

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0325/2001

10 October 2001

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive on establishing a general framework for improving information and consultation rights of employees in the European Community (9919/1/01 – C5-0388/2001 – 1998/0315(COD))

Committee on Employment and Social Affairs

Rapporteur: Fiorella Ghilardotti

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

	Page
PROCEDURAL PAGE	4
DRAFT LEGISLATIVE RESOLUTION.....	5

PROCEDURAL PAGE

At the sitting of 16 September 1999 Parliament confirmed as its first reading under the codecision procedure its vote of 14 April 1999 on the proposal for a European Parliament and Council directive on establishing a general framework for improving information and consultation rights of employees in the European Community (COM(1998) 612 - 1998/0315 (COD)).

At the sitting of 5 September 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (9919/1/01 - C5-0388/2001).

The committee had appointed Fiorella Ghilardotti rapporteur at its meeting of 27 July 1999.

It considered the common position and draft recommendation for second reading at its meetings of 20 September and 8/9 October 2001.

At the latter meeting it adopted the draft legislative resolution by 36 votes to 6, with 3 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad and José Ribeiro e Castro, vice-chairmen; Fiorella Ghilardotti, rapporteur; Jan Andersson, María Antonia Avilés Perea, Regina Bastos, Theodorus J.J. Bouwman (for Ian Stewart Hudghton), André Brie (for Sylviane H. Ainardi), Philip Bushill-Matthews, Gunilla Carlsson (for Raffaele Lombardo), Luciano Caveri, Alejandro Cercas, Luigi Cocilovo, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Marie-Hélène Gillig, Anne-Karin Glase, Richard Howitt (for Elisa Maria Damião), Stephen Hughes, Anne Elisabet Jensen (for Daniel Ducarme), Ioannis Koukiadis, Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Manuel Medina Ortega (for Proinsias De Rossa), Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner (for Karin Jöns), Miet Smet, Ilkka Suominen, Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for Guido Podestà).

The recommendation for second reading was tabled on 10 October 2001.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on establishing a general framework for improving information and consultation rights of employees in the European Community (9919/1/01 – C5-0388/2001 – 1998/0315(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (9919/1/01 – C5-0388/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(1998) 612²),
 - having regard to the Commission's amended proposal (COM(2001) 296³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0325/2001),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 219, 30.7.1999, p. 174.

² OJ C 2, 5.1.1999, p. 3.

³ OJ C 240, 28.8.2001, p. 133.

Amendment 1
Recital 22a (new)

(22a) Member States should take measures to guarantee that employee representatives are elected by employees or designated by employees' organizations only and have a minimum term of office with possibilities to be re-appointed.

Justification

The amendment proposes a new formulation of the amendment adopted in the first reading. It is aimed to ensure the independence of employees' representatives.

Amendment 2
Recital 26 a (new)

(26a) Reinforced and dissuasive sanctions and specific judicial procedures applicable in the case of decisions taken in serious breach of the obligations under this Directive must be established.

Justification

The amendment is aimed at finding a compromise between Parliament's and the Commission's position and the Council's position on the sanctions.

Amendment 3
Article 2(ea) (new)

(ea) "social partners" means the competent representative organisation of the trade unions, the employee representatives of the undertaking, as provided by law, the employers' organization or the employer.

Justification

It is appropriate to give a definition of "social partners".

Amendment 4
Article 2(f)

(f) "information" means transmission by the employer to the employees' representatives of *data* in order to enable them to acquaint themselves with the subject-matter and to examine it;

(f) "information" means transmission by the employer to the employees' representatives ***and/or employees of information containing all relevant facts on the subjects set down in Article 4***, in order to enable them to acquaint themselves with the subject-matter and to examine it, ***before the decision is taken***;

Justification

The content of the information must be as complete as possible, according with the provision laid down in the Directive.

Amendment 5
Article 2, point (g)

(g) 'consultation' means the exchange of views and establishment of dialogue between the employees' representatives and the employer.

(g) 'consultation' means the exchange of views and establishment of dialogue between the employees' representatives and the employer ***during the planning stage in order to ensure the effectiveness of the procedure and make it possible to exert influence.***

Justification

Defining the term 'consultation' makes sense only where consultation is carried out before the company has taken the decision.

Amendment 6
Article 3(3a) (new)

(3a) The Member States, without prejudice to existing national provisions or practice, shall foster and promote social dialogue also in small and medium-sized enterprises, which do not come within the field of application of this Directive.

Justification

The new paragraph is aimed at encouraging social dialogue in SMEs, which are excluded from the field of this proposal.

Amendment 7
Article 4, point 2 (a)

2. Information and consultation shall cover:

(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

2. Information and consultation shall cover:

(a) information on the recent and probable development of the undertaking's or the establishment's activities and ***its*** economic ***and financial*** situation, ***in particular as regards investment, production, sales and structure as well as strategic plans including changes to organisational structures and market developments;***

Justification

The content of information should be specified more precisely, particularly about "economic" information which should include investment, production, sales and infrastructure, fundamental factors for the future of a company and employment such as organisational structures and development, i.e. not only sales but also market developments.

Amendment 8
Article 4(4)

4. Consultation shall take place:

(a) while ensuring that the timing, method and content thereof are appropriate;

(b) at the relevant level of management and representation, depending on the subject under discussion;

4. Consultation shall take place:

(a) while ensuring that the timing, method and content thereof are appropriate;

(b) at the relevant level of management and representation, depending on the subject under discussion;

(c) on the basis of **relevant** information to be supplied by the employer and **of** the opinion which the employees' representatives are entitled to formulate;

(c) on the basis of information **in accordance with Article 2(f)** to be supplied by the employer and the opinion which the employees' representatives are entitled to formulate;

Justification

The area of information and consultation and the moment in which they take place should be specified more precisely.

Amendment 9
Article 4(4a) (new)

(4a) Member States shall ensure that, where a decision to be implemented will have considerable adverse consequences for employees, the final decision may be postponed for an appropriate period at the request of the employees' representatives so that consultations may continue with the aim of avoiding or mitigating such adverse consequences.

(4b). Member States shall ensure that, where a decision to be implemented will have considerable adverse consequences for employees, in particular, transfers, relocations, closure of establishments or undertakings or large-scale redundancies, existing bodies representing employees may in the event of failure to reach agreement, where appropriate, meet once again with the relevant bodies of the undertaking.

Justification

It is necessary to guarantee the consultation of employees' representatives before implementing a final decision which will have an impact on future of employees.

Amendment 10
Article 5

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

Member States may entrust management and labour at the appropriate level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. ***The social partners may conclude agreements respecting the general objectives laid down by the Directive and subject to generally applicable conditions laid down by the Member States. The existing legislative arrangements and/or statutory minimum standards for employees' representatives and/or employees at national level may not be diminished by such agreement. Where legislative arrangements and/or statutory minimum standards at national level do not exist, such agreements shall contain rules and arrangements which provide for fuller rights for information and consultation than those laid down by this Directive.***

Justification

The aim of the amendment is to ensure that the level of protection for employees in the Member States at the time when the directive is adopted must not under any circumstances be lowered, even by agreements.

Amendment 11 Article 7

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

Employees' representatives shall, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them. ***In particular, employees' representatives must be entitled to:***

(a) legal protection against disadvantage with regard to career, wage and training during their term of office and for six months thereafter, and

(b) appropriate and continuing training,

including paid training leave, the organisation of periodic meetings among themselves and with all the employees and the use of the firm's internal computer networks.

Justification

The protection and guarantees covered in this Article need to be more precisely defined.

Amendment 12
Article 8(2a) (new)

(2a) Member States shall provide more stringent sanctions in case of serious breach by the employer of the information and consultation obligations in respect of decisions which may lead to the termination of the employment contracts or employment relations.

Member States shall also provide for specific procedures allowing employees' representatives to obtain the suspension of decisions which may lead to the termination of the employment contracts or employment relations, when these decisions have been taken in serious breach by the employer of the information and consultation obligations. The suspension period shall last until such time as effective information and consultation would be carried on.

Within the meaning of the previous paragraphs, serious breaches are:
a) the total absence of information and/or consultation of the employees' representatives prior to a decision being taken or the public announcement of that decision; or
b) the withholding of important information or provision of false information rendering ineffective the exercise of the right to information and consultation.

Justification

The amendment is aimed at finding a compromise between Parliament's and the Commission's position and the Council's position on the sanctions.

Amendment 13
Article 9(a) (new)

Article 9(a)

Public administration

Member States shall examine in cooperation with the social partners appropriate ways in which the principles laid down in this Directive can be implemented in public administrations.

Justification

The Member States and the social partners should establish the provisions needed to ensure the implementation of the principles laid down in the Directive to public administration.

Amendment 14
Article 9(b) (new)

Article 9 b

Avoidance

Member States shall take appropriate measures in conformity with Community law with a view to preventing a reduction in the number of employees in undertakings or establishments or the break-up of undertakings or establishments into groups of undertakings or establishments for the purpose of depriving employees of the rights to information and consultation laid down in this directive.

Justification

This amendment aims at avoiding changes in company structure designed solely to elude the

field of application of the directive.

Amendment 15
Article 10

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

Deleted.

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

Justification

The transition periods in the Member States in which there is no general system of information and consultation of employees seem no appropriate. The implementation period seems sufficient to guarantee the transposition of the Directive in such situation.

Amendment 16
Article 11(1)

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than * or shall ensure that

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than * or shall ensure that

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

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

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

management and labour introduce by that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them to guarantee the results imposed by this Directive at all times. They shall forthwith inform the Commission thereof.

management and labour introduce by that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them to guarantee the results imposed by this Directive at all times. They shall forthwith inform the Commission thereof.

Justification

The amendment is aimed at re-establishing a two year transition period as in the Commission proposal.