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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**Report on the implementation by Member States of Directive 2009/38/EC 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)**

Submitted by the Department of Business, Energy and Industrial Strategy on 8th
June 2018

SUBJECT MATTER

1. This report reviews the implementation by Member States of the Recast Directive 2009/38/EC of the Establishment of a European Works Council.
2. A European Works Council can be set up to inform and consult employees on transnational matters in multinational companies that have at least 1000 employees in the EEA and at least 150 employees in at least two Member States.
3. The European Works Council Directive was first adopted in 1994. It was extended to the UK in 1997 by a further Directive, and then implemented through '*The Transnational Information and Consultation of Employees Regulations 1999*'.
4. 'Directive 2009/38/EC' was a recast Directive, finalised in June 2009 with a transposition deadline of two years later. The Directive had the following objectives:
 - Ensure employees' transnational and consulting rights are respected;
 - Encourage the creation of new European Works Councils;
 - Resolve problems in the practical application of the original Directive 94/45/EC;
 - Remedy the lack of legal certainty;
 - Ensure better links with other EU legislation on informing and consulting employees.

5. *'Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertaking and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)'* was subject to public consultation in the UK in autumn 2008 and winter 2009/10, before it was finalised. The Directive was transposed in March 2010 through the *'Transnational Information and Consultation of Employees (Amendment) Regulations 2010'*, which mostly came into force in June 2011.
6. The report evaluated the relevance, coherence, efficiency and EU added value of the Recast Directive. The report focuses on the changes made in the Recast Directive and the effects on:
 - the creation of European Works Councils;
 - the effectiveness of employees' transnational information and consultation rights; and
 - improvements to the legal framework.
7. Following the evaluation, the European Commission intends to
 - create and share a practical handbook for European Works Councils' practitioners;
 - provide funding to social partners to support the implementation and effectiveness of European Works Councils; and
 - ensure the full transposition of key provisions of the Recast Directive in Member States.

SCRUTINY HISTORY

8. The original European Works Council proposal was published in 1994, under the title *'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'*.
9. An Explanatory Memorandum on the Recast Directive - *'Council Directive on the establishment of European Works Council or a procedure in Community-scale undertakings and Community-scale group of undertakings for the purposes of informing and consulting employees'* – was submitted by the Department of Business, Innovation and Skills on 23 July 2008. It was cleared by the House of Lords European Union Committee, and by the House of Commons European Scrutiny Committee as politically important.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for Business, Energy and Industrial Strategy leads on European Single Market and Labour Market reform, including employee consultation and information rights.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The Devolved Administrations have been consulted in the preparation of this EM but have not responded with any concerns.

LEGAL AND PROCEDURAL ISSUES

12. This is not applicable as this document is only a report of Directive 2009/38/EC.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

13. This report applied to the EEA as the European Works Council Directive applies to the EEA.

SUBSIDIARITY

14. This report and the proposed policy response at EU level do not change the principles of subsidiarity previously laid out in Directive 2009/38/EC.
15. The European Works Councils have an EU transnational dimension. Only an EU legal act, transposed into national legislation, can regulate the issue of information and consultation procedures for workers in transnational companies.

POLICY IMPLICATIONS (including exit implications where appropriate)

16. The policy implications of this report are minimal, as the European Commission will undertake the majority of the tasks. These include the creation and sharing of a practical handbook and providing funding to social partners.
17. The European Commission also aims to ensure the full transposition of the Recast Directive in Member States. Following two public consultations, the UK transposed and implemented Directive 2009/38/EC through the '*Transnational Information and Consultation of Employees (Amendment) Regulations 2010*', which came into force in June 2011.
18. The UK published three impact assessment assessing the implementation of the recast European Works Council Directive, including an assessment on the draft regulations.

CONSULTATION

19. No consultation is required as this is as this document is just a report on Directive 2009/38/EC.

IMPACT ASSESSMENT

20. An Impact Assessment has not been produced as this document is a report on the implementation of the Directive. The measures proposed in the report will be carried out by the European Commission and will require the direct involvement of the UK.

FINANCIAL IMPLICATIONS

21. The report does not contain relevant information on the financial implications of the proposed measures to be undertaken by the European Commission. There are no foreseen financial implications for the UK.

TIMETABLE

22. This will likely be adopted during the Austrian Presidency.

A handwritten signature in black ink, consisting of the name 'Andrew' followed by a stylized monogram 'AGR'.

Andrew Griffiths MP

Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility