

**JOINT DECLARATION IN FAVOUR OF THE IMPLEMENTATION OF
DIRECTIVE 2009/38/EC 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

Date: 12 April 2011

of:

CONFINDUSTRIA, ABI, ANIA and CONFCOMMERCIO – Imprese per l'Italia

and

CGIL, CISL, UIL

Background

With this joint declaration the parties intend to submit to the Italian Government and Parliament (in keeping with the rules laid out by the Treaty and by Directive 2009/38/EC), the social parties' position on the implementation of the provisions of this Directive, by drafting a proposed piece of implementing legislation, taking full advantage of social dialogue and collective autonomy.

The signatory parties to the present declaration therefore hope that the Government and Parliament will draw up a legislative provision which conforms to the text agreed by the parties whilst remaining in line with the objectives of the same Directive.

It would thus be desirable that implementation of the legislative initiative of Directive 2009/38/EC includes consultation with the aforementioned parties, so that they may express their willingness to negotiate.

With regard to this, the parties would like to emphasise that within the context of a market that is increasingly open to international competition and technical and productive innovation, the objective of Directive 2009/38/EC is to develop – via the involvement of employees – a constructive attitude towards change based on effective social dialogue.

In signing the present joint declaration, then, the parties – with the intention of implementing Directive 2009/38/EC – confirm that they share the goal of improving the dissemination of information and consultation on transnational issues. They also support the regulation of methods of co-ordinating these with national procedures, giving a major role to agreements at the level of undertakings, in full accordance with the principles jointly expressed by the European social parties in their letter to the Director General of the European Commission's DG for Employment dated 14 June 2010.

The parties acknowledge that the sharing of information and consultation which take place within the European Works Councils are elements which are successful in promptly addressing adaptation to new conditions imposed by the globalisation of the

economy, because they foster a climate of reciprocal trust and respect between company and employees.

Ultimately, the European Works Councils can contribute to creating a valuable comparison between different industrial practices present in the countries of the EU, reinforcing the development of a shared approach to the challenges faced by undertakings and employees in the ever faster and more intense process of internationalisation.

On the basis of the above, the parties have agreed the following implementing text.

Read, approved and signed by:

CONFINDUSTRIA

ABI

ANIA

CONFCOMMERCIO – Imprese per l'Italia

CGIL

CISL

UIL

Amendments to Legislative Decree 74/2002

Article 1

Add the following sentence to paragraph 2:

"The practical arrangements for information and consultation shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively."

Article 1

Insert paragraph 6 after paragraph 5:

"6. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence of the European Works Council and the scope of the information and consultation procedure for workers governed by this Legislative Decree shall be limited to transnational issues."

Article 1

Insert paragraph 7 after paragraph 6:

"7. Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States."

Article 2(1)

Replace subparagraph g) with the following:

"g) "information" means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;"

Article 2(1)

Replace subparagraph h) with the following:

"h) "consultation" means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;"

Article 2(1)

Replace subparagraph i) with the following:

"j) "European Works Council" means the council established in accordance with Article 1(2), Article 9(2)(b) and Article 9(6) or the requirements of Article 16, and composed of employees of the Community-scale undertaking or Community-scale group of undertakings within the meaning of Article 9(2)(a)for the purpose of informing and consulting employees;"

Article 2(1)

Insert the following subparagraph l) after subparagraph i):

"l) 'special negotiating body' means the body established in accordance with Article 5 to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1(2)."

Article 4

Insert paragraph 4 after paragraph 3:

"4. The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of the second sentence of paragraph 2 of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Legislative Decree the information required for commencing the negotiations referred to in Article 5 et seq., and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(b) and (d)."

Article 7

Replace paragraphs 1 and 2 with the following:

"1. The members of the special negotiating body shall be appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together."

Article 7

Replace paragraph 3 with the following:

"2. The central management or manager referred to in Article 4(1) and the local managements shall be informed of the composition of the special negotiating body and of the start of negotiations by trade union organisations under Article 5(1). The central management or manager referred to in Article 4(1) shall inform the employers' organisations and Community-level trade union organisations of the composition of the special negotiating body and of the start of negotiations."

Article 8

Insert paragraph 2(a) after paragraph 2:

'2(a) Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.'

Article 8

Replace paragraph 3 with the following:

"3. For the purpose of negotiation, the special negotiating body may be assisted by experts of its choice including representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.'

Article 9(1)

Replace the word 'constructive' with 'cooperative'

Article 9(2)

Replace subparagraph b) with the following:

'b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;'

Article 9(2)

Replace subparagraph e) with the following:

'e) the competence and subjects of the information and consultation procedure of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in compliance with the principles set out in Article 1(6);'

Article 9(2)

Replace subparagraph f) with the following:

'f) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes;'

Article 9(2)

Insert the following subparagraph h) after subparagraph g):

'h) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council.'

Article 9(3)

In the second sentence, replace the phrase *'to discuss the information conveyed to them'* with *'also to discuss the information conveyed to them'*.

Article 12

Replace the article heading with the following: *'Operation of the European Works Council and the information and consultation procedure for workers'*.

Article 12(1)

Replace the word *'collaboration'* with *'cooperation'*.

Article 12(2)

Replace the word *'collaboration'* with *'cooperation'*.

Article 13

Replace the article heading with the following: *'Protection and role of employees' representatives'*.

Article 13

Replace paragraph 1 with the following:

"1. The members of the European Works Council, under Article 9(2)(e), shall have the means required to apply the rights arising from this Legislative Decree to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings. In addition, the members of the special negotiating body, employees of the Community-scale undertaking or Community-scale group of undertakings, members of the European Works Council, and employees' representatives in the framework of an information and consultation procedure, have the right to paid time off, if they are employees of the Italian body, for performance of their tasks, of at least eight hours per quarter, supplemented by agreement up to the extent established by agreements that have set out more favourable conditions compared with the provisions of the legislation in force. In addition, the provisions contained in Articles 22 and 24 of Law No 300 of 20 May 1970 are applied to the above.

Article 13

Insert paragraph 3 after paragraph 2:

"3. 'Without prejudice to Article 11, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Legislative Decree.'

Article 13

Insert paragraph 4 after paragraph 3:

"4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages. The content of the training, considering the agreements in place, is decided jointly by the central management and the select committee or, where no such committee exists, the European Works Council ."

Article 14

Replace the article with the following:

"Article 14. Relationship with other Community and national provisions -1. *Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(6).*

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 9. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

3. Where no such arrangements have been defined by agreement under Article 9 and where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged, the information and coordination procedures must take place in a coordinated manner in the European Works Council as well as in the national employee representation bodies .

4. This Decree is without prejudice to the rules under Article 47 of Law No 428 of 29 December 1990 and Article 24 of Law No 223 of 23 July 1991 as well as the information and consultation rights governed by law and any collective contracts and agreements in force also pursuant to Legislative Decree No 25 of 6 February 2007.

5. Implementation of this Legislative Decree shall not be sufficient grounds for any regression in relation to the situation which already prevails and in relation to the general level of protection of workers in the areas to which the Directive applies.

Article 15

Replace the article with the following:

"Article 15. Adaptation - 1. *Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100*

employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Articles 5, 6 and 7.

3. During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

Article 15(a).

Insert the following article 15(a) after article 15:

'Article 15(a). Agreements in force - 1. *Without prejudice to Article 15, the obligations arising from this Legislative Decree shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, either a) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees were concluded by 22 September 1996, with the trade union organisations under Article 5(1)(e) and, if they had expired, were extended or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings; or b) an agreement concluded pursuant to the former version of this Decree as published in the Italian Official Gazette No 96 of 24 April 2002 and signed or revised between 5 June 2009 and 5 June 2011.*

The national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings referred to in point (b).

2. Upon expiry of the agreements referred to in paragraph 1, the parties to those agreements may decide jointly to renew or revise them. Where this is not the case, the provisions of this Legislative Decree shall apply.

Article 16(1)

Remove the words:

'and in the cases provided for in Article 15(3)'.

Article 16

Replace paragraph 2 with the following:

"2. The competence of the European Works Council shall be determined in accordance with Article 1(6). The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies. The

consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express. The provisions of Article 1(2) and (11) apply to the information and consultation procedure."

Article 16

Replace paragraphs 4 and 5 with the following:

"4. The members of the European Works Council shall be appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together."

Article 16

Replace paragraph 6 with the following:

"5. To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis. It shall adopt its own rules of procedure."

Article 16(8)

Replace the words '*within the limits*' with '*in compliance*'.

Article 16(9)

Repeal paragraph 9

Article 16(10)

After the words '*exceptional circumstances*' add '*or decisions affecting*'.

Article 16(11)

Replace the words "*at the end of the meeting or within seven days*" with "*within a period decided jointly at the meeting by the central management and the select committee or, where no such committee exists, the European Works Council. If this is not jointly specified, an opinion must be formulated within seven days*".

Article 16(13)

Repeal paragraph 13

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