

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/56/EEC

of 24 June 1992

amending Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 Community Charter of the Fundamental Social Rights of Workers, adopted at the Regulation Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of eleven Member States, states *inter alia* in point 7, first paragraph, first sentence, and second paragraph; in point 17, first paragraph; and in point 18, third indent:

7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community (. . .).

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

(. . .)

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

(— . . .)

(— . . .)

— in cases of collective redundancy procedures;

(— . . .)';

Whereas, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies ⁽⁴⁾, other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are at least five redundancies;

Whereas it should be stipulated that Directive 75/129/EEC applies in principle also to collective redundancies resulting where the establishment's activities are terminated as a result of a judicial decision;

Whereas the Member States should be given the option of stipulating that workers' representatives may call on experts on grounds of the technical complexity of the matters which are likely to be the subject of the informing and consulting;

⁽¹⁾ OJ No C 310, 30. 11. 1991, p. 5 and OJ No C 117, 8. 5. 1992, p. 10.

⁽²⁾ OJ No C 94, 13. 4. 1992, p. 157.

⁽³⁾ OJ No C 79, 30. 3. 1992, p. 12.

⁽⁴⁾ OJ No L 48, 22. 2. 1975, p. 29.

Whereas the provisions of Directive 75/129/EEC should be clarified and supplemented as regards the employer's obligations regarding the informing and consulting of workers' representatives;

Whereas it is necessary to ensure that employers' obligations as regards information, consultation and notification apply independently of the fact that the decision on collective redundancies emanates from the employer or from an undertaking which controls that employer;

Whereas Member States should ensure that workers' representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in Directive 75/129/EEC are fulfilled,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 75/129/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

- (a) the following subparagraph shall be added to paragraph 1:

'For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.';

- (b) subparagraph 2 (d) shall be deleted.

2. Section II shall be replaced by the following:

'SECTION II

Information and consultation

Article 2

1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, *inter alia*, at aid for redeploying or retraining workers made redundant.

Member States may provide that the workers' representatives may call upon the services of experts in accordance with national legislation and/or practice.

3. To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

- (a) supply them with all relevant information and
- (b) in any event notify them in writing of:
 - (i) the reasons for the projected redundancies;
 - (ii) the number of categories of workers to be made redundant;
 - (iii) the number and categories of workers normally employed;
 - (iv) the period over which the projected redundancies are to be effected;
 - (v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;
 - (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.';

3. in Article 3 (1) the following subparagraph shall be added after the first subparagraph:

'However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.';

4. in Article 4, the following paragraph shall be added after paragraph 3:

'4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.';

5. the following phrase shall be inserted at the end of Article 5:

'or to promote or to allow the application of collective agreements more favourable to workers.';

6. the following text shall be inserted after Article 5:

'Article 5a

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest two years after its adoption or shall ensure, at the latest two years after adoption, that the employers' and workers' representatives introduce the required provisions by way of agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive.

They shall immediately inform the Commission thereof.

2. When Member States adopt the provisions referred to in paragraph 1, such provisions shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

3. Member States shall forward to the Commission the text of any fundamental provisions of national law already adopted or being adopted in the area governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1992.

For the Council

The President

José da SILVA PENEDA