

COUNCIL DIRECTIVE 97/74/EC

of 15 December 1997

extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Council, acting in accordance with the Agreement on social policy annexed to Protocol 14 to the Treaty, and in particular Article 2(2) thereof, adopted Directive 94/45/EC ⁽⁴⁾; whereas, as a result, the said Directive does not apply to the United Kingdom of Great Britain and Northern Ireland;

Whereas the Amsterdam European Council held on 16 and 17 June 1997 noted with approval the agreement of the Intergovernmental Conference to incorporate the Agreement on social policy in the Treaty and also noted that a means should be found to give legal effect to the wish of the United Kingdom of Great Britain and Northern Ireland to accept the Directives already adopted on the basis of that Agreement before the signature of the Amsterdam Treaty; whereas this Directive seeks to achieve this aim by extending Directive 94/45/EC to the United Kingdom;

Whereas the fact that Directive 94/45/EC is not applicable in the United Kingdom directly affects the functioning of the internal market; whereas implementation of the said Directive in all the Member States will improve the functioning of the internal market;

Whereas Directive 94/45/EC provides for a maximum of 17 members of the special negotiating body; whereas such a number corresponds to the 14 Member States which are party to the Agreement on social policy plus the three remaining Contracting Parties of the European Economic Area; whereas the adoption of this Directive will bring the total number of States covered by Directive 94/45/EC to 18; whereas, therefore, the abovementioned maximum should be increased to 18 so that each

Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented;

Whereas Directive 94/45/EC provides for special treatment to be accorded to Community-scale undertakings and groups of undertakings in which there is, at 22 September 1996, an agreement covering the entire workforce providing for the transnational information and consultation of employees; whereas, accordingly, Community-scale undertakings and groups of undertakings falling within the scope of that Directive solely as a result of its application to the United Kingdom should be granted similar treatment;

Whereas the adoption of this Directive will make Directive 94/45/EC applicable in all Member States including the United Kingdom; whereas, from the date on which this Directive enters into force, the term 'Member States' in Directive 94/45/EC should be construed as including, where appropriate, the United Kingdom;

Whereas Member States were required to bring into force the laws, regulations and administrative provisions to comply with Directive 94/45/EC no later than two years after its adoption; whereas a similar period should be granted to the United Kingdom, as well as to the other Member States, to bring into force the necessary measures to comply with this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to Article 3, Directive 94/45/EC shall apply to the United Kingdom of Great Britain and Northern Ireland.

Article 2

In Article 5(2)(b) of Directive 94/45/EC '17' shall be replaced by '18'.

⁽¹⁾ OJ C 335, 6. 11. 1997.

⁽²⁾ OJ C 371, 8. 12. 1997.

⁽³⁾ OJ C 355, 21. 11. 1997.

⁽⁴⁾ OJ L 254, 30. 9. 1994, p. 64.

Article 3

1. The obligations resulting from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings, which, solely by virtue of Article 1, fall within the scope of this Directive, provided that, on the date laid down in Article 4(1) or the date of its transposition in the Member State in question, where this is earlier than the said date, there is already an agreement covering the entire workforce providing for the transnational information and consultation of employees.

2. When the agreements referred to in paragraph 1 expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, Directive 94/45/EC, as extended by this Directive, shall apply.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 15 December 1999 or shall ensure, by that date at the latest, that management

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

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 15 December 1997.

For the Council

The President

J.-C. JUNCKER