

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 406 final
Brussels, 20.09.1994

94/0113 (PRT)

Reexamined proposal for a

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**

(presented by the Commission pursuant to Article 189 C (d)
of the EC Treaty)



EXPLANATORY MEMORANDUM

On 13 April 1994, the Commission adopted a "Proposal for a Council Directive on the establishment of European committees or procedures in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees"¹.

The Economic and Social Committee delivered its opinion on 1 June 1994².

The European Parliament delivered its opinion at first reading on 4 May 1994³.

On 3 June 1994, the Commission adopted an amended proposal under Article 189a (2) of the EC Treaty, incorporating a number of the amendments proposed by the European Parliament⁴.

On 18 July 1994, the Council adopted a common position on the Commission's amended proposal⁵.

The European Parliament examined the Council's common position at second reading on 15 September 1994 and approved it subject to 12 proposed amendments.

The Commission has examined the amendments proposed by the European Parliament at second reading, incorporating a number of them into the present reexamined proposal.

The Commission's position on each of the amendments approved by Parliament at second reading is as follows.

AMENDMENTS 1 AND 2

These amendments seek to reduce the thresholds indicated in Art. 12(1)(a) and (c) of the common position, for the number of employees on the payroll of a Community-scale undertaking or group of undertakings, from 1 000 to 500 and from 150 to 100.

As it pointed out in the course of the first reading in Parliament, the Commission feels that the scope of the directive must be limited to the largest European undertakings. 1 000

¹ OJ C 135, 18.5.1994, p. 8.

² Not yet published in the Official Journal.

³ Not yet published in the Official Journal.

⁴ OJ C 199, 21.7.1994, p.10

⁵ OJ C 244, 31.8.1994, p.37



employees has always been regarded as the most appropriate yardstick for this new approach to the international information and consultation of workers. The Commission would, however, point to the terms of Article 15 of the common position, which states that the Commission is required to review the application arrangements within a fixed period, with special reference to the workforce size thresholds. This will give the Commission an opportunity to take a fresh look at this question.

The Commission is willing to accept the European Parliament's amendment regarding the second threshold (number of workers employed in at least two different Member States).

AMENDMENT 3 (AND AMENDMENTS 4, 11 AND 14)

Amendment 3 seeks to allow only workers' representatives for the undertakings belonging to the group to appoint the workers' representatives on the special negotiating body. Amendments 4, 11 and 14 are also concerned with the arrangements for setting up the special negotiating body or the European Works Council, proposing the introduction of a number of additional rules.

The Commission appreciates the desire of the European Parliament to uphold democratic principles in setting up these worker-representation bodies. Nonetheless, the Commission is convinced that the best approach is not to interfere in existing forms and arrangements for employee representation at national level (which are themselves in conformity with democratic principles) and to allow them to be used in the procedures imposed by the directive, if the Member States so wish. This principle, which is the corollary to the principle of subsidiarity, is reflected in Article 2 (1) (d), according to which "employees' representatives means the employees' representatives provided for by national law and/or practice".

Introducing uniform and restrictive rules into the text of the directive would seriously limit the freedom which it would seem desirable for Member States to enjoy. In addition, the proposed rule whereby it would be up to each Member State to lay down the criteria for determining supplementary members is impracticable in that, if adopted, it would lead to a conflict of laws which would be very difficult to resolve.

The same arguments can be advanced with regard to Parliament's call for account to be taken of the relative significance of the various employee categories, this constituting a principle which is completely unknown in much existing national legislation and practice and which would therefore be difficult to apply in a uniform and across-the-board manner.

Nonetheless, the Commission can agree to a new recital in the preamble to the reexamined proposal stating that Member States may, if they so wish, make provision for the representation of the various employee categories.



AMENDMENT 5

This amendment seeks to enable employees' representatives from third countries to be on the special negotiating body, with undertakings and establishments situated in such countries being regarded for this purpose as situated in a Member State.

The text of the proposed directive as it stands does little or nothing to prevent the participation of employees' representatives from third countries, either in the special negotiating body or in a European Works Council or in an information and consultation procedure. Nonetheless, the directive adopts a voluntarist approach in this regard. This is perfectly understandable in that it would not be possible to require the direct application of the directive's rules outside the directive's territorial scope (i.e. the territory of the eleven Member States to which the directive is addressed). Here too, the Commission feels that it is up to Member States, if they think it useful and desirable, to introduce the appropriate compulsory measures to impose on undertakings and groups whose central management is situated on their territory a wider framework for the transnational information and consultation of employees than derives from the directive itself. (The directive has to be restricted to its natural field of application, i.e. the territory of the eleven Member States concerned.)

AMENDMENT 7

Amendment 7 seeks to reduce to one and a half years the three-year period provided for in Article 7 (1) of the common position as the period within which the subsidiary provisions adopted by the Member States in accordance with the annex do not yet apply.

This deadline has emerged gradually in the course of institutional discussions on the proposal presented by the Commission last April. The proposal then was for a two-year period; the Council decided to introduce into its common position a three-year deadline, with no opposition from the Commission. The Commission's initial texts (dating from 1991), on the other hand, provided for only one year.

The evident point of extending the deadline was to encourage voluntary agreements between the special negotiating body and the central management. The Commission is sympathetic to this standpoint, as is illustrated by its changing position over time. Nonetheless, the Commission realises that extending the deadline has the disadvantage of delaying the implementation of the information and consultation mechanisms provided for in the directive in extreme situations of unwillingness to implement.

The Commission therefore agrees to resubmit this question to the Council (on the basis of a 2-year period) to enable the Council to reexamine its common position in the light of the stance adopted by the European Parliament at second reading.



AMENDMENT 8

Amendment 8 sets out to restrict the facility available to Member States to make special arrangements for the central management of undertakings established on their territory and which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions to instances where rules in this field already exist in national law.

The Commission is able to accept this point of view, which has been incorporated into the reexamined proposal.

AMENDMENT 9

Amendment 9 seeks to give more substance to the measures for the protection of employees' representatives set out in general terms in Article 10 of the common position. Special mention is made of the prohibition of any form of discrimination and protection against dismissal or other sanctions in respect of activities associated with the exercise of a mandate as an employees' representative.

Although it feels that this type of measure was already covered by the wording of Article 10 of the common position, the Commission is willing to incorporate the required details into its reexamined proposal.

AMENDMENT 10

This represents a bid by the European Parliament to reduce the period allowed in Article 15 for review of the directive.

The Commission can go along with the 5-year period proposed by Parliament.

REEXAMINED PROPOSAL FOR A

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**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**

COMMON POSITION

AMENDED TEXT

Citations

Unchanged

Recitals 1-15

Unchanged

Recital 15 a (new)

Whereas, in accordance with the principle of subsidiarity, it is for the Member States to determine who are the employees' representatives and to make provision, should they think fit, for balanced representation of the various categories of employees

Recitals 16 - 22

Unchanged

Article 1

Unchanged

Article 2

1. For the purposes of this Directive:

a) "Community-scale undertaking" means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

a) "Community-scale undertaking" means any undertaking with at least 1 000 employees within the Member States and at least 100 employees in each of at least two Member States;

Point (b)

Unchanged

c) "Community-scale group of undertakings" means a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States;
- at least two group undertakings in different Member States; and
- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

Points (d) to (h)

Paragraph 2

Articles 3 - 6

Article 7

1. In order to achieve the objective in Article 1 (1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide, or
- where the central management refuses to commence negotiations within six months of the request referred to in Article 5 (1), or
- where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not

c) "Community-scale group of undertakings" means a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States;
- at least two group undertakings in different Member States; and
- at least one group undertaking with at least 100 employees in one Member State and at least one other group undertaking with at least 100 employees in another Member State;

Unchanged

Unchanged

Unchanged

1. In order to achieve the objective in Article 1 (1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide, or
- where the central management refuses to commence negotiations within six months of the request referred to in Article 5 (1), or
- where, after two years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not

taken the decision provided for in
Article 5 (5).

Paragraph 2

Article 8

Paragraphs 1 and 2

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions.

Article 9

Article 10

Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6 (3) shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/practice in force in their country of employment.

No provision made

taken the decision provided for in
Article 5 (5).

Unchanged

Unchanged

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, provided that such provisions already exist in national law.

Unchanged

Unchanged

They may be subject to no discrimination by virtue of their activity and shall enjoy protection from dismissal, apart from in exceptional circumstances which justify the said dismissal, and protection from other sanctions imposed by reason of oral or written action and interventions connected with the exercise of their mandate.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6 (3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

Unchanged

Articles 11 - 14

Unchanged

Article 15

Not later than*, the Commission shall, in consultation with the Member States and with management and labour at European level, 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.

Not later than*, the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular, examine whether the workforce size thresholds are appropriate with a view to submitting suitable amendments to Parliament and the Council, where necessary.

Article 16

Unchanged

Annex

Unchanged

* six years after the adoption of this Directive

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DOCUMENTS

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