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5. European works council

A5-0282/2001

European Parliament resolution on the Commission report on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994) (COM(2000) 188 – C5-0437/2000 – 2000/2214(COS))

The European Parliament,

- having regard to the Commission report (COM(2000) 188 – C5-0437/2000),
 - having regard to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Councils or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees ⁽¹⁾,
 - having regard to Council Directive 98/59/EC of 20 July 1998 on collective redundancies ⁽²⁾ (consolidated versions of Directives 75/129/EEC and 92/56/EEC) and 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 businesses ⁽³⁾ (consolidated version of Directive 77/187/EEC as amended),
 - having regard to the Davignon report of the Group of Experts on 'European Systems of Worker Involvement' (C4-0455/1997) and its Resolution of 19 November 1997 thereon ⁽⁴⁾,
 - having regard to the proposal for a Council directive establishing a general framework for informing and consulting employees in the European Community (COM(1998) 612 – C4-0706/1998 – 1998/0315(SYN) and its opinion of 14 April 1999 thereon ⁽⁵⁾,
 - having regard to the proposals for a Council regulation on the Statute for a European Company (C5-0092/2001) and a Council directive supplementing the Statute for a European Company with regard to the involvement of employees (C5-0093/2001),
 - having regard to the publication of the Commission report, as a contribution to the continuing debate as to how effective Directive 94/45/EC on the establishment of procedures for informing and consulting employees in undertakings operating in more than one Member State is, but whereas it should be noted that the Commission report, despite a brief assessment of the implementing legislation and of the application of the Directive in practice, is essentially limited to a description of the national implementing measures,
 - having regard to the findings of the public hearings held by the Committee on Employment and Social Affairs on 26 January 1999 and 25 April 2001 on the subject of European works councils,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy (A5-0282/2001),
- A. whereas the main goal of the Directive is to lift obstacles to information, consultation and communication with the workforce in companies operating in more than one Member State in order to facilitate social dialogue in these companies,
- B. whereas the transposition of the Directive into national law within the time limits laid down was generally successfully achieved,

⁽¹⁾ OJ L 254, 30.9.1994, p. 64.

⁽²⁾ OJ L 225, 12.8.1998, p. 16.

⁽³⁾ OJ L 82, 22.3.2001, p. 16.

⁽⁴⁾ OJ C 371, 8.12.1997, p. 83.

⁽⁵⁾ OJ C 219, 30.7.1999, p. 223.

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- C. whereas the immediate impact of the Directive can be seen in the sheer numbers of European works councils formed since the adoption of the Directive in 1994, amounting to some 650 under either Article 6 or Article 13 agreements,
- D. whereas, however, as many as 1 800 companies across the EU meet the criteria and thresholds above which a European works council should be established according to the terms of the Directive, and whereas the level of cover is therefore unsatisfactory, which may encourage further initiatives,
- E. whereas various cases of restructuring and collective redundancy have highlighted gaps in European legislation on workers' rights to information and consultation, particularly with regard to timeliness and possible sanctions in the event of non-compliance,
- F. whereas there is a need to balance the competitive needs of companies in an ever-changing market with the rights of employees to information and consultation which can in particular be achieved through collective agreements with management, in particular at times of industrial change,
- G. whereas, therefore, it is vital to create a culture of partnership between employers and employees in all Member States where companies are based, so that the spirit of cooperation called for by the Directive will also be put into practice in relations with local workers' representatives,
- H. whereas it is difficult to create such a culture if a European works council meets only once a year, as is the fact in 85 % of cases,
- I. whereas the interests and concerns of employees can only be taken into account at a time of restructuring if the information and consultation is in good time and adequate; whereas there has been a number of highly-publicised cases in recent months where this was not the case, and workers learnt of major restructuring in their company through the press and/or after decisions on restructuring were already taken; whereas employees must be able to exercise their rights to information and consultation at the appropriate stage of the process,
- J. whereas there is a close link between the revision of the Directive on the establishment of a European works council, the current proposals with regard to information and consultation at national level and the extension of the Statute of the European Company with regard to workers' participation; whereas, furthermore, in the interests of clarity and legal precision these three items of legislation should, in the medium term, include appropriate rules on information and consultation,
- K. whereas trade unions play a vital role both in support of European works councils and in transmitting information to the workforce as a whole from management via the works council; whereas the management right to communicate directly with the workforce remains unaffected, as does its right to manage the company,
- L. whereas research has shown that women are seriously under-represented on European works councils, given that nine out of ten works council representatives are men,
- M. whereas the Commission's report is a means of keeping the discussion moving on how effective the Directive has been in setting up information and consultation procedures in companies based in more than one Member State,
- N. whereas the Directive takes account of the different forms of worker participation in companies which exist in Europe, thereby safeguarding the subsidiarity principle,
- O. whereas an evaluation of the Directive has also revealed weaknesses which must be addressed if the Directive is to be effective in achieving its aims,
1. Emphasises that social relations based on dialogue, genuine information and consultation of employees and their representatives will benefit collective negotiations and reduce the risk of conflict, and that it may also prove to be a factor for undertakings' success;

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2. Reiterates its call on the Commission to submit a proposal for the revision of Directive 94/45/EC at an early date and to include in that proposal the following improvements:

- (i) a precise definition of information and consultation of employees as being the implementation of an exchange of views and dialogue between employees or their representatives and the employer, pursuant to document COM(1998) 612) ⁽¹⁾, so as to ensure that such information and consultation takes place in good time and at regular intervals before the decision by the company or group management, so as to allow the employees genuinely to influence the management's decision-making process; decisions of central management or any other management level shall be valid only if information and consultation are properly carried out, with due regard for the principles of confidentiality of the information;
- (ii) an enhanced obligation to convene special meetings of the European works council in good time in order to convey information to employees on company proposals regarding restructuring and decisions having implications for the continued existence and future of the company and its various sites and subsidiaries, with a view to allowing employees and their representatives time to study the information provided by management, to present their point of view and put forward alternative proposals to those of management in the form of opinions;
- (iii) the introduction of an enhanced consultation procedure, within the meaning of Directives 75/129/EEC and 98/59/EC ⁽²⁾ with a view to reaching agreement on certain issues which particularly affect employees (in particular collective redundancies and transfers of companies and transfer of production);
- (iv) a reduction from three years to 18 months for the introduction of the minimum standards in the Annex to the Directive, should central management and the special negotiating body be unable to reach agreement;
- (v) a reduction in the thresholds for companies to be included within the scope of the Directive from 1 000 to 500 employees for the company as a whole and from 150 to 100 employees per establishment in at least two Member States;
- (vi) clarification of the need for the works council to continue functioning during periods of company mergers;
- (vii) a new clause in the Directive allowing for adjustments in numbers of members of the European works council and the special negotiating body following major restructuring of the company so that these bodies properly reflect the proportions of employees working in the establishments after restructuring;
- (viii) discussions about more rights for trade unions, particularly as experts, within the remit of works councils and a more prominent role for national and/or European trade unions on European works councils and the special negotiating bodies themselves, in accordance with employees' wishes;
- (ix) more opportunities and proper resources for members of European works councils to be offered training, aiming in particular at awareness of accounting regulations and employment law in other countries and at improving language skills, and the provision of the necessary time off;
- (x) the strengthening of the provisions concerning the protection and rights of workers' representatives to enable them to have access to all establishments and firms and to fulfil their tasks and mandates without loss of pay, to inform workers and take advantage of additional training;
- (xi) specifying that members must have facilities at their disposal, e.g. meeting rooms with use of fax, phone and Internet between meetings so as to enable them to fulfil the tasks imposed upon them by the Directive;

⁽¹⁾ Proposal for a Council directive establishing a general framework for informing and consulting employees in the European Community.

⁽²⁾ Council Directive of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies.

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- (xii) general extension of the matters covered by the information and consultation process with the European works council to include measures planned by the company and group management in connection with the situation as regards health, safety, job rotation, the environment, in-service training, lifelong learning, equal opportunities and financial participation by employees (e.g. share options);
 - (xiii) adequate sanctions at national and European level for non-compliance with the Directive including the following measures to implement the law:
 - the Member States shall introduce appropriate measures at national and European level for cases of failure by employers or employees' representatives to comply with this Directive; in particular, they shall ensure that there are administrative and legal procedures which can be used to bring about compliance with the obligations arising from the Directive, including procedures whereby employers or employees' representatives may seek legal remedy, either administratively or through the courts, if they consider that the other party is failing to fulfil its obligations.
 - provision of a clause that decisions of the management will only be regarded as legitimate if an orderly information and consultation process as defined in the renewed Directive has taken place beforehand;
 - (xiv) in cases in which the application of a decision may have major negative effects on workers, provisions to the effect that the adoption of the final decision may be suspended for an appropriate period at the request of the workers' representatives, in order to continue the negotiations to avoid or ameliorate the negative effects;
 - (xv) greater clarification of the conditions for renewing agreements reached under Article 13 of the Directive;
 - (xvi) the opportunity to terminate voluntary agreements (Article 13 of Directive 94/45/EC) which were concluded for an unspecified period and make no provision for cancellation of the agreements;
 - (xvii) recommendations on the relative numbers of men and women serving on the special negotiating bodies and European works councils;
 - (xviii) a recommendation that representatives of employees on works councils should be freely chosen by employees;
 - (xix) a higher minimum number of preparatory and compulsory meetings per year;
 - (xx) any revision of the Directive should result in mandatory, rather than merely optional, coverage of merchant navy crews;
 - (xxi) as the Commission points out in the report, the Directive does not currently require agreements to contain an adjustment clause covering changes to the make-up of the undertaking; it should be revised to ensure that agreements actually do cover all the undertaking's or group's workers at all times;
3. Calls on the Commission to notify those Member States which have not yet taken steps to transpose the Directive;
4. Reminds the Commission of the need, pursuant to Article 127 of the Treaty, to ensure a coherent link between competition rules and Community social legislation; calls for clearance for mergers to be subject to proof of compliance with the obligation to inform and consult employees and European works councils;
5. Insists that no Structural Fund monies should be granted to companies which have breached major aspects of their obligations under the Directive, and/or that such companies should be required to repay these and any other Community funds or national aid given to such companies for the promotion of regional development and employment, and that they should be excluded from public procurement and public subsidies;
6. Promotes the ideal of the creation of world-wide works councils where a company has employees in countries outside the EU and welcomes the initiatives already taken in certain companies to ensure equal access to information and consultation wherever the workforce is based;

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7. Calls for the inclusion, in the context of discussions on future Treaty amendments, of the concept of worker participation (*Mitwirkung*) in addition to information and consultation under Article 137 of the Treaty, subject to the agreement of the social partners, and calls for only genuine codetermination to be subject to the unanimity rule;

8. Instructs its President to forward this resolution to the Council, the Commission and the social partners.

6. Monitoring application of Community law (1999)

A5-0250/2001

European Parliament resolution on the Commission's seventeenth annual report on monitoring the application of Community law (1999) (COM(2000) 92 – C5-0381/2000 – 2000/2197(COS))

The European Parliament,

- having regard to the Commission's seventeenth annual report on monitoring the application of Community law (1999) (COM(2000) 92)⁽¹⁾,
 - having regard to the second annual survey on the application of, and respect for, environmental law – January 1998 to December 1999,
 - having regard to petitions Nos 429/2000 and 555/2000,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Employment and Social Affairs and the Committee on Petitions (A5-0250/2001),
- A. whereas the task of the Commission's annual reports on monitoring the application of Community law is essentially twofold, namely: to establish to what extent Member States have transposed and properly applied directives and to account for the Commission's use of its discretionary powers to initiate violation proceedings,
- B. whereas, for all the applicable directives, the average rate of communication of transposal measures by all the Member States is 94,53 %, but account must be taken above all of the effective implementation of directives in national legislation,
- C. whereas the consistent application of Community law in each country constitutes a primary precondition for the smooth operation of the single market and the substantial and continuing disparities between Member States regarding the application thereof mean that the '*acquis communautaire*' is incomplete,
- D. bearing in mind that one of the reasons for the poor implementation of Community law is the inability to understand secondary Community legislation,
- E. whereas the enlargement and consolidation of the Community call for a re-evaluation of the procedure for drawing up the Commission's annual reports on monitoring the application of Community law and the role of these reports,
- F. whereas the Commission sent 1 075 letters of formal notice in 1999,
- G. whereas the number of complaints received by the Commission services has increased by 16 % and the number of petitions resulting in the initiation of proceedings for non-compliance has steadily risen and the state of application of Community law thus casts a shadow over the future of the single market,

⁽¹⁾ OJ C 30, 30.1.2001, p. 1.