

EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Directive of the European Parliament and of the Council establishing a general
 framework for informing and consulting employees in the European Community

Joint text

approved by the Conciliation Committee
provided for in Article 251(4) of the EC Treaty

DIRECTIVE 2002/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of

establishing a general framework for informing and consulting employees
in the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure referred to in Article 251 ⁴, and in the light of the joint text approved by the Conciliation Committee on 17 December 2001,

¹ OJ C 2, 5.1.1999, p. 3.

² OJ C 258, 10.9.1999, p. 24.

³ OJ C 144, 16.5.2001, p. 58.

⁴ Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p. 223), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 55), Council Common Position of 27 July 2001 (OJ C 307, 31.10.2001, p. 16) and Decision of the European Parliament of 23 October 2001 (not yet published in the Official Journal).

Whereas:

- (1) Pursuant to Article 136 of the Treaty, a particular objective of the Community and the Member States is to promote social dialogue between management and labour.
- (2) 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 different Member States.
- (3) The Commission consulted management and labour at Community level on the possible direction of Community action on the information and consultation of employees in undertakings within the Community.
- (4) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour on the contents of the planned proposal; management and labour have presented their opinions to the Commission.
- (5) Having completed this second stage of consultation, management and labour have not informed the Commission of their wish to initiate the process potentially leading to the conclusion of an agreement.

- (6) The existence of legal frameworks at national and Community level intended to ensure that employees are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting employees from being taken and made public without adequate procedures having been implemented beforehand to inform and consult them.
- (7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.
- (8) There is a need, in particular, to promote and enhance information and consultation on the situation and likely development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the possible anticipatory measures envisaged, in particular in terms of employee training and skill development, with a view to offsetting the negative developments or their consequences and increasing the employability and adaptability of the employees likely to be affected.
- (9) Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work.

- (10) The Community has drawn up and implemented an employment strategy based on the concepts of "anticipation", "prevention" and "employability", which are to be incorporated as key elements into all public policies likely to benefit employment, including the policies of individual undertakings, by strengthening the social dialogue with a view to promoting change compatible with preserving the priority objective of employment.
- (11) Further development of the internal market must be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.
- (12) Entry into the third stage of economic and monetary union has extended and accelerated the competitive pressures at European level. This means that more supportive measures are needed at national level.
- (13) The existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively a posteriori approach to the process of change, neglect the economic aspects of decisions taken and do not contribute either to genuine anticipation of employment developments within the undertaking or to risk prevention.
- (14) All of these political, economic, social and legal developments call for changes to the existing legal framework providing for the legal and practical instruments enabling the right to be informed and consulted to be exercised.

- (15) This Directive is without prejudice to national systems regarding the exercise of this right in practice where those entitled to exercise it are required to indicate their wishes collectively.
- (16) This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives.
- (17) Since the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the object is to establish a framework for employee information and consultation appropriate for the new European context described above, and can therefore, in view of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (18) The purpose of this general framework is to establish minimum requirements applicable throughout the Community while not preventing Member States from laying down provisions more favourable to employees.

- (19) The purpose of this general framework is also to avoid any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings. To this end, the scope of this Directive should be restricted, according to the choice made by Member States, to undertakings with at least 50 employees or establishments employing at least 20 employees.
- (20) This takes into account and is without prejudice to other national measures and practices aimed at fostering social dialogue within companies not covered by this Directive and within public administrations.
- (21) However, on a transitional basis Member States in which there is no established statutory system of information and consultation of employees or employee representation should have the possibility of further restricting the scope of the Directive as regards the numbers of employees.
- (22) A Community framework for informing and consulting employees should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.
- (23) The objective of this Directive is to be achieved through the establishment of a general framework comprising the principles, definitions and arrangements for information and consultation, which it will be for the Member States to comply with and adapt to their own national situation, ensuring, where appropriate, that management and labour have a leading role by allowing them to define freely, by agreement, the arrangements for informing and consulting employees which they consider to be best suited to their needs and wishes.

- (24) Care should be taken to avoid affecting some specific rules in the field of employee information and consultation existing in some national laws, addressed to undertakings or establishments which pursue political, professional, organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions.
- (25) Undertakings and establishments should be protected against disclosure of certain particularly sensitive information.
- (26) The employer should be allowed not to inform and consult where this would seriously damage the undertaking or the establishment or where he has to comply immediately with an order issued to him by a regulatory or supervisory body.
- (27) Information and consultation imply both rights and obligations for management and labour at undertaking or establishment level.
- (28) Administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on this Directive.
- (29) This Directive should not affect the provisions, where these are more specific, of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ¹ and of Council Directive 2001/23/EC of 12 March 2001 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 undertakings or businesses ².

¹ OJ L 225, 12.8.1998, p. 16.

² OJ L 82, 22.3.2001, p. 16.

- (30) Other rights of information and consultation, including those arising from Council Directive 94/45/EEC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees ¹, should not be affected by this Directive.
- (31) Implementation of this Directive should not be sufficient grounds for a reduction in the general level of protection of workers in the areas to which it applies,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object and principles

1. The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.
2. The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness.

¹ OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

3. When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees.

Article 2

Definitions

For the purposes of this Directive:

- (a) "undertaking" means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States;
- (b) "establishment" means a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources;
- (c) "employer" means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice;
- (d) "employee" means any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice;

- (e) "employees' representatives" means the employees' representatives provided for by national laws and/or practices;
- (f) "information" means transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject-matter and to examine it;
- (g) "consultation" means the exchange of views and establishment of dialogue between the employees' representatives and the employer.

Article 3

Scope

1. This Directive shall apply, according to the choice made by Member States, to:

- (a) undertakings employing at least 50 employees in any one Member State, or
- (b) establishments employing at least 20 employees in any one Member State.

Member States shall determine the method for calculating the thresholds of employees employed.

2. In conformity with the principles and objectives of this Directive, Member States may lay down particular provisions applicable to undertakings or establishments which pursue directly and essentially political, professional organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, on condition that, at the date of entry into force of this Directive, provisions of that nature already exist in national legislation.
3. Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas.

Article 4

Practical arrangements for information and consultation

1. In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.
2. Information and consultation shall cover:
 - (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).

3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

4. Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer in accordance with Article 2 (f) and of the opinion which the employees' representatives are entitled to formulate;

- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c).

Article 5

Information and consultation deriving from an agreement

Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the date laid down in Article 11, as well as any subsequent renewals of such agreements, may establish, while respecting the principles set out in Article 1 and subject to conditions and limitations laid down by the Member States, provisions which are different from those referred to in Article 4.

Article 6

Confidential information

1. Member States shall provide that, within the conditions and limits laid down by national legislation, the employees' representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality.
2. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it.
3. Without prejudice to existing national procedures, Member States shall provide for administrative or judicial review procedures for the case where the employer requires confidentiality or does not provide the information in accordance with paragraphs 1 and 2. They may also provide for procedures intended to safeguard the confidentiality of the information in question.

Article 7

Protection of employees' representatives

Member States shall ensure that employees' representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

Article 8

Protection of rights

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.
2. Member States shall provide for adequate sanctions to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These sanctions must be effective, proportionate and dissuasive.

Article 9

Link between this Directive and other Community and national provisions

1. This Directive shall be without prejudice to the specific information and consultation procedures set out in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

2. This Directive shall be without prejudice to provisions adopted in accordance with Directives 94/45/EC and 97/74/EC.
3. This Directive shall be without prejudice to other rights to information, consultation and participation under national law.
4. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

Article 10

Transitional provisions

Notwithstanding Article 3, a Member State in which there is, at the date of entry into force of this Directive, no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of employee representation at the workplace allowing employees to be represented for that purpose, may limit the application of the national provisions implementing this Directive to:

- (a) undertakings employing at least 150 employees or establishments employing at least 100 employees until^{*}, and
- (b) undertakings employing at least 100 employees or establishments employing at least 50 employees during the year following the date in point (a).

^{*} 5 years after the entry into force of this Directive.

Article 11

Transposition

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than * or shall ensure that management and labour introduce by that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them to guarantee the results imposed by this Directive at all times. They shall forthwith inform the Commission thereof.
2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 12

Review by the Commission

Not later than **, the Commission shall, in consultation with the Member States and the social partners at Community level, review the application of this Directive with a view to proposing any necessary amendments.

* 3 years after the entry into force of this Directive.

** 5 years after the entry into force of this Directive.

Article 13

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

Addresses

This Directive is addressed to the Member States.

Done at,

For the European Parliament
The President

For the Council
The President

Joint declaration of the European Parliament, the Council and the Commission on employee representation

“With regard to employee representation, the European Parliament, the Council and the Commission recall the judgements of the European Court of Justice of 8 June 1994 in Cases C-382/92 (Safeguarding of employees rights in the event of transfers of undertakings) and C-383/92 (Collective Redundancies)”