

IMPLEMENTING WORKERS' PARTICIPATION DIRECTIVE

1. Legal framework for the participation of workers in decision making processes

The participation of workers in management or workers' rights and their role in case of transfer of undertakings are regulated by two directives:

- Directive 2002/14/ES of the European Parliament and of the Council dated 11 March 2002 on the determination of the general framework for informing and consulting employees in the European community (OJ L 80, 23.3.2002, page 29-34);
- The Council Directive 2001/23/ES of 12.3.2001 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 (OJ L 82, 22.3.2001, page 16-20).

In order to regulate the rights of employees regarding participation in management and their representatives, **the Directive 2002/14/ES is of vital importance** because it imposes member states to establish legal frameworks which allow workers' collective enforcements of their interests in the company. When establishing the framework in regard, the member states need to consider the following goals:

- Encouragement of mutual trust;
- a flexible working organisation;
- the increase in awareness on the needs for flexibility;
- trainings for the purpose of employability;
- the strengthening of competitiveness of the company;
- the correction of the negative development and its consequences through training and development of skills;
- the improvement of employability and flexibility of workers; and
- the reciprocity of (material) rights and (material) obligations.

When considering the legal aspects of the participation of workers in management, it is important to pursue the purpose and rights of the addressee or the whole legal institute: the employee. However, participation of workers in management is not only meant for the protection and inclusion of interests of employees, but also for working for the benefit of the company or employer; through the strengthening of competition, both directly as well as through indirect actions, and a much more flexible working organisation.



2. A must for EU member states

Every member state shall implement legal framework that enables employees to elect or appoint their representatives and to establish legal framework for exchange of information and consultation on issues related to employee - possible or actual, present or future - employment status.

Thus, the EU member state is obliged to implement the Directive and establish the mechanisms for exercising the employee's right to collectively participate in the decision making process.

There is no obligation for employees or employers to establish workers' councils at company level. This is exclusively employees' right. On the other side, the employer is obliged to refrain from any actions towards or against the establishment of workers' councils.

3. Independent employee representatives are of key importance

Despite the positive traditional role of trade unions in defending employees' rights, it must be emphasized that by the definition, trade unions are organizations of their members. By being a member organization, trade unions represent and exercise the interests of their members and not necessarily the interests of all employees. They represent the collective employment relationship interests, such as wages, annual leave, working hours, some aspects of health and safety at work etc.

The idea of workers' councils is that all employees, regardless of the trade union membership, must be given an opportunity to participate in establishing their representative body and influencing company's decisions through employee participation in management. Workers' councils represent all employees in the company in the process of adopting managerial decisions such as company status changes, transfer of undertaking, changes in company's activities, employment policy, wage system policy etc.

Workers' council is not a supplement for trade unions at any level, but an addition to the workers' collective right to organise. Workers' participation does not mean that workers in fact take managerial decisions, however, the right to be informed and to be consulted on issues concerning all workers is an important aspect of managing changes in the company. Hence, workers have an opportunity to obtain information on foreseen changes as well as to share their opinion and contribute to better and more balanced measures and decision making.

