

European Works Council

The Directive by the Council of the European Union relating to the creation of a European works council or the creation of a procedure for the information and hearing of employees in companies and groups of companies operating across the Community.

This Directive was approved on 22.9.1994 by the Ministers of Labor and Social Affairs, and is applicable in all EU member states with the exception of Great Britain. The states were to implement it in their national laws by 22.9.1996 at the latest.

1. Scope of application of the Directive

The Directive extends to companies and groups of companies groups operating on a Community-wide basis. The following definitions are drawn from the Directive itself.

A company operating on a Community-wide basis is a company with at least 1,000 employees in the member states (excluding Great Britain) and with 150 employees in at least two member states each.

A group of companies operating on a Community-wide basis must have at least 1,000 employees in the member states, and must consist of at least two companies which stand in a controlling and controlled relationship to one another. In this context, at least two of the companies belonging to the group must be established in different member states, and at least one of the companies belonging to the group of companies must have at least 150 employees in one member state and another company must have at least 150 employees in another member state.

The capability of exerting a controlling influence on another company shall be deemed to prevail until proven otherwise in the event of specific preconditions pertaining. These preconditions shall include, in particular, the direct or indirect majority interest in another company, the majority voting rights in the capital of another company, or the right to appoint more than half the members of the board of directors, the company management, or the supervisory board. The determinant consideration as to whether a company is a controlling one is the law of the member state to which the company is subject. If it is not subject to the law of a member state, then the law of that member state shall be determinant in which the representative of the company or, in default of such a representative, the management of that company within a group of companies is domiciled which has the highest number of employees. Accordingly, both companies and groups of companies are also affected of which the management is located outside the EU or in Great Britain, if companies belonging to the group are domiciled in the member states.

2. Priority for negotiation solutions

The Directive allocates responsibility for implementation of a body for information and hearing of employees to the central management of the company or of the group of companies. If the central management is not domiciled in a member state, its representative in the Community, or, in default of such a representative, the management of the business or company with the highest number of employees in a member state, shall be responsible for this. On the employees' side, a special negotiation group forms the contractual partner.

The Directive represents a framework and minimum content for agreements between the contractual partners. The contractual partners are accorded a fairly generous room or maneuver. The subsidiary provisions set out in the Appendix are only to be applied in exceptional cases, and specifically if no agreement on the implementation of a European works council can be reached between the company or group management and the employees' special negotiation group (unless the application of the subsidiary provisions of the Directive have been agreed upon).

The agreement is to be concluded in writing and must contain, inter alia, the establishment of a European works council, the determination of the companies and operational locations affected, the availments, and the information and hearing procedures of the European works council, its number of members, the distribution of its delegates and duration of mandate, the venue, frequency, and duration of meetings, as well as the financial and material resources to be provided.

Instead of a European works council, it shall also be possible for one or several notification and hearing procedures to be established.

For these agreements, a majority of the votes by members of the special employees' negotiation group shall be required.

The initiative for the assumption of negotiations may come from either the company or from the employees' side. In the latter case, an application in writing from at least 100 employees or their representatives will be required, from at least two operational locations or companies in at least two different member states. The special employees' negotiation group which is then to be formed shall be composed of 3 to 17 members, the election or appointment of whom shall be effected by means of a procedure to be determined by the individual member state in each case.

A point which is to be ensured in this context is the representation by one member of each member state in which an operational location or company is established (the "representation principle"). The number of additional members is determined in accordance with the provisions of the law of the member state in the sovereign territory of which the company or group management is domiciled, in accordance with the number of employees in each case (the "proportionality principle").

The special negotiation group can decide, on the basis of at least two-thirds of the votes cast, not to enter into negotiations, or to terminate negotiations which have already been entered into. By way of such a decision, the procedure for concluding an agreement will be brought to an end, and the subsidiary provisions of the Directive shall not apply either. To this extent, the engagement of a European works council can be done away with. In this case, a new application may be made for the convening of the special negotiation group at the earliest two years after this resolution, unless the parties concerned decide on another time period.

3. The subsidiary provisions of the Directive

These provisions may be summarized as follows:

Provision is made for the mandatory involvement of a European works council. Its responsibility is limited to the information and hearing of matters which relate to the company or group as a whole, or at least two operational locations or group companies in different member states. It shall be composed of employees from the company or group concerned, and shall consist of a minimum of three and a maximum of thirty members, elected or appointed in accordance with the legal provisions of the individual states (representation and proportionality principle). The European works council shall elect from among its members a smaller committee of a maximum of three members; this group is to be informed and invited to hearings under extraordinary circumstances which have substantial effects on the interests of the employees, and in particular with regard to the establishment or closure of companies or operational locations, or in the event of mass redundancies. Provision is further to be made for the right of the European works council to meet once annually with the management of the company or group, on the basis of a report to be prepared on the business situation and perspectives, for the purpose of information and hearing.

4. Existing agreements

The Directive does not apply to such companies and groups which already had an agreement applicable to all employees by 22.9.1996, in which international information and hearing of employees is provided for. There are currently about 30 European company groups at which such a system has been introduced (e.g. VW, Bayer, Hoechst, etc.).

5. Miscellaneous provisions

Among the miscellaneous provisions of the Directive particular mention may be made, for example, of a ruling about the confidentiality of information. According to this, the member states are obliged to make provision for the members of the special negotiation group and of the European works council being prohibited from passing on to third parties any information which is provided to them expressly in confidence. In addition to this, provision is to be made for the establishment of an administrative or court procedure to guarantee that the provisions of the Directive will be respected by the member states, and the granting of the same protection to members of the special negotiation group and the European works council (or of the body established in its stead), such as is enjoyed by the workforce organizations in accordance with national laws.