



# EU FRAMEWORK Information and Consultation Rights in Europe: legislation, practice and challenges



# Information Consultation Participation

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## Cornerstone rights

- Worker involvement
- Social dialogue

In a complex context of industrial relations

- based on legislation and practice
- interesting in a both economic and social dimension

**I&C** is considered to have a **positive impact** on establishing a **good work climate** and mitigating human resource problems. It therefore **contributes also to the company's performance.**



# I&C for social dialogue

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There is a need to reestablish a **balance between shareholders' value and other stakeholders'** needs and priorities.

The idea is to promote a **new model of corporate governance**: through **more participation of employees and other stakeholders**, for more social integration and an integrated development of the whole society.

Information and consultation **impact on social dialogue** in a way that **enhance a participative approach** responding to need of change and innovation.

# I&C as EU fundamental rights

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**Art. 27 Charter of Fundamental Rights of the EU (2000):**  
*‘Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices’.*

**Articles 151 and 153 of the TFEU** state that EU should support and complement the activities of the Member States in this field and may to that end adopt minimum directives.

# Article 153 TFEU

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In particular, **article 153**, which is the proper legal base introduced in 1997 with the Treaty of Amsterdam, entrusts the Parliament and the Council to adopt:

- Measures designed to **encourage cooperation** between Member States;
- **Directives** setting out **minimum requirements** for gradual implementation.

In this field the Ordinary legislative procedure is applicable with prior consultation of the European Economic and Social Committee and the Committee of Regions.



# EU LEGISLATION on employee involvement

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There is a **wide but disjointed *acquis*** concerning employee involvement.

A **first group** of directives concerns employee involvement in relation to certain situations, which are often an effect of the internal market. In particular this group of directives deals with the right of workers to be informed and consulted at national level on a number of **important issues relating to a company's economic performance, financial soundness and future development plans which could affect employment:**

- Directive 75/129/EEC on **collective redundancies**, as amended by Council Directives 92/56/EEC and 98/59/EC, under which employers must enter into negotiations with workers in the event of mass redundancy, with a view to identifying ways and means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences. The Directive also provides for a notification procedure for public authorities;
- Directive 2001/23/EC on the safeguarding of employees' rights in the event of **transfers of undertakings**, businesses or parts of undertakings or businesses (consolidating Council Directives 77/187/EEC and 98/50/EC), under which workers must be informed of the reasons for such a transfer and its consequences; it also contains material provisions on safeguarding employees' jobs and rights in the event of transfer;

# EU LEGISLATION on employee involvement

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A **second group** of directives addresses different issues **related to cross-border companies** foreseeing form of workers representations.

- Directive on the establishment of EWCs (1994/45/EC + 2009/38/EC): The directive on European Work Councils (EWCs) regulates employee involvement in community – scale undertakings or groups of undertakings. It provides for the establishment of **permanent employee representation bodies at transnational level for the purposes of I&C** on transnational matters. The directive does not regulate participation.
- Directive 2004/25/EC on takeover bids
- Directive 2011/35/EU on mergers of public limited companies

# EU LEGISLATION on employee involvement

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A **third group** of directives lays down rules applicable to **situations with a transnational component**, granting partial rights to **participation in the corporate governance**:

- Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees: the Statute for a European public limited liability company, adopted by Council Regulation (EC) No 2157/2001, is complemented by a directive establishing **rules on the participation of workers in decisions concerning the strategic development of the company**. Not only are employees informed and consulted through a body similar to a European Works Council, but provision is made for board-level employee participation where this form of participation was applied in the national founding companies, as is the case in the national systems of many Member States (the so-called ‘before-and-after’ principle);
- Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society (Council Regulation (EC) No 1435/2003) with regard to the involvement of employees: this directive sets **rules on the mechanisms to be provided for in European Cooperative Societies (ECSs) in order to ensure that employees’ representatives can exercise influence on the running of the undertaking**. Cooperatives have a specific governance model based on joint ownership, democratic participation and control by members;
- Directive 2005/56/EC on cross-border mergers of limited liability companies also contains rules on determining the employee participation regime to be applied to the merged company.



# Private initiatives

## Transnational company agreements

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Recent developments of the practice have seen the conclusion, between companies and workers' representatives, of **transnational company agreements (TCAs)**. This phenomenon is appending against the background of the growing international dimension of company organisation and the increasing emphasis on corporate social responsibility, including new approaches to dialogue between management and employees.

In its resolution of 12 September 2013 on cross-border collective bargaining and transnational social dialogue, the European Parliament proposes that the Commission gives consideration to the need, in the interests of greater legal security and transparency, for an optional European legal framework for European TCAs, which would include clauses designed to ensure that the conclusion of a TCA does not result in an evasion of national collective agreements.



# EU Framework – core legislation

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The core of the EU framework can be found in the **Directive 2002/14**, which sets minimum principles, definitions and arrangements for information and consultation of employees at the enterprise level within each country.

Its main objective was to **consolidate a general and permanent right to I&C of employees** at national undertaking/establishment level.

To avoid undue burdens on small and medium-sized enterprises, the Directive applies only to undertakings employing at least 50 employees, or to establishments employing at least 20 employees, according to the choice made by the Member State.

Timely information and consultation are key to meeting the globalisation challenge through the development of new forms of work organisation.

Limitations: lack of effectiveness, thresholds, no dissuasive sanctions

# Fragmented legislation and practice:

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- No homogeneous definitions of information and consultation
- These pieces of EU legislation mostly presuppose existing national systems of employee involvement.
- Difficult linkage among various instances of I&C in different branches of EU law
- Difficult linkage between national and EU law
- Legal gaps in national law



## Strategic priorities

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It is a priority to Promote a **coherent and sustainable model of employee involvement** in the EU legislation, especially in EU company law, favouring an upward harmonisation and enhancing European minimum standards for workers.  
involvement



# Thank You!

