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58. Calls for all EU policies with a likely effect on children in third countries to be subject to consistent child rights impact assessments prior to their adoption, as well as subsequent evaluations; underlines that children should be considered as a separate and distinct group as they are not affected in the same way as adults;
59. Welcomes the initiative launched in the above-mentioned Council Conclusions to better coordinate and enhance the division of labour in the area of children's rights, by mapping out existing Commission and Member State policies and activities in pilot countries;
60. Is concerned that pilot countries have still not been identified, and calls on Member States to work closely with the Commission to ensure that this exercise is implemented quickly;
61. Calls on the Commission to develop procedures, benchmarks and indicators to ensure that 'mainstreamed' children's rights do not fall off the agenda, and shares the Commission's view that besides 'mainstreaming' of children's rights, specific actions are also needed under the geographical funds and the European Development Fund, possibly in non-focal sectors;
62. Believes that Parliament could play a more coordinated and systematic role in the monitoring of EU commitments on children, through for example the Annual Report on Human Rights;
63. Suggests that the interparliamentary assemblies (ACP-EU JPA, Eurolat, Euro-Mediterranean Parliamentary Assembly) invite children's organisations of the host country to their meetings, and supports the creation of inter-regional youth fora, such as an EU-Africa Youth Platform;
64. Instructs its President to forward this resolution to the Council and the Commission, the governments and parliaments of the Member States, the Secretary-General of the United Nations and the Co-Chairs of the ACP-EU Joint Parliamentary Assembly.
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## **Implementation of Directive 2002/14/EC: informing and consulting employees in the European Community**

P6\_TA(2009)0061

**European Parliament resolution of 19 February 2009 on the implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community (2008/2246(INI))**

(2010/C 76 E/03)

*The European Parliament,*

- having regard to Articles 136 to 145 of the EC Treaty,
- having regard to the declaration of the Heads of State and Government of 9 December 1989 on the Community Charter of the Social Rights of Workers, and in particular Articles 17 and 18 thereof,
- having regard to the European Social Charter of the Council of Europe, as revised in 1996, and in particular Article 21 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, adopted in Nice on 7 December 2000 and formally signed by the Heads of State and Government of the 27 Member States in the European Parliament in December 2007, and in particular Article 27 thereof,

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- having regard to Convention 135 of the International Labour Organisation (ILO) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, adopted on 23 June 1971, and in particular Article 5 thereof,
- having regard to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees <sup>(1)</sup>,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies <sup>(2)</sup>,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses <sup>(3)</sup>,
- having regard to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) <sup>(4)</sup>,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees <sup>(5)</sup>,
- having regard to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community <sup>(6)</sup> and the Joint declaration of the European Parliament, the Council and the Commission on employee representation <sup>(7)</sup>,
- having regard to Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees <sup>(8)</sup>,
- having regard to its resolution of 10 May 2007 on strengthening European legislation in the field of information and consultation of workers <sup>(9)</sup>,
- having regard to the proposal for a European Parliament and Council 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 (recast) (COM(2008)0419), and the annex thereto (SEC(2008)2166),
- having regard to the Commission communication of 17 March 2008 on the review of the application of Directive 2002/14/EC in the EU (COM(2008)0146) and the accompanying working document (SEC(2008)0334),
- having regard to Rule 45 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 Economic and Monetary Affairs and the Committee on Legal Affairs (A6-0023/2009),

<sup>(1)</sup> OJ L 254, 30.9.1994, p. 64.

<sup>(2)</sup> OJ L 225, 12.8.1998, p. 16.

<sup>(3)</sup> OJ L 82, 22.3.2001, p. 16.

<sup>(4)</sup> OJ L 294, 10.11.2001, p. 1.

<sup>(5)</sup> OJ L 294, 10.11.2001, p. 22.

<sup>(6)</sup> OJ L 80, 23.3.2002, p. 29.

<sup>(7)</sup> OJ L 80, 23.3.2002, p. 34.

<sup>(8)</sup> OJ L 207, 18.8.2003, p. 25.

<sup>(9)</sup> OJ C 76 E, 27.3.2008, p. 138.

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- A. whereas the Member States are late in transposing Directive 2002/14/EC, and whereas some Member States have confined themselves to transcribing certain aspects of its minimum applicable provisions,
- B. whereas the current financial crisis will have consequences for the EU economy in terms of the restructuring, merging and relocation of undertakings at EU level,
- C. whereas the aim of Directive 2002/14/EC is to establish a general framework for informing and consulting employees about the future of the undertaking in which they are employed and for consulting them effectively in anticipation of the economic developments of that undertaking,
- D. whereas the principle of informing and consulting employees is central to the social market economy and should not be seen as an obstacle to the economic development of undertakings,
- E. whereas in the European Union there are 23 000 000 undertakings with fewer than 250 employees (accounting for 99 % of undertakings and employing over 100 000 000 people), and whereas the EU institutions have a duty to guarantee and enhance the right of employees to be informed and consulted,

***Gradual strengthening of the process of informing and consulting employees within the EU***

- 1. Acknowledges that the transposition of Directive 2002/14/EC has been significantly delayed in some Member States and that more time will therefore be needed for its evaluation; stresses, however, that in Member States where no general system for informing and consulting employees existed before the directive will have an obvious impact;
- 2. Urges those Member States that have not yet correctly transposed Directive 2002/14/EC to do so as soon as possible;
- 3. Considers that the action taken to this end by the Commission should allow, in close cooperation with the national authorities of the Member States concerned and the social partners, further progress and a resolution of the problems identified in connection with the interpretation of Directive 2002/14/EC and the conformity of transposition measures;
- 4. Notes that some Member States, in their measures transposing Directive 2002/14/EC, have failed to take account of certain young workers, women working part-time or workers employed for short periods on fixed-term contracts; urges the Member States, accordingly, to bring their provisions governing the calculation of workforce numbers into line with the spirit and letter of the directive in order to ensure that the calculation of thresholds is always based on the actual number of workers, to the exclusion of all other conditions;
- 5. Considers it desirable for the Member States, whilst respecting their national practices, to specify precisely the conditions and restrictions relating to Article 6 of Directive 2002/14/EC on confidential information and to focus on:
  - (a) the duration of that obligation after the expiry of the mandate of such employees' representatives;
  - (b) the criteria and instances for the undertaking's legitimate interest in keeping such information confidential or the risk of harm to the undertaking if such information were disclosed;
- 6. Calls on the Member States, in their transposition measures, to:
  - (a) define precisely the term 'information', leaving no scope for alternative interpretations, at the same time and complying with the spirit of Directive 2002/14/EC by enabling workers' representatives to scrutinise the information provided, without waiting for the end of the information procedure, if decisions by undertakings have direct implications for workers;

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- (b) include, connection with the content of information, references to Article 4(2)(a), (b) and (c) of Directive 2002/14/EC;
  - (c) require that information be provided in good time before consultation;
  - (d) ensure full compliance with the requirements laid down in Article 4 of Directive 2002/14/EC as regards information and consultation rights and with a view to seeking an agreement within the meaning of Article 4(4)(e);
  - (e) involve the trade unions represented in the undertaking, in order to consolidate the social dialogue;
7. Urges those Member States that do not have effective, proportional and dissuasive sanctions, as provided for in Article 6(3) of the directive, which they can impose in the event of non-compliance with the rules governing the exercise of workers' information and consultation rights to introduce such sanctions;
8. Calls on all Member States which do not possess a system for the protection of employees' representatives to establish such a system;
9. Suggests that those Member States in which protection for employees' representatives is traditionally guaranteed by means of an agreement negotiated between trade unions and employers' associations provide for a high level of subsidiary protection for such employees' representatives should the negotiations fail;

***Implementing and improving the measures transposing Directive 2002/14/EC***

10. Considers that it is necessary for a range of possible sanctions that Member States could take against employers that fail to comply with the right of employees to be informed and consulted under Directive 2002/14/EC to be identified and made available to Member States;
11. Stresses that the Member States cannot invoke subsidiarity to justify not meeting their obligation to adopt sufficiently severe sanctions to dissuade employers from breaching Directive 2002/14/EC;
12. Draws attention to the judgments of the Court of Justice of the European Communities of 8 June 1994<sup>(1)</sup> establishing the principle that those Member States in which procedural and institutional arrangements are inadequate have an obligation to introduce suitable statutory provisions laying down appropriate administrative and judicial review procedures and appropriate, effective, proportional and dissuasive sanctions against employers who fail to meet their obligations to inform and consult employees;
13. Calls on the Member States, pending a revision of Directive 2002/14/EC, to draw on the case law of the Court of Justice when laying down administrative or judicial review measures and sanctions against employers that fail to meet their obligations to inform and consult employees;
14. Considers that the transposition measures adopted by the Member States must ensure that the right of employees' representatives to be informed and consulted remains an automatic right, in line with the correct interpretation of Directive 2002/14/EC;
15. Considers that it is necessary to lay down arrangements governing performance of the duties of employees' representative in such a way that those duties can be carried out during working hours and remunerated accordingly;

<sup>(1)</sup> Case C-382/92, Commission v. United Kingdom [1994] ECRI-2435 and case C-383/92, Commission v. United Kingdom [1994] ECRI-2479.

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16. Considers that it is necessary to guarantee that representatives of public administration employees and employees in the public and financial sector enjoy the same rights to information and consultation as are granted to other employees;
17. Considers that it is necessary to review the scope for employing direct consultation in cases where an elected or trade union representation structure exists, thereby ensuring that employers do not use direct consultation to intervene in matters covered by the right of trade unions to conduct collective bargaining, such as pay;
18. Calls for consideration to be given to the need to revise the workforce thresholds triggering the application of Directive 2002/14/EC so that only micro-undertakings are excluded from its scope;
19. Points out to the Member States that, although doubts persist as to precise meaning of the term 'undertaking' in Directive 2002/14/EC, the case law of the Court of Justice on this matter is comprehensive, and calls on the Member States to refer to that case law in their transposition measures, in order to rule out infringement actions relating to those measures;
20. Urges the Commission to take measures as soon as possible to guarantee the effective transposition of Directive 2002/14/EC by the Member States, at the same time checking all the points in respect of which shortcomings have been noted or which have given rise to problems, such as the provisions and national practices concerning the calculation of workforce numbers, the use of the specific provisions laid down in Article 3(2) and (3) and the safeguards to be applied in connection with the confidentiality clause laid down in Article 6; calls on the Commission to initiate infringement proceedings against those Member States which have failed to transpose the directive or which have not done so correctly;
21. Calls on the Commission to submit an evaluation report on the results achieved through the application of Directive 2002/14/EC as regards strengthening the social dialogue, the ability to anticipate, prevention and employability on the labour market, and as regards its ability to prevent administrative, legal and financial difficulties among small and medium-sized undertakings, attaching appropriate proposals where necessary;
22. Welcomes the proposal for a Council regulation on the Statute for a European private company (COM(2008)0396), which takes into account the specific needs of small undertakings;
23. Calls on the Commission, which is responsible for monitoring mergers and takeovers, to ensure that the rules laid down in national and Community law concerning the information and consultation of workers are complied with when decisions on mergers and takeovers are taken;
24. Takes the view that information which could be extremely economically damaging to an undertaking, if disclosed, should be kept absolutely confidential until a final decision is taken on substantial economic issues concerning the undertaking (e.g. in the form of a letter of intent);
25. Calls on the Commission regularly to advocate improvements to the right of employees to be informed and consulted and to place this issue on agendas for the European social dialogue, at both inter-professional and sectoral levels;
26. Calls on the Commission to encourage the social partners to take proactive, positive steps to influence implementation at national level, for example through the dissemination of good practices;
27. Calls on the Commission to take initiatives as soon as possible in order to boost an effective culture of cooperation between the social partners in the European Union in the field of the information and consultation of employees, taking account of the nature of the subject matter and the characteristics and size of undertakings;

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28. Notes with satisfaction that the agreement concluded between the European Community Shipowners' Associations and the European Transport Workers' Federation on the Maritime Labour Convention, 2006 makes reference to consultation in relation to various issues, such as risks to the health and safety of workers and the early termination of contracts;

29. Welcomes the proposal in the Commission communication of 10 October 2007 on Reassessing the regulatory social framework for more and better seafaring jobs in the EU (COM(2007)0591), to review Directive 2002/14/EC and calls on the Commission, in so doing, to remove the possibility of derogating from Directive 2002/14/EC offered by Article 3(3) thereof;

30. Calls on the Commission to consider the need to coordinate Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC and 2003/72/EC and Regulation (EC) No 2157/2001 with a view to determining what changes may be required in order to eliminate duplications and contradictions; takes the view that any changes required should be made simultaneously;

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31. Instructs its President to forward this resolution to the Council, the Commission, the European Economic and Social Committee, the Committee of the Regions and the governments and parliaments of the Member States.

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## Social Economy

P6\_TA(2009)0062

### European Parliament resolution of 19 February 2009 on Social Economy (2008/2250(INI))

(2010/C 76 E/04)

*The European Parliament,*

- having regard to Articles 3, 48, 125 to 130 and 136 of the EC Treaty,
- having regard to Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) <sup>(1)</sup>, and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute with regard to the involvement of employees <sup>(2)</sup>,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market <sup>(3)</sup>,
- having regard to Council Decision 2008/618/EC of 15 July 2008 on guidelines for the employment policies of the Member States <sup>(4)</sup>,
- having regard to the Commission Communication of 30 January 2008 on a proposal for the Joint Report on Social Protection and Social Inclusion 2008 (COM(2008)0042), the Accompanying document to the Commission Communication on a Proposal for the Joint Report (SEC(2008)0091), and to the Joint Employment Report 2007/2008, as endorsed in the Presidency conclusions following the Spring European Council of 13 to 14 March 2008,
- having regard to its resolution of 6 May 1994 on the alternative, social economy <sup>(5)</sup>,

<sup>(1)</sup> OJ L 207, 18.8.2003, p. 1.

<sup>(2)</sup> OJ L 207, 18.8.2003, p. 25.

<sup>(3)</sup> OJ L 376, 27.12.2006, p. 36.

<sup>(4)</sup> OJ L 198, 26.7.2008, p. 47.

<sup>(5)</sup> OJ C 205, 25.7.1994, p. 481.