

**Amended proposal for a Directive of the European Parliament and of the Council establishing a general framework for improving information and consultation rights of employees in the European Community <sup>(1)</sup>**

(2001/C 240 E/21)

COM(2001) 296 final — 1998/0315(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 23 May 2001)*

<sup>(1)</sup> OJ C 2, 5.1.1999, p. 3.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on Social Policy attached to the Protocol (No 14) on Social Policy annexed to the Treaty establishing the European Community, and in particular Article 2(2) thereof,

Deleted

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

Unchanged

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure referred to in Article 189c,

Acting in accordance with the procedure referred to in Article 251 <sup>(3)</sup>,

Whereas:

Whereas, on the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, and with the exception of the United Kingdom of Great Britain and Northern Ireland, the Member States of the European Community, hereinafter referred to as the 'Member States', desirous of implementing the Social Charter of 1989, have adopted an Agreement on Social Policy;

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Whereas Article 2(2) of the said Agreement authorises the Council to adopt minimum requirements by means of directives;

(1) Whereas, pursuant to Article 1 of the Agreement, a particular objective of the Community and the Member States is to promote social dialogue between management and labour.

(1) Pursuant to Article 136 of the Treaty, a particular objective of the Community and the Member States is to promote social dialogue between management and labour.

<sup>(1)</sup> OJ C 258, 10.9.1999, p. 24.

<sup>(2)</sup> 14.12.2000.

<sup>(3)</sup> The opinion of the European Parliament was published in OJ C 219, 30.7.1999, p. 223.

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- (2) Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that 'information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States'.
- (3) Whereas the Commission, pursuant to Article 3(2) of the Agreement on Social Policy, has consulted management and labour at Community level on the possible direction of Community action on the information and consultation of workers in undertakings within the European Union.
- (4) Whereas the Commission, considering after this consultation that Community action was advisable, has again consulted the social partners on the content of the planned proposal, pursuant to Article 3(3) of the said Agreement, and the social partners have presented their opinions to the Commission.
- (5) Whereas, having completed this second stage of consultation, the social partners have not informed the Commission of their wish to initiate the process potentially leading to the conclusion of an agreement, as provided for in Article 4 of the said Agreement.
- (6) Whereas the existence of legal frameworks at national and Community level intended to ensure that workers are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting workers from being taken and made public without adequate procedures having been implemented beforehand to inform and consult them.
- (7) Whereas there is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.

## AMENDED PROPOSAL

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- (2) Point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that 'information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States'.
- (3) The Commission has consulted management and labour at Community level on the possible direction of Community action on the information and consultation of workers in undertakings within the European Union.
- (4) The Commission, considering after this consultation that Community action was advisable, has again consulted the social partners on the content of the planned proposal, and the social partners have presented their opinions to the Commission.
- (5) Having completed this second stage of consultation, the social partners have not informed the Commission of their wish to initiate the process potentially leading to the conclusion of an agreement.
- (6) The existence of legal frameworks at national and Community level intended to ensure that workers are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting workers from being taken and made public without adequate procedures having been put in place beforehand to inform and consult them.
- (7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.

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| <p>(8) Whereas timely information and consultation is a prerequisite for the success of restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly via the development of new forms of work organisation.</p> <p>(9) Whereas the European Community has drawn up and implemented an employment strategy based on the concepts of 'anticipation', 'prevention' and 'employability', which are to be incorporated as key elements into all public policies likely to benefit employment, including the policies of individual undertakings, by strengthening the social dialogue with a view to promoting with preserving the priority objective of employment.</p> <p>(10) Whereas further development of the internal market must be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.</p> <p>(11) Whereas the third stage of economic and monetary union will extend and accelerate the competitive pressures at European level; this will mean that more supportive measures are needed at national level.</p> <p>(12) Whereas the existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively <i>a posteriori</i> approach to the process of change, neglect the economic aspects of decisions taken and do not contribute to genuine anticipation of employment developments within the undertaking or to risk prevention.</p> | <p>(8) In particular, there is a need to promote and strengthen information and consultation on the situation and probable development of employment within the undertaking and, where it ensues from the evaluation carried out by the employer that employment within the undertaking is likely to come under threat, on any anticipatory measures envisaged, in particular in terms of training and enhancing employees' skills, with a view to offsetting negative developments or their consequences and improving the employability and adaptability of the employees likely to be affected.</p> <p>(9) Timely information and consultation is a prerequisite for the success of restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly via the development of new forms of work organisation.</p> <p>(10) The European Community has drawn up and implemented an employment strategy based on the concepts of 'anticipation', 'prevention' and 'employability', which must constitute key elements of all public policies likely to benefit employment, including enterprise policies, by strengthening the social dialogue with a view to promoting change compatible with preserving the priority objective of employment.</p> <p>(11) Further development of the internal market must be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.</p> <p>(12) The third stage of economic and monetary union will extend and accelerate the competitive pressures at European level; this will mean that more supportive measures are needed at national level.</p> <p>(13) The existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively <i>a posteriori</i> approach to the process of change, neglect the economic aspects of decisions taken and do not contribute to genuine anticipation of employment developments within the undertaking or to risk prevention.</p> |
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- (13) Whereas, as a result of all these political, economic, social and legal developments, action is needed at Community level to make the essential changes to the existing legal framework.
- (14) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the object is to establish a framework for employee information and consultation appropriate for the new European context described above; but whereas, in view of the scale and impact of the proposed action, these objectives can be better achieved at Community level by the introduction of minimum regulations applicable to the entire European Community; the present Directive constitutes no more than the minimum necessary to achieve these objectives.
- (15) Whereas the purpose of this general framework is to establish minimum requirements applicable throughout the European Community, while avoiding any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings; whereas, to this end, the scope of this Directive should be restricted to undertakings with at least 50 employees, without prejudice to any more favourable national or Community provisions; whereas, in order to maintain the appropriate balance between the above-mentioned factors, this minimum may be raised to 100 employees in the case of the more innovative measures proposed herein on the information and consultation of employees on developments in the employment situation within the undertaking.

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- (14) As a result of all these political, economic, social and legal developments, action is needed at Community level to make the essential changes to the existing legal framework in the form of legal and practical instruments allowing the right of information and consultation to be exercised.
- (15) This Directive does not prejudice national systems under which the concrete exercising of this right implies a collective expression of will on the part of the entitled parties.
- (16) This Directive does not prejudice systems providing for the direct involvement of employees, provided the latter are always free to exercise their right to information and consultation via their representatives.
- (17) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the object is to establish a framework for employee information and consultation appropriate for the new European context described above; however, in view of the scale and impact of the proposed action, these objectives can be better achieved at Community level by the introduction of minimum regulations applicable to the entire European Community; the present Directive constitutes no more than the minimum necessary to achieve these objectives.
- (18) The purpose of this general framework is to establish minimum requirements applicable throughout the European Community, while avoiding any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings; whereas, to this end, the scope of this Directive should be restricted to undertakings with at least 50 employees, without prejudice to any more favourable national or Community provisions; whereas, in order to maintain the appropriate balance between the above-mentioned factors, this minimum may be raised to 100 employees in the case of the more innovative measures proposed herein on the information and consultation of employees on developments in the employment situation within the undertaking. It does not prevent Member States from adopting provisions that are more favourable to employees.
- (19) It is also the purpose of this general framework to avoid any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings; it would appear appropriate, to this end, to restrict the scope of this Directive to undertakings with at least 50 employees or establishments with at least 20 employees, at the choice of the Member States.

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- (16) Whereas a Community framework for informing and consulting employees must keep to a minimum the burden on businesses while ensuring the effective exercise by employees of their rights.
- (17) Whereas the objectives of this Directive are to be achieved through the establishment of a general framework comprising the definitions and purpose of the information and consultation, which it will be up to the Member States to complete and adapt to their own national situation, ensuring, where appropriate, that the social partners have a leading role by allowing them to define freely the arrangements for informing and consulting employees which they consider to be best suited to their needs and wishes.
- (18) Whereas care must be taken to avoid affecting some specific rules in the field of employees' information and consultation existing in some national laws, addressed to undertakings which pursue political, professional organisation, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions.
- (19) Whereas undertakings must be protected against public disclosure of certain particularly sensitive information.
- (20) Employers must be entitled not to inform or consult employees where this would be seriously prejudicial to the undertaking or where they have to comply immediately with an injunction issued by a monitoring or surveillance authority.
- (21) Whereas modernisation of work implies both rights and obligations for the two social partners at undertaking level.

## AMENDED PROPOSAL

- (20) The Community framework for informing and consulting employees must keep to a minimum the burden on businesses while ensuring the effective exercise of rights.
- (21) The objective of this Directive are to will be achieved through the establishment of by establishing a general framework comprising the definitions and purpose of the information and consultation, which it will be up to the Member States to complete and adapt to their own national situation, ensuring, where appropriate, that the social partners have a leading role by allowing them to define freely the arrangements for informing and consulting employees which they consider to be best suited to their needs and wishes setting out the principles, definitions and procedures for information and consultation which Member States will have to comply with and adapt to their own national situation, ensuring where appropriate that the social partners have a leading role by allowing them to define freely, through agreements, the procedures for informing and consulting employees which they consider to be best suited to their needs and wishes.
- (22) Care must be taken to avoid affecting some specific rules in the field of employees' information and consultation existing in some national laws, addressed to undertakings which pursue adversely affecting certain specific rules in the field of employee information and consultation which exist in some national laws and are aimed at undertakings pursuing political, professional organisation, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions.
- (23) Undertakings must be protected against public disclosure of certain particularly sensitive information.
- (24) Employers must be entitled not to inform or consult employees where this would be seriously prejudicial to the undertaking or where they have to comply immediately with an injunction issued by a monitoring or surveillance authority.
- (25) Information and consultation are both rights and obligations of the social partners at undertaking level.

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- (22) Whereas a reinforced and dissuasive sanction, applicable in the case of decisions taken in serious breach of the obligations under this Directive must be established at Community level, without prejudice to the general obligations of Member States in this respect.
- (23) Whereas this Directive also applies to the subjects covered by Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies<sup>(1)</sup> and Council Directive 77/187/EEC of 14 February 1998 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 businesses, amended by the Council Directive 98/50/EC of 29.6.1998<sup>(2)</sup>.
- (24) Whereas other employee information and consultation rights, including those arising from Council Directive 94/45/EEC 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>(3)</sup> must not be affected by this Directive,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

**Object and principles**

1. The purpose of this Directive is to establish a general framework to information and consultation for informing and consulting employees in undertakings within the European Community.

<sup>(1)</sup> OJ L 225, 12.8.1988 p. 16.

<sup>(2)</sup> (OJ L 61, 5.3.1977, p. 26 and (OJ L 201, 17.7.1998, p. 88).

<sup>(3)</sup> OJ L 254, 30.9.1994, p. 64.

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- (26) A reinforced and dissuasive sanction, applicable in the case of decisions taken in serious breach of the obligations under this Directive must be established at Community level, without prejudice to the general obligations of Member States in this respect.
- (27) This Directive also applies to the subjects covered by Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies<sup>(1)</sup> and 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 businesses<sup>(2)</sup>.
- (28) This Directive must not prejudice other employee information and consultation rights, including those arising from Council Directive 94/45/EEC 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>(3)</sup> and Council Directive 97/74/EC of 15 December 1997 extending this Directive<sup>(4)</sup> to the United Kingdom.
- (29) Application of the provisions of this Directive must not constitute grounds for reducing the general level of employee protection within the scope of the Directive,

HAVE ADOPTED THIS DIRECTIVE:

Unchanged

1. The purpose of this Directive is to establish a general framework laying down minimum requirements concerning employees' rights to information and consultation in undertakings within the European Community.

<sup>(1)</sup> OJ L 225, 12.8.1998 p. 16. This Directive consolidates Council Directive 75/129/EC of 17 February 1975 (OJ L 48, 22.2.1975, p. 29) and Council Directive 92/56/EC of 24 June 1992 (OJ L 245, 26.8.1992, p. 3).

<sup>(2)</sup> OJ L 82, 22.3.2001, p. 16. This Directive consolidates Council Directive 77/187/EC of 14 February 1997 (OJ L 61, 5.3.1997, p. 26) and Council Directive 98/50/EC of 29 June 1998 (OJ L 201, 17.7.1998, p. 88), which amended it.

<sup>(3)</sup> OJ L 254, 30.9.1994, p. 64.

<sup>(4)</sup> OJ L 10, 16.1.1998, p. 23.

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2. When defining or implementing information and consultation procedures, the employer and the employees' representatives shall work in a spirit of co-operation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking and of the employees.

2. Information and consultation procedures shall be established and implemented so as to ensure their effectiveness.

3. When defining or implementing information and consultation procedures, the employer and the employees' representatives shall work in a spirit of co-operation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking and of the employees.

*Article 2*

Unchanged

**Definitions and scope****Definitions**

For the purposes of this Directive:

Unchanged

a) 'undertakings' means public or private undertakings carrying out an economic activity, whether or not operating for gain, which are located within the territory of the Member States of the European Community and have at least 50 employees, without prejudice to the provisions of Article 4(3);

a) 'undertakings' means public or private undertakings carrying out an economic activity, whether or not operating for gain, which are located within the territory of the Member States of the European Community;

b) 'employer' means the natural or legal person party to employment contracts or employment relationships with employees;

b) 'establishment' means a place of business with no legal personality, which is part of an undertaking and where a non-transitory economic activity is carried out with human means and goods;

c) 'employer' means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national legislation and practice;

c) 'employees' representatives' means the employees' representatives provided for by national laws and/or practices;

d) 'employee' means any person who, in the Member State concerned, is protected as an employee under national labour legislation and in accordance with national practice;

e) 'employees' representatives' means the employees' representatives provided for by national laws and/or practices;

d) 'information' means transmission by the employer to the employees' representatives of information containing all relevant facts on the subjects set down in Article 4(1), ensuring that the timing, means of communication and content of the information are such as to ensure its effectiveness, particularly in enabling the employees' representatives to examine the information thoroughly and, where appropriate, prepare consultations;

f) 'information' means transmission of details by the employer to the employees' representatives so that they can take note of and consider the subject in question;

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e) 'consultation' means the organisation of a dialogue and exchange of views between the employer and the employees' representatives on the subjects set out in Article 4(1)(b) and (c),

— ensuring that the timing, method and content are such that this step is effective;

— at the appropriate level of management and representation, depending on the subject under discussion;

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

— including the employees' representatives' right to meet with the employer and obtain a response, and the reasons for that response, to any opinion they may formulate;

— including, in the case of decisions within the scope of the employer's management powers, an attempt to seek prior agreement on the decisions referred to in Article 4(1)c.

2. In conformity with the principles and objectives of this Directive, Member States may lay down particular provisions applicable to undertakings which pursue directly and essentially political, professional organisation, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, on condition that, at the date of adoption of this Directive, such particular provisions already exist in national legislation.

*Article 3***Information and consultation procedures deriving from an agreement**

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

Deleted

Unchanged

**Scope**

1. This Directive shall apply, at the Member States' choice, to:

— undertakings with at least 50 employees in a Member State, or

— establishments with at least 20 employees in a Member State.

The Member States shall establish the manner in which the number of employees is calculated.

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1. Member States may authorise the social partners at the appropriate level, including at undertaking level, to define freely and at any time through negotiated agreement the procedures for implementing the employee information and consultation requirements referred to in Articles 1, 2 and 4 of this Directive.

2. The agreements referred to in paragraph 1 may establish, while respecting the general objectives laid down by the Directive and subject to conditions and limitations laid down by the Member States, arrangements which are different to those referred to in Article 2(1)(d) and (e) and Article 4 of the present Directive.

*Article 4***Content of, and procedures for information and consultation**

1. Without prejudice to any provisions and/or practices more favourable to employees in force in the Member States, employee information and consultation shall, if there is no agreement between the social partners as envisaged in Article 3, cover:

- a) information on the recent as well as the reasonably foreseeable development of the undertaking's activities and its economic and financial situation;
- b) information and consultation on the situation, structure and reasonably foreseeable development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the anticipatory measures envisaged, in particular for employee training and skill development, with a view to offsetting the potential negative developments or their consequences and increasing the employability of the employees likely to be affected;

2. In line with the principles and objectives laid down in this Directive, the Member States may make provision for specific arrangements applicable to undertakings pursuing political, professional organisation, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, provided such specific arrangements already exist in national law on the date on which this Directive is adopted.

Deleted

Unchanged

**Procedures for information and consultation**

1. Acting in compliance with the principles set out in Article 1, and without prejudice to current provisions and/or practices which are more favourable to employees, the Member States shall establish the procedures under which employees can exercise the right to information and consultation at the appropriate level, in accordance with paragraphs 2, 3 and 4 below.

2. Information and consultation shall cover:

- a) information on the recent as well as the probable development of the undertaking's activities and its economic and financial situation;
- b) information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, especially in the event of a threat to employment;

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c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 8(1).

2. The Member States shall ensure that information and consultation are effective and useful within the meaning of Article 1 and Article 2(1)(d) and (e). To this end, they shall determine the information and consultation procedures for the subjects listed in paragraph 1.

3. Member States may exclude from the information and consultation obligations referred to in paragraph 1(b) of this Article undertakings with fewer than 100 employees.

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c) information and consultation on decisions likely to lead to significant changes in work organisation or in contractual relations, including those covered by the provisions referred to in Article 9(1).

3. Appropriate information shall be provided at the appropriate time and in the appropriate manner, so as to allow the employees' representatives to examine the matter properly and, where appropriate, to prepare for consultation.

4. Appropriate consultation shall take place:

— at an appropriate time and using appropriate means;

— at the relevant management and representation level, depending on the subject;

— on the basis of relevant information provided by the employer and the opinion which the employees' representatives are entitled to formulate;

— in a manner which allows the employees' representatives to meet the employer and obtain a reasoned response to any opinion they have formulated;

— with a view to reaching an agreement on the decisions referred to in paragraph 2(c) which come under the employer's prerogative.

*Article 5***Information and consultation under an agreement**

The Member States may allow the social partners at the appropriate level, including undertaking or establishment level, to define freely and at any time, through negotiated agreements, the procedures for informing and consulting employees. Provided they comply with the principles set out in Article 1, and subject to conditions and limits laid down by the Member States, such agreements may make provision for procedures which differ from those set out in Article 4.

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*Article 5**Article 6***Confidential information**

Unchanged

1. Member States shall provide that the employees' representatives and any experts who assist them are not authorised to disclose any information which has expressly been provided to them in confidence. This obligation shall continue to apply irrespective of where the said representatives or experts are, even after expiry of their term of office.

1. Member States shall provide, subject to conditions and limits laid down in national legislation, that the employees' representatives and any experts who may assist them are not authorised to disclose, except to employees bound by a confidentiality obligation, any information which has expressly been provided to them in confidence, if this is in the legitimate interest of the undertaking. This obligation shall continue to apply irrespective of where the said representatives or experts are, even after expiry of their term of office.

2. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or would be prejudicial to it.

Unchanged

3. Without prejudice to existing national procedures, Member States shall make provision for administrative or judicial appeal procedures should the employer claim confidentiality or fail to provide information in accordance with the above paragraphs. They may also make provision for procedures to safeguard the confidentiality of the information in question.

*Article 6**Article 7***Protection of employees' representatives**

Unchanged

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.

*Article 7**Article 8***Protection of rights**

Unchanged

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced, including procedures which may be instituted by the employer or the employees' representatives where either party considers that the other party is in breach of the obligations provided for in Article 5.

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

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2. Member States shall provide for adequate penalties to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These penalties must be effective, proportionate and dissuasive.

3. Member States shall provide that in case of serious breach by the employer of the information and consultation obligations in respect of the decisions referred to in Article 4(1)(c) of this Directive, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected. The non-production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established, in accordance with the arrangements and procedures to be determined by the Member States.

The provision of the previous paragraph also applies to corresponding obligations under the agreements referred to in Article 3,

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.

*Article 8***Link between this Directive and other Community and national provisions**

1. This Directive constitutes the general framework for employee information and consultation in undertakings in the European Community. It is also applicable to the information and consultation procedures set out in Article 2 of Council Directive 98/59/EC and Article 6 of Directive 77/187/EC.

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Unchanged

3. Member States shall provide that in case of serious breach by the employer of the information and consultation obligations in respect of the decisions referred to in Article 4(2)(c) of this Directive, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected. The non-production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established, in accordance with the arrangements and procedures to be determined by the Member States.

The provision of the previous paragraph also applies to corresponding obligations under the agreements referred to in Article 5,

Unchanged

*Article 9*

Unchanged

1. This Directive constitutes the general framework for employee information and consultation in undertakings in the European Community. It is also applicable to the information and consultation procedures set out in Article 2 of Council Directive 98/59/EC and Article 7 of Council Directive 2001/23/EC.

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2. This Directive does not prejudice the provisions adopted in accordance with Council Directive 94/45/EC of 24 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.

3. This Directive shall be without prejudice to other rights of employees to information, consultation and participation under national law.

*Article 9***Transposition of the Directive**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than ... (two years after adoption) or shall ensure that the social partners introduce 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.

2. Where Member States adopt these provisions, 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 10***Review by the Commission**

Not later than ... (five years after adoption), the Commission shall, in consultation with the Member States and the social partners at Community level, review the application of this Directive with a view to proposing to the Council any necessary amendments.

*Article 11*

This Directive is addressed to the Member States.

2. This Directive does not prejudice the provisions adopted in accordance with Council Directive 94/45/EC of 24 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 or Council Directive 97/74/EC of 15 December 1997 extending this Directive to the United Kingdom.

Unchanged

4. Application of the provisions of this Directive shall not constitute grounds for any regression in relation to the situation which already exists in the Member States in respect of the general level of employee protection within the scope of the Directive.

*Article 10*

Unchanged

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than ... (three years after adoption) or shall ensure that the social partners introduce 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.

Unchanged

*Article 11*

Unchanged

*Article 12*

Unchanged