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REPORT

on the Commission report on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994)
(COM(2000) 188 – C5-0437/2000 – 2000/2214(COS))

Committee on Employment and Social Affairs

Rapporteur: Winfried Menrad

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PROCEDURAL PAGE

By letter of 4 April 2000, the Commission forwarded to Parliament its report on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994) (COM(2000) 188 – 2000/2214(COS)).

At the sitting of 8 September 2000 the President of Parliament announced that she had referred the report to the Committee on Employment and Social Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy and for their opinions (C5-0437/2000).

The Committee on Employment and Social Affairs had appointed Winfried Menrad rapporteur at its meeting of 12 April 2000.

The committee considered the Commission report and the draft report at its meetings of 4 December 2000, 25 April, 29 May, 21 June and 10 July 2001.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman and rapporteur; Marie-Thérèse Hermange, vice-chairperson; Jan Andersson, María Antonia Avilés Perea, Elspeth Attwooll (for Luciano Caveri), Regina Bastos, Ieke van den Burg, Alejandro Cercas, Luigi Cocilovo, Elisa Maria Damião, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti, Anne-Karin Glase, Richard Howitt (for Proinsias De Rossa), Stephen Hughes, Karin Jöns, Piia-Noora Kauppi (for Philip Bushill-Matthews), Ioannis Koukiadis, Rodi Kratsa-Tsagaropoulou, Toine Manders (for Daniel Ducarme), Thomas Mann, Mario Mantovani, Claude Moraes, Ria G.H.C. Oomen-Ruijten (for Raffaele Lombardo), Paolo Pastorelli (for Guido Podestà), Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Miet Smet, Helle Thorning-Schmidt, Bruno Trentin (for Marie-Hélène Gillig), Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for James L.C. Provan).

The opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy are attached.

The report was tabled on 17 July 2001.

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

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission report on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994) (COM(2000) 188 – C5-0437/2000 – 2000/2214(COS))

The European Parliament,

- having regard to the Commission report (COM(2000) 188 – C5-0437/2000)¹,
- having regard to Council Directive 94/45/EC of 22 September 1994 on European works councils²,
- having regard to Council Directive 98/59/EC of 20 July 1998 on collective redundancies³ (consolidated versions of Directives 75/129/EEC and 92/56/EEC) and 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 businesses⁴ (consolidated version of Directive 77/187/EEC as amended),
- having regard to the Davignon report of the Group of Experts on 'European Systems of Worker Involvement' (C4-0455/1997) and its Resolution of 19 November 1997 thereon,⁵
- having regard to the proposal for a Council directive establishing a general framework for informing and consulting employees in the European Community (COM(1998)612 – C4-0706/1998 – 1998/0315(SYN) and its opinion of 14 April 1999 thereon,⁶
- having regard to the proposals for a Council regulation on the Statute for a European Company (C5-0092/2001)⁷ and a Council directive supplementing the Statute for a European Company with regard to the involvement of employees (C5-0093/2001)⁸,
- having regard to the publication of the Commission report, as a contribution to the continuing debate as to how effective Directive 94/45/EC on the establishment of procedures for informing and consulting employees in undertakings operating in more than one Member State is, but whereas it should be noted that the Commission report, despite a brief assessment of the implementing legislation and of the application of the Directive in practice, is essentially limited to a description of the national implementing measures,

¹ Not yet published.

² OJ L 254, 30.9.1994, p. 64

³ OJ L 225, 12.8.1998, p. 16

⁴ OJ L 82, 22.3.2001, p. 16

⁵ OJ C 371, 8.12.1997, p. 83

⁶ OJ C 219, 30.7.1999, p. 223

⁷ Not yet published.

⁸ Not yet published.

- having regard to the findings of the public hearings held by the Committee on Employment and Social Affairs on 26 January 1999 and 25 April 2001 on the subject of European works councils,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy (A5-0282/2001),
- A. whereas the main goal of the Directive is to lift obstacles to information, consultation and communication with the workforce in companies operating in more than one Member State in order to facilitate social dialogue in these companies,
 - B. whereas the transposition of the Directive into national law within the time limits laid down was generally successfully achieved,
 - C. whereas the immediate impact of the Directive can be seen in the sheer numbers of European works councils formed since the adoption of the Directive in 1994, amounting to some 650 under either Article 6 or Article 13 agreements,
 - D. whereas, however, as many as 1800 companies across the EU meet the criteria and thresholds above which a European works council should be established according to the terms of the Directive, and whereas the level of cover is therefore unsatisfactory, which may encourage further initiatives,
 - E. whereas various cases of restructuring and collective redundancy have highlighted gaps in European legislation on workers' rights to information and consultation, particularly with regard to timeliness and possible sanctions in the event of non-compliance,
 - F. whereas there is a need to balance the competitive needs of companies in an ever-changing market with the rights of employees to information and consultation which can in particular be achieved through collective agreements with management, in particular at times of industrial change,
 - G. whereas, therefore, it is vital to create a culture of partnership between employers and employees in all Member States where companies are based, so that the spirit of cooperation called for by the directive will also be put into practice in relations with local workers' representatives,
 - H. whereas it is difficult to create such a culture if a European works council meets only once a year, as is the fact in 85% of cases,
 - I. whereas the interests and concerns of employees can only be taken into account at a time of restructuring if the information and consultation is in good time and adequate; whereas there has been a number of highly-publicised cases in recent months where this was not the case, and workers learnt of major restructuring in their company through the press and/or after decisions on restructuring were already taken; whereas employees must be able to exercise their rights to information and consultation at the appropriate stage of the process,

- J. whereas there is a close link between the revision of the Directive on the establishment of a European works council, the current proposals with regard to information and consultation at national level and the extension of the Statute of the European Company with regard to workers' participation; whereas, furthermore, in the interests of clarity and legal precision these three items of legislation should, in the medium term, include appropriate rules on information and consultation,
- K. whereas trade unions can play a vital role both in support of European works councils and in transmitting information to the workforce as a whole from management via the works council; whereas the management right to communicate directly with the workforce remains unaffected, as does its right to manage the company,
- L. whereas research has shown that women are seriously under-represented on European works councils, given that nine out of ten works council representatives are men,
- M. whereas the Commission's report is a means of keeping the discussion moving on how effective the Directive has been in setting up information and consultation procedures in companies based in more than one Member State,
- N. whereas the Directive takes account of the different forms of worker participation in companies which exist in Europe, thereby safeguarding the subsidiarity principle,
- O. whereas an evaluation of the Directive has also revealed weaknesses which must be addressed if the Directive is to be effective in achieving its aims;
1. Emphasises that social relations based on dialogue, genuine information and consultation of employees and their representatives will benefit collective negotiations and reduce the risk of conflict, and that it may also prove to be a factor for undertakings' success;
 2. Reiterates its call on the Commission to submit a proposal for the revision of Directive 94/45/EC at an early date and to include in that proposal the following improvements:
 - (i) a precise definition of information and consultation of employees as being the implementation of an exchange of views and dialogue between employee representatives and the employer, pursuant to document COM(1998) 612¹, so as to ensure that such information and consultation takes place in good time and at regular intervals before the decision by the company or group management, so as to allow the employees genuinely to influence the management's decision-making process; decisions of central management or any other management level shall be valid only if information and consultation are properly carried out, with due regard for the principles of confidentiality of the information;
 - (ii) an enhanced obligation to convene special meetings of the European works council in good time in order to convey information to employees on company proposals regarding restructuring and decisions having implications for the continued existence and future of the company and its various sites and subsidiaries, with a view to allowing employees and their representatives time to

¹ Proposal for a Council directive establishing a general framework for informing and consulting employees in the European Community

study the information provided by management, to present their point of view and put forward alternative proposals to those of management in the form of opinions;

- (iii) the introduction of an enhanced consultation procedure, within the meaning of Directives 75/129/EEC and 98/59/EC² with a view to reaching agreement on certain issues which particularly affect employees (in particular collective redundancies and transfers of companies and transfer of production);
- (iv) a reduction from three years to 18 months for the introduction of the minimum standards in the Annex to the Directive, should central management and the special negotiating body be unable to reach agreement;
- (v) a reduction in the thresholds for companies to be included within the scope of the Directive from 1000 to 500 employees for the company as a whole and from 150 to 100 employees per establishment in at least two Member States;
- (vi) clarification of the need for the works council to continue functioning during periods of company mergers;
- (vii) a new clause in the Directive allowing for adjustments in numbers of members of the European works council and the special negotiating body following major restructuring of the company so that these bodies properly reflect the proportions of employees working in the establishments after restructuring;
- (viii) discussions about more rights for trade unions, particularly as experts, within the remit of works councils and a more prominent role for national and/or European trade unions on European works councils and the special negotiating bodies themselves, in accordance with employees' wishes;
- (ix) more opportunities and proper resources for members of European works councils to be offered training, aiming in particular at awareness of accounting regulations and employment law in other countries and at improving language skills, and the provision of the necessary time off;
- (x) the strengthening of the provisions concerning the protection and rights of workers' representatives to enable them to have access to all establishments and firms and to fulfil their tasks and mandates without loss of pay, to inform workers and take advantage of additional training;
- (xi) specifying that members must have facilities at their disposal , e.g. meeting rooms with use of fax, phone and Internet between meetings so as to enable them to fulfil the tasks imposed upon them by the Directive;
- (xii) general extension of the matters covered by the information and consultation process with the European works council to include measures planned by the company and group management in connection with the situation as regards health, safety, job rotation, the environment, in-service training, lifelong learning,

² Council Directive of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies

equal opportunities and financial participation by employees (e.g. share options);

- (xiii) adequate sanctions at national and European level for non-compliance with the Directive and the following measures to implement the law:

(1) The Member States shall introduce appropriate measures at national and European level for cases of failure by employers or employees' representatives to comply with this Directive; in particular, they shall ensure that there are administrative and legal procedures which can be used to bring about compliance with the obligations arising from the Directive, including procedures whereby employers or employees' representatives may seek legal remedy, either administratively or through the courts, if they consider that the other party is failing to fulfil its obligations.

(2) Provision of a clause that decisions of the management will only be regarded as legitimate if an orderly information and consultation process as defined in the renewed Directive has taken place beforehand;

- (xiv) in cases in which the application of a decision may have major negative effects on workers, provisions to the effect that the adoption of the final decision may be suspended for an appropriate period at the request of the workers' representatives, in order to continue the negotiations to avoid or ameliorate the negative effects;
 - (xv) greater clarification of the conditions for renewing agreements reached under Article 13 of the Directive;
 - (xvi) the opportunity to terminate voluntary agreements (Article 13 of Directive 94/45/EC) which were concluded for an unspecified period and make no provision for cancellation of the agreements;
 - (xvii) recommendations on the relative numbers of men and women serving on the special negotiating bodies and European works councils;
 - (xviii) a recommendation that representatives of employees on works councils should be freely chosen by employees;
 - (xix) a higher minimum number of preparatory and compulsory meetings per year;
 - (xx) any revision of the Directive should result in mandatory, rather than merely optional, coverage of merchant navy crews;
 - (xxi) as the Commission points out in the report, the Directive does not currently require agreements to contain an adjustment clause covering changes to the make-up of the undertaking; it should be revised to ensure that agreements actually do cover all the undertaking's or group's workers at all times;
3. Calls on the Commission to notify those Member States which have not yet taken steps to transpose the Directive;
4. Reminds the Commission of the need, pursuant to Article 127 of the Treaty, to ensure a coherent link between competition rules and Community social legislation; calls for

clearance for mergers to be subject to proof of compliance with the obligation to inform and consult employees and European works councils;

5. Insists that no Structural Fund monies should be granted to companies which have breached major aspects of their obligations under the Directive, and/or that such companies should be required to repay these and any other Community funds or national aid given to such companies for the promotion of regional development and employment, and that they should be excluded from public procurement and public subsidies;
6. Promotes the ideal of the creation of world-wide works councils where a company has employees in countries outside the EU and welcomes the initiatives already taken in certain companies to ensure equal access to information and consultation wherever the workforce is based;
7. Calls for the inclusion, in the context of discussions on future Treaty amendments, of the concept of worker participation (Mitwirkung) in addition to information and consultation under Article 137 of the Treaty, subject to the agreement of the social partners, and calls for only genuine codetermination to be subject to the unanimity rule;
8. Instructs its President to forward this resolution to the Council, the Commission and the social partners.

EXPLANATORY STATEMENT

1. Background to the Commission's report

Article 15 of the European works councils Directive states that: 'Not later than 22 September 1999, the Commission shall ... review its operation and, in particular examine whether the workforce size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary'.

The rapporteur therefore welcomes the publication of the Commission's report as a means of keeping the discussion moving on how effective the Directive has been in setting up information and consultation procedures in companies based in more than one Member State. That said, while the report does contain some evaluation of the implementing legislation and the practical application of the Directive, the bulk of the Commission's report is limited to a description of the national implementing measures.

In fact, discussion on the effective functioning of the Directive, and indeed on overall progress in information, consultation and participation of workers in companies, began much earlier:

- The rapporteur, who has been Parliament's rapporteur on the subject since the initial proposal for a Directive in 1994, has himself maintained contact with numerous experts and practitioners in the field;
- The Dublin Foundation for the Improvement of Working and Living Conditions has published a series of reports analysing the works councils that have been set up; the most recent study, published early in 2001, entitled 'Negotiating European works councils', makes a comparison between Article 6 and Article 13 agreements;
- In April 1999, the Commission, in conjunction with the social partners, held a conference to assess the implementation of the Directive, and this formed the basis of the Commission's report;
- In January 1999, and again in April 2001, this committee held public hearings on the works councils Directive, with experts from both sides of industry as well as researchers in the field.

2. The context for this report

- 2.1. *Economic and social:* since the publication of the Commission's report in April 2000, the European labour market has been through a period of tremendous flux. A series of major companies operating in both new technology sectors such as telecommunications and banking, and more traditional industries such as food, steel, textiles and motor vehicles, have undergone major restructuring, often resulting in thousands of jobs being lost. In many cases, regrettably, the workforce in these companies learnt about the restructuring through the press rather than the works council, where these existed. This has made the current discussion on the effectiveness

of the European works council Directive all the more topical and of direct relevance to the daily lives of thousands of citizens working in companies based in more than one Member State.

- 2.2 *Legislation*: the legislative context has also shifted since the publication of the Commission's report. In December 2000, after 30 years of negotiations, agreement was reached in the Council of Ministers on proposals for the Statute for a European Company, and the involvement of workers in such a company. At the same time the rapporteur is hopeful of progress in Council on the proposal for a framework directive on information and consultation at national level.

3. The Directive's successes

The rapporteur would like to underline some of the overall successes of the Directive:

- 3.1. The generally successful transposition of the Directive into national law, within the time limits laid down, i.e. by 22 September 1996.
- 3.2. The direct impact the Directive has had on the sheer numbers of works councils set up. From fewer than 40 in 1994 at the time of the Directive's adoption, to about 650 today, some 400 of which were set up under the Directive's Article 13 (allowing the maintenance of voluntary agreements on transnational information and consultation, where these were established before 22 September 1996). However, experts at the committee's hearing in April 2001 pointed out that some 1800 companies across the Union come within the scope of the Directive.
- 3.3. Where European works councils are accompanied by a select committee, meeting more frequently than once or twice a year, it has been found that European works councils can contribute to the learning process of employee representatives and in particular to the development of a European consciousness among them. Unfortunately, although this may be the case in many large companies, experts at the April 2001 hearing pointed out that as many as 85% of European works councils meet only once a year. Much work therefore remains to be done to fulfil the Directive's potential for creating a European culture of information and consultation.
- 3.4. In many companies the Directive has had immediate success in lifting obstacles to information, consultation and communication with the workforce. Successful case studies were brought to the attention of Members at the April 2001 hearing (in particular Daimler-Chrysler and Air France). However, this has to be seen in conjunction with some of the weaknesses of the Directive in other cases, of which more will be revealed below.

The rapporteur would, in this context, highlight the wording of paragraph 5 of the Annex to the Directive which lays down that: 'Without prejudice to Article 8 of the Directive, the members of the European works council shall inform the representatives of the employees ... or, in the absence of representatives, *the workforce as a whole* (rapporteur's italics), of the content and outcome of the information and consultation procedure carried out in accordance with this Annex'.

The rapporteur would wish to consider the merits of bringing the right to information for all the workforce into the body of the Directive rather than leaving it in the Annex (which only applies where there is no agreement between management and the special negotiating body). The principle of information reaching all members of the workforce is vital. Experts at the April hearing suggested, however, that some problems were being encountered in ensuring that information reaches every factory within a group of undertakings. Trade unions have been found to be vital in this process (see below).

- 3.5. The existence of a European works council means that the interests and concerns of employees are more likely to be taken into account at a time of restructuring of the undertaking or group concerned.

Research has shown that many companies have now recognised that early involvement of the European works council in any decision-making process can reduce the potential for conflict and increase the likelihood of employee acceptance of the decisions taken. There has been a number of examples of successes in this respect in the fields of health and safety at work, equal opportunities, and one outstanding example in the automobile industry, at Ford: when Ford moved to contract out one of its supply sections and effectively release from Ford's employment the workers concerned, the European works council reached an agreement whereby those workers would retain the protection and rights they had enjoyed under Ford's employment.

The rapporteur would also make the following specific comments on the Directive and its positive impact:

- 3.6. The very fact of having collective agreements between the central management and the employees' special negotiating body on setting up a works council has strengthened the negotiating autonomy of the social partners.
- 3.7. The wording of the Directive is sufficiently flexible to encompass the various models for workers' participation in companies which exist in Europe. Subsidiarity has therefore been respected in this Directive. As the Commission's report itself points out: 'up to now the Directive has been smoothly integrated into the industrial relations systems of the different countries, thanks to the Member States' freedom as regards the choice of representation mechanisms'. The Commission also observes that the national provisions brought in to implement the Directive meet the standards laid down in the Annex.
- 3.8. Without ignoring the many companies coming within the scope of the Directive which have not yet established a works council, there appears to have been a successful negotiation of either an Article 6 or an Article 13 agreement in every undertaking where this has been attempted, so formal recourse to the formal minimum standards in the Annex has been had only in very rare and exceptional cases.

4. The Directive's weaknesses

The Commission itself acknowledges that there is a need for 'further interpretation of some issues', and lists these without entering into detail. The various hearings on the

implementation of the Directive have also thrown up a number of weaknesses in the Directive, many of which would no doubt have been avoided if the Parliament's proposals on the original draft Directive had been taken on board by the Council.

- 4.1. The first weakness, which has recently been the focus of public interest, concerns the timing of information and consultation when there are 'exceptional circumstances affecting the employees' interests to a considerable extent, particularly *in the event of relocations, the closure of establishments or undertakings or collective redundancies...*' (rapporteur's italics) (paragraph 3 of the Annex).

In 1994 Parliament had tabled an amendment at first reading providing for such information and consultation 'in good time before the decision of the undertaking'. Sadly, the final text of the Directive refers only to the fact that in the case of emergency consultation a meeting with the select committee or the full works council should take place 'as soon as possible' in such circumstances. This text appears only in a recital and in the Annex.

In many recent cases such meetings have not been taking place in good time, and there is a definite need to re-examine the provisions on this in the near future. The hearing in April 2001 heard of two cases (Alstom-ABB, Corus) where workers had been informed via the press or presented with a final decision by management. But these are by no means isolated cases; indeed, the most recent example from Marks & Spencer has led to court action at Member State level on the grounds that employees were not given adequate information prior to decisions being taken. In a discussion with the rapporteur the company's representatives presented the situation differently.

It is clear that adequate information is needed in good time in order that workers' representatives have the opportunity to offer alternatives to a company's restructuring plans with a view to diminishing, for example, any job losses. The rapporteur believes that a definition of 'adequate information' and 'consultation' might be needed in any revised Directive in order to avoid the unacceptable events we have seen in recent months. In this connection the rapporteur points to the improved definition in the framework Directive on information and consultation. Moreover, if there are special circumstances, and particularly if restructuring is envisaged, an enhanced consultation procedure should be provided for.

- 4.2. The second weakness concerns the period of three years laid down in Article 7(1) before the minimum standards in the Annex come into effect. In 1994, Parliament had considered that three years was too long a period to wait if central management and the special negotiating body were unable to conclude an agreement, and Parliament's amendment at the time suggested an 18-month period, after which the provisions of the Annex would come into force. The rapporteur believes that consideration should be given again to reducing the three-year period. Most experts at the April 2001 hearing concurred with this view.
- 4.3. Article 2 of the Directive lays down the size of undertaking to which the Directive applies, and this is precisely the area mentioned in Article 15 (see above, point 2) which should be re-examined. The rapporteur recalls that the following positions were taken up in 1994:

- Parliament: Undertakings with at least **500** employees in the Member States, and at least **100** in each of at least two Member States;
- Commission: Undertakings with **1000** employees, and at least **100** in two Member States;
- Council: Undertakings with **1000** employees, and at least **150** in two Member States.

We all know, of course, that the Council's view prevailed, but we also know that these figures are to a large extent arbitrary. The rapporteur suggests that the most reasonable threshold to apply is that proposed by Parliament in 1994.

5. Other areas for possible amendments to the Directive

The rapporteur would like to draw attention to the following issues, which he believes should be given consideration in any future amendment of the Directive.

- 5.1. It was revealed at the April 2001 hearing that nine out of ten representatives on the special negotiating bodies and on European works councils are men. The rapporteur calls for balanced representation of men and women.
- 5.2. Article 5(2)(c) should also provide for a more prominent role for trade unions in the establishment of European works councils, and a model for this might be Austria, where trade union representatives can be members of the special negotiating body even if they are not employees of the undertaking concerned but are members of one of its bodies representing employees. The whole relationship between European works councils and trade unions needs to be addressed. While trade union rights had not been raised in 62% of works councils, according to figures produced by the experts at the April 2001 hearing, it remains an issue for a substantial number of employee representatives.
- 5.3. Consideration should be given to a clause in the Directive which would allow for an adjustment in the numbers of members of both the European works council and the special negotiating body where there is a major restructuring of a company, so that the composition of both bodies properly reflects the proportion of employees working in the establishments after restructuring.
- 5.4. Several experts at the April 2001 hearing raised problems relating to mergers and joint ventures. A revised Directive needs to make it quite clear what is the status of a works council and its members in the case of a joint venture where there is no dominant company. Moreover, there appears to be an anomaly whereby when two merging companies are dissolved prior to merger, there is no legal entity and therefore no official status for participation of employees. This means that at the very stage of the restructuring process when worker information and consultation is most important, no works council can legally exist under the current provisions.
- 5.5. Investment in training of employee representatives is vital if works councils are to

function effectively. Language difficulties have long been known about in terms of the practical application of the Directive. For this reason, the rapporteur would like to see specific mention of the possibility of language training for members of the works councils and the special negotiating bodies, as this will in the long term improve communication with the whole workforce of the undertaking. More importantly, however, research unveiled at the April 2001 hearing showed that training is more urgently needed in accounting regulations, employment law and industrial relations systems applied in other Member States.

- 5.6. Article 11 of the Directive deals with compliance. The wording is weak, however, as paragraph 3 states merely that 'Member States shall provide for *appropriate measures* (rapporteur's italics) in the event of failure to comply with this Directive'. The rapporteur wishes to see the introduction of appropriate sanctions for non-compliance in Article 11. He also wishes to see the introduction of an obligation on companies proposing to merge to prove that they have complied with this Directive before the merger is authorised by the Commission. He would further like to see a requirement for the repayment, in certain circumstances, of any Structural Fund monies or national aid given to companies for the promotion of regional development and/or employment, should they not have respected their obligations under the Directive.
- 5.7. The rapporteur believes that Article 6 is not explicit enough about what areas can be discussed in the works councils, and he would suggest that measures planned by company or group management relating to training, equal opportunities, health and safety, and possible employees' financial participation in the undertaking (e.g. share options) should also form part of the information and consultation process. It is necessary to examine in this connection whether, in addition to the binding provisions laid down in Article 6(2), directive provisions might also be incorporated into this provision or whether, if appropriate, the 'general competence' pursuant to (2) of the subsidiary requirements ought to be extended accordingly.

Owing to the requirement for brevity the rapporteur is unable to address every aspect. Where other major issues are concerned, such as the numerical composition of bodies, confirmation of the agreements concluded before the Directive came into force, the extent of protection of employees' representatives and the involvement of experts, he therefore refers readers to his working document (PE 300.488/rev.).

6. Link between the different proposals on information and consultation

There is a clear link between the three sets of possible legislation at Community level:

- The possible amendment to the European works council Directive;
- The general framework Directive on information and consultation at national level (awaiting Council Common Position)
- The Directive on workers' involvement in the European Company Statute (Council agreement December 2000, and referral to Parliament March 2001).

The rapporteur believes the time is right to proceed with an immediate revision of the European works council Directive. Following consultation with the social partners, and taking into account the various evaluations of the Directive already undertaken by the Dublin Foundation and other academic sources, he wishes to see a new proposal for a revision of Directive 94/95/EC put forward as soon as possible, following consultation of the social partners in 2001.

The rapporteur recognises that all three proposals above are intrinsically linked. Indeed, in the medium term he would like to see information and consultation provisions being analogous in all documents, and, specifically, in line with the 1997 proposals from the Luxembourg Presidency and the Davignon Report (which, as we know, was supported at the time by both UNICE and the ETUC).

These proposals are also contained in the proposal for a Council Directive complementing the Statute for a European Company, with regard to the participation of employees in the European Company. Political agreement was reached on that proposal at the Nice Conference in December 2000.

The rapporteur believes in particular that the (transnational) body representing employees provided for in the case of the European Company, as a special European works council for that form of company, should be used in the medium term as the model for the amendment of the Directive on the establishment of a European works council (especially in view of Part 2 (c) of the catch-all provisions).

In the longer term, a common formulation of all the rules on information, consultation and participation might even result in the Directive on collective redundancies and the Directive on the safeguarding of employees' rights in the event of transfers of undertakings or businesses being extended beyond the national provisions to cover the transnational aspects of the Directive on a European works council.

The rapporteur believes that if appropriate the post-Nice discussions should examine whether the rules laid down in Article 137 of the Treaty of Amsterdam ought perhaps to be amended as follows: information, consultation and participation (*coopération; Mitwirkung*) should be subject to the principle of majority voting in the Council of Ministers and to Parliament's right of assent. Only real economic codetermination within the board of directors or supervisory board of a company limited by shares should still be subject to the unanimity rule, in other words parity codetermination such as exists in the German coal, iron and steel industry could only be decided unanimously within the Council, as before.

The rapporteur takes the view that it would be appropriate to seek such an amendment of the EU Treaty (information, consultation, participation – codetermination) only in agreement with the social partners.

7. The future is global

With the increasing globalisation of the economy, and the presence of major European-based companies in many countries outside the Union, thought must be given in the long term to the provision of information and consultation with workers at all levels of companies throughout

the world. The expert from Daimler-Chrysler at the April 2001 hearing suggested that this process had already begun in his company and this is bound to be an issue in other companies as the trend towards globalisation continues.

29 May 2001

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Employment and Social Affairs

on the Report from the Commission to the European Parliament and the Council on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994)
(COM(2000) 188 – C5-0437/2000 – 2000/2214 (COS))

Draftsman: Gary Titley

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Gary Titley draftsman at its meeting of 22 November 2000.

It considered the draft opinion at its meetings of 23 April 2001 and 29 May 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, vice-chairman; Gary Titley, draftsman; Luis Berenguer Fuster, Bert Doorn, Janelly Fourtou, Françoise Grossetête, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Angelika Niebler, Elena Ornella Paciotti, Astrid Thors, Diana Wallis, Joachim Wuermeling and Stefano Zappalà, Francesco Fiori (for Antonio Tajani pursuant to Rule 153(2)).

SHORT JUSTIFICATION

Background

Council Directive 94/45/EC of 22 September 1994¹ constituted the first application of Article 2(2) of the Social Agreement (now repealed and replaced by Articles 136-143 of the EC Treaty as a result of the Amsterdam Treaty). The United Kingdom did not sign up to the Social Agreement and so the directive did not apply to it. However, following the Amsterdam Treaty, Directive 97/74² extended the directive to that country and your draftsman is pleased to report that it has now been implemented by Regulations in the UK and Northern Ireland³. This aspect of the implementation of the directive falls outside the scope of the Commission's report, which covers only the period to 22 September 1996.

Although the directive was generally transposed satisfactorily (by law or regulation, after consultation of the social partners, or, as in the case of Belgium, by collective agreement), proceedings had to be brought against Luxembourg⁴ and a case has been brought against Italy for failing fully to implement the legislation. Portugal did not incorporate the directive into national law until 1999.

The directive's aim is to improve workers' rights to be informed and consulted in multinational groups or companies operating in Europe. The "Community-scale undertakings" to which it applies have to employ at least 1000 workers across the Member States and have at least 150 workers employed in at least two Member States. The trade unions estimate that over 1100 multinationals employing some 15 million workers are affected.

The directive's approach is a voluntary one. Under Article 13, companies which had concluded voluntary agreements for the transnational information and consultation of their entire workforce before 22 September 1996 were exempt. With the directive in force, it is only if negotiations to conclude voluntary agreements via the Special Negotiating Body (SNB) are refused or fail that the directive's requirements on the composition, role and function of what might be termed the basic standard European Works Council (EWC) apply. This allows the various national models for worker participation to continue in being, in accordance with the principle of subsidiarity.

Apart from promoting European solidarity and allowing ready discussion on working conditions and terms of employment across frontiers, the directive improves the flow of information to the workforce as a whole and worker consultation (see point 5 of the Annex⁵). Recent research has shown that positive outcomes of the Community legislation include the ability of employee representatives to influence decisions (for instance, in the field of health and safety) and the possibility of better dialogue, both between the social partners and between employees in different countries. Works council members also felt that they had

¹ OJ 1994 L 254, p. 6.

² OJ 1998 L 10, p. 22.

³ The Transnational Information and Consultation of Employees Regulations 1999, SI 1999 No 3323.

⁴ Culminating in the judgment in Case C-430/98 Commission v. Luxembourg [1999] ECR I-7391.

⁵ "Without prejudice to Article 8..., the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with the Annex".

some influence on issues concerning the reorganisation of production and locations. However, although some enlightened companies are now realising that timely involvement of the EWC can be helpful in the event of restructuring (relocation of production, outsourcing, etc), EWCs are not invariably consulted on strategic issues and the annual meeting with central management does not fully satisfy the need for timely information and debate. There is reason to consider that the duty to consult and inform workers could usefully be stepped up. It is worth noting that in various cases prior to the adoption of the directive (e.g. Case T-96/92 Comité Central d'Entreprise de la Société Générale des Grandes Sources and Others v. Commission [1995] ECR II-1213) the Court of Justice held that works councils were parties concerned for the purposes of merger control proceedings, even though they were not to be regarded as individually concerned for that purpose, and this presupposes a duty to inform and consult on the part of the employer.

A further problem to which the Commission report adverts is the vagueness of the requirement for an information and consultation meeting to be held with management "as soon as possible" in the event of exceptional circumstances affecting employees, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies (Annex, point 3). It is essential, in the interest of the objectives of the directive, legal certainty and the impact of such exceptional circumstances on workers' lives and local communities, to tighten up this requirement. It should be borne in mind that Article 27 of the Charter of Fundamental Rights provides that "Workers or their representatives must ... be guaranteed information and consultation **in good time** ..."

Lastly, your draftsman would draw attention to two areas in which wide discrepancies appear to exist between the different countries, namely the ways in which part-time employees are taken into account and the number of hours which employee representatives can take off work for works council activities. Greater convergence should be secured in any future revision of the directive.

CONCLUSIONS

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 points in its motion for a resolution:

1. Commends the Commission on its detailed and timely report and trusts that the findings made therein and as a result of thorough consultations with interested parties will result, not only in proposals for revision of Directive 94/45, but also for co-ordination of the various provisions on information and consultation contained therein, in the general framework directive on information and consultation at national level and in the proposed directive on workers' involvement in the European Company Statute;
2. Calls on the Commission to make proposals for reinforcing and extending the scope of the duty to consult and inform the European Works Council on strategic issues, particularly in the event of restructuring operations;
3. Believes, especially in the light of Article 27 of the Charter of Fundamental Rights, that the European Works Council must be consulted in good time in the event of exceptional circumstances affecting employees, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies;
4. Suggests that the Commission come forward with a programme for promoting the training and exchanges of members of European Works Councils (language learning, training in negotiation skills and in the rudiments of company, employment and competition law), not only with a view to facilitating their tasks, but also with an eye to promoting European solidarity and understanding;
5. Considers that any revision of the directive should result in mandatory, rather than merely optional, coverage of merchant navy crews;
6. Takes the view that, in considering a revision of the directive, the Commission should consider adopting guidelines for penalties for infringement;
7. Expresses the hope that the process of revision of the directive will lead to a greater convergence in the approach adopted in the Member States and countries of the European Economic Area towards part-time workers and arrangements for time-off for employee representatives.

30 May 2001

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Employment and Social Affairs

on the report from the Commission to the European Parliament and the Council on the application of the Directive 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 (Council Directive 94/45/EC of 22 September 1994)
(COM(2000) 188 – C5-0437/2000 – 2000/2214 (COS))

Draftsman: Harlem Désir

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Harlem Désir draftsman at its meeting of 22 June 2000.

It considered the draft opinion at its meetings of 27 March, 25 April and 29 May 2001.

At the last meeting it adopted the following conclusions by 25 votes to 0, with 19 abstentions.

The following took part in the vote: Carlos Westendorp y Cabeza ,chairman; Peter Michael Mombaur, vice-chairman; Harlem Désir, draftsman; Konstantinos Alyssandrakis, Yves Butel, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Elisa Maria Damião (for Elena Valenciano Martínez-Orozco), Willy C.E.H. De Clercq, Concepció Ferrer, Christos Folias, Norbert Glante, Michel Hansenne, Malcolm Harbour (for Roger Helmer), Hans Karlsson, Bashir Khanbhai (for Anders Wijkman), Wolfgang Kreissl-Dörfler (for Massimo Carraro), Helmut Kuhne (for Glyn Ford), Werner Langen, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Nelly Maes, Erika Mann, Angelika Niebler, Hervé Novelli (for Dominique Vlasto), Reino Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, Samuli Pohjamo (for Colette Flesch), John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Mechtilde Rothe, Christian Foldberg Røvsing, Paul Rübig, Ilka Schröder, Konrad K. Schwaiger, Esko Olavi Seppänen, Helle Thorning-Schmidt (for François Zimeray, Astrid Thors, Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca, Myrsini Zorba and Olga Zrihen Zaari.

SHORT JUSTIFICATION

Council Directive 94/45/EC of 22 September 1994 laid down that: ‘Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation’. It is on the basis of that review and of a conference held in April 1999 with the social partners that the Commission delivered its report to Parliament and the Council on 4 April 2000.

The Commission emphasises that most of the Member States have transposed the Directive more or less within the two-year deadline, although some countries were quite late in doing so.

The report notes that the Directive has led to the establishment of European Works Councils (EWC) in some 600 Community-scale undertakings and groups of undertakings, i.e. in more than one-third of the undertakings concerned. Most EWCs (more than 400) were established on the basis of agreements already in force signed pursuant to Article 13, i.e. before the cut-off date for transposing the Directive into national law (22 September 1996).

The report highlights a number of deficiencies in the 1994 text:

- problems of interpretation with particular regard to:
- the concept of ‘controlling undertaking’,
- geographical criteria,
- conditions for the renewal of agreements already in force,
- changes in the structure of the group,
- the concept of ‘expert’.

The report also notes that *‘some of the agreements [signed] seem to guarantee only a very low level of transnational consultation and information’*.

Finally, with regard to restructuring operations having a serious social impact, it notes that *‘the problem [exists] of whether the present text is sufficiently clear with regard to ensuring that information is provided and consultation takes place within a reasonable time limit and in any event before a decision is taken’*.

It should not be the case that, notwithstanding the existence of the Directive, employees learn about decisions affecting them from the radio, with information to shareholders and company share-price appreciation being deemed more important than the fate of the workforce. Given the announcements of site closures or redundancies at Renault Vilvoorde, Danone, Corus and ABB-Alstom, not to mention Marks & Spencer, where management announced its restructuring plans to the EWC fifteen minutes before making them public, the review of this Directive makes very good sense. As the Commission emphasises, we need to know whether Europe is capable of providing a response to the problems of employees who are adversely affected by globalisation. That implies that employees’ representatives must be given a chance to influence the decision-making process and, where appropriate, that alternative solutions must be sought which might limit the adverse social impact of restructuring. Your draftsman takes the view emphasised in the Commission report that the review of the Directive must take into account the connection between the various Community laws either in force or in the process of being adopted which concern information and consultation of employees:

- the European Works Council Directive
- the proposal for a Directive establishing a general framework for informing and consulting employees in the European Community
- the draft Directive concerning the involvement of workers in the European Company.

Your draftsman regrets that the Commission has not tackled the issue of thresholds which it was specifically asked to address. A lowering of those thresholds would be in line with developments in the business world in Europe.

CONCLUSIONS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Notes that the Directive has led to more than 600 agreements being signed but that, in a large number of Community-scale undertakings and groups of undertakings, no EWC has been established or agreement signed concerning the information and consultation of employees at European level;
2. Emphasises that social relations based on dialogue, genuine information and consultation of employees and their representatives will benefit collective negotiations and reduce the risk of conflict, and that it may also prove to be a factor for undertakings' success;
3. Calls on the Commission to notify those Member States which have not yet taken steps to transpose the Directive;
4. Shares the Commission's view that *'the problem [exists] of whether the present text is sufficiently clear with regard to ensuring that information is provided and consultation takes place within a reasonable time limit and in any event before a decision is taken'*;
5. Emphasises that in order to achieve genuine consultation of workers' representatives, it is necessary to give them high quality, regular and usable information in good time;
6. Notes that the definition of consultation as *'the establishment of dialogue and exchange of views'* has proved to be too vague to guarantee that consultation takes place in time for it to have an effect on negotiations, i.e. before decisions are taken, including in the cases referred to in the Annex to the Directive entitled 'Subsidiary requirements' *'where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies'*;
7. Emphasises that, for the application of the Directive in general, and not only in the cases referred to in the Annex under the heading 'Subsidiary requirements', it should be guaranteed that, in the case of measures which affect the employees' interests to a considerable extent, EWCs should *'have the right to be informed'* and that, after an

information and consultation meeting on the basis of a management report, EWCs should be able to deliver *'an opinion'* before any final decision is taken;

8. Recalls that, when it voted in April 1999 at first reading on the proposal for a Council directive establishing a general framework for informing and consulting employees in the European Community, the European Parliament clearly called for consultation to take place *'during the planning stage, so as to ensure the effectiveness of the step'*, such consultation to be carried out *'on the basis of information supplied by the employer'*, as well as on the basis of *'the opinion which the employees' representatives are entitled to formulate'* and with regard to which that are entitled *'to obtain a response, and the reasons for that response'*, the aim of consultation being *'to seek prior agreement'*;
9. Emphasises that, in the draft directive supplementing the Statute for a European Company, 'consultation' is defined as *'the establishment of dialogue and exchange of views ... at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on the measures envisaged ... which may be taken into account in the decision-making process ...'*;
10. Emphasises that, in the draft directive supplementing the Statute for a European Company, 'information' is defined as *'the informing of the body representative of the employees and/or employees' representatives ... at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ (of the SE)'*;
11. Notes that the Directive on the European Works Council should, therefore, be revised in an effort to achieve consistency and in order to take account of the more recent and more precise wordings, which will give greater effectiveness to the concepts of consultation and information by enabling them to lead to genuine negotiations;
12. Recalls that the Directive on collective redundancies lays down that *'Employers shall notify the competent public authority in writing of any projected collective redundancies'* and *'forward to the workers' representatives a copy of the notification'*. The latter *'may send any comments they may have to the competent public authority'*; calls for the Directive on the European Works Council to make express reference to this right of EWCs to refer matters to the competent public authority in the case of measures which significantly affect employees' interests;
13. Takes the view that, in order to guarantee compliance with the provisions of the Directive, penalties for non-compliance should be consistent and have a deterrent effect and, in particular, that decisions taken in breach of the procedures for the information and consultation of employees should be annulled;
14. Takes the view that ensuring trade-union participation in the Special Negotiating Body (SNB) will guarantee the best conditions for the establishment of the European Works Council and for the smooth linking of employee representation at national and transnational level;

15. Emphasises the importance of training for EWC members, given the diversity of the national laws in force in the various undertakings or groups of undertakings as well as the need to offer language courses which will enable employees' representatives to exchange information at the various levels;
16. Emphasises the need to provide for possible consultation with one or more experts, with contractual negotiations concerning the cost of expert advice and any applicable ceiling being conducted on an individual basis with undertakings;
17. EWCs and employees' representatives at transnational level must be given the resources which they require to carry out their tasks, including resources to enable them to hold preparatory meetings. EWC members must be entitled to hold meetings with representatives of local employees. The EWC budget must be sufficient to cover its operating and translation costs and for it to report independently to employees on its activities. In order to reduce current disparities between the Member States as regards time credits granted (ranging from some 2 hours per month in Spain and Italy to 20 hours per month in France), the Directive should lay down a minimum time credit for EWC members;
18. Calls for the Directive to include a clause for the revision, after a certain period of time has elapsed, of agreements signed in accordance with Article 13;
19. Stresses, as the Commission points out in the report, that the Directive does not currently require agreements to contain an adjustment clause covering changes to the make-up of the undertaking; considers that it should be revised to ensure that agreements actually do cover all the undertaking's or group's workers at all times;
20. Emphasises that the three-year period required for the conclusion of an agreement with an SNB for the establishment of an EWC seems unduly long and will open the door to delaying tactics; calls for the Directive to provide that, if negotiations have not reached a successful conclusion within a period of 18 months, an EWC shall be established in application of the 'Subsidiary requirements' which shall constitute minimum standards;
21. Calls for the revision of the thresholds adopted in 1994 which exclude from information and consultation at European level a large number of undertakings affected by the same transnational considerations as those which are currently eligible; proposes that the Directive shall apply to all undertakings which have more than 500 employees, including at least 100 employees in two Member States;
22. Hopes that consideration will be given, in conjunction with the social partners, to the addition of the concept of 'participation' to the 'information' and 'consultation' of employees at Community level in order to involve employees and their representatives more fully in the major strategic choices which will determine the evolution of the undertaking, its development and its organisation.