

SUMMARY

2016/48 Establishment of the European Work Council (SK)

<p>Council Directive 94/45/EC (the ‘Directive’) determines the conditions for setting up a European Works Council or other means of providing information to employees in relation to employers that operate in more than one EU Member State. The aim of the Directive is to ensure employees are properly informed about their own employer and the company group operating in the EU, under their right to transnational information. In the case at hand, the courts needed to determine what conditions had to be met to set up a European Work Council and when a European Work Council would be established by operation of law.</p>

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Background

The setting up of a European Works Council at national law level is regulated by the Labour Code, based on the Directive and on Directive 2009/38/EC. The Labour Code provides that the right of employees and employee groups operating in EU and EEA Member States to be given transnational information and any consultation necessary in relation to this, must be

provided by means of either a European Works Council or by other means.

The Labour Code provides that for the rules to apply, the employer must operate within the EU and employ at least 1,000 employees in Member States and at least 150 employees in each of at least two Member States. If those conditions are met, the employer must either set up a European Works Council or put in place a different procedure for informing and consulting with employees to ensure their information rights are fulfilled.

The Labour Code provides that a special body is authorised to negotiate for employees in relation to the establishment of the European Works Council. The employer is responsible for creating the conditions and providing the means required to set the European Works Council up. Central management at the employer must start negotiations on the establishment of a European Works Council either on their own initiative or upon the written request of at least 100 employees in the workplaces of at least two employers.

If management refuses to commence negotiations or does not do so within six months of submission of the employees' request, a European Works Council will be established by operation of law. Similarly, if, within three years of submission of a request, there is still no agreement to set up a European Works Council or a different procedure and the special negotiating body has not ended its negotiations, a European Works Council will be established by operation of law.

The obligation on central management is to provide information to the European Works Council about the organisational structure, the economic and financial situation of the employer and the company group operating within the EU, and about the progress of its activities, production and sales.

Facts

A group of employee representatives claimed that the employer met the conditions for setting up a European Works Council under Labour Code and the Directive, because it employed at least 1,000 employees in EU Member States and at least 150 employees in each of at least two Member States. Specifically, the employer had 1,072 employees in the Czech Republic and 1,236 employees in the Slovak Republic. For that reason, the employee representatives asked the employer to establish a special negotiating body for the purpose of setting up a European Works Council. The employer failed to do so and so the employee representatives set up a European Works Council under the Labour Code and appointed its members.

The employer failed to convene a meeting of the European Works Council and to negotiate with employees and therefore, the employee representatives made a claim to the District

Court, asking it to order the employer to convene a meeting and cooperate with the European Works Council.

However, the employer argued that the conditions for convening a meeting were not met. It pointed out certain faults in the process of creating the European Works Council and in the election of its members and argued that the employee representatives had no right to bring an action, as they did not have the *locus standi* to do so (they did not prove the legal personality and thus the *locus standi* to sue).

Judgment

The District Court ruled in favour of plaintiffs. According to the Court, the conditions for establishing a European Work Council were met (at the time of submission of the request the defendant employed at least 1,000 employees within the EU and at least 150 employees in each of at least two Member States and a written request was made by at least 100 employees at two employers). Under Slovak law, a European Works Council can be established by an agreement concluded between central management and a special negotiating body or by operation of law if certain conditions set out in the Labour Code are met. It was not in dispute that a European Work Council came into being by operation of law and that the employee representatives had appointed members to a special negotiating body and announced its composition to central management. The special negotiating body also notified central management of its obligation to call a meeting of this body. The defendant did not respond to this request for over six months and so the employee representatives proceeded in accordance with the Labour Code, under which a European Work Council would be established by operation of law if central management did not commence negotiations within six months of submission of the employee representatives' request. The District Court ruled that the defendant had accepted that a European Work Council had been established by operation of law but had unlawfully refused to negotiate with its appointed members. The defendant appealed against the judgment, arguing that the conditions for the establishment of a European Work Council and the arrangement of an initial meeting were not met. The defendant claimed that the plaintiffs had not proved that the defendant had the required number of employees or that it was required to establish a European Work Council. The defendant also argued that the plaintiffs had not proved their labour relationship to the defendant. The defendant considered the legal rules relating to European Works Councils in Labour Code to be unclear and ambiguous and so it asked the District Court to request a preliminary judgment regarding the application of the Directive and of Directive 2009/38/EC from the ECJ. However, the Court rejected this request.

The Regional Court of Bratislava did not accept the defendant's objections. It stated that the

defendant had not proved its claim that it was not the employer or even the controlling employer. For these reasons, the Regional Court confirmed the judgment of the District Court.

Commentary

The judgments of both courts are interesting as they clarify what type of employer is obliged to establish a European Works Council and the purpose and aim of the Directive and the Labour Code in relation to the setting up of a European Works Council. We fully share the view taken by the courts.

The District Court stated that employment legislation for the establishment of a European Works Council and recognition of the rights of employees to transnational information in the Labour Code relate back to requirements of the Directive. The District Court also stated that if an employer refuses to commence negotiations or if agreement is not reached following negotiations, a European Works Council will be set up by operation of law, provided the conditions required under the Labour Code are met. The Labour Code requires that a European Works Council be established if there is no other agreed way of providing the requisite information to employees.

The Court argued in its judgment that the Labour Code specifies the types of employers operating within the EU and the Slovak Republic that are required to set up a European Works Council or agree another way of informing employees of transnational information.

The District Court pointed out that the dispute in the case at hand consisted of a different interpretation of the provisions of the Labour Code about setting up a European Works Council and convening its initial meeting. The Court felt that if an overly formalistic approach was taken to the appointment of members, which required proof of their labour relationship to employer, this would make it practically impossible to convene a meeting of the European Works Council and to provide the necessary information to employees about the company's activities.

The Regional Court stated that the objective of the Directive and the Labour Code was to allow to employees to obtain information and to provide a means of negotiating with them and enabling to express their views. Their right to information applied not only to their particular employer, but to the whole of the company group operating across the EU.

The Labour Code sets out which employers are obliged to provide transnational information and to offer a means of consultation. Employees working for an employer or group of employers operating within the EU and also those whose employer has a registered office in the Slovak Republic have a right to transnational information and a means of consultation.

No appeal is allowed against the Regional Court's judgment that does not have 'suspensive effect'. This means that the judgment is valid and enforceable after its delivery to the parties. It was possible to ask for a review of the judgment in front of the Supreme court but we do not know if this was done.

Subject: Work Council, establishment of the European Work Council

Parties: 1. O. a.s., 2. O. a.s., 3. O. a.s., 4. O. a.s., 5. O. a.s. – v – H. a.s.

Court: Krajský súd Bratislava (County Court Bratislava)

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