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

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# Explanatory memorandum

## Introduction

### General remarks

1. As a result of changes in the structure of undertakings, the procedures for consulting and disclosing information to employees are often no longer consistent with these new structures. Whereas firms have become more complex in that they have grown or expanded their operations by setting up subsidiaries or establishments in a given country, or even in several foreign countries, their employees continue to be informed and consulted only at local level (shop, works or sector of activity).

2. It therefore follows that decisions which may have serious repercussions for employees at local level may well have been considered and taken at a much higher level (in the same country or even abroad). Even local employers may be ignorant of the motives behind such decisions. Generally speaking, disclosure of information to employees is still confined to the affairs of the local business entity, with the result that the workers concerned are only able to obtain a partial or even incorrect picture of the affairs of the concern as a whole.

3. Recent events have merely confirmed that this situation has particularly serious implications for the employees of firms operating in several countries, since the application of labour law (and even more so the law relating to employees' representative bodies) is usually confined to the territory of a given country. The powers of these bodies, like those of the trade unions, do not normally extend beyond national frontiers.<sup>1</sup> Thus, the procedures by which employees in a given country are informed or consulted only have effect within the legal framework of that country, only benefit the employees in that State and generally only relate to activities carried out in that State when they are not confined to a particular subsidiary or establishment.

Provision should be made for additional information to be supplied to employers in each Member State relating to their company's transnational operations so that they can provide their employees with a clear and complete picture of the activities

and performance of the concern as a whole *in the various countries in which it is established*. There is also a need for provisions that would enable employees' representatives to approach management at the level of the decision-making centre in another country where this management alone is in a position to inform and consult them in accordance with the provisions of the directive.<sup>2</sup>

4. Similar information and consultation problems can arise in undertakings operating exclusively at national level when procedures for informing and consulting employees are inconsistent with the structure of the entity whose decisions affect their interests, for instance when a firm expands its business operations by opening a number of establishments in one country and the bodies representing its employees continue to operate only at the level of the individual shop, works or establishment. However, a more common situation is that where a dominant undertaking may have several subsidiaries in the same country while the bodies representing its employees are not organized at the highest level. There is a need for provisions to enable the managers of these establishments or subsidiaries to inform and consult their employees in the proper manner even where the decision affecting their interests is taken not by them but by management at a higher level. Employees' representatives should also be allowed to approach the central management if it alone is in a position to inform and consult them in accordance with the provisions of the Directive.<sup>3</sup>

In a Community in which national economies are closely interlinked and in which undertakings are undergoing structural changes by availing themselves of the right of establishment guaranteed by the EEC Treaty, it is essential that all undertakings with a sizeable workforce and a relatively complex structure, in particular those operating on a transnational basis, should have the same rights and the same responsibilities.

<sup>1</sup> Legislation of this nature cannot be applied in the territory of another State. 'The provisions according to which the Central Works Council shall meet at the undertaking's premises must, where the registered place of business is abroad (in Belgium), be taken to mean the principal place in which he carries out his activities as an employer in France.' (Decree of the Council of State of 29 June 1973/Compagnie des Wagons-Lits.)

<sup>2</sup> Section II (points 10 to 15).

<sup>3</sup> Section III (points 16 to 22).

A legal framework for the disclosure of information to and consultation with employees will therefore constitute a stepping-stone to the creation of a uniform operating environment for all undertakings in the Community. The current economic climate, which has necessitated far-reaching and difficult structural changes in industry and has had very serious social repercussions, highlights the importance of a Community initiative in this field. Against this background, the requirement that all firms should inform and consult their employees on the basis of their overall operations assumes particular importance.

Furthermore, it should be remembered that all the Member States already have information and consultation procedures of their own, although the legal nature of these arrangements and their effectiveness in practice vary from one country to the next. A Community instrument should not interfere with existing systems which have already gone part of the way towards solving the problem. Procedures already put in place by national legislation or on a voluntary basis, for example those modelled on the OECD guidelines, should — where possible — be integrated into the Community system. These arrangements should also be flexible enough to take account of systems based on agreements between the two sides of industry and those that have force of law.

The same objectives as those enshrined in international instruments that are not legally binding, such as the OECD guidelines and the ILO Tripartite Declaration, will be followed with regard to the activities of transnational firms, but they will be achieved in a Community context by means of methods appropriate to the Community's peculiar circumstances and needs.

5. The problems raised by this proposal for a directive are frequently complex. Certain points will undoubtedly require subsequent clarification in the light of consultations to be held with Parliament and the Economic and Social Committee. In addition, the Commission will continue to pursue its discussions with interested groups.

The Commission stresses that these various discussions are also in line with the general aim of

developing consultation between the two sides of industry at Community level.

In the light of the opinions that it receives, the Commission will clarify or where appropriate amend the proposed directive in accordance with Article 149(2) of the EEC Treaty.

Finally, the Commission recalls that the OECD and the ILO are continuing their work in this field and that it intends to participate actively in these proceedings, in particular with a view to ensuring that as soon as possible multinational undertakings based outside the Community are subject to the same obligations as those based within.

### *Legal basis*

6. Article 100 of the EEC Treaty has been chosen as legal basis for the directive since the lack of consistency between the information and consultation procedures on the one hand and the complex structure of undertakings on the other has a direct effect on the operation of the Common Market and should therefore be remedied by approximating legislation while maintaining progress within the meaning of Article 117 of the Treaty. The directive on collective redundancies<sup>1</sup> and the directive on the safeguarding of employees' rights,<sup>2</sup> the scope of which the new directive will in a sense extend, are also based on Article 100.

## **Comments on the articles**

### **Section I**

#### *Definitions and scope*

#### **Article 1**

7. The proposed Community rules fall into two distinct parts. One (Section II) is intended to apply to undertakings whose decision-making centre is located in another Member State or a non-member

<sup>1</sup> OJ L 48 of 22.2.1975; Bull. EC 12—1974, point 1305.

<sup>2</sup> OJ L 61 of 5.3.1977; Bull. EC 12—1976, points 1307 and 2218.

country and the other (Section III) will cover undertakings which have several establishments and/or one or more subsidiaries within a given country, but whose decision-making centre is also located in that country. This approach will ensure equivalent treatment for all undertakings with a sizeable workforce whilst at the same time taking into account the special features of transnational firms. Since the latter operate in several countries and hence within the framework of several legal systems, the articles referring to them are of necessity frequently more complex than those relating to firms which operate in a single country. The two parts of the directive are, however, parallel in substance.

#### Article 2

8. In line with the directive on the safeguarding of employees' rights in the event of transfers,<sup>1</sup> the term *employees' representatives* as defined in Article 2 means the representatives provided for by the laws or practice of the Member States, with the exception of members of administrative, governing or supervisory bodies of companies, which do not constitute employees' representative bodies.

● *Management* means those persons responsible for directing the affairs of an undertaking at the various levels specified in the articles of the directive. Individual articles thus refer to either the management of a dominant undertaking or the management of its subsidiaries or the management of an undertaking with one or more establishments.

● *Decision-making centre* means the place where the management of an undertaking with a complex structure actually performs its functions. This may be located either within the Member State where the undertaking operates (in the case of a complex undertaking operating within one country), or in another Member State or even outside the Community (in the case of transnational undertakings).

#### Article 3

9. This article defines the terms 'dominant undertaking' and 'subsidiary'. Undertaking A will be regarded as dominant in relation to Undertaking B where it either holds the majority of the votes appertaining to the shares issued by Undertaking B or has the power to designate at least half the members of

Undertaking B's administrative, management or supervisory bodies. Whilst this definition of the concepts of 'dominant undertaking' and 'subsidiary' is based on objective criteria appropriate to the particular context of this directive, it is not such as to render the latter inconsistent with other Community instruments covering analogous situations. Controls in fact may always be established in cases other than those covered by the presumptions (for instance important holdings even when not a majority).

#### Section II

#### *Information and consultation procedures in transnational undertakings*

#### Article 4

10. To the extent that this is not already the case, existing national legislation will need to be supplemented in order to ensure that employees receive such additional information as will enable them to obtain a full and comprehensive picture of the activities and results of the undertaking as a whole in the various countries where it operates. Steps should, for instance, be taken to ensure in connection with the disclosure requirements imposed by the directives on collective redundancies and transfers of undertakings that a situation can no longer occur where the employer at national level is kept in ignorance of the grounds for a decision taken within the framework of an undertaking's global strategy: he must be in a position both to inform the employees of the real grounds for a decision which he himself has not taken and to consult them before the decision is implemented.

It will, however, be possible to confine these disclosure and consultation requirements to subsidiaries or establishments employing more than one hundred workers. Allowance has been made here for the situation in those Member States where bodies representing employees with rights as regards disclosure of information and consultation do not have to be established until the workforce reaches a specified level.

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<sup>1</sup> OJ of 5. 3. 1977; Bull. EC 12 — 1976, points 1307 and 2218.

## Article 5

*11. Paragraph 1.* Central management will be obliged to transmit to national management, at at least six-month intervals, all the data which the latter will need in order to inform and consult the workforce in a meaningful manner and without delay on the operations of the undertaking as a whole rather than simply on its activities within the country concerned.

*Paragraph 2.* The list of items of information to be communicated to the employees or their representatives is the same as that already put forward by the Commission in its amended proposal for a regulation establishing a statute for European companies.<sup>1</sup> It was approved in this context by the European Parliament and raised no major objections at the time on the part of any of the other bodies consulted. In addition, the list corresponds to the provision of national legislation in those Member States which are most advanced in this field.<sup>2</sup>

*Paragraph 3.* The management of each subsidiary in the various Member States will be obliged to communicate the information received without delay to the representatives of their employees. The same will apply to the management of establishments forming part of an undertaking whose decision-making centre is located in another country (Articles 8 and 9).

*Paragraph 4.* Should national management be unable to supply the information required, the employees' representatives will be able to request this information directly from the management of the dominant undertaking (or the central management of an undertaking with establishments in several Member States,<sup>3</sup> even though the latter is located in another country. This provision is necessitated by the fact that, under existing legislation, the rights of bodies representing employees do not normally extend beyond national frontiers. The ILO and OECD codes of conduct whose objectives the Commission has decided to follow also stress the importance of providing for contacts between the real decision-makers and those directly affected by their decisions, even where the two are not in the same country. If on the other hand the managements of the subsidiaries or establishments have communicated

to their employees' representatives the information required, the information procedure is closed.

*Paragraph 5.* The Member States will need to lay down penalties for failure to comply with the disclosure requirements.

## Article 6

*12.* Management will, in particular, be required to consult the representatives of its employees in connection with all decisions liable to affect the latter's interests directly, namely those relating to:

- the closure or transfer of the whole or major parts of an establishment,
- restrictions, extensions or substantial modifications to the activities of the undertaking,
- major modifications with regard to organization,
- the introduction of long-term cooperation with other undertakings or the cessation of such cooperation (paragraph 2).

The list of decisions with respect to which consultation will be compulsory goes no further than the requirements already in force in those countries whose legislation is most advanced in this field and is moreover the same as that already approved by the Commission in its proposal for a regulation establishing a statute for European companies.<sup>4</sup> In order to ensure that the final decision is not held up, provision has been made for the employees to be required to make their views known within a specified period. For its part, the central management of the dominant undertaking will be under an obligation to supply the management of each of its subsidiaries or establishments in the Community with precise information (to be passed on without delay to the employees) concerning:

- the grounds for the proposed decision,
- the legal, economic and social consequences of this decision for the workers concerned,

<sup>1</sup> Supplement 4/75 — Bull. EC, Article 120 (for instance).

<sup>2</sup> Federal Republic of Germany, the Netherlands and Belgium.

<sup>3</sup> Point 15.

<sup>4</sup> Op. cit., Article 125.

- the measures planned in respect of these workers (paragraph 1).

This list is the same as that already approved by the Council in the directives on collective redundancies and the safeguarding of employees' rights in the event of transfers.

Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on terms of employment or working conditions, the management of the subsidiary or establishment will be required to hold consultations with them with a view to reaching agreement on the measures planned in their regard (paragraph 4). This procedure is already in force in all the Member States under the directive on the safeguarding of employees' rights in the event of transfers.<sup>1</sup>

In the event of the managements of the subsidiaries or establishments failing to provide the information required by this article or to organize consultations at their level, the representatives of the employees will be authorized to open consultations with central management through mandated delegates.

In addition to laying down appropriate penalties for failure to fulfil these disclosure and consultation requirements, the Member States will need to ensure that the representatives of employees affected by decisions taken in violation of the consultation requirements have a right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests in so far as these are directly threatened. Without going into detail regarding the various procedures in force in the individual Member States, it must be stressed that this concept should be taken in the widest possible sense — the possible forms of action include refusal to authorize collective redundancies, suspension of the rights of the majority shareholder (i.e. the dominant undertaking) in the subsidiary and the award of damages against the undertaking for each day's delay in meeting its obligations as regards disclosure of information and consultation (paragraph 6).

#### Article 7

13. The decision as to how employees' representatives are to be appointed will be a matter for legislation and/or national practice. The nature of the

body responsible for representing employees will also be left to their discretion (central or group works council, works council at plant level, shop stewards' committee, etc.).

However, this article provides that where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary or establishment (at the level of the group or firm), the employees concerned must be informed and consulted at this level (paragraphs 1 and 2).

The Member States will also be obliged to accept the establishment of a body representing all the employees of the dominant undertaking and its subsidiaries in the Community by means of agreements to be concluded between management at the level of the decision-making centre and the employees' representatives (paragraph 3). There is a need for such bodies to be set up since under existing laws organizations representing employees may not operate outside the territory of a given State. The operations of such a body shall be subject to the legislation of the country in which it has been set up.

#### Article 8

14. Specific measures should be taken to protect employees working for firms whose decision-making centre is located outside the Community. The protection afforded should be equivalent to that afforded to the employees of undertakings whose decision-making centre is located within the Community. Article 8 therefore provides that if such an undertaking does not ensure the presence in the Community of at least one person able to fulfil the information and consultation requirements laid down by the directive, the management of the subsidiary employing the largest number of workers in the Community will be responsible for fulfilling the obligations imposed on the management of the undertaking. This provision ensures that the directive will be respected by undertakings not based in the Community, with a view to avoiding any difference in treatment *vis-à-vis* Community-based undertakings, which could lead to a deterioration in the latter's competitive position.

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<sup>1</sup> OJ L 61 of 5.3.1977; Bull. EC 12—1976, points 1307 and 2218.



## Article 9

15. The provisions of Articles 4 to 8 of the directive relating to dominant undertakings and their subsidiaries should also be applied to undertakings whose decision-making centre is located in a Member State and which have one or more establishments employing at least one hundred workers in at least one other Member State. Preference for a particular legal structure (e.g. subsidiary or establishment) should not affect employees' rights with regard to information and consultation (paragraphs 1 and 3). Article 7 should apply to the undertaking and its various establishments and agreements to set up a body representing all the undertaking's employees should be authorized by both the managements of this undertaking and the representatives of its employees in its various establishments.

The provisions of the directive should also apply to undertakings whose decision-making centre is located in a non-member country and which have one or more establishments in a Community country. Article 8 applies to these undertakings in particular. Thus, if they do not ensure the presence within the Community of at least one person responsible for fulfilling the requirement to inform and consult employees, the establishment employing the largest number of workers in the Community will be responsible for fulfilling the obligations imposed on the undertaking by this directive (paragraph 2).

## Section III

### *Information and consultation procedures in undertakings with a complex structure operating in a single country*

## Article 10

16. Article 10 defines the scope of Section III which relates to the situation of undertakings with a complex structure as defined in Article 3,<sup>1</sup> but whose decision-making centre is located *in the same country* as that in which the employees work. The undertaking in question may be either a dominant undertaking with one or more subsidiaries in the same country or an undertaking with several esta-

blishments in the same country (Article 14). In both cases, the employees of subsidiaries or establishments employing at least one hundred workers must be informed in accordance with Article 11 and consulted in accordance with Article 12.

## Article 11

17. The information to be forwarded every three months by the management of the undertaking to its subsidiaries or establishments is the same as that described in Article 5 for undertakings with a transnational structure. The Commission has thus ensured that the two sections of the text are kept closely parallel. The information given should relate to the activities of the various subsidiaries or establishments and not only to the activities of the entity in which the employees work.

## Article 12

18. The various items of information which are the subject of mandatory consultation are the same as those in Article 6 (1) and (2).<sup>2</sup>

Consultations should take place between the management of the subsidiary (or establishment) and the representatives of the employees affected by a decision 'likely to have a direct effect on the employees' terms of employment or working conditions'. The consultations should take place 'with a view to reaching agreement on the measures planned' in relation to the employees. This wording is based on Article 6 of the directive on the safeguarding of employees' rights in the event of transfers.

The consultation will be held at the level of the existing representative bodies in each Member State after the management of each undertaking has communicated to the employees' representatives the information they need to make known their views on the decision which is the subject of mandatory consultation (paragraphs 3 and 4). However, where the requirements to disclose information and consult the employees has not been observed at the level of each subsidiary or establishment, the employees' re-

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<sup>1</sup> Point 9.

<sup>2</sup> Point 12.

representatives are authorized to approach the management of the dominant undertakings.

Consultations with managements at this level may be conducted by delegates with a mandate from the employees' representatives to obtain information on the grounds for the decision and its repercussions for the employees and, where appropriate, to seek agreement on the measures planned with regard to the employees (paragraph 5).

The penalties laid down in paragraph 6 are identical to those provided for in Article 6(6).<sup>1</sup>

### Article 13

19. Article 13 corresponds to Article 7 (Section II).<sup>2</sup> The Member States are, however, not obliged to authorize the setting up by collective agreement of a body representing all the employees of the dominant undertaking and its subsidiaries (or the undertakings and its establishments).<sup>3</sup> Whereas this procedure has its place in the context of a transnational concern, it is only meaningful in the context of a firm operating in a single Member State where there is no body representing all the employees of the dominant undertaking and its subsidiaries (or the undertaking and its establishments — see Article 14), which is not the case under the laws or accepted practices of all the Member States. However, under the terms of Article 13(3), Member States that do not have bodies representing employees at the level of the dominant undertaking must authorize the setting up of such bodies by means of agreements.

### Article 14

20. This article corresponds to Article 9. It has already been stated in relation to Articles 10 to 14 that the situation provided for in the case of dominant undertakings and their subsidiaries also applies to undertakings with one or more establishments in the same Member State. Employees must have the right to be properly informed and consulted whatever the legal structure of their firm, be it a subsidiary or an establishment.

### Article 15

21. The disclosure of any meaningful information must be counterbalanced by the requirement not to divulge trade secrets.

On the one hand, it is vital that the disclosure of secrets regarding the undertaking or its business or the premature disclosure of a planned operation should not be allowed either to prejudice the firm's interests or cause the proposed business operation to fail. For this reason, information of a confidential nature should not be passed on by persons who are required not to divulge trade secrets (members and former members of bodies representing employees and delegates with a mandate from them) (paragraph 1).

On the other hand, it would be unacceptable for managers of an undertaking to declare information to be confidential simply to prevent it being divulged. To circumvent this difficulty, paragraph 2 of this article provides that tribunals or other national bodies should be empowered to settle any disputes relating to the confidentiality of certain information. Penalties would be imposed in cases of infringement of the secrecy requirement (paragraph 3).

In its proposal relating to a statute for European companies, the Commission suggested a similar provision.<sup>4</sup>

### Articles 16 to 19

22. These provisions are in accordance with those approved by the Council in recent directives drawn up in the social field.

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<sup>1</sup> Point 12.

<sup>2</sup> Point 13.

<sup>3</sup> Article 14, where national law makes provision for such a representative institution: point 20.

<sup>4</sup> Op. cit., Article 114.

Proposal for a Council directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings<sup>1</sup>

(Presented to the Council by the Commission on 24 October 1980)

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<sup>1</sup> OJ C 297 of 15. 11. 1980.

*The Council of the European Communities,*

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the European Parliament,

Whereas the Council adopted on 21 January 1974 a Resolution concerning a social action programme;<sup>1</sup>

Whereas in a common market where national economies are closely interlinked it is essential, if economic activities are to develop in a harmonious fashion, that undertakings should be subject to the same obligations in relation to Community employees affected by their decisions, whether they are employed in the Member State to whose legislation the undertaking is subject or in another Member State;

Whereas the procedures for informing and consulting employees as embodied in legislation or practised in the Member States are often inconsistent with the complex structure of the entity which takes the decisions affecting them; whereas this may lead to unequal treatment of employees affected by the decisions of one and same undertaking; whereas this may stem from the fact that the information and consultation procedures do not apply beyond national boundaries;

Whereas this situation has a direct effect on the operation of the Common Market and consequently needs to be remedied by approximating the relevant laws while maintaining progress as required under Article 117 of the Treaty;

Whereas this directive forms part of a series of directives and proposals for directives in the field of company and labour law;

*Has adopted the following directive:*

## **Section I**

### *Scope and definitions*

#### *Article 1*

This directive relates to:

— procedures for informing and consulting employees employed in a Member State of the Community by an undertaking whose decision-making centre is located in another Member State or in a non-member country (Section II);

— procedures for informing and consulting employees where an undertaking has several establishments, or one or more subsidiaries, in a single Member State and where its decision-making centre is located in the same Member State (Section III).

#### *Article 2*

For the purposes of this directive the following definitions shall apply:

##### *(a) Employees' representatives*

The employees' representatives referred to in Article 2 (c) of 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.<sup>2</sup>

##### *(b) Management*

The person or persons responsible for the management of an undertaking under the national legislation to which it is subject.

##### *(c) Decision-making centre*

The place where the management of an undertaking actually performs its functions.

<sup>1</sup> OJ C 13 of 12. 2. 1974.

<sup>2</sup> OJ L 61 of 5. 3. 1977.

### *Article 3*

1. For the purposes of this directive an undertaking shall be regarded as dominant in relation to all the undertakings it controls, referred to as subsidiaries.

2. An undertaking shall be regarded as a subsidiary where the dominant undertaking, either directly or indirectly,

(a) holds the majority of votes relating to the shares it has issued,

or

(b) has the power to appoint at least half of the members of its administrative, management or supervisory bodies where these members hold the majority of the voting rights.

## **Section II**

### *Information and consultation procedures in transnational undertakings*

#### *Article 4*

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in at least one other Member State shall be required to disclose, via the management of those subsidiaries, information to employees' representatives in all subsidiaries employing at least one hundred employees in the Community in accordance with Article 5 and to consult them in accordance with Article 6.

#### *Article 5*

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

(a) structure and manning;

(b) the economic and financial situation;

(c) the situation and probable development of the business and of production and sales;

(d) the employment situation and probable trends;

(e) production and investment programmes;

(f) rationalization plans;

(g) manufacturing and working methods, in particular the introduction of new working methods;

(h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this article.

#### *Article 6*

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its employees, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than forty days before adopting the decision, giving details of:

— the grounds for the proposed decision;

— the legal, economic and social consequences of such decision for the employees concerned;

— the measures planned in respect of these employees.

2. The decisions referred to in paragraph (1) shall be those relating to:

- a) the closure or transfer of an establishment or major parts thereof;
- b) restrictions, extensions or substantial modifications to the activities of the undertaking;
- c) major modifications with regard to organization;
- d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than thirty days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in case of failure to fulfil the obligations laid down in this article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

### *Article 7*

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary, the information provided for in Article 5 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 6 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives. If such a body is created, paragraphs 1 and 2 shall be applicable.

### *Article 8*

Where the management of the dominant undertaking whose decision-making centre is located outside the Community and which controls one or more subsidiaries in the Community does not ensure the presence within the Community of a least one person able to fulfil the requirements as regards disclosure of information and consultation laid down by this directive, the management of the subsidiary that employs the largest number of employees within the Community shall be responsible for fulfilling the obligations imposed on the management of the dominant undertaking by this directive.

### *Article 9*

1. The management of an undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in at least one other Member State shall disclose, via the management of those establishments, information to the employees' representatives in all of its establishments in the Community employing at least one hundred employees in accordance with Article 5 and consult them in accordance with Article 6.

2. The management of an undertaking whose decision-making centre is located in a non-member country and which has at least one establishment in

one Member State shall be subject to the obligations referred to in paragraph (1).

3. For the purposes of applying this article, the terms 'dominant undertaking' and 'subsidiary' in Articles 4 to 8 shall be replaced by the terms 'undertaking' and 'establishment' respectively.

### Section III

#### *Procedures for informing and consulting the employees of undertakings with complex structures whose decision-making centre is located in the country in which the employees work*

#### *Article 10*

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in the same Member State shall be required, via the management of its subsidiaries, to disclose information to employees' representatives in all subsidiaries employing at least one hundred employees in that State in accordance with Article 11 and to consult them in accordance with Article 12.

#### *Article 11*

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

- (a) structure and manning;
- (b) the economic and financial situation;
- (c) the situation and probable development of the business and of production and sales;
- (d) the employment situation and probable trends;
- (e) production and investment programmes;

(f) rationalization plans;

(g) manufacturing and working methods, in particular the introduction of new working methods;

(h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) above to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member State shall provide for appropriate penalties in case of failure to fulfil the obligation laid down in this Article.

#### *Article 12*

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its workers, it shall be required to forward precise information to the management of each its subsidiaries within the Community not later than forty days before adopting the decision, giving details of:

- the grounds for the proposed decision;
- the legal, economic and social consequences of such decision for the employees concerned;
- the measures planned in respect of these employees.

2. The decisions referred to in paragraph (1) shall be those relating to:

- (a) the closure or transfer of an establishment or major part thereof;
- (b) restrictions, extensions or substantial modifications to the activities of the undertaking;

(c) major modifications with regard to organization;

(d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than thirty days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in the case of failure to fulfil the obligations laid down in this article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

### *Article 13*

1. Where in a Member State a body representing employees, exists at a level higher than that of the individual subsidiary, the information provided for in Article 11 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 12 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives, unless provision is made for it by national law. If such a body is created, paragraphs 1 and 2 shall be applicable.

### *Article 14*

1. The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in the same Member State shall be required to disclose, via the management of the subsidiaries, information to the employees' representatives in all its subsidiaries employing at least one hundred employees in accordance with Article 11 and to consult them in accordance with Article 12.

2. For the purposes of applying this Article, the terms 'dominant undertaking' and 'subsidiary' in Articles 10 to 13 shall be replaced by the terms 'undertaking' and 'establishment' respectively.

## **Section IV**

### *Secrecy requirements*

### *Article 15*

1. Members and former members of bodies representing employees and delegates authorized by them shall be required to maintain discretion as regards information of a confidential nature. Where they communicate information to third parties they shall take account of the interests of the undertaking and shall not be such as to divulge secrets regarding the undertaking or its business.

2. The Member States shall empower a tribunal or other national body to settle disputes concerning the confidentiality of certain information.



3. The Member States shall impose appropriate penalties in cases of infringement of the secrecy requirement.

## Section V

### *Final provisions*

#### *Article 16*

This directive shall be without prejudice to measures to be taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies<sup>1</sup> and Directive 77/187/EEC or to the freedom of the Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

#### *Article 17*

1. The Member States shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive not later than . . .<sup>2</sup> They shall forthwith inform the Commission thereof.

2. The Member States shall communicate to the Commission the texts of laws, regulations and administrative provisions which they adopt in the area covered by this directive.

#### *Article 18*

Within two years from the date fixed in Article 17, the Member States shall transmit to the Commission all information necessary to enable it to draw up a report to be submitted to the Council relating to the application of this directive.

#### *Article 19*

This directive is addressed to the Member States.

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<sup>1</sup> OJ L 48 of 22.2.1975.

<sup>2</sup> Date to be specified at the time of adoption by the Council.

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Realizing that workers need to be fully informed of the business activities and long-term policies of the firms employing them, the Commission has adopted a proposal for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings (those with several establishments, or one or more subsidiaries, in one or more Member States, or whose decision-making centre is outside the Community).