

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0231/2001**

21 June 2001

**\***

## **REPORT**

on the Draft Council directive supplementing the Statute for a European  
Company with regard to the involvement of employees  
(14732/2000 – C5-0093/2001 – 1989/0219(CNS))

(Renewed consultation)

Committee on Employment and Social Affairs

Rapporteur: Winfried Menrad

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
LEGISLATIVE PROPOSAL .....	6
DRAFT LEGISLATIVE RESOLUTION.....	11
EXPLANATORY STATEMENT .....	12
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET (including its position on the legal basis) .....	17

## PROCEDURAL PAGE

On 30 June 1970 the European Commission submitted its initial proposal for a regulation on the European company. The proposal was amended in 1975. On 25 August 1989 the Commission submitted new proposals for a regulation on the Statute for a European company and a related directive concerning the involvement of employees in the European company (COM(1989) 268 - 1989/0218-0219(SYN))<sup>1</sup>, which were amended in 1991 (COM(1991) 174)<sup>2</sup>.

The 1989 and 1991 proposals were based on Article 54 (current Article 44) of the EC Treaty, which provided for the cooperation procedure. Following the entry into force of the Maastricht Treaty, these proposals became subject to the codecision procedure.

At the sitting of 24 January 1991, Parliament adopted its position at first reading on these proposals, confirmed on 2 December 1993 and again on 27 October 1999.

Subsequently, the Council decided that the correct legal basis for the proposals was Article 308 of the EC Treaty which provided for consultation of Parliament.

By letter of 9 March 2001 the Council consulted Parliament again under Article 308 of the EC Treaty on the Draft Council directive supplementing the Statute for a European Company with regard to the involvement of employees (14732/2000 - 1989/0219 (CNS)).

At the sitting of 15 March 2001 the President of Parliament announced that she had referred this Council text to the Committee on Employment and Social Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0093/2001).

The Committee on Employment and Social Affairs appointed Winfried Menrad rapporteur at its meeting of 15 February 2001.

The committee considered the draft Council directive and draft report at its meetings of 20 March 2001, 29 May 2001 and 21 June 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman and rapporteur; Jan Andersson, Elspeth Attwooll (for Luciano Caveri), Alima Boumediene-Thiery (for Jillian Evans pursuant to Rule 153(2)), Philip Bushill-Matthews, Luigi Cocilovo, Elisa Maria Damião, Den Dover (for Gunilla Carlsson), Harald Ettl, Carlo Fatuzzo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Ian Stewart Hudghton, Stephen Hughes, Anne Elisabet Jensen (for Daniel Ducarme), Karin Jöns, Piia-Noora Kauppi (for Roger Helmer), Dieter-Lebrecht Koch (for Jorge Salvador Hernández Mollar), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Toine Manders (for Luciana Sbarbati), Thomas Mann, Mario Mantovani, Claude Moraes, Ria G.H.C. Oomen-Ruijten (for Ruth Hieronymi), Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner (for Hans Udo Bullmann), Helle Thorning-Schmidt, Anne

---

<sup>1</sup> OJ C 263, 16.10.1989, p. 69

<sup>2</sup> OJ C 138, 14.5.1991, p. 8

E.M. Van Lancker and Barbara Weiler.

The opinion of the Committee on Legal Affairs and the Internal Market including its position on the legal basis is attached.

The report was tabled on 21 June 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### Draft Council directive supplementing the Statute for a European Company with regard to the involvement of employees (14732/2000 – C5-0093/2001 – 1989/0219(CNS))

The proposal is amended as follows:

Text proposed by the Council<sup>1</sup>

Amendments by Parliament

#### Amendment 1

##### Citation 1

Having regard to the Treaty establishing the European Community, and in particular **Article 308 thereof**,

Having regard to the Treaty establishing the European Community, and in particular **the third indent of Article 137(3)**,

#### *Justification*

*The correct legal basis is Article 137(3) (third indent), since the Directive concerns the representation and collective defence of the interests of workers and employees, including co-determination (participation of workers' representatives in the competent bodies of the company). Since the Treaty contains a specific legal basis, there is no need for recourse to the powers conferred on the Community by Article 308 of the Treaty.*

#### Amendment 2

##### Recital 3 a (new)

**(3a) The purpose of this Directive is to establish minimum requirements for the information, participation and consultation of employees in undertakings within the European Community.**

#### *Justification*

*The conditions in those Member States which have additional social legislation should not be diluted.*

#### Amendment 3

##### Recital 5a (new)

---

<sup>1</sup> Not yet published.

***(5a) It is, however, appropriate to harmonise the national implementing provisions of the Member States, since acquired rights are not called into question,***

*Justification*

*In order to prevent a situation in which there are 15 different national implementing provisions, the transposition of the Directive must be coordinated because otherwise the raison d'être of the SE would be lost .*

Amendment 4  
Recital 7a (new)

***(7a) Member States should ensure through appropriate provisions that, in the case of substantial structural changes following the creation of an SE, there are negotiations on the future participation of workers.***

*Justification*

*The right to negotiations on worker participation can not be limited to the period in which an SE is being created; if there are to be substantial structural changes (e.g. mergers, the integration of other undertakings and companies), there must be the possibility of fresh negotiations.*

Amendment 5  
Recital 12a (new)

***(12a) Clear rules are required on management's obligation to provide information, specifying areas to which this obligation applies.***

*Justification*

*The present text does not contain clear rules on management's obligation to provide information. It is essential, however, that the areas in respect of which there is an obligation to provide information are clearly described.*

Amendment 6  
Recital 17

(17) The Treaty *has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.*

(17) The Treaty *provides the necessary legal basis in the form of Article 137(3) third indent.*

*Justification*

*The correct legal basis is Article 137 (3) (third indent) since the directive concerns the representation and collective defence of the interests of workers and employees, including co-determination (participation of workers' representatives in the competent bodies of the company). Since the Treaty contains a specific legal basis, there is no need for recourse to the powers conferred on the community by Article 308 of the Treaty.*

Amendment 7  
Article 2(k)

(k) 'Participation' means the influence of the ***body representative of the employees and/or the employees' representatives*** in the affairs of a company ***by way of:***  
– ***the right to elect or appoint some of the members of the company's supervisory or administrative organ; or***  
  
– ***the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.***

(k) 'Participation' means the influence of the employees' representatives ***on the supervisory or administrative board*** in the affairs of a company;

*Justification*

*The tasks of the body representative of the employees involve questions of information and consultation, not participation. This institution is the special form of the European Works Council in SEs. Participation must be an ongoing task, rather than a one-off right such as recommending, nominating and rejecting employees' representatives in the supervisory organ. This Directive seeks to enshrine the right to broader consultation which could be described as participation. The Committee of Employment's report on the Commission's report on the application of the Directive on the establishment of a European works council (COM (2000/2214(COS)) suggests that decisions on information, consultation and participation should be taken in the Council of Ministers by majority voting and that only codetermination should require unanimity.*

Amendment 8  
Article 4(g)



(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights.  
***Without prejudice to the arrangements decided on, the election or appointment of employees to the SE's administrative or supervisory body shall take place according to relevant national customs or legal provisions of the Member States governing the appointment of employees to the bodies of joint stock companies.***

*Justification*

The Council's proposal for a Directive omitted this point by an oversight, but it appeared in the original Commission proposal.

Amendment 9  
Article 12(3) (new)

***The Commission shall chair an implementation group, comprising experts from the Member States, to facilitate and coordinate the transposition of this directive at national level into national law.***

*Justification*

*In order to avoid having 15 different sets of provisions for national implementation, the Commission needs to chair a delegation comprising officials from the Member States to coordinate the correct transposition of the directive.*

Amendment 10  
Annex, Part 3 (b), first paragraph

(b) In other cases of the establishing of an SE, the employees of the SE, its

(b) In other cases of the establishing of an SE, the employees of the SE, its

subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

***The election or appointment of employees to the SE's administrative or supervisory body shall take place according to relevant national customs or legal provisions of the Member States governing the appointment of employees to the bodies of joint stock companies.***

#### *Justification*

*The Council's proposal for a Directive omitted this point by an oversight, but it appeared in the original Commission proposal.*

#### Amendment 11 Annex, Part 3 (b), paragraph 3

The representative body shall decide on the allocation of seats within the administrative or supervisory **body** among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

The representative body shall decide on the allocation of seats within the administrative or supervisory **board** among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

### *Justification*

*(Translator's note: This amendment applies only in part to the English version. The justification does not relate to the part of the amendment applying to the English version).*

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the Draft Council directive supplementing the Statute for a European Company with regard to the involvement of employees (14732/2000 – C5-0093/2001 – 1989/0219(CNS))**

**(Consultation procedure - renewed consultation)**

*The European Parliament,*

- having regard to the draft Council directive (14732/2000<sup>1</sup>),
  - having regard to the Commission proposal to the Council (COM(1989) 268)<sup>2</sup> amended in 1991 by COM(1991) 174<sup>3</sup>
  - having regard to its position at first reading of 24 January 1991<sup>4</sup> confirmed on 2 December 1993<sup>5</sup> and 27 October 1999<sup>6</sup>,
  - having been consulted by the Council again under Article 308 of the EC Treaty (C5-0093/2001),
  - having regard to Rule 67 and 71(2) of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Legal Affairs and the Internal Market including its position on the legal basis (A5-0231/2001),
1. Approves the Council draft as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the draft directive substantially;
  5. Instructs its President to forward its position to the Council and Commission.

---

<sup>1</sup> Not yet published

<sup>2</sup> OJ C 263, 16.10.1989, p. 69

<sup>3</sup> OJ C 138, 29.5.1991, p. 8

<sup>4</sup> OJ C 48, 25.2.1991, p. 55

<sup>5</sup> OJ C 342, 20.12.1993, p. 15

<sup>6</sup> OJ C 154

## EXPLANATORY STATEMENT

### I. BACKGROUND

After thirty years of tough negotiations the Employment and Social Affairs Ministers managed to reach an agreement finally at their Council meeting on 20 December 2000 on a Statute for a European Company. The Council choose Article 308 TEC as the legal basis for the regulation and directive.

In 1970 the Commission had submitted its initial proposal for a regulation on the uniform establishment of the European company; this was submitted to Parliament at the end of the 1980s in the form of two separate proposals, the first a proposal for a regulation on a statute for a European company, based on Article 100 TEC (95 TEU), and the second a proposal for a directive complementing this statute with regard to the involvement of employees<sup>1</sup>, on the basis of Article 54 TEC (44 TEU). As in the fifth proposal for a directive, a choice was provided between a monolithic and a dual construction and between a number of different models of the participation of employees. The proposal for a regulation and the proposal for a directive thus formed an indissoluble whole, since a European company without participation in some form is unthinkable.

The core elements of both proposals were as follows:

- the optionally applicable, cross-border fiscally advantageous blueprint for a European company created either by the merger of national undertakings, or the establishment of a holding company or a common subsidiary;
- the option between a monolithic and dual structure;
- binding provisions concerning the participation of employees' representatives;
- information and consultation requirements, or the obligation of the administrative or supervisory board to obtain authorisation before implementing decisions such as:
  - shutting down or relocating establishments;
  - cutting back or expanding establishments;
  - changing establishments;
  - the establishment of subsidiaries or holding companies;
- election procedures and the working methods of employees' representatives should follow normal practice in the Member State concerned.

The proposals failed owing to the issue of worker participation. The European Parliament motion for a resolution adopted in January 1997 on the basis of a Commission communication on the information and consultation of employees attempted to give a fresh impulse to the

---

<sup>1</sup> COM(89/268) of 16.10.1989. Parliament adopted its legislative proposal on 24 January 1991 and tabled amendments to both texts in the reports drawn up jointly by Mrs Oddy and Mr Rothley on behalf of the Committee on Legal Affairs and Citizens' Rights and Mr Suarez and Mr Brok, on behalf of the Committee on Social Affairs.

legislative procedure to solve the question of worker participation in the SE. A group of experts was then set up, chaired by Etienne Davignon, to attempt to address this problem. It rapidly came to the conclusion that none of the existing Member State systems, if they had been taken as a point of reference, could be expected to command the necessary majority in the Council, so it proposed the following structure:

- negotiations must be held between the parties before the registration of the company. In the event of a breakdown, they should continue for a further three months. Under no circumstances may negotiations last longer than one year in total;
- if no agreement is reached by the end of that period, the rules on the information and consultation of workers and their participation (the reference rules) will apply;
- the application of the reference rules will ensure that 'priority given to negotiations does not lead to legal insecurity or the possible blocking of the establishment of the European company'<sup>1</sup>.

On the basis of the report of the Group of experts, the Luxembourgish Council Presidency submitted to the Council a new legislative proposal which, however, was unable to overcome the opposition of the United Kingdom, Ireland and Spain in particular. The same applies to the proposals submitted by Parliament (motions for resolutions of January 1997 and November 1997) in which it adopted a position on these documents. Parliament wished to avoid two dangers, namely:

- the imposition of a certain model for employee participation favoured by a small number of Member States on the other Member States (no 'export of employee participation');
- circumvention of more far-reaching co-determination in certain countries by means of a European legal instrument (no 'escape route from employee participation').

Numerous rounds of negotiations and changes to the legislative proposal were needed before the Council was able to reach the present agreement on the European company on 20 December 2000 which managed to overcome the most serious misgivings. Spanish opposition could only be overcome at the Nice Summit by introducing an option: Member States are given the option not to transpose the rules on employee participation – restricted to a scenario where the European company is established by merger – into national law (opting-out clause).

## **II. MAIN OUTLINE OF THE REGULATION AND DIRECTIVE**

Under the present proposal a European company may be established:

- by the merger of at least two companies which are subject to the law of different Member States;

---

<sup>1</sup> Final report of the Davignon Group of May 1997 (C4-0455/97). Parliament adopted a report on this matter in November 1997. Rapporteur: W. Menrad.

- as a holding company of joint stock and limited liability companies from various Member States (the essential difference between this and establishment through merger is that the founding companies continue to exist);
- as a joint subsidiary of companies within the meaning of Article 48(2);
- through the transformation of a company established under the law of a Member State and which has had a subsidiary for at least two years which is subject to the law of another Member State.

The organs of the European company are the shareholders' general meeting and the supervisory and management body in the dual system or the administrative body in the monolithic system; the negotiating partners may opt for either system.

The directive supplementing the regulation governs both the information and consultation of workers' representatives on matters concerning the European company itself, its subsidiaries or establishments – essentially the provisions of the European Works Council have been taken over – and employee participation in the supervisory or administrative body of the European company.

The scale of employee participation will be decided through free negotiations between the companies concerned and the workers represented by a special negotiating body. In principle this negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

Reduction of participation rights means a proportion of employees' representatives of organs of the SE which is lower than the highest proportion existing within the participating companies. However, a qualified majority is only necessary where certain limit values are attained concerning the proportion of employees with participation rights compared to the overall number of employees. These are:

- in the case of merger: 25%
- in the case of a holding company: 50%; and
- in the case of the formation of a subsidiary: 50%.

In the event of a breakdown of negotiations a safety clause is provided to protect participation rights and applies where:

- the parties agree on such a measure;
- no agreement has been reached within half a year or, in the case of an extension, one year and the negotiating body has not decided to allow national provisions to apply, providing the competent organ of each of the companies concerned has agreed to a continuation of the procedure. The same limit values also apply here, i.e. the minimum level of participation under the safety clause in the annex to the directive applies automatically when these values are attained.

The following provisions apply to employee participation:

- In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE.
- In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest appropriate proportion in force in the participating companies concerned before registration of the SE.

### **III. AMENDMENTS TO THE DIRECTIVE**

Taking into account the Commission proposal, the Davignon report, Parliament's opinion on these proposals and the results of the hearing of 25 April on the information, consultation and participation rights of workers, your rapporteur wishes to make the following critical remarks concerning the proposal for a Council Directive:

#### **1. Changing the legal basis**

The Council has taken Article 308 TEC as the legal basis. Article 308 is to be used as the legal basis where:

- action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and
- this Treaty has not provided the necessary powers for the legal acts in question.

The European Parliament's Legal Service has found that the Treaty does in fact provide a special legal basis, namely Article 137(3), which it believes should be implemented.

#### **2. Tax problems**

##### **(a) Tax neutrality**

In order to make the European company financially more attractive the tax merger directive adopted on 23 July 1990 should be applied to this legal form.

##### **(b) Tax base**

A European company will only be attractive to employers if it is no longer subject to national taxation in the Member State concerned.

##### **(c) Uncovering undisclosed reserves**

The final taxation of the previous company is a tax law problem which has not yet been solved.

#### **3. Transposition of the directive**

After the adoption of the SE, a three-year transitional period begins. Rules implementing the



regulation and transposing the Directive must be uniformly applied throughout the Community so as to prevent a situation in which 15 different sets of rules apply, because otherwise this would remove the very *raison d'être* of a European company.

#### **4. Election procedure**

The Commission's original proposal provided that the procedure for electing employees' representatives should follow existing practice or legal provisions in individual Member States.

#### **5. European Works Council – European Company**

Article 12 of the Directive states that the European company and its subsidiaries are not subject to the provisions of the European Works Council, and provision is made for a special employees' body. Measures must, however, be taken to ensure that the provisions on information and consultation rights in both directives are harmonised.

20 June 2001

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Employment and Social Affairs

on the Draft Council directive supplementing the Statute for a European Company with regard to the involvement of employees  
(14732/2000 – C5-0093/2001 – 1989/0219(CNS))

Draftsman: Bill Miller

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Bill Miller draftsman at its meeting of 29 February 2000.

It considered the draft opinion at its meetings of 27 February, 5 March, 24 April, 25 May and 20 June 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Willi Rothley, vice-chairman acting chairman; Bill Miller, draftsman; Maria Berger, Kathalijne Maria Buitenweg (for Raina A. Mercedes Echerer, pursuant to Rule 153(2)), Michael Cashman (for Evelyne Gebhardt pursuant to Rule 153(2)), Bert Doorn, Marie-Françoise Garaud, Françoise Grossetête (for Janelly Fourtou), Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Kurt Lechner, Neil MacCormick, Manuel Medina Ortega, Ria G.H.C. Oomen-Ruijten (for Klaus-Heiner Lehne), Astrid Thors (for Toine Manders), Felekna Uca, Diana Wallis, Joachim Wuermeling and Christos Zacharakis (for Stefano Zappalà).

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council<sup>1</sup>

Amendments by Parliament

### Amendment 1 Citation 1

Having regard to the Treaty establishing the European Community, and in particular **Article 308 thereof**,

Having regard to the Treaty establishing the European Community, and in particular **the third indent of Article 137(3)**,

#### *Justification*

*The correct legal basis is Article 137(3) (third indent), since the Directive concerns the representation and collective defence of the interests of workers and employees, including co-determination (participation of workers' representatives in the competent bodies of the company). Since the Treaty contains a specific legal basis, there is no need for recourse to the powers conferred on the Community by Article 308 of the Treaty.*

### Amendment 2 Recital 3 a (new)

**(3a) The purpose of this Directive is to establish minimum requirements for the information, participation and consultation of employees in undertakings within the European Community.**

#### *Justification*

*The conditions in those Member States which have additional social legislation should not be diluted.*

---

<sup>1</sup> OJ not yet published.

Amendment 3  
Recital 6 a (new)

***(6a) For the purposes of this Directive, consultation is taken to mean dialogue and an exchange of views between employees' representatives and the competent body of the SE. The time, nature, means and content of that consultation must be such as to allow employees' representatives to communicate their position.***

*Justification*

*Any consultation has to be meaningful.*

Amendment 4  
Recital 7 a (new)

***(7a) For the purposes of this Directive, participation is taken to mean the possibility for representatives of the employees of an SE to exercise an influence on the undertaking in the future.***

*Justification*

*Any participation must be meaningful.*

Amendment 5  
Recital 8 a (new)

***(8a) Under this proposed Directive, the information, participation and consultation shall be carried out by the employees' representatives and the competent body of the SE.***

*Justification*

*The representatives are chosen by the employees.*

Amendment 6

Recital 17

(17) The Treaty *has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.*

(17) The Treaty *provides the necessary legal basis in the form of Article 137(3), third indent.*

*Justification*

*See justification for Amendment 1.*