCs have full legal personality in only four Member States, allowing EWC representatives to initiate judicial proceedings on behalf of EWCs¹⁴;
 - G. whereas there is evidence that early consultation can have a substantial impact on job security during restructuring processes and that this can have a positive impact on job quality¹⁵;
 - H. whereas the concept of transnationality remains a difficult concept for EWC practitioners to interpret in concrete cases¹⁶;
 - I. whereas the extensive use of confidentiality clauses based on Article 8 of Directive 2009/38/EC constitutes an obstacle for effective information and consultation rights¹⁷;
1. Notes that participation rights play a crucial role in a functioning of the social market economy; stresses that EWCs enhance democracy at the workplace;
 2. Acknowledges that Directive 2009/38/EC has led to improvements regarding the establishment and functioning of EWCs; regrets, however, that EWCs still face major difficulties to enforce their rights, especially on timely information and consultation;
 3. Underlines that the definition and consequent interpretation of what matters are to be regarded as ‘transnational issues’ remains vague and results in a fragmented implementation by the Member States; stresses in this regard that the scope of possible effects is a missing element which needs to be considered while determining the transnational character of a matter;

⁹ European Economic and Social Committee study of 31 August 2020, p. 24.

¹⁰ European Economic and Social Committee study of 31 August 2020, p 25.

¹¹ Commission report of 14 May 2018at p. 6.

¹² Commission Staff Working Document of 14 May 2018, pp. 33 to 35.

¹³ Commission Staff Working Document of 14 May 2018, p. 34.

¹⁴ Commission Staff Working Document of 14 May 2018, p. 34.

¹⁵ Parliament’s European added value assessment of November 2012.

¹⁶ Commission Staff Working Document of 14 May 2018, p. 6.

¹⁷ Commission Staff Working Document of 14 May 2018, p. 27-28.

4. Regrets that the timely manner of consultation remains an issue where the employees' representatives opinion may be requested or delivered at a point in time where no meaningful consideration can be taken or when the management decision on the proposed measure has already been taken; regrets that the lack of management obligation to take an opinion into account often results in the input being disregarded or failing to have an actual impact on the proposed measure at hand;
5. Notes that the three-year timing provision of situations governing the entry into force of subsidiary requirements in the event of a failure to conclude an agreement is excessive and to the disadvantage of workers; underlines that the right of EWCs to have an annual meeting with the central management is insufficient and should be increased provide for biannual meetings in order to improve the practical functioning and running of EWCs;
6. Highlights that the Member State implementation of confidentiality provisions is fragmented due to the lack of a clear definition and therefore calls for a clear definition of confidential information in line with the definitions provided for in Directive 2016/943; stresses in this context that further efforts by Member State are needed in order to specify and clarify the conditions under which the central management is not required to pass on information which could be harmful;
7. Stresses that in cases of disagreement on whether to undertake an information or consultation procedure, there is a lack of guidance on how to resolve the current negative effects on EWCs and workers representatives;
8. Is concerned about the fragmented and insufficient compliance with Directive 2009/38/EC; calls in this regard for reinforced procedures and other measures to ensure proper, effective and timely compliance, including the temporary suspension of the implementation of management decisions;
9. Regrets that in many Member States penalties for non-compliance are not effective, dissuasive or proportionate as required by Directive 2009/38/EC; stresses that the provisions governing Member State penalties needs to be strengthen in order to improve compliance with Directive 2009/38/EC;
10. Stresses that the provisions guiding the situations in which the obligations of Directive 2009/38/EC do not apply due to other agreements in force warrant further clarification in order to improve the functioning and implementation of Directive 2009/38/EC;
11. Calls on Member States to ensure access to justice for EWCs and for the specification of the legal status of EWCs and Special Negotiating Bodies as legal actors;
12. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

**ANNEX TO THE MOTION FOR A RESOLUTION:
RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

Directive 2009/38/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 4 is replaced by the following:

“4. Matters shall be considered to be transnational where they concern, *directly or indirectly*, the Community-scale undertaking or 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.”;

(b) the following paragraph is added:

“7a. *In order to determine the transnational character of a matter, the scope of its possible effects must be taken into account. This includes matters which, irrespective of the number of Member States involved, are of concern to European workers in terms of the scope of their potential impact, as well as matters which involve the transfer of activities between Member States.*”;

(2) in Article 2, point (g) is replaced by the following:

“(g) ‘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 or Community-scale group of undertakings;”;

(3) in Article 7(1), the third indent is replaced by the following:

“— where, after *one year* from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).”;

(4) in Article 8, paragraphs 1 and 2 are replaced by the following¹:

¹ The existing text reads as follows:

“1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees’ representatives in the framework of an information and consultation

- “1. Member States shall **ensure** that members of special negotiating bodies or of European Works Councils and any experts who assist them **are obliged not to reveal any trade secrets, as defined in Article 1(1) of Directive (EU) 2016/943 of the European Parliament and of the Council^{1a}** which **have** expressly been provided to them in confidence.

The same shall apply to employees’ representatives in the framework of an information and consultation procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office:

This paragraph shall not apply to members of the European Works Council who pass on information to national or local work councils that may affect the situation of workers where such information has been provided to them in confidence and is subject to national rules on confidentiality.

2. Each Member State shall **define**, in specific **and substantiated** cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State **shall** make such dispensation subject to prior administrative or judicial authorisation.

^{1a.} ***Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).***”;

- (5) in Article 9, the following paragraph is added:

“If there is a dispute between the central management and the European Works

procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.”.

Council or the employees' representatives as to whether an information and consultation procedure is to be carried out, the central management shall provide reasons why the information and consultation requirements under this Directive or under agreements concluded pursuant thereto do not apply, in particular because of the absence of transnational issues.”;

(6) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following²:

“2. Member States shall ***ensure***, in the event of failure to comply with this Directive, that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced ***in a timely and effective manner***.

Member States shall establish procedures to enable 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 under this Directive or under agreements concluded pursuant thereto.”;

(b) in paragraph 3, the following subparagraph is added:

“The central management shall bear the direct costs incurred in carrying out the procedures, including the costs of legal representation and the subsistence and travel expenses for at least one workers' representative.”;

(7) the following article is inserted:

“Article 11a

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto. The penalties shall be effective, proportionate and dissuasive.

2. The penalties referred to in paragraph 1 shall include:

(a) financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement;

(b) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including EU funds managed by the relevant Member States, for a period of up to three years;

(c) orders excluding the undertaking from procurement within the

² The existing text reads as follows: “2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.”

meaning of Directive 2014/24/EU of the European Parliament and of the Council^{1a}, for a period of up to three years.

3. *The financial penalties referred to in paragraph 2, point (a), shall amount to a maximum of at least EUR 10 000 000 or 2 % of the undertaking's total annual worldwide turnover in the preceding business year, whichever is higher.*
4. *In the case of intentional infringements, Member States shall provide for a maximum financial penalty of at least EUR 20 000 000 or 4 % of the undertaking's total worldwide annual turnover in the preceding business year, whichever is higher.*

^{1a} Directive (EU) 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).";

(8) Article 14(1) is amended as follows:

(a) point (b) is replaced by the following³:

“(b) an agreement concluded pursuant to Article 6 of Directive 94/45/EC is concluded between 5 June 2009 and 5 June 2011 or such an agreement has been adjusted due to changes in the structure of the undertakings or groups of undertakings;”;

(b) the following subparagraph is inserted after the first subparagraph:

“Points (a) and (b) of the first subparagraph shall apply only in so far as the obligations arising from this Directive have already been fully complied with.”;

(c) the following subparagraph is added:

“Member States shall ensure that appropriate administrative or judicial procedures are in place to verify that the obligations arising from this Directive are fully taken into account in accordance with paragraph 1 of this Article. In all other respects, Article 11(3) shall apply mutatis mutandis.”;

(9) in Annex I, point 2 is replaced by the following:

“The European Works Council shall have the right to meet with the central management *twice* a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.”

³ The existing text reads as follows: (b) an agreement concluded pursuant to Article 6 of Directive 94/45/EC is signed or revised between 5 June 2009 and 5 June 2011.