COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.11.1995
COM(95) 547 final

COMMUNICATION FROM THE COMMISSION

ON WORKER INFORMATION AND CONSULTATION

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I. INTRODUCTION

1 In the White Paper on European Social Policy (Chapter III, point A.6), the Commission states its intention to study, following the adoption of the directive on transnational information and consultation of workers in Community-scale undertakings and groups of undertakings, "its impact on the seven proposals for Council directives which concern or contain provisions concerning information and consultation of employees which are currently on the table of the Council".

In keeping with its announced attention, the Commission returned to this subject in points 4.2.3 and 4.2.4 of the Medium-term Social Action Programme:

"4.2.3 - Information and consultation of workers: the Commission is currently examining whether and to what extent the system of workers' involvement established by the information and consultation directive could help the adoption of the four amended proposals for Regulations concerning the European Company Statute, the Statute for a European Association, the Statute for a European Cooperative and the Statute for a European Mutual Society.

4.2.4. Given that little progress has been made on the information and consultation provisions of the draft "fifth" directive (Annex I), the Commission will consider the possibility of deleting those provisions from the proposal during 1995. In that case, having regard to the Parliament's opinion on the White Paper, the Commission will initiate consultations with the social partners on the advisability and possible direction of Community action in the field of information and consultation of employees in national undertakings."[1]

2 The subject of information and consultation is politically sensitive and often gives rise to heated discussions. The purpose of the present communication is not to

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[1] The above-mentioned proposals are as follows (in their most recent version): amended proposal for a Council Regulation (EEC) on the Statute for a European Company and amended proposal for a Council Directive supplementing the Statute for a European Company with regard to the involvement of employees (OJ C 176, 8.7.91); amended proposal for a Council Regulation (EEC) on the statute for a European association and amended proposal for a Council Directive supplementing the statute for a European association with regard to the involvement of employees (OJ C 236, 31.8.93, p. 1 and p. 14); amended proposal for a Council Regulation (EEC) on the statute for a European cooperative society and amended proposal for a Council Directive supplementing the statute for a European cooperative society with regard to the involvement of employees (OJ C 236, 31.8.93, p. 17 and p. 36); amended proposal for a Council Regulation (EEC) on the statute for a European mutual society, and amended proposal for a Council Directive supplementing the statute for a European mutual society with regard to the involvement of employees (OJ C 236, 31.8.93, p. 40 and p. 56); amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs (OJ C 240 of 9.9.83).

seek to re-open the debate in a controversial way but rather to attempt to take stock of the present situation and, faced with a large number of blocked proposals, to explore whether there might not be new ways of moving forward.

The Commission's wish is to put forward options for discussion. The Commission remains committed to the fundamental principles regarding the need to ensure adequate safeguards at European level for the information and consultation of employees which motivated its original proposals in this area but believes that only an innovative approach will offer a prospect of real progress.

3 Given the complexity and the sensitivity of the discussions currently under way, the Commission, therefore, considers it helpful - prior to taking any new initiatives in this area - to send to the Council, Parliament and the Economic and Social Committee this present document in order to allow for the fullest possible debate on the options set out in Part IV.

In the same spirit, the present Communication is also addressed to the social partners at European level in accordance with the third indent of point 28 of the Communication of 14 December 1993 concerning the application of the Agreement on social policy presented by the Commission to the Council and to the European Parliament[2]. Although the Commission has not yet finalised its position on which approach should be adopted, it considers the present consultation of the social partners to be that referred to in Article 3 (2) of the Agreement on Social Policy annexed to the Protocol on Social Policy annexed to the Treaty on European Union, if this route were to be taken.

II. ASSESSMENT OF COMMUNITY ACTIVITIES RELATING TO EMPLOYEE INFORMATION, CONSULTATION AND INVOLVEMENT

4 The adoption on 22 September 1994 of Council Directive 94/45/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[3] makes it possible and obligatory to take stock of Community measures in the area of employee information, consultation and involvement. In fact, the undeniable success represented by the adoption of this directive after 14 years of institutional debate and the support it has won among the social partners and the dynamics it has created between them stand in stark contrast to the lack of progress in discussions on other proposals tabled by the Commission since 1970 in this area or in the related area of the involvement of workers.

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2 COM(93) 600 final.

3 OJ No L 254 of 30.9.94, p. 64.

The Commission therefore believes that the time has come to analyse, with the Member States, the European Parliament, the Economic and Social Committee and the social partners at European level, the previous measures taken in this area, to try to identify the reasons for the different fate of its various proposals and to learn from past successes and failures.

5 The history of the attempts to establish Community-level rules on employee information, consultation and involvement is closely linked to the history of the European Community itself. For many years now, this subject has been at the heart of the discussions on European social policy, the European social model and the preferred type of economic and social development in Europe. These discussions have been not only long, but also lively, controversial and, in some cases, even heated.

This goes some way to explaining why the various measures taken by the European Commission in this area have aroused opposition. On the one hand, three proposals have been finalised: Directive 75/127/EEC of 17 February 1975 on the protection of workers' representatives in the event of collective redundancies[4], revised by Directive 92/56/EEC of 24 June 1992[5], Directive 77/187/EEC of 14 February 1977 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 businesses[6] and the above-mentioned Directive on European Works Councils. On the other hand, a number of other proposals containing rules on employee information, consultation and involvement have been under discussion for a long time in the Council, but it has not yet proved possible to bring them to a successful conclusion: these are the above-mentioned proposals for regulations on the statute for a European company, a European association, a European cooperative society and a European mutual society (and the associated directives on the involvement of employees) and the proposal for a fifth directive on the structure of companies.

Two other Commission proposals have been with the Council for many years, *viz.* the Proposal for a Council Directive on informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings[7], known as the *"Vredeling proposal"*, and the Proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees[8]. However, it is no longer necessary to include the last proposal in this analysis of prospects, as it is the immediate precursor of the *"European Works Councils"* proposal, which, in a way, has replaced it. Furthermore, the

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4 OJ L 48 of 22.2.75.

5 OJ L 245 of 26.8.92.

6 OJ L 61 of 5.3.77.

7 OJ C 297 of 15.11.80, p. 3. The amended proposal was published in OJ C 217 of 12.12.83, p. 3.

8 OJ C 39 of 15.2.91. The amended proposal was published in OJ C 336 of 31.12.91.

Commission has already indicated its intention to withdraw the proposal. The same applies to the *"Vredeling proposal"*; although the Commission believes that it should not be withdrawn until a comprehensive solution to the whole problem has been found.

The two sets of proposals covered in this document differ not only in terms of their success or failure, but also in that the first three proposals (the directives on *"collective redundancies"*, *"transfers of undertakings"* and *"European Works Councils"*) establish a model of involving workers in business decision-making under which their legitimate representatives are entitled to be informed and consulted on a number of important issues relating to the operation of the business or affecting their interests (which is also true of the *"Vredeling proposal"*), whereas the last five proposals (on *"a European company"*, *"a European association"*, *"a European cooperative society"*, *"a European mutual society"* and for *"the fifth directive"*) provide for forms of employee *"involvement"* (incorporation of employees into the supervisory board or the board of administration) which supplement or replace employee information and consultation.

A detailed description of the main provisions of these Community instruments and these proposals may be found in the annex.

The first point that can be made in this assessment is therefore that the Commission's proposals containing rules on informing and consulting employees' representatives have succeeded (apart from the *"Vredeling proposal"*), whereas its proposals for establishing European-level forms of employee involvement have failed.

6 In addition to the failure represented by the never-ending discussions on proposals which have still to be adopted, the fact that there are nine different sets of Community legal rules (six of which at the basic proposal stage) applicable to different types of body or situation may seem to some to be unjustified or, at least, unnecessarily complex, given the relative simplicity of national bodies of legislation, which are normally comprehensive or, if not, much simpler.

It should be pointed out as a contribution to the discussion that important reasons led the Commission – one might add, with the support of a number of Member States and social partners – to present the Council with such a large number of successive proposals, all of them pertaining to the involvement of employees in the operation of undertakings. In fact, for many years it proved impossible to establish general European-level rules on employee information, consultation or involvement[9]. Faced with this difficulty, the Commission, quite naturally, sought

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9 In fact, the adoption of the *"European Works Councils"* Directive was a landmark decision in the European Community, since the previously adopted Community provisions in this area cover specific situations in undertakings and employment relationships (imminent collective redundancy or business transfer).

to achieve progress where it thought that this could be done most easily, but this approach did not prove any more successful.

The Commission believes that the adoption of the *"European Works Councils"* Directive has put the problem in a completely different light. Now that it has been shown to be possible and even desirable to establish general legal standards in this area at European level, the next step will inevitably be to consider whether it is necessary to maintain a piecemeal approach.

7 This assessment would be incomplete if it did not deal, if only in passing, with the consequences of the decades of deadlock in the institutional discussions of the six proposals which have not been adopted. First, there are the consequences for the image of the European Union in the eyes of its citizens, and especially of European workers, who cannot understand how it is possible for proposals designed to enhance their rights to be informed, consulted and involved in the running of the business to have been under discussion, in certain cases for 25 years, without being adopted. There are also the serious consequences for businesses in the European Union, which have not been provided with the previously announced legal instruments to help them to adapt to the internal market and to competition at world level.

As a result, for some time now there have been urgent requests for the statute for a European company to be adopted without delay. This would be an ideal legal instrument, especially for attracting private capital for the establishment of large trans-European networks. UNICE has demanded that this statute be provided to businesses in the European Union as soon as possible so that they can preserve and enhance their competitive position. It also believes that, now that the *"European Works Councils"* Directive has been adopted, European companies should be subject to the same employee information and consultation requirements as all businesses concerned by this Directive, since it would be hard to imagine sufficient reasons to justify special treatment for them. More recently, the request for rapid adoption of the statute for a European company was one of the main recommendations to the Heads of State and Government of the Competitiveness Advisory Group chaired by C. A. Ciampi.

It should be emphasised that the main reason why these proposals have been blocked in the Council is because of the problems encountered by their provisions on employee information, consultation and involvement.

The Commission believes that the blockage of its proposals in the Council for many long years, which is very damaging to the image of the Union and to the interests of citizens and European businesses, cannot be allowed to continue and that the political will and the strong spirit of compromise which led to the adoption of the *"European Works Councils"* Directive one year ago must now be reaffirmed so that the proposed instruments can be adopted as soon as possible.

III PRINCIPLES AND OBJECTIVES OF THE NEW COMMUNITY APPROACH TO EMPLOYEE INFORMATION AND CONSULTATION

8 This assessment means, in the Commission's view, that a new approach needs to be adopted in order to redefine the Community legal framework in force and the proposals on employee information, consultation and involvement.

Several basic ideas emerged from the internal Commission debate announced in the White Paper on Social Policy and the Medium-term Social Action Programme. The Commission believes that, although it may still change its ideas in this area and the social partners should provide important input, it would be helpful to submit these ideas to the social partners at European level. In the same way, before taking any measures in this area, the Commission wants to broaden the discussion to include the Member States, the European Parliament and the Economic and Social Committee.

9 First, the principle of simplification. As mentioned in point 5, the European Community currently has a general legal framework providing for employee information and consultation at transnational level (the *"European Works Councils"* Directive) and specific provisions providing for employee information and consultation at national level in specific circumstances (collective redundancies and business transfers). If the proposals which are currently with the Council were adopted, these three bodies of legal rules would be supplemented by the legal framework established by the *"Vredeling"* Directive and five other specific legal frameworks, all of them different, albeit with obvious similarities, and each of them applicable to a particular type of entity (the European company, the European association, the European cooperative society, the European mutual society and public limited companies).

The Commission is considering whether this is an appropriate prospect for a situation – industrial relations – in which the legal status of the employer does not play a key role and, in any event, does not seem to warrant fundamentally different rules for a public limited company, an association, a mutual society and an entrepreneur as a physical person or in any other form. Experience at national level shows that any differences in systems of employee information, consultation and involvement are usually due to the size of the undertaking, the number of staff or factors which may affect the actual rights and obligations of the people subject to collective agreements, of which the legal form of the employer does not normally play a key role.

The fact that Community action in this area should not be designed merely to approximate national systems or to establish minimum requirements at Community level only increases the misgivings currently caused by such a wide, detailed and diverse set of adopted or proposed Community instruments.

If these arguments are accepted, the alternative would be to simplify this diversified approach by providing only for the establishment of general overall legal frameworks at European level, which could naturally be developed and fleshed out by the Member States if they wished. In an extreme form, this approach could mean that there would be only two general frameworks at European level on informing and consulting employees: one governing the transnational aspects (which already exists, now that the *"European Works Councils"* Directive has been adopted) and the other governing the national aspects.

The latter would require the adoption of a new Community instrument, and this raises a number of questions as to its nature (approximation of legislation or establishment of minimum requirements) and the legal basis to be used (Treaty or the Agreement on Social Policy in the Maastricht Treaty).

The Commission is aware of the misgivings which an initiative of this kind may cause among certain Member States and social partners as far as the principle of subsidiarity is concerned. It understands the arguments of those who might cite the lack of the transnational element in this new instrument to deny, in the name of this principle, the need to establish Community-level rules in this area. However, the Commission believes that, given the current state of affairs, it is necessary to establish whether arguments of this kind should take precedence over the unquestionable need to adopt the above-mentioned proposals, which are in the interests of all concerned.

In any event, the Commission believes that this new single instrument would be more in keeping with the principles of subsidiarity and proportionality than the large number of instruments currently proposed. This would be true, given the need to pursue the objectives referred to in Articles 117 and 118 of the Treaty and in Article 1 of the Agreement on Social Policy. (Moreover, this Agreement specifically mentions the information and consultation of workers among the new areas of responsibility explicitly granted to the European Union (cf. the third indent of Article 2 (1) of the Agreement).) Attention also must be paid to the need to ensure an harmonious functionning of the internal market and to avoid distortions of competition. Lastly, the general nature of the provisions which could be introduced, which would make it a reference framework setting out, quite simply, the major principles and basic rules in this area, would ensure compliance with the principle of proportionality and overcome the misgivings of those who might be afraid of an excessively rigid and detailed instrument.

10 This new approach could also be justified on the grounds of the coherence of Community law and European Community social policy. The way in which the discussions on this subject have been conducted in the Union's institutions has led to an anomalous situation, to say the least. On the one hand, the Community has adopted general legal rules concerning employee information and consultation at transnational level and specific rules concerning employee information and consultation at national level in the particular situations of an imminent collective

redundancy or business transfer. On the other hand, there is no general framework on information and consultation at national level, which is all the more regrettable since the provisions of the *"collective redundancies"* and *"business transfers"* Directives can only be fully effective where this general framework for informing and consulting employees' representatives exists (which is fortunately the case in 13 Member States).

The contribution which this new framework could make is obvious. On the one hand, it could facilitate the task of simplification referred to above, as it would no longer be necessary to provide for specific rules for each of the entities covered by the above-mentioned proposals. This would make it much easier to adopt these proposals. On the other hand, the provisions of Community legislation in force which require employees' representatives to be informed and consulted prior to collective redundancies and business transfers would benefit considerably from the establishment of this general framework. This is because the strategy of prevention which underpins them, which is so difficult to apply when information and consultation procedures are isolated and limited to cases of imminent collective redundancies or business transfers, could be developed most effectively against a background of stable and permanent information and consultation procedures, which is the only way of ensuring that employment management is genuinely forward-looking.

11 The third principle preferred by the Commission is based on pragmatism and balance and concerns the strength and specific content of the rules to be established at European level.

The Commission believes it to be no accident that the measures to establish employee information and consultation rules at European level have been virtually a total success, while the more ambitious measures to expand the coverage of the traditions and practices of employee involvement to the whole Community, especially by incorporating workers into supervisory boards or boards of administration, have failed.

The discussions in the Council, which have been at once rich and disappointing, have shown just how difficult it is to achieve a sufficient consensus among the Member States for the adoption of rules on involvement. However, they have also shown the broad measure of agreement on the Community rules on informing and consulting employees' representatives, which has led to the adoption of the three Community instruments in force in this area.

Against this background and buoyed by the considerable success encountered by the *"European Works Councils"* Directive among the players in industry, the Commission is considering whether a form of Community action in this area, which, while not ideal, is at least possible and feasible, has not been found. The never-ending discussions on the types of involvement are leading the Commission increasingly to the view that, as things stand, success is most likely using a solution along the lines of the *"European Works Council"* Directive.

This view is not based on pragmatism alone. The Commission is closely watching the current experiment with the implementation of the *"European Works Councils"* Directive. Although it is too early to draw all the lessons from this experiment, the interest and dynamism shown by the social partners in implementing this directive, especially by anticipating its transposition into national legislation by concluding agreements, indicate that, while the ways of involving workers and their representatives in the decision-making process which have been established in businesses by this Directive are limited to information and consultation procedures, they could constitute an acceptable minimum framework at European level. This minimum framework would not, of course, prevent the survival nor the evolution of more elaborated systems and practices at national level.

12 The fourth principle is that of the generality of all Community rules. While the Commission accepts that Community action should be based on the framework established by the *"European Works Councils"* Directive, it considers that this approach will not meet the objective of ensuring the harmonious operation of the internal market and of increasing the protection of European workers and their involvement in the running of the business unless the rules in question are applied throughout the European Community. This is particularly true of the Community instruments which are addressed, without limitation, to all Member States and which are designed to benefit all businesses and organisations which pursue their activity on the territory of all Member States (as is the case for the six above-mentioned proposals). In such circumstances, there seems to be little justification for one or more countries being granted an exemption in this area, which would give an unfair advantage to the businesses that have their registered office there rather than in another Member State.

IV POSSIBLE DIRECTION FOR COMMUNITY ACTION

13 On the basis of the reasons stated above and given the current situation, various options are possible.

Option 1: maintain the *status quo*

This option would mean continuing the discussions in the Council on the basis of the six above-mentioned proposals and maintaining the fragmented approach to Community action on employee information, consultation and involvement. The main disadvantage of this option is that, as things stand, it seems to offer little hope of progress.

Option 2: global approach

This option involves a change in the way of looking at the whole question. Instead of attempting to establish, at Community level, sets of specific rules for each entity to be covered by Community rules on company law, attempts would be made to establish general frameworks at European level on informing and

consulting employees. This would make it possible to withdraw the proposals for directives annexed to the proposals for regulations on the statute for a European company, a European association, a European cooperative society and a European mutual society. The same would apply to the social provisions in the proposal for the *"fifth directive"* and the *"Vredeling proposal"*.

Given that the European Community already has a legal framework for employee information and consultation at transnational level, this global approach would mean quite simply that a Community instrument on information and consultation at national level would have to be adopted. Before taking this approach, a number of questions need to be answered: Would it be in keeping with the principles of subsidiarity and proportionality? What would be the nature of the proposal (approximation of legislation or establishment of minimum requirements)? and, lastly, Which legal basis should be used (Treaty or Maastricht Social Agreement)?

The main advantage of this option is that it is a step towards simplifying Community law and European social policy. It could also make it easier - and, in fact, might even be necessary - to achieve progress with the six above-mentioned proposals, since the businesses concerned which are of purely national scale would then be covered by this general framework.

Option 3: immediate action on the proposals concerning the statute for a European company, a European association, a European cooperative society and a European mutual society

If the global approach set out above is adopted, immediate steps could be taken to unblock these proposals, especially the proposal on the statute for a European company, the adoption of which is particularly urgent. This would be justified by the importance of this instrument for the organisation of companies at European level and by the urgent need to find a legal vehicle which meets the needs of major trans-European transport infrastructure projects (the Member States have indicated that they will need two years to introduce the implementing provisions for the Statute, in spite of its immediate legal effect).

This could be done in two ways:

a) The above-mentioned proposals for directives would be withdrawn on the same condition, *mutatis mutandis*, as that set out in Article 136 of the proposal for a regulation on the statute for a European company, which stipulates that no European company, European association, European cooperative society or European mutual society could be set up in a Member State which had not transposed the *"European Works Councils"* Directive.

   This solution would have the advantage of maintaining the compulsory link between the establishment of these organisations and their application of the procedures for employee information and consultation, which has

always been a key element in these proposals. It would also prevent discrimination between these organisations depending on the Member State in which they decided to locate their registered office.

b) No conditions would be attached to the withdrawal of these proposals. In this case, only the Community provisions in force (the *"European Works Councils"*, *"collective redundancies"* and *"business transfers"* Directives) would be applicable to the organisations concerned, as appropriate.

The disadvantage of this sub-option is that one Member State is not covered by the *"European Works Councils"* Directive. This would mean that the European companies, European associations, European cooperative societies and European mutual societies which are of multinational scale and have their registered offices in this Member State would not be subject to the same obligations in the area of transnational information and consultation of employees, as would be the case for organisations with their registered office in another Member State.

V. CONCLUSION

14 The arguments set out above are provided as a contribution to the discussion which the Commission would like to see developed among the Member States, in the European Parliament and the Economic and Social Committee and between the social partners at Community level. The Commission reaffirms that it is open to any way of achieving the objectives at the heart of this debate. These are, first, to put an end to the unacceptable situation of never-ending institutional discussion of the six above-mentioned proposals and, second, to supplement the Community legal framework in the area of employee information and consultation and to make it more coherent and effective.

The Commission would like to receive the comments and views of the Member States, the European Parliament, the Economic and Social Committee and the social partners at European level on these matters. It is particularly interested in knowing their views on the options set out in point 13 of this communication.

ANNEX

Summary of the Community instruments in force and Commission proposals for regulatory provisions on information and consultation of employees

I. **Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies.**

Council Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies.

Objective

To approximate the legislation on collective redundancy arrangements and procedures in the Member States, and to increase the protection of employees in the event of collective redundancy.

Content

1 Definition of the terms "collective redundancies" and "workers' representatives".

2 The Directive does not apply to:
- collective redundancies effected under contracts of employment concluded for a limited period of time or for a specific task except where such redundancies take place prior to the date of expiry or the completion of such contracts;
- workers employed by public administrative bodies or by establishments governed by public law;
- the crews of seagoing vessels.

3 Employers contemplating collective redundancies must begin consultations with the workers' representatives with a view to reaching an agreement. These consultations must, as a minimum, cover ways and means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences, particularly by recourse to accompanying social measures aimed at redeploying or retraining workers made redundant.

4 Under Directive 92/56/EEC, Member States may provide that the workers' representatives may call upon the services of experts in accordance with national legislation and/or practice. In the course of such consultations, employers must supply workers' representatives with all relevant information and, in any event, notify them in writing of:
- the reasons for the projected redundancies,
- the period over which they are to be effected,
- the number and categories of workers normally employed,
- the number to be made redundant,
- the criteria on which these workers have been selected,
- the method for calculating any redundancy payments.

5 Collective redundancy procedure:

- the employer is obliged to notify the competent authority in writing of any planned redundancies. The notification must include all relevant information on the projected redundancies and consultations, except the method for calculating redundancy payments. However, in the event of termination of activities as a result of a judicial decision, notification is obligatory only if expressly requested by the competent authority;
- employers must forward a copy of the notification to the workers' representatives, who may send any comments they may have to the competent public authority;
- collective redundancies take effect not earlier than thirty days after notification, the intervening period being used by the public authorities to seek solutions. Member States may grant the public authority the power to reduce the period or extend it to up to sixty days following notification, where the problems raised are not likely to be solved within the initial period.

  This article is not obligatory in the event of collective redundancies resulting from termination of activities as a result of a judicial decision. Wider powers to extend the period may be granted. The employer must be informed of the extension and the grounds for it before expiry of the initial period.

6 Member States have the right to apply or introduce laws, regulations or administrative provisions which are more favourable to workers.

References

Official Journal L 48, 22.2.1975
Official Journal L 245, 26.8.1992

II. Council Directive 77/187/EEC of 14 February 1977 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 businesses

Objective

Since economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, there is a need to protect workers in the event of a change of employer and, more especially, to ensure that their rights are safeguarded.

Content

1 The Directive concerns transfers of undertakings, businesses or parts of businesses as a result of legal transfers or mergers, where the business concerned is situated within the territorial scope of the EEC Treaty. The Directive does not apply to seagoing vessels.

2 The transferer and the transferee must inform the representatives of their respective employees in good time of the reasons for the transfer, the legal, economic and social implications, and the measures envisaged in relation to the employees. For the workers to be transferred, this information must be given before the transfer is carried out, and all employees must be informed before their employment and working conditions are directly affected.

If the transferer or the transferee envisages measures in relation to his employees, he must consult their representatives in good time on such measures with a view to seeking agreement. Member States whose laws, regulations or administrative provisions provide for recourse to an arbitration board may limit the obligations in respect of information and consultation where the transfer is likely to entail serious disadvantages for a considerable number of the employees. Member States may provide that, where there are no employees' representatives, the employees themselves must be informed in advance when a transfer is about to take place.

References

Official Journal L 61, 5.3.1977

III. Council Directive 94/45/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

Objective

To improve employees' right to information and consultation in Community-scale undertakings and groups of undertakings.

Content

1 Scope: the Directive applies to Community-scale undertakings and groups of undertakings with at least 1 000 employees and at least two establishments or undertakings employing at least 150 people in two or more Member States.

The Directive does not cover small businesses and does not affect the provision made for information and consultation in the legislation and practices of individual Member States.

Community-scale undertakings and groups of undertakings where the central management is not situated in a Member State are covered by the Directive. In this case, responsibility is invested in the central management's representative agent in a Member State or the undertaking employing the greatest number of employees in any one Member State.

By "Member States" are meant the 11 Member States signatory to the Agreement on Social Policy.

2 The establishment of a European Works Council must be at the instigation either of the central management of the undertaking or group of undertakings, or of the employees or their representatives.

The nature, functions, competence and operating procedures of such a Works Council are freely defined by agreement between the two parties. Provision is made for derogation from the requirement to establish a Works Council, in which case the alternative procedure instituted need not comply with the provisions set out in the Annex either.

3 In the event of no agreement being reached, the Directive stipulates that certain subsidiary requirements set out in the Annex to the Directive must be applied. These concern the nature and content of the information and consultation and the composition and operating arrangements of the European Works Council.

4 The European Works Council has the right to meet with central management at least once a year to be informed and consulted on the company's progress and

prospects. The information is expected to cover the company structure, its economic and financial situation, probable development of the business, production and sales, the employment situation and its probable development, investment projects, changes concerning organisation, transfers of production, cutbacks or closures of undertakings or collective redundancies. Where there are exceptional circumstances affecting employment, the select committee, or where no such committee exists, the European Works Council has the right to demand a meeting with the central management to be informed and consulted on any measures likely to affect employees' interests. European Works Councils must have a minimum of three members and a maximum of thirty. Their operating costs are to be borne by the central management.

5 The Directive contains provisions on confidentiality and secrecy of information.

6 It also provides that employees' representatives must, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

References

Official Journal L 254, 30.9.1994, p. 64

IV. Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings

Objective

To improve information and consultation of employees in undertakings with complex structures.

Content

1. The Directive applies to undertakings and groups of undertakings with over 1 000 employees within the Community.

2. The proposal provides for an obligation on parent undertakings (irrespective of whether their decision-making centre is within the EC) to inform and consult the employees of its subsidiaries within the EC and the employees of its component establishments. Where the decision-making centre is located outside the EC, it may be represented for this purpose by an agent or, in the absence of such, the management of the subsidiary concerned is responsible for the information and consultation obligations. Where the centre is located within the EC, the parent undertaking and subsidiary are jointly responsible.
   At least once a year, or whenever the information in question is brought up to date (and communicated to shareholders and creditors in implementation of the relevant legislation) the management of the parent undertaking must communicate it to the management of its subsidiaries to enable it to be passed on to the employees' representatives. The information concerned covers the activities of the whole group and the specific situation of the production sector or the geographical area in which the subsidiary is active. In particular, it should cover structure, the economic and financial situation, the probable development of the business and of production and sales, the employment situation and probable trends, and investment prospects.
   This information must be communicated without delay by the management of each subsidiary to the employees' representatives, who may ask the management for an oral explanation of the information communicated.

3. If the management of the subsidiary fails to communicate the information within a month, the employees' representatives are entitled to approach the management of the parent undertaking, which must forward the relevant information without delay to the management of the subsidiary, for communication to the employees' representatives.
   Where the management of a parent undertaking proposes taking a decision likely to affect the interests of employees of the subsidiaries in the EC, it must forward the information to the management of each subsidiary concerned in good time, who must pass it on in writing to the representatives of the employees concerned, again in good time. In addition, the local management is obliged to consult the

employees' representatives on the measures envisaged (within 30 days), and discuss them with a view to reaching an agreement concerning the workers affected, and provide oral explanations on request.

If the management fails to comply with these obligations, the employees' representatives have the right to appeal to a tribunal or other competent authority for measures to be taken within a maximum period of 30 days to compel the management to do so.

4. The management may not implement the decisions envisaged before the opinion of the employees' representatives has been received, or failing this, within 30 days from the date on which the information concerned is forwarded.

5. If the legislation of a Member State provides for an employees' representative body at a higher level than that of the subsidiary, the information referred to must also be given to that body, which must also be consulted if the representatives of the employees of the subsidiary in question agree to transfer their right to be consulted to the higher level.

6. By means of an agreement between the management of the parent company and all the employees of its subsidiaries within the EC, a representative structure at group level may be set up.

References

Commission proposal	Official Journal C 297, 15.11.80, p. 3
Amended proposal:	Official Journal C 217, 12.12.83, p.3
Opinion of the European Parliament:	Official Journal C 13, 17.1.83
Opinion of the ESC:	Official Journal C 77, 29.3.82

V. Proposal for a Council Regulation on the statute for a European company.

Proposal for a Council Directive complementing the statute for a European company with regard to the involvement of employees in the European company

Objective

To create a European company with its own legal framework to enable companies based in different Member States to merge or form a holding company or a joint subsidiary, avoiding the legal and practical constraints created by the existence of twelve different legal systems. To organise the involvement of employees in the European company, and recognise their place and role in the company.

Content

Proposal for a Council Regulation on the statute for a European company

1 Provision is made for four ways of forming a European company: by merging, forming a holding company or joint subsidiary, or conversion of a limited company formed under the law of a Member State. Mergers are restricted to public limited companies in different Member States. Formation of a European holding company is open to public and private limited companies with a presence within the Community, either by having their central administrations in different Member States or a subsidiary company or branch office in a Member State other than that of the central administration. Formation of a European company (SE) in the form of a joint subsidiary is a open to any body governed by public or private law conforming to the same criteria.

2 The registered office of an SE must be situated at the place specified in its statutes, i.e. the place where it has its central administration. It may be transferred within the Community in accordance with the defined procedures.

3 The statutes of the SE provide for the company to have as its governing bodies the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system). In the case of the two tier system, the management board is responsible for the management of the SE. The member or members of the management board are empowered to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the supervisory board. No person may at the same time be a member of the management board and the supervisory board of the same SE. However, the supervisory board may nominate one of its members to exercise the function of a member of the management board in the event of a vacancy. During such period the function of the person concerned as a member of the supervisory board is suspended.
In the case of the one-tier system, the administrative board is responsible for the management of the SE. The member or members of the administrative board are

empowered to represent the company in dealings with third parties and in legal proceedings.

Proposal for a Council Directive complementing the statute for a European company with regard to the involvement of employees in the European company

1 Definition of the concept of employee involvement, which does not mean day-to-day involvement in matters within the jurisdiction of the management, but participation in the supervision and strategic development of the SE.

2 The proposal sets out various models of participation: inclusion of employees' representatives on the supervisory or administrative board, a separate body representing employees of the SE, or other models to be established by means of an agreement concluded between the management or administrative boards of the founder companies and the company employees, complying with the information and consultation requirements provided for in the model for a separate representative body. An SE may not be formed unless one of the models referred to in the Directive has been chosen.

3 Employees' representatives must be provided with the premises, material and financial resources and other facilities enabling them to perform their duties in an appropriate manner.

Opinion of the European Parliament

First reading: the Parliament approved the Commission proposal with certain amendments, most of which were accepted by the Commission.

Current situation

The amended proposals are currently before the Council pending a common position.

References

Commission proposals	
COM(89) 268/I and II final	Official Journal C 263, 16.10.1989
Amended proposals	
COM(91) 174/I and II final	Official Journal C 176, 8.7.1991
Opinion of the European Parliament	
First reading	Official Journal C 48, 25.2.1991
Opinion of the Economic and Social Committee	
	Official Journal C 124, 21.5.1990

VI. Proposal for a Council Regulation on the statute for a European association

Proposal for a Council directive supplementing the statute for a European association with regard to the involvement of employees

Objective

To introduce a European statute enabling all associations and foundations to operate throughout Community territory by providing European associations with appropriate legal instruments. To organise the involvement of workers in the European association (EA), to enable their place and role within the company to be recognised.

Content

Proposal for a Council Regulation on the statute for a European association

1 The European association (EA) is a structure whose members pool their knowledge or activities either in the general interest or to promote, directly or indirectly, the trade or professional interests of its members.

2 The EA acquires legal personality from the day of its registration in the Member State in which it has its registered office.

3 The statute provides for an EA to be formed directly, either by two or more legal entities formed under the law of a Member State and having their registered office and central administration in at least two Member States, or by a minimum of 21 natural persons who are nationals of at least two Member States of the Community and resident in at least two Member States.

4 An EA can also be formed by conversion, provided that the national association has an establishment in a Member State other than that of its central administration. An EA formed in this way must demonstrate that it is carrying on genuine and effective cross-border activities.

5 The registered office of an EA must be situated at the place specified in its statutes, which must be within the Community, at the same place as the EA's central administration.

6 The EA statutes provide for administrative bodies in the form of a general meeting and an executive committee.

7 The EA must draw up estimates for the forthcoming financial year.

8 An EA may be wound up by a decision of the general meeting, in particular where the period fixed in the statutes has expired, or where the disclosure of accounts has not taken place in the EA's last three financial years, or by judicial

decision, particularly where the EA has transferred its registered office outside the Community.

9 EA's undergoing liquidation, insolvency proceedings or suspension of payments are subject to the law of the Member State in which they have their registered office.

Proposal for a Council Directive supplementing the statute for a European association with regard to the involvement of employees

1. The registration of the EA is dependent on the choice of participation model and/or information and consultation system.

2. Under the Directive, the laws, regulations and administrative provisions of the Member State governing the participation of employees in the supervisory or administrative boards of national companies remain applicable. However, if the Member State concerned has no specific provisions on employee involvement, or such provisions are not applicable to the EA, it must ensure at least that the employees of the EA are informed and consulted in accordance with the minimum requirements set out in the subsequent articles.

3. The Directive sets out the procedure for the adoption of information and consultation arrangements in EAs with at least 50 employees.

4. Where the EA is formed solely by natural persons, the procedure selected must be submitted to the general meeting called to approve the formation of the EA.

5. The executive committee of the EA must inform and consult in good time the employees of that entity in specified minimum areas. These include any proposals which might significantly affect employees' interests or any question concerning conditions of employment.

6. The Directive sets out certain basic principles concerning election procedures and the mandates of representatives. According to these, employees' representatives in the EA must be elected and represent the employees (including those working part time) of all the establishments, plants or installations belonging to the EA.

Opinion of the European Parliament

First reading: on 20 January 1993, the Parliament approved the Commission proposals with certain amendments, some of which were accepted by the Commission.

Current situation

The amended proposals are currently before the Council pending a common position.

References

Commission proposals	
COM(91)273/I and II final	Official Journal C 99, 21.4.1992
Amended proposals	
COM(93)252 final	Official Journal C 236, 31.8.1993
Opinion of the European Parliament	
First reading	Official Journal C 42, 15.2.1993
Opinion of the Economic and Social Committee	
	Official Journal C 223, 31.8.1992

VII. Proposal for a Council Regulation on the statute for a European cooperative society

Proposal for a Council Directive supplementing the statute for a European cooperative society with regard to the involvement of employees

Objective

To facilitate the development of cross-border activities of cooperatives, while taking account of their specific features, by providing them with appropriate legal instruments. To organise the involvement of employees in the European cooperative society (SCE) to enable their position and role within the company to be recognised.

Content

Proposal for a Council Regulation on the statute for a European cooperative society

1 The cooperative is defined as a corporate body governed by private law having legal personality. The capital is formed from members' own contributions in the form of shares, on which revenue is based. The cooperative acquires legal personality on the date of its registration in the Member State in which it has its registered office.

2 The registered office of an SCE must be situated within the Community within the Member State in which it has its central administration.

3 The regulation provides for an SCE to be formed by at least two legal entities formed under the law of a Member State, having their registered office and central administration in at least two different Member States.

4 A parent cooperative may also convert into SCE form together with one of its subsidiaries or establishments in a Member State other than that of its central administration if it can demonstrate that it is carrying on genuine and effective cross-border activities.

5 The minimum capital of an SCE must be at least ECU 100 000 or the equivalent in national currency.

6 The SCE's statutes provide for a general meeting plus either a management board and supervisory board (two-tier system) or an administrative board (one-tier system).

Proposal for a Council Directive supplementing the statute for a European cooperative society with regard to the involvement of employees

1 The Directive coordinates the laws, regulations and administrative provisions of the Member States concerning the involvement of employees in the SCE.

2 Registration of the SCE depends on the choice of participation model and/or information and consultation system.

3 Under the Directive, the national provisions governing the participation of employees in the supervisory or administrative boards of national cooperative societies are applicable. However, if the Member State in which the registered office is situated has no rules on the participation of employees or if such provisions are not applicable to the SCE, it must ensure at least that the employees of the SCE are informed and consulted in accordance with the subsequent articles.

4 Where the majority of the employees of the SCE are also members thereof, the above procedure and the information and consultation system envisaged are not applicable, as the employees already participate in decision-making in their capacity as members.

5 The Directive sets out the adoption procedure for an information and consultation system for SCEs with at least 50 employees.

6 The management and/or administrative board of the SCE must inform and consult in good time the employees of that entity in the areas determined by them, which must include, as a minimum, any proposals which might significantly affect the interests of the employees or any question concerning conditions of employment.

7 The Directive sets out certain basic principles concerning election procedures and the mandates of representatives. According to these, the employees' representatives in the SCE must be elected and represent the employees (including those working part time) of all the establishments, plants or installations belonging to the SCE.

Opinion of the European Parliament

First reading: on 20 January 1993, the Parliament approved the Commission proposals with certain amendments, some of which were accepted by the Commission.

Current situation

The amended proposals are currently before the Council pending a common position.

References

Commission proposals	
COM(91) 273/III and IV final	Official Journal C 99, 21.4.1992
Amended proposals	
COM(93) 252 final	Official Journal C 236, 31.8.1993
Opinion of the European Parliament	
First reading	Official Journal C 42, 15.2.1993
Opinion of the Economic and Social	

VIII. Proposal for a Council Regulation on the statute for a European mutual society

Proposal for a Council Directive supplementing the statute for a European mutual society with regard to the involvement of employees

Objective

To assist mutual societies in developing cross-border activities by providing them with appropriate legal instruments while taking account of their specific nature, particularly their activities of general benefit. To organise the involvement of employees in European mutual associations (ME) to enable their place and role in the undertaking to be recognised.

Content

Proposal for a Council Regulation on the statute for a European mutual society

1 The European mutual society (ME) is defined as a group of persons guaranteeing its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorised by its statutes, which include providence activities, insurance, health cover and loans. The ME acquires legal personality on the day of its registration in the Member State in which it has its registered office.

2 The Regulation does not affect basic statutory social security schemes which in certain Member States are managed by mutual societies, or the liberty of Member States to decide whether or not and under what conditions to entrust the management of these schemes to mutual societies.

3 The Regulation provides for the formation of an ME by national legal entities. The founding members must ensure that the ME is transnational in character when it is formed, by seeing that the following conditions are met: a mutual society or an equivalent legal entity must be formed under the law of a Member State and have its registered office and central administration in different Member States.

4 The Regulation also provides for conversion into an ME (provided that this does not result in the society being wound up or in the creation of a new legal person) where the ME has an establishment or subsidiary in a Member State other than that in which it has its central administration, and can demonstrate that it is carrying on genuine and effective cross-border activities.

5 The statutes of the ME provide for a general meeting and either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system).

Proposal for a Council Directive supplementing the statute for a European mutual society with regard to the involvement of employees

1 The choice of a participation model and/or information and consultation system is a prerequisite for the registration of an ME.

2 Under the Directive, the national provisions governing the participation of employees in the supervisory or administrative boards of national mutual societies remain applicable. However, if the Member State in which the ME has its registered office has no specific rules on employee participation or such provisions are not applicable to MEs, it must ensure at least that the employees of the ME are informed and consulted in accordance with the subsequent articles, where the ME has at least 50 employees.

3 The management and/or administrative board of the ME must inform and consult in good time the employees of that entity and determine the areas for obligatory information and consultation, which must include, particularly, any proposals which might significantly affect the interests of the employees and any question concerning conditions of employment.

4 The Directive sets out certain basic principles concerning election procedures and the mandates of representatives. In accordance with these, employees' representatives in an ME must be elected and represent the employees (including those working part time) of all the establishments, plants or installations belonging to the ME.

Opinion of the European Parliament

First reading: on 6 July 1993, the Parliament approved the Commission proposals with certain amendments, some of which were accepted by the Commission.

Current situation

On 6 July 1993, the Commission submitted amended proposals.

The amended proposals are currently before the Council pending a common position.

References

Commission proposals	
COM(91) 273/V and VI final	Official Journal C 99, 21.4.1992
Amended proposals	
COM(93) 252 final	Official Journal C 236, 31.8.1993
Opinion of the European Parliament	
First reading	Official Journal C 42, 15.2.1993
Opinion of the Economic and Social Committee	Official Journal C 223, 31.8.1992

IX. Proposal for a fifth Council Directive to coordinate the safeguards, which, for the protection of the interests of members and others are required by Member States of companies within the meaning of the second paragraph of Article 58 of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs

Objective

To coordinate the legislation of Member States on the structure of public limited companies and the powers and obligations of their organs.

Content

1 The Directive applies to such companies as:
- in the United Kingdom: the "public limited company";
- in France: the "société anonyme";
- in Germany: the "Aktiengesellschaft",

and their equivalent in the other Member States. The Member States are empowered to exclude cooperatives.

2 The Member States must provide that such companies be organised according to a two-tier system (a management organ and supervisory organ) or a one-tier system (an administrative organ in which the executive members are supervised by the non-executive members).

3 The authorisation of the supervisory organ or non-executive members must be obtained for any decision by the management organ or executive members relating to:
- the closure or transfer of part or all of the undertaking;
- substantial curtailment or extension of the activities of the undertaking;
- substantial organisational changes;
- establishment or termination of long-term cooperation with other undertakings.

4 In companies employing less than 1 000 persons, the members of the advisory board are appointed by the general meeting. In those employing over 1 000 persons, Members States must provide for participation of employees in the appointment of:
- the members of the supervisory organs in the two-tier system;
- the non-executive members of the board in the one-tier system.

A maximum of two-thirds of the members of the Advisory Board or the non-executive members are appointed by the general meeting, and a minimum of one third and a maximum of one half are appointed by the staff. The members of the supervisory organ may be coopted by the supervisory organ itself. However, the general meeting of shareholders or the staff representatives are empowered to oppose the appointment for certain specified reasons.

Member States may also provide for employee participation through a body representing the employees or through a collectively agreed system. Members of the management organ may not at the same time be members of the supervisory organ. In order to ensure a high degree of participation in company life, it is necessary to:

- strengthen the position of shareholders in respect of the exercise of their right to vote; voting rights must be proportional to participation in the capital;
- restrict the issue of shares which carry special pecuniary advantages with no voting rights.

5. An annual general meeting must be organised. Other general meetings may be convened by the management organ, the executive members of the administrative organ or by the shareholders, provided the latter's shares represent a certain minimum capital. The annual accounts, the annual report and the report by the persons responsible for auditing the accounts must be made available to all shareholders. An absolute majority is required for all decisions taken by the general meeting, except in certain special circumstances. Minutes must be drawn up for every annual general meeting. The memorandum or articles of association may not confer on the holders of a particular category of shares an exclusive right to put forward nominations for a majority of those members of the supervisory organ whose appointment is a matter for the general meeting.

6. The annual accounts must meet various requirements. For example, 5% of any profits for the financial year must be appropriated to a legal reserve until that reserve reaches a certain minimum amount. The auditors of the accounts must be entirely independent of the company and be appointed by the general meeting. The auditors must prepare a detailed report on the results of their work.

7. The memorandum or articles of association may not confer on the holders of a particular category of shares an exclusive right to put forward nominations for a majority of those members of the administrative organ whose appointment is a matter for the general meeting.

8. The Commission must submit a report on the application of the Directive to the Council and Parliament within a specified period.

9. Certain derogations from the Directive are authorised, such as companies whose whole or principal object is political, religious, charitable or educational.

Opinion of the European Parliament

First reading: the Parliament approved the initial proposal with many amendments. It proposed adding the option of a one-tier system to the two-tier system proposed,

raising the minimum number of employees for obligatory staff participation from 500 to 1 000, and extending the options for the form that participation should take.

The Commission submitted this proposal on 9 October 1972.

Current situation

The Commission submitted an initial amended proposal on 19 August 1983, a second amended proposal on 13 December 1990 and a third on 20 November 1991.

The third amended proposal is currently before the Council pending a common position.

References

Commission proposal	
COM(72) 887 final	Official Journal C 131, 13.12.1972
Amended proposal	
COM(83) 185 final	Official Journal C 240, 9.9.1983
Amended proposal	
COM(90) 629 final	Official Journal C7, 11.1.1991
Amended proposal	
COM(91) 372 final	Official Journal C 321, 12.12.1991
Opinion of the European Parliament	Official Journal C 149, 14.6.1991
First reading	Official Journal C 240, 16.9.1991
Opinion of the Economic and	Official Journal C 109, 19.9.1974
Social Committee	Official Journal C 269, 14.10.1991

ISSN 0254-1475

COM(95) 547 final

DOCUMENTS

EN 04

Catalogue number : CB-CO-95-607-EN-C

ISBN 92-77-96258-5

Office for Official Publications of the European Communities

L-2985 Luxembourg