

# EUROPEAN PARLIAMENT

2004



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*Committee on Employment and Social Affairs*

**2008/0141(COD)**

23.9.2008

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## **DRAFT REPORT**

on 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) (COM(2008)0419 – C6-0258/2008 – 2008/0141(COD))

Committee on Employment and Social Affairs

Rapporteur: Philip Bushill-Matthews

(Recast – Rule 80a of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on 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)  
(COM(2008)0419 – C6-0258/2008 – 2008/0141(COD))**

**(Codecision procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0419),
  - having regard to Articles 251(2) and Article 137 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0258/2008),
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of [...] from the Committee on Legal Affairs to the Committee on Employment and Social Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
  - having regard to Rules 80 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (A6-0000/2008),
- A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and incorporating the technical amendments approved by the Committee on Legal Affairs and as amended below;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

## Amendment 1

### Proposal for a directive

#### Article 2 – paragraph 1 – point (f)

*Text proposed by the Commission*

(f) ‘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, ***in particular, to conduct an appropriate study and, where necessary, prepare for consultation;***

*Amendment*

(f) ‘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 consultations with the competent body of the Community-scale undertaking or Community-scale group of undertakings in question;***

Or. en

## Amendment 2

### Proposal for a directive

#### Article 2 – paragraph 1 – point (g)

*Text proposed by the Commission*

(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 enables employees' representatives to express an opinion on the basis of the information provided and within a reasonable time ***to the competent body of the Community-scale undertaking or Community-scale group of undertakings;***

*Amendment*

(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 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,*** and within a reasonable time ***which may be taken in to account within*** the Community-scale undertaking or

Community-scale group of undertakings;

Or. en

### Amendment 3

#### Proposal for a directive

#### Article 5 – paragraph 4 – subparagraph 3

##### *Text proposed by the Commission*

For the purpose of the negotiations, the special negotiating body may request assistance with its work from experts of its choice, ***for example representatives of appropriate*** Community-level trade union organisations. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, ***where appropriate to promote coherence and consistency at Community level.***

##### *Amendment*

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 such trade union representatives*** may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

Or. en

### Amendment 4

#### Proposal for a directive

#### Article 10 – paragraph 1

##### *Text proposed by the Commission*

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall collectively represent the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings ***and shall have the means required to apply the rights stemming from this Directive.***

##### *Amendment*

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall ***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.

Or. en

## Amendment 5

### Proposal for a directive Article 10 – paragraph 4

*Text proposed by the Commission*

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be **have access to** training without loss of wages.

*Amendment*

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be **provided with** training without loss of wages.

Or. en

## Amendment 6

### Proposal for a directive Article 12 – paragraph 3

*Text proposed by the Commission*

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting the European Works Council **and** the national bodies **start in parallel** in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

*Amendment*

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting **are conducted in** the European Works Council **as well as in** the national bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

Or. en

## Amendment 7

### Proposal for a directive Article 13 – paragraph 1

*Text proposed by the Commission*

1. Without prejudice to paragraph 3, the

*Amendment*

1. Without prejudice to paragraph 3, the



obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which there was already an agreement on 22 September 1996, covering the entire workforce, providing for the transnational information and consultation of employees, ***in so far as such agreements are still in force***. When these agreements expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of this Directive shall apply.

obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which there was already an agreement on 22 September 1996, ***or in which an agreement is signed or an existing agreement is revised during the two years following the adoption of the present text, or in undertakings in which such agreements exist and which are due to negotiate under paragraph 3***, covering the entire workforce, providing for the transnational information and consultation of employees. When these agreements expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of this Directive shall apply.

Or. en

## Amendment 8

### Proposal for a directive

#### Article 13 – paragraph 3 – subparagraph 4

*Text proposed by the Commission*

***When the new European Works Council established following the procedure referred to in the first subparagraph takes up its activities, the previously existing European Works Council(s) shall be dissolved and the agreement(s) instituting them shall be terminated.***

*Amendment*

***deleted***

Or. en

## EXPLANATORY STATEMENT

The issue of review of the European Works Council Directive has been a contentious issue for some time, with industry as well as trade unions. Considerable differences of opinion within the Parliament have also been expressed in the past, and indeed these were expected to intensify as a result of further proposals from the Commission. However, following a surprise agreement between the Social Partners during the 2008 summer vacation the ground has significantly shifted.

### A. Practical Implications

1) The Commission has proposed a "recasting" of the Directive rather than a "Review". My understanding is that this will confine the comments from Parliament to the specific articles which the Commission has proposed to recast. It should make our work easier and quicker.

2) On that basis, the French Presidency has asked me as Rapporteur to try to fast-track my report so that can be signed off during their term of office. I have said that I am very happy in principle to do this, assuming that colleagues may be generally supportive of the approach accepted by the Social Partners and subsequently welcomed in Council.

3) However, before this can be confirmed, not only does our Committee need to establish its overall position but there is an earlier hurdle to surmount. The legal services need to pronounce exactly what a "recasting" does and does not allow, and whether it is considered the correct approach in this instance. Until they have officially ruled, we cannot technically issue a Report, and therefore equally are not in any position to propose amendments either.

4) Working Documents are of course permitted. The fact that this working document may contain pages that bear a close resemblance to a Report is - of course - just coincidence.

5) Meanwhile the Council is planning to discuss the Social Partner agreement in the coming weeks - no later than October 3rd. If, as is expected, they endorse the agreement with enthusiasm and also support an early agreement by Parliament, that is also something we should take on board.

### B. The Approach of your Rapporteur

1) While I personally welcome the existence and development of Works Councils, at local, national and European level as appropriate, I remain unconvinced that further and more prescriptive legislation is helpful to the cause. However, I am also very aware that while this legislative dossier has languished on the sidelines for a long time, there is sudden and substantial agreement at Social Partner level. I regard this as a significant and positive step which we should not ignore.

2) I believe that while all MEPs are clearly free to make their own observations on what to do next, in my view Parliament should seize the opportunity to sign off this dossier and facilitate what the major stakeholders want. To try to re-calibrate the agreement, however well-

intentioned, would run the risk of unpicking it altogether. The result would again be stalemate with further progress blocked. I propose to colleagues that we agree it is time to move on, and it is time to deliver.

3) The overall approach that Shadow Rapporteurs might consider is that further proposals about which they may feel strongly - particularly in articles which fall outside the scope of the "re-cast" - might be proposed "off balance-sheet" as it were. This was the solution for example regarding Corporate Social Responsibility: in this case in the absence of legislation the Rapporteur proposed a Multi-Stakeholder Forum in order to explore best practice and inspire others to follow. The results have been very positive: real tools have been developed, real ideas have flowed, and more and more companies are choosing to embed CSR into their businesses in ways which they consider are right for them. Individual companies have taken ownership of CSR because they have helped to shape it in ways that they have chosen themselves.

4) If colleagues consider that a similar idea may have merit on this dossier, it would be useful to have an early indication of what it might cover. We could then try to get the Social Partners onside before the official Report goes to plenary, so that any outcomes could be presented in the plenary debate. What I would be looking for is an early commitment from these key Stakeholders that they are committed to the concept of information and consultation, they wish to seek ways of enhancing it to the mutual benefit of all stakeholders, and that they will actively encourage more pan-European companies to sign up.

5) I personally have certain amendments that I would wish to table to the main Report, but I am prepared not to table any amendments at all if that is the only way to achieve a fast-track decision. This is not to dictate to colleagues what they can or cannot do - it is simply a copy of the initiative by the PES to fast-track an agreement on the Temporary Agency Workers dossier. Any amendments would naturally require full discussions and potential compromises: these would not only risk unpicking the deal on the table but would roll over the dossier into the Czech and perhaps Swedish Presidencies so the outcome might be doubly uncertain. My recommendation is that we should aim to bank the real progress made by the stakeholders, and that Parliament should aim to deliver rather than delay.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels,

**OPINION**

**FOR THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**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  
COM(2008) 419 final of 2.7.2008 - 2008/0141 (COD)**

Having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular point 9 thereof, the Consultative Group consisting of the legal services of the European Parliament, the Council and the Commission held a meeting on 16 July 2008 at which it examined, inter alia, the above proposal presented by the Commission.

On examining the proposal for a directive of the European Parliament and of the Council to recast Council Directive 94/45/EC of 22 September 1994 on the establishment of the European Works Council or a procedure in Community-scale undertakings and Community-scale groups for the purposes of informing and consulting employees<sup>1</sup>, the Working Party established, by common consent, that additions were to be made to the text of the correlation table in Annex III of the proposal to recast.

Thus the Working Party was able to establish from the examination, by common consent, that the proposal did not comprise any substantive amendments other than those identified as such. The Working Party was also able to establish, in regard to the codification of the unchanged provisions of the previous act with the substantive amendments, that the proposal was indeed a straightforward codification without substantive changes to the acts to which it related.

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<sup>1</sup> The Working Party had German, English and French versions of the proposal and worked from the French version, the original version of the working document.

C. PENNERA  
Legal adviser

J.-C. PIRIS  
Legal adviser

M. PETITE  
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