

Lesson 4



**GROWTH THROUGH
TRANSFORMATIONAL CHANGES**
in the industrial sector influenced by the EU Green Deal and digitalization and
oactive participation of workers in restructuring the changing working environment

Right to information, consultation and participation



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Good morning. Today we will focus on the basic rights of employees to access information, to be consulted, and the right to participate in company decision-making – known as the right of participation.

It is worth pointing out that in the case of information and consultation, we are talking about the same standards for employees across the European Union. This right is enshrined in directives adopted by all member states. However, in the case of the right of participation, countries in the European Union are free to adopt solutions and powers.

But let us start from the beginning.

European Union legislation provides workers with the right to information, consultation, and participation, which establishes mechanisms for social dialogue to prevent collective labour disputes. These disputes may, for example, concern pay levels, working conditions, collective redundancies, or other cases of restructuring.

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 Community**¹ defines **'information'** as 'means transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it' ((Article 2 (f)). **'Consultation'** is defined as 'means the exchange of views and establishment of dialogue between the employees' representatives and the employer' (Article 2 (g)). The directive introduces a requirement for information and consultation within the company with employee representatives and creates a legal basis for the establishment of a **works council**. These provisions apply to companies with at least fifty employees in any Member State. The Directive leaves flexibility to the Member States regarding the practical arrangements, which can be made in agreement with the social partners. However, they must comply with the principles expressed in Article 1. 1. Namely: '3.) When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, considering the interests both undertaking or establishment and of the employees.'

The information and consultation procedures include:

- information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
- information and consultation on the situation, structure, and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, where there is a threat to employment;
- information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

1 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0014>

The right to information and consultation also applies to employees of transnational undertakings operating in the European Union. Directive 94/45/EC on the establishment of a European Works Council or a procedure for informing and consulting employees in Community-scale undertakings or Community-scale groups of undertakings² and the subsequent updated Directive 2009/38/EC³ laid the foundations for the establishment of **European Works Councils (EWCs)**. These are permanent employee representation bodies that facilitate information and consultation processes.

The main motivation behind the establishment of such mechanism was the need for workers to respond to the developing processes of globalisation of companies and greater integration in the European Union, also in terms of social dialogue. With the increased internationalisation of companies, there was a need for an appropriate level of social dialogue to correspond to decision-making bodies to balance the positions of workers and employers. European Works Councils introduced a new European level of industrial relations. EWCs can be set up in transnational companies with establishments in at least two Member States. Such companies must meet the following criteria:

- they employ at least 1,000 workers in the Member States; and
- have at least 150 employees in each of at least two Member States.

Directive 94/45/EC was amended after 15 years in force. The new Directive 2009/38/EC (recast) strengthened the role and rights of EWCs in several areas, in particular:

- strengthened and more clearly defined EWC information and consultation rights;
- distinguished more clearly between information and consultation within the EWC and processes carried out by national bodies, and thus introduced a new definition of 'transnational matters' for which the EWC is responsible;
- strengthened the role of trade unions;
- also gave EWC members the right to participate in training without loss of pay due to absence from work.

In 2023, the European Parliament adopted an own-initiative legislative resolution calling on the Commission to strengthen the role and capacity of EWCs. The main changes proposed by the Commission include the following:

A. Giving equal rights to workers in multinational enterprises operating in the European Economic Area to request the establishment of a new EWC, meaning that exemptions from the current Directive will be removed, allowing more than five million workers in 320 multinational enterprises with pre-directive agreements to request the establishment of an EWC.

B. Clarifying the definition of transnational cases: ensuring that EWCs complement and do not overlap with the work of national information and consultation bodies. A clear definition is crucial to determine when EWCs need to be consulted and informed.

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31994L0045>

³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0038>

C. Another issue is to ensure that employees of multinational companies are consulted on issues affecting them in a timely and meaningful way.

D. Making sure that EWCs have the necessary capacity to do their work: EWC agreements must specify the financial and material resources allocated, for example regarding experts, legal costs, and training.

E. The strengthening of the gender balance in EWCs is also to be an important change.

F. The last issue concerns improving access to legal remedies.

The Commission's proposal to amend the EWC Directive will be discussed by the European Parliament and the Member States. Once it is adopted, the Member States will have one year to incorporate the directive into national law. The new rules will take effect two years later. During this two-year period, parties will be able to adapt their EWC agreements to the revised requirements.

Employees can also act, which is called **employee participation** and involves greater employee involvement and responsibility. Employee participation can be direct, in which case it involves direct bargaining practices, usually on an individual basis, between employees and the employer. There is also mediated participation through democratically elected employee representatives. In EU countries, workers can usually encounter the following forms of representation:

- trade union (there can be more than one union in a given workplace);
- ad hoc representations - created to initiate a dialogue to resolve an issue of importance at the time. They are usually established in place of a trade union if such an organisation has not already been established in a company;
- board level employee representation (BLER) - this is where I would like to focus more. In most EU countries, employees have the right to elect their representatives to statutory bodies (supervisory board, management board) in selected companies (usually state-owned companies or other large companies or in the public sector).

Board level employee representation is a mechanism for employee participation and a crucial element of industrial democracy. According to Aline Conchon (2011), employee representation on boards of directors and supervisory boards 'refers to the phenomenon in which employees elect or appoint their representatives to the statutory bodies of companies'. Elected (or appointed) employee representatives have the same responsibilities as other members of the company's statutory bodies and, at the same time, represent employees' interests (Munkholm, 2018).

In contrast to the right to information and consultation, the regulation of employee participation in management is left to the discretion of the Member States, and there is therefore no legal framework to set specific standards in this regard in individual countries. As a result, a wide variety of adopted solutions in this regard can be found in EU countries. The mechanism is in place in nineteen of the thirty-one countries of the European Economic Area, of which fourteen enjoy extensive regulation and five only limited participation rights. Each country has developed a specific system, and board-level representation is always embedded in the broad-

er context of the national industrial relations system (see Conchon, 2011 and Munkholm, 2018 for more details on differences at national level).

European law protects the right to information, consultation, and participation also in the case of restructuring of multinational companies (Owczarek, 2021). For example, Directive 2001/86/EC - which supplements the European Company Statute - ensures employee involvement in European companies by informing and consulting employees. It even protects participation at board level when such participation already exists in one of the companies involved in the European company formation process. Furthermore, Directive 2005/56/EC on cross-border mergers contains provisions ensuring that information, consultation and participation mechanisms in the merging companies are maintained at a level no worse than before European law protects the right to information, consultation and participation also in the case of restructuring of multinational companies (Owczarek, 2021). For example, Directive 2001/86/EC - which supplements the European Company Statute - ensures employee involvement in European companies by informing and consulting employees. It even protects participation at board level when such participation already exists in one of the companies involved in the European company formation process. Furthermore, Directive 2005/56/EC on cross-border mergers contains provisions ensuring that information, the merger. These employee rights are reiterated in the subsequent EU Directive 2017/1132/EC relating to certain aspects of company law. In addition, Directive 2019/2121 amending Directive (EU) 2017/1132 in relation to cross-border conversions, mergers and divisions extended the scope of regulated restructuring from mergers also to divisions and conversions of multinational corporations.

EU legislation on information and consultation (and related matters)

Council Directive 94/45/EC of 22 September 1994 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 <https://eur-lex.europa.eu/eli/dir/1994/45/oj>

Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0086>

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 Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0014>

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0056>

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 employees (Recast) <https://eur-lex.europa.eu/eli/dir/2009/38/oj>

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex-%3A32017L1132>

Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L2121>

