

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91)345 final

Brussels, 16 September 1991

Amended 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

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

COMMISSION OF THE EUROPEAN COMMUNITIES

CORRIGENDUM

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EXPLANATORY MEMORANDUM

Parliament and the Economic and Social Committee have delivered opinions on the proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings and groups of undertakings for the purposes of informing and consulting employees. The amended proposal which the Commission is submitting pursuant to Article 149 of the EEC Treaty, takes account of Parliament's amendments approved on 10 July 1991 and the Economic and Social Committee's opinion adopted on 21 March 1991. A number of technical improvements have been incorporated for the sake of legal certainty and consistency.

Article 2

Point (a) has been amended in order to link the secondary workforce threshold (100 employees) with the Member State rather than with the establishment. This amendment is in line with the wishes expressed by Parliament and the Economic and Social Committee. It was also recommended in a report on company size and structure carried out at the Commission's request, on the ground that a number of undertakings in the service sector would have otherwise been excluded. A bank, for instance, or a retail "chain" store or a distribution "company" might employ thousands of people in each of a number of Member States without any of its workplaces reaching the threshold of 100 employees.

Point (d) has been amended at the request of Parliament and the Economic and Social Committee. In order to make it possible for employees' representatives in companies' administrative, managing or supervisory bodies to be members of the EWC where the relevant legislation of a Member State so allows, the phrase "with the exception of members of administrative, managing or supervisory bodies of companies who sit in such bodies as employees' representatives" has been deleted. The new text mirrors the definition of "workers' representatives" in Article 1(1)(b) of Council Directive 75/129/EEC on collective dismissals⁽¹⁾.

Point (e), inserted to reflect the opinions of the Parliament and the Economic and Social Committee, is designed to overcome the problem of short-term fluctuations in the number of employees by specifying that the workforce size thresholds laid down by the Directive should be based on the number of persons normally employed during a period of two years prior to the relevant moment. It goes without saying that where an undertaking has been in operation or under control for a period shorter than two years, the relevant period shall extend to the date on which the operations, or, as the case may be, the control, began.

Article 3

Paragraph 3. It would be contrary to the Directive's aims and objectives to impose the setting up of European Works Councils upon investment companies or financial holding companies which do not involve themselves, directly or indirectly, in the management of the undertaking in which they have holdings. Within the meaning of Article 3 (5) (a) of Council Regulation (EEC) of 21 December 1989 on the concentrations between undertakings,⁽²⁾ an investment company carries out transactions and dealings in securities for its own account or for the account of others, holds on a temporary basis securities which it has acquired in an undertaking with a view to re-selling them and does not exercise voting rights with a view to determining the behaviour of the undertaking concerned. Provided that this is the case, it should

(1) OJ No L 48/29 of 22.02.1975

(2) O.J n° L 395/1 of 30.12.1989

not be considered to be a controlling undertaking with respect to the company in which it has holdings. The same holds true with respect to financial holding companies within the meaning of Article 3(5)(c) of the aforementioned Regulation which requires that the voting rights in respect of the holdings are exercised only to maintain the full value of investments and not to determine directly or indirectly the conduct of those undertaking. The new paragraph inserted into Article 3 takes account of this particular situation.

Article 4

The amendment to paragraph 1 follows that made to Article 2(a) and ties in with paragraph 1, point(a) of the Annex and by ninth recital of the proposal. It has been introduced in response to Parliament's wishes. The new text lays down that the powers and competence of the EWC shall cover all establishments and group undertakings located in the Community, irrespective of their workforce, provided that they belong to a Community-scale undertaking or group of undertakings.

Paragraph 2 clarifies the original text. In accordance with the proposed amendments, the central management of the undertaking or controlling undertaking is responsible for the fulfilling of any obligation concerning the setting up of the EWC imposed upon the Community-scale undertaking or group of undertakings in accordance with the Directive.

Article 5

In paragraph 1 the words "elected by" have been introduced in response to Parliament's amendment to paragraph 5. The term "nature" has been replaced by "scope" which reflects more accurately the intended meaning. In effect, the EWC agreement may empower the EWC set up a number of EWCs in response to the complexity of the group structure or the diversity of sectors and activities concerned. The amendment proposed attempts to overcome the ambiguity of the term "nature". For consistency, identical amendments have been introduced in Article 6(1)(a).

In paragraph 2 the terms "or group of undertakings" have been incorporated at Parliament's request.

The maximum membership of the special negotiating body is in line with the limitation to membership of the EWC prescribed by paragraph 1(b) of Annex. The composition of the special negotiating body will take into account, as far as possible, the different categories of the employees concerned in line with the wishes expressed by Parliament and the Economic and Social Committee with respect to the composition of the EWC.

Paragraph 3. As requested by Parliament priority has been given to the employees' representatives over employees as regards requests from the central management to convene the special negotiating body.

In paragraph 5 the words "appointed or" have been deleted to take into account Parliament's wishes.

Article 6

The amendment to paragraph 1 point(a) was determined by that to Article 5(1) and 5(5), the latter at Parliament's request.

Article 7

The new phrase "must negotiate in good faith to reach the agreement mentioned in Article 6" was included in respond to an amendment made by Parliament and reinforces the aspects of the proposal based on agreement.

Article 8

Paragraph 1 incorporates an amendment adopted by Parliament with a view to discouraging any management abuse of the directive's secrecy clause. Accordingly, the new text expressly requires any withholding of information to be on the basis of objective criteria.

Paragraph 2 clarifies, for the purpose of consistency, the original wording making an explicit reference to members of the special negotiating body and experts.

Article 11

The wording of paragraph 2 has been amended slightly for reasons of accuracy and clarity.

Article 13

This Article was added to take into account Parliament's wishes. It provides for a review of the operation of the Directive, notably of the workforce thresholds applicable five years after the date referred to in Article 12(1).

ANNEX

paragraph 1

Point (b) has been amended in the light of the views of the Parliament and Economic and Social Committee and in accordance with the abovementioned amendments to Article 5(4) and 6 1(a). The reference to "appointment" has been deleted at Parliament's request. As regards the composition of EWC, the introduction of an upper limit of 30 members was recommended by the Economic and Social Committee. The provision stating that in the overall composition of the EWC account should be taken of the various employment categories with the opinion of both the Parliament and the Economic and Social Committee.

Point (d). Pursuant to the opinions of Parliament and the Economic and Social Committee, a non-exhaustive list of management proposals likely to have major consequences for the interests of employees has been incorporated. Express reference is made, inter alia, to relocation, mergers, reduction in size or closure of undertakings and introduction of new technologies.

In accordance with the opinion of the Economic and Social Committee, account has been taken of the diversity and complexity of groups' structures by involving in the consultation process any level of management within the group which contemplates a decision having a transnational dimension and liable to have major consequences for the employees.

Point (e) reflects the opinions of Parliament and the Economic and Social Committee. It expressly provides that the EWC is entitled to meet alone, prior to meetings with the relevant management.

Amended 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 (1)

ORIGINAL PROPOSAL

AMENDED PROPOSAL

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.

Amended 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.

The Council of the European Communities,

The Council of the European Communities,

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

Unchanged

Having regard to the proposal from the Commission,

Unchanged

Having regard to the Opinion of the European Parliament,

Unchanged

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

Unchanged

Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information and consultation for workers, must be developed along appropriate lines, taking account of the practices in force in the various Member States; whereas the Charter states that "this shall apply especially in companies or groups of companies having establishments or companies in two or more Member States";

Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information, consultation and participation for workers, must be developed along appropriate lines, taking account of the practices in force in the various Member States; whereas the Charter states that "this shall apply especially in companies or groups of companies having establishments or companies in two or more Member States";

Whereas it is important to develop dialogue between management and employee representation at Community-level;

Whereas the completion of the Internal market is bound to generate a process of concentrations of undertakings, cross-border mergers, take overs, joint ventures and consequently, a transnationalization of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, this situation requires that undertakings and groups of undertakings operating in more than one Member State must inform and consult the representatives of their employees affected by their decisions;

Unchanged

Whereas procedures for informing and consulting employees as embodied in legislation or practice in Member States are often inconsistent with the transnational structure of the entity which takes the decision affecting those employees; whereas this may lead to unequal treatment of employees affected by the decisions of one and the same undertaking, or group of undertakings;

Unchanged

Whereas Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾ and Council Directive 77/187/EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or part of businesses incorporate compulsory procedures for informing and consulting the representatives of the employees affected by the operations in question;

Unchanged

Whereas these information and consultation requirements do not aim to cover all situations likely to affect the employees' interests and, in particular, do not extend specifically to situations in which the decision-making centre is not situated in the Member State in which the employees affected by its decisions are employed;

Unchanged

Whereas this situation has a direct effect on the operation of the internal market and consequently needs to be remedied;

Unchanged

Whereas appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or groups of undertakings are properly informed and consulted in cases where decisions likely to affect them are taken outside the Member State in which they are employed;

Unchanged

(2) OJ L 48, 22.2.1975.

Whereas, in order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, a European Works Council must, in principle, be set up;

Unchanged

Whereas European Works Councils in such undertakings or groups must encompass all establishments or, as the case may be, group undertakings located in the Community, irrespective of whether the undertaking or, in the case of a group, the controlling undertaking, has its central management outside the Community;

Unchanged

Whereas, in accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the controlling undertaking in a group to determine by agreement the nature, composition, competence, mode of operation, procedures and financial resources of the European Works Council so as to suit their own particular circumstances;

Unchanged

Whereas, however, in the absence of such an agreement, certain minimum requirements in respect of the composition, functions and powers, procedures and financial resources of the European Works Council should apply;

Unchanged

Whereas, moreover, the employees' representatives may unanimously agree not to seek the setting up of a European Works Council and, in these circumstances, the parties may decide upon an alternative procedure for informing and consulting employees on condition that such an alternative procedure meets certain basic conditions;

Whereas, moreover, the employees' representatives may unanimously agree not to seek the setting up of a European Works Council; whereas the parties may decide upon an alternative procedure for the information and consultation of employees on condition that such an alternative procedure meets certain basic conditions;

Whereas the European Works Council must be kept informed as to the activities and prospects of the undertaking or group of undertakings so that it may assess the possible impact on the workers' interests; whereas, to this end, the undertaking or the controlling undertaking should be required to communicate to the European Works Council, on the occasion of an annual meeting, general information directed towards the interests of the employees and information relating more specifically to those aspects of the undertaking's or group of undertakings' activities and prospects which are liable to affect the employees' interests;

Unchanged

Whereas, before the implementation of any decision significantly affecting the employees' interests, the European Works Council should also be informed in good time and invited to give its opinion;

Unchanged

Whereas the information and consultation requirements laid down by this Directive should be implemented in the case of an undertaking or, in a group, a controlling undertaking, having its central management in a non-member country, by its representative agent in the Community or, in the absence of such an agent, by the establishment or controlled undertaking employing the highest number of employees in the Community;

Unchanged

Whereas appropriate remedies must be provided by Member States in the event of failure to comply with this Directive;

Unchanged

HAS ADOPTED THIS DIRECTIVE :

Unchanged

Section 1

Section 1

General

General

Article 1

Article 1

- | | |
|--|---------------------|
| <p>1. The object of this Directive is to improve the information to and consultation of employees in Community-scale undertakings and groups of undertakings.</p> | <p>1. Unchanged</p> |
| <p>2. To this end, a European Works Council (hereinafter "EWC") shall be established in every Community-scale undertaking and group of undertakings, where this is requested in the manner provided for by Article 5.3, with the purpose of informing and consulting their employees upon the terms, in the manner and with the effects laid down by this Directive.</p> | <p>2. Unchanged</p> |

Article 2

For the purposes of this Directive :

- (a) A "Community-scale undertaking" means an undertaking with at least 1,000 employees within the Community and with at least two establishments in different Member States each employing at least 100 employees;
- (b) A "Community-scale group of undertakings" means a group of undertakings with at least 1,000 employees within the Community and with at least two group undertakings in different Member States each of which employs at least 100 employees within the Community;
- (c) A "group of undertakings" comprises a controlling undertaking and its controlled undertakings.
- (d) "Representatives of the employees" means the employees' representatives provided for by the laws or practice of the Member States, with the exception of members of administrative, managing or supervisory bodies of companies who sit on such bodies as employees' representatives.

Article 3

1. For the purpose of this Directive, a "controlling undertaking" is an undertaking which :

- (a) has a majority of the shareholders' or members' voting rights of another undertaking (controlled undertaking);

or

- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory board of another undertaking, and is at the same time a shareholder in, or member of, that undertaking (controlled undertaking);

or

Article 2

For the purposes of this Directive :

- (a) A "Community-scale undertaking" means an undertaking with at least 1,000 employees within the Community including 100 employees in at least each of two Member States;
- (b) Unchanged
- (c) Unchanged
- (d) "Representatives of the employees" means the employees' representatives provided for by the laws or practice of the Member States.
- (e) The prescribed workforce size thresholds shall be based on the number of employees normally employed during the previous two years.

Article 3

1. Unchanged

Com(91) 345 final/2

(c) has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum and articles of association, where the law governing that undertaking (controlled undertaking) permits its being subject to such contracts or provisions;

(Unchanged)

or

(d) is a shareholder in or member of an undertaking, and :

(i) has had the power to appoint, solely as a result of the exercise of its voting rights, a majority of the members of the administrative, management or supervisory bodies of that undertaking (controlled undertaking) who have held office during the financial year and during the preceding financial year; or

(ii) alone controls, pursuant to an agreement with other shareholders in or members of that undertaking (controlled undertaking), a majority of shareholders' or members' voting rights in that undertaking.

2. For the purposes of paragraph 1(a), (b) and (d), the controlling undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

2. Unchanged

3. Notwithstanding paragraph 1 above, an undertaking shall not be deemed to be a "controlling undertaking" with respect to another undertaking in which it has holdings where the former undertaking is a company within the scope of Article 3(5)(a) or Article 3(5)(c) of Council Regulation (EEC) 4064/89⁽³⁾.

Article 4

1. EWCs shall encompass :
 - (a) in the case of Community-scale undertakings, all the establishments located within the Community each of which employs at least 100 employees;
 - (b) in the case of the Community-scale group of undertakings, all the group undertakings located within the Community each of which employs at least 100 employees.
2. The setting up of the EWC shall be the responsibility of the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the central management of the controlling undertaking.
3. Where a Community-scale undertaking or, in the case of a Community-scale group of undertakings, the controlling undertaking, has its central management outside the Community, the responsibility referred to in paragraph 2 shall lie with its representative agent in the Community to be designated, if necessary, or, in the absence of such an agent, by the management of the establishment, or the central management of the group undertaking employing the highest number of employees in a Member State.
4. The law applicable in order to determine whether an undertaking is a "controlling undertaking" shall be the law of the Member State which governs that undertaking. Where the law governing the undertaking is not that of a Member State, the applicable law shall be the law of the Member State in which the representative agent of the undertaking or, in the absence of such an agent, the central management of the group undertaking which employs the highest number of employees in the Community is situated.

Article 4

1. The powers and competence of the EWCs resulting from the EWC agreement referred to in Article 6 or in the absence thereof, from the minimum requirements laid down in accordance with the Annex, shall cover, in the case of a Community-scale undertaking, all the establishments located within the Community and, in the case of a Community-scale group of undertakings, all group undertakings located within the Community.
2. Any obligation concerning the setting up of the EWC imposed upon the Community-scale undertaking or group of undertakings in accordance with this Directive shall be the responsibility of the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the central management of the controlling undertaking.
3. Unchanged
4. Unchanged

Section II

The EWC Agreement

Article 5

1. The nature, composition, competence and mode of operation of the EWC shall be determined by means of a written agreement concluded between the central management of the Community-scale undertaking, or, in the case of a Community-scale group, the controlling undertaking, and a special negotiating body drawn from the representatives of the employees of the undertaking or group. Where there are no employee representatives within the meaning of Article 2(d), the employees concerned shall be entitled to elect from among their number representatives for the purpose of this Article.
2. The special negotiating body shall include at least one employee representative from each Member State in which the Community-scale undertaking employs at least 100 employees or, in the case of a Community-scale group of undertakings, from each group undertaking employing at least 100 employees within the Community. Member States shall make provision for the special negotiating body to include additional representatives, up to a maximum of five, to be drawn from Member States or, as the case may be, group undertakings in which significantly more than 100 employees are employed. The additional representatives shall be allocated in accordance with systems which take into account the number of staff they represent.

Section II

The EWC Agreement

Article 5

1. The scope, composition, competence and mode of operation of the EWC shall be determined by means of a written agreement concluded between the central management of the Community-scale undertaking, or, in the case of a Community-scale group, the controlling undertaking, and a special negotiating body drawn from and elected by representatives of employees of the undertaking or group. Where there are no employee representatives within the meaning of Article 2(d), the employees concerned shall be entitled to elect from among their number representatives for the purposes of this Article.
2. The special negotiating body shall in any case include one employee representative from each Member State in which the Community-scale undertaking or group of undertakings has at least 100 employees and, in the case of a Community-scale group of undertakings, from each group undertaking employing 100 employees within the Community, up to a maximum equal to the number of Member States of the European Community. Member States shall make provision for the special negotiating body to include additional representatives, up to a maximum of five, to be drawn from the Member States or, as the case may be, groups undertakings in which significantly more than 100 employees are employed. The additional representatives shall be allocated in accordance with systems which take into account the number of staff they represent and the categories to which they belong.

3. At the written request of any employees or of their representatives, or on the initiative of the central management of a Community-scale undertaking or, in the case of a Community-scale group, of a controlling undertaking, a meeting of the special negotiating body shall be convened by the said central management. The composition of this body shall be determined in accordance with paragraph 2. At the end of the aforesaid meeting, the special negotiating body shall inform the central management in writing of its request for the opening of negotiations with a view to concluding the agreement referred to in Article 6(1). For the purpose of such negotiations, it may be assisted by experts of its choice. However, the special negotiating body may decide unanimously not to request the setting up of a EWC.
3. At the written request of any employees where there are no employees' representatives within the meaning of Article 2(d), or of their representatives, where these exist within the meaning of Article 2(d), or on the initiative of the central management of a Community-scale undertaking or, in the case of a group, of a controlling undertaking, a meeting of the special negotiating body shall be convened by the said central management. At the end of the aforesaid meeting, the special negotiating body shall inform the central management in writing of its request for the opening of negotiations with a view to concluding the agreement referred to in Article 6. For the purpose of such negotiations, it may be assisted by experts of its choice. However, the special negotiating body may decide unanimously not to request the setting up of a EWC.

4. Member States shall also make provision for the costs of the discussions held under paragraph 1 and 3 to be met by the undertaking or, in the case of a group, by the controlling undertaking.

4. Unchanged

5. Each Member State shall determine the manner in which representatives of employees or, in the absence thereof, the body of employees, employed in its territory by Community-scale undertakings or groups of undertakings shall appoint or elect members of the special negotiating body.

5. Each Member State shall determine the manner in which representatives of employees or, in the absence thereof, the body of employees, employed in its territory by Community-scale undertakings or groups of undertakings shall elect members of the special negotiating body.

6. For the purpose of identifying the representatives of employees employed in other Member States, each Member State shall refer to the appropriate laws which implement paragraph 5 above in the other Member States .

6. Unchanged

Article 6

Article 6

1. The agreement between the central management of the Community-scale undertaking or, in the case of a Community-scale group, the controlling undertaking and the special negotiating body shall determine :

1. Unchanged

(a) the nature and composition of the EWC, the number of members, the allocation of seats and the method and duration of appointment or election of the members;

(a) the scope and composition of the EWC, the number of members, the allocation of seats, the election procedures and the term of office;

(b) the functions and powers of the EWC;

(b) Unchanged

(c) the procedure for informing and consulting the EWC;

(c) Unchanged

(d) the place, frequency and duration of meetings of the EWC;

(d) Unchanged

(e) the financial and material resources to be allocated to the EWC.

(e) Unchanged

2. However, by written agreement between the central management of the Community-scale undertaking or, in the case of a group, the controlling undertaking and the special negotiating body entered into at the conclusion of the negotiations, it may be decided not to set up a EWC but only on condition that the minimum requirements in relation to information and consultation set out at paragraphs (a), (c), (d), (f) and (g) of the Annex, as well as in Article 9 of this Directive are respected mutatis mutandis.

2. Unchanged

Section III

Absence of Agreement

Article 7

1. Where the central management of the Community-scale undertaking, or the controlling undertaking in a Community-scale group of undertakings, and the special negotiating body so decide, or in so far as they fail to reach the agreement mentioned in Article 6 within one year of the initial request to convene the special negotiating body referred to in Article 5.3, the minimum requirements laid down by the legislation of the Member State in which the central management of the undertaking or, in the case of a group, the controlling undertaking is situated, shall apply.
2. The minimum requirements referred to in paragraph 1 shall be subject to the rules contained in the Annex.

Section IV

Miscellaneous

Article 8

1. Each Member State may provide that the central management of the Community-scale undertakings or controlling undertakings situated in its territory have the right to withhold information which, if disclosed, would substantially damage the interest of the undertakings concerned.
2. Member States shall provide that members of the EWC or the employees to whom they refer, shall not reveal to third parties any information which has been provided to them in confidence.

Section III

Absence of Agreement

Article 7

1. The central management of the Community-scale undertaking, or the controlling undertaking in a group of undertakings, and the special negotiating body must negotiate in good faith to reach the agreement mentioned in Article 6. Where they so decide, or in so far as they fail to reach the agreement mentioned in Article 6 within one year of the initial request to convene the special negotiating body referred to in Article 5(3), the minimum requirements laid down by the legislation of the Member State in which the central management of the undertaking or, in the case of a group, the controlling undertaking is situated, shall apply.
2. Unchanged

Section IV

Miscellaneous

Article 8

1. Each Member State may provide that the central management of the Community-scale undertakings or controlling undertakings situated in its territory have the right to withhold information which, if disclosed, would, in the light of objective criteria, substantially damage the interest of the undertakings concerned.
2. Member States shall provide that members of the special negotiating body and of the EWC and the experts who assist them shall not reveal any information which has expressly been provided to them in confidence. This obligation shall be maintained even after the end of their mandates.

Article 9Article 9

The members of the special negotiating body and the members of the EWC shall enjoy in the exercise of their functions the same protection and guarantees provided for employees' representatives by the national legislation or practice in force in the country of employment. In any event they must be allowed to attend meetings of the special negotiating body or the EWC and those members who are employees of the Community-scale undertaking or group undertaking must be guaranteed payment of full wages for the duration of any absence from work in connection with their duties.

Unchanged

Section VSection V

Final provisions

Final provisions

Article 10Article 10

1. Each Member State shall ensure that the management of the establishments or group undertakings situated in its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, irrespective of whether the central management of the Community-scale undertaking or of the controlling undertaking is situated in its territory.

1. Unchanged

2. Member States shall provide for appropriate remedies in the event of failure to comply with this Directive, and, in particular, shall ensure that adequate procedures exist at the suit of the EWC for the enforcement of obligations under this Directive.

2. Unchanged

Article 11Article 11

1. This Directive shall be without prejudice to measures taken pursuant to Directive 75/129/EEC and Directive 77/187/EEC.

1. Unchanged

2. Nothing in this Directive shall affect the operation of the laws or practices of the Member States in respect of the provisions of information and consultation of employees at group level, undertaking level and establishment level.

2. This Directive is without prejudice to the laws or practices of the Member States in respect of the provisions of information and consultation of employees at group level, undertaking level and establishment level.

3. This Directive shall not affect the right of the Member States to apply or introduce laws, regulations or administrative provisions more favourable to employees.

3. Unchanged.

Article 12

1. Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall immediately inform the Commission thereof.
2. When member States adopt these provisions, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

(Non-foreseen)

Article 13

This Directive is addressed to the Member States.

Article 12

1. Unchanged
2. Unchanged

Article 13

Five years after the date referred to in Article 12(1) the Commission shall review the operation of this Directive and, in particular, the appropriateness of the workforce size thresholds with a view to proposing, where necessary, the adequate amendments.

Article 14

This Directive is addressed to the Member States.

Annex*Minimum requirements*

1. The minimum requirements referred to in Article 7(1) shall cover the matters set out in Article 6(1) and shall be subject to the following conditions :

(a) The competence of the EWC shall be limited to those matters which concern the Community-scale undertaking or group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States. In the case of Community-scale undertakings or groups of undertakings referred to in Article 4, paragraph 3 of this Directive the competence of the EWC shall be limited to those matters concerning all their establishments or group undertakings located inside the Community or concerning at least two of their establishments or group undertakings in different Member States.

(b) The EWC shall :

(i) subject to paragraph b(ii), have a minimum of three members and a maximum of 30;

(ii) include at least one member from each Member State in the territory of which a Community-scale undertaking has an establishment employing at least 100 employees or, in the case of a group, at least one member from each group undertaking employing at least 100 employees;

(iii) be composed of representatives of the employees of the undertakings in question who are appointed, elected, replaced and removed by the representatives of employees or, in the absence thereof, by the body of employees; in accordance with systems which take into account, in an appropriate manner, the number of staff they represent.

Annex*Minimum requirements*

1. Unchanged

(a) Unchanged

(b) The EWC shall :

(i) have a minimum of three members and a maximum of 30;

(ii) include at least one member from each Member State in the territory of which the Community-scale undertaking or group of undertakings employs at least 100 employees and, in the case of a group, at least one member from each group undertaking employing at least 100 employees within the Community subject to the maximum referred to in subparagraph (i);

(iii) be composed of representatives of the employees of the establishments or undertakings in question who are elected, replaced and removed by the representatives of employees or, in the absence thereof, by the body of employees, in accordance with systems which take into account, in an appropriate manner, the number of staff they represent and the categories to which they belong.

(c) The EWC shall have the right to meet with the central management of the undertaking or controlling undertaking at least once a year, to be informed of the progress of the undertaking's or group of undertakings' business and of its prospects. This information shall relate in particular to its structure, economic and financial situation, the probable development of the business and of production and sales, the employment situation and probable trend, and investment prospects.

(d) Subject to subparagraph (a) above, the EWC shall have the right to be informed and consulted by the central management of the undertaking or controlling undertaking about any management proposal likely to have serious consequences for the interests of the employees of the undertaking. This consultation shall be timely and shall be carried out on the basis of a report from the central management of the undertaking or group of undertakings, on which the EWC may put forward its opinion. The final decision shall be exclusively the responsibility of the central management of the undertaking or controlling undertaking.

(c) Unchanged

(d) Subject to subparagraph (a) above, the EWC shall have the right to be informed and consulted by the central management of the undertaking or controlling undertaking, and by any other more appropriate level of management within the group which is competent to take a particular decision, about any management proposal likely to have serious consequences for the interests of the employees. Proposals likely to have serious consequences may, in particular, relate to :

- (i) the relocation, merger, reduction in size or closure of undertakings, establishments or significant parts thereof,
- (ii) changes with regard to the organisation of a Community-scale undertaking or group of undertakings; and
- (iii) the introduction of new working methods or production processes.

This consultation shall be timely and shall be carried out on the basis of a report from the central management of the undertaking or by the appropriate level of management of the group of undertakings on which the EWC may put forward its opinion. The final decision shall be exclusively the responsibility of the central management of the undertaking or the appropriate level of management within the group of undertakings.

(e) In addition to the annual meeting provided for by paragraph (c), at least one special meeting between the EWC and the central management of the undertaking or controlling undertaking shall be held per year where necessary for the purposes of paragraph (d) above. This shall be convened by the central management of the undertaking or controlling undertaking at the request of the EWC.

(e) Unchanged

The EWC shall be entitled to meet, prior to meetings with the central management of the Community-scale undertakings or with the management of the group of undertakings, without the management concerned being present.

(f) The members of the EWC shall inform the workers' representatives at establishment or at group undertaking level or, in the absence thereof, the body of employees, of the content and outcome of the information and consultation process carried out in accordance with this Annex.

(f) Unchanged

(g) The operating expenses of the EWC shall be borne by the central management of the undertaking or controlling undertaking. The central management concerned shall provide the members of the EWC with such financial and material resources as enable them to meet and perform their duties in an appropriate manner. In particular, the cost of the meeting facilities and interpretation, and the accomodation and travel expenses of members of the EWC, shall be met by the central management of the undertaking or controlling undertaking.

(g) Unchanged

2. Article 5, paragraphs 5 and 6, of this Directive shall apply mutatis mutandis.

2. Unchanged

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