

AmCham EU's position on the consolidation of EU legislation on worker information and consultation

Recasting of directives is unnecessary, undesirable and untimely

Executive summary

AmCham EU welcomes the European Commission's Regulatory Fitness and Performance Programme (REFIT) and its stated intentions of reducing regulatory burden and increasing competitiveness. However, given the focus on reducing regulatory burden and increasing competitiveness in Europe, we find little or no rationale for recasting the three information and consultation directives which are on transfers of undertakings, collective redundancies and a general framework for information and consultation of workers.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

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The American Chamber of Commerce to the EU (AmCham EU) welcomes the European Commission's Regulatory Fitness and Performance Programme (REFIT) and its stated intentions of reducing regulatory burden and increasing competitiveness. However, given the focus on reducing regulatory burden and increasing competitiveness in Europe, we find little or no rationale for recasting the three information and consultation directives which are on transfers of undertakings, collective redundancies and a general framework for information and consultation of workers.

The three directives have already been found fit for purpose, with both the Commission staff working document and the recent social partner consultation document affirming that, 'There is no evidence of any duplication or contradiction resulting in problems in [the directives'] practical implementation.'¹

The transfer of undertakings and collective redundancy directives have been in place for the better part of fifty years and have already been the recipient of multiple reviews and updates.² They have created predictability and legal certainty with regards to the rights of employees in specific cases, which are clear and comprehensible for business.

The requirements involved in each directive and the audiences to which the consultation is addressed are very different. Scope, ex-post or ex-ante effect of consultation, stakeholders and thresholds for application all differ, in addition to definitions of information and consultation. The experiences of our member companies would refute the claim from the Commission that harmonising definitions of information and consultation would increase legal clarity. Indeed, we would underline that these differences relate to the specific circumstances that each directive addresses. This neither makes them inconsistent with one another, nor does it imply any less protection of workers in practice.

The third directive, the Framework on Information and Consultation, is both more recent in application and more general in effect. Implementation has been inconsistent at best and, in the Commission's own analysis, 'A large number of the establishments covered by the directives do not have information and consultation bodies.'³ The fundamental challenge facing information and consultation is not to be found in definitions or other technical elements of the directives themselves, but rather on raising awareness and sharing best practices.

Any harmonisation of information and consultation definitions toward that of either the European Works Council or the European Company definitions would fundamentally and negatively impact the pace of business change in Europe, further eroding competitiveness. Harmonisation would bring about additional and unjustified restrictions on management prerogatives to take and implement decisions in a timely fashion.

The Commission argues that harmonisation would bring 'consistency and coherence'⁴ but we firmly believe it would apply definitions to national-level information and consultation, which, while appropriate in the environment of a European Works Council, would not be fit for purpose in national processes. The confusion, which would be created with regards to the scheduling of consultative activities (European and national), as well as the content of that consultation (on the intention or the effects of change), would undermine rather than enhance legal certainty for business.

The Commission has asked the social partners whether the three directives should be revised or recast and, if so, what scope would be applied to any revision or recasting. It is the firm view of AmCham EU that such a review is unnecessary, undesirable and untimely.

1 Consultation Document C(2015) 2303 final; Staff Working Document SWD(2013) 293 final

2 Collective redundancies directives amended in 1992 and consolidated in 1998; Transfers of undertakings directive amended in 1998 and consolidated in 2001

3 Staff Working Document SWD(2013) 293 final

4 Consultation Document C(2015) 2303 final