



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

## **Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision-making process**

*EU directives and policies on employment and employee involvement in business decision-making.; tools to influence the decision-making process and the active participation of companies in the railway sector*

The challenges faced by the European economy and the development of industrial relations, as well as the evolution of multinational company structures generated an increased need for a common legal framework aiming to set the standards of employee involvement in decision-making and establish clear procedures to be implemented in all EU member states and candidate countries.

The employee involvement in the decision-making process of companies is a priority topic in the EU legal framework. When analyzing the legal aspects of the worker participation, we need to refer to several European Directives currently in force, in order to set the complete imagine of legislative priority and perspectives for implementation:

- ✓ [Directive 2002/14/EC](#)
- ✓ [The Transfer of Undertakings Directive](#);
- ✓ [The Collective Redundancies Directive](#);
- ✓ [2018/957 amending Directive 96/71/EC](#)

### **Directive 2002/14/EC**

The Directive 2002/14/EC is establishing a general framework for informing and consulting the employees in the European Community.

Object and principles:

1. The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

2. The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness.

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, taking into account the interests both of the undertaking or establishment and of the employees.

As part of its 2010 Work Programme, the Commission has started an ex-post evaluation of the operation and effects of three Directives in the area of information and consultation of workers. The three Directives under scrutiny have been: 98/59/EC ([collective redundancies](#)); 2001/23/EC ([transfers of undertakings](#)); and 2002/14/EC ([general framework](#)). The aim of the fitness check was to check whether these directives are 'fit for purpose' in the context of the Commission's policy of better / smart regulation.

EU Commission (2011) [Information note](#) 'Fitness check' on EU acts in the area of Information and Consultation of Workers

### **The Transfer of Undertakings Directive**

Directive 2001/23/EC of 12 March 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.

The Directive was adopted '*[i]n the interests of clarity and rationality*' and did not generate a structural change or the scope of the original Transfer of undertakings directive. Its application is set for when the undertaking to be transferred is situated within the 'territorial scope of the Treaty'.

A condition for the applicability of the Directive is that there is a transfer of employer. The ECJ stated in *Allen v. Amalgamated Construction*<sup>4</sup> that there can be a Directive-relevant transfer when there is:

*a change in the natural or legal person responsible for carrying out the business, who by virtue of this acquires the obligations of an employer vis-à-vis*



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

*employees of the undertaking, regardless of whether or not ownership is transferred. For instance, if a person acquires the stock of a company but the employer remains the same, the Directive does not become applicable.*

More information: <https://www.worker-participation.eu/EU-Framework-for-ICP/Information-and-Consultation/Transfers-of-undertakings-Directive-2001-23-EC>

Scope and definitions:

1. (a) This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.  
(b) Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity, which retains its identity, meaning an organised grouping of resources, which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.  
(c) This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.
2. This Directive shall apply where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty.

### **The Collective Redundancies Directive**

Council Directive 98/59/EC of 20 July 1998, on the approximation of the laws of the Member States relating to collective redundancies.

For the purposes of this Directive: 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is either, over a period of 30 days:

- at least 10 in establishments normally employing more than 20 and less than 100 workers;



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

- at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers;
- at least 30 in establishments normally employing 300 workers or more, or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.

### **Directive 2018/957 amending Directive 96/71/EC**

Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

The directive has been published on July 9, 2018, entered into force on July 29, 2018 and has to be implemented in national regulation on July 30, 2020 at the latest, date by which Directive 96/71/EC remains applicable in the version prior to the amendments made by the new Directive. At the same time, according to the settled case law of the Court of Justice of the European Union, Member States are required during the transposition period of the Revision Directive (i.e. 30.06.2020) to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive.

**The amendment process** involved active negotiations and strong debates among the Member States.

The proposal of the European Commission for reforming some rules on posting of workers within the European Union, by updating Directive 96/71/EC, originally adopted in 1996, has been presented on 8 March 2016.

Several Member States showed concerns and the 'Yellow Card' option was activated, forcing the Commission to re-assess its proposal.

A [Communication was published on 20 July 2016](#), which concluded that the draft law did not constitute a breach of the subsidiarity principle. The agreement has been reached in the Council of the European Union on 23 October 2017 and the European Parliament's plenary session approved its negotiating position two days later. An informal agreement between the institutions was reached on 15 March 2018. The Parliament formally endorsed the compromise draft law on 29 May, followed by the Council on 21 June. The new Directive was adopted on 28 June.

The main amendments brought refer to:



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

- the posted workers must, during the posting period, benefit from the working and employment conditions laid down in the host Member State by means of both statutory and administrative provisions as well as, where applicable, by collective agreements or arbitration awards which have been declared universally applicable;
- the employers have the obligation to grant/ensure posted workers:

-the remuneration (not just the minimum wage) established in the host Member State by means of both statutory and administrative provisions and, where applicable, by collective agreements or arbitration awards which have been declared universally applicable. The concept of remuneration shall be determined by the national law and/or practice of the host Member State and includes all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable.

-the posting allowance shall be presumed to be granted as reimbursement of expenditure (and therefore cannot be taken into account when determining the remuneration).

-the accommodation conditions, as regulated in the host Member State by statutory and administrative provisions and, where applicable, by collective agreements or arbitration awards, which have been declared universally applicable.

- the level of reimbursement of expenditure to cover travel, board and lodging expenses, respectively of posting allowances for posted workers who are temporarily sent from their regular place of work in the host Member State to another place of work, will be the one set by the legislation of the host Member State;
- the principle of equal treatment between temporary agency workers posted by a temporary employment agency and workers recruited directly by the user undertaking located in the territory of the host Member State.

-the temporary agency must guarantee temporary posted workers, during their posting, the working conditions applicable in the territory of the host Member States in accordance with Article 5 of Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work



Employees and employers from railway sector in joint action to strengthen the partnership and trust among each other during companies' decision making process



WITH SUPPORT FROM THE EUROPEAN UNION

-the rule apply where, in the context of the transnational provision of services, temporary workers are sent to work temporarily in the territory of a Member State other than that in whose territory they usually perform their mission;

- the obligation for Member States to publish on the single national website the information on working and employment conditions applicable in their territory (including related to the elements of remuneration, without undue delay and in a transparent manner).

-failing to comply with the obligation will be considered when establishing the sanctions applicable to infringements of acts adopted by the Member States for the purpose of transposing Directive 96/71/EC, as amended and supplemented

- the freedom to provide services within the territory of a Member State, of the fact that Member States may, subject to the principle of equal treatment, impose working and employment conditions on matters other than those covered by Directive 96/71/EC, only insofar as it concerns public policy provisions;
- the employers have the obligation to observe, in relation with posted workers, the working and employment conditions applicable in the host Member State where the posting exceeds 12 months (18 months by exception), except for the provisions concerning (i) the procedures, formalities and conditions for the conclusion and termination of employment agreements, including non-compete clauses, respectively (ii) supplementary occupational retirement pension schemes;
- the rule according to which, where a Member State finds that an undertaking is improperly or fraudulently creating the impression that a worker is covered by the provisions of Directive 96/71/CE, the concerned Member State will take all necessary measures to ensure that the worker will benefit from the relevant law and practices.