



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.09.1997

COM(97) 457 final

97/0238 (CNS)

97/0239 (CNS)

Proposal for a
COUNCIL DIRECTIVE
on the extension of 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, to the United Kingdom of Great Britain and Northern Ireland

Proposal for a
COUNCIL DIRECTIVE
extending Council Directive 96/34/EC of 3 June 1996, on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, to the United Kingdom of Great Britain and Northern Ireland

(presented by the Commission)

SUMMARY

The aim of this proposal is to extend 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 to the United Kingdom of Great Britain and Northern Ireland.

Directive 94/45/EC was adopted on 22 September 1994 under Article 2 (2) of the Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community. It does not apply to the United Kingdom of Great Britain and Northern Ireland.

The Amsterdam European Council noted with approval the agreement of the Intergovernmental Conference to incorporate the Social Agreement in the EC Treaty.

At the said European Council the Members of the European Council whose States are party to the Agreement on Social Policy annexed to Protocol 14 to the Treaty on European Union welcomed wholeheartedly the decision of the United Kingdom to accede to the social provisions of the new Treaty. They noted with great satisfaction the willingness of the United Kingdom to accept the Directives which have already been adopted on the basis of that Agreement. The European Council noted that a means had to be found, in advance of the signature of the Amsterdam Treaty, to give legal effect to these wishes.

At the Council of 24 July 1997, the Council and the Commission agreed to put into effect the conclusions adopted at the Amsterdam European Council. To this effect, they agreed that the European Works Council and the Parental Leave Directives should be applied to the United Kingdom by the adoption of Article 100 ECT Directives. To this end, the Commission should as soon as possible submit to the Council the relevant proposals. Such proposals should, without prejudice to the necessary technical adjustments, not alter the material content of the above-mentioned Directives.

Since the fact that Directive 94/45/EC is not applied in the United Kingdom negatively affects the functioning of the common market, a Directive is, therefore, proposed, based on Article 100 of the EC Treaty.

EXPLANATORY MEMORANDUM

Introduction

The aim of this proposal is to extend Council Directive 94/45/EC of 22 September 1994⁽¹⁾ 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 to the United Kingdom of Great Britain and Northern Ireland.

Council Directive 94/45/EC, adopted under Article 2 (2) of the Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community, does not apply to the United Kingdom of Great Britain and Northern Ireland.

The Amsterdam European Council held at 16 and 17 June 1997 noted with approval the agreement of the Intergovernmental Conference to incorporate the Social Agreement in the Treaty.

At the said meeting of the European Council the Members of the European Council whose States are party to the Agreement on Social Policy annexed to Protocol 14 to the Treaty on European Union welcomed wholeheartedly the decision of the United Kingdom to accede to the social provisions of the new Treaty. They noted with great satisfaction the willingness of the United Kingdom to accept the Directives which have already been adopted on the basis of that Agreement. The European Council noted that a means had to be found, in advance of the signature of the Amsterdam Treaty, to give legal effect to these wishes.

At the Council of 24 July 1997, the Council and the Commission agreed to put into effect the conclusions adopted at the Amsterdam European Council. To this effect, they agreed that the European Works Council and the Parental Leave Directives should be applied to the United Kingdom by the adoption of Article 100 ECT Directives. To this end, the Commission should as soon as possible submit to the Council the relevant proposals. Such proposals should, without prejudice to the necessary technical adjustments, not alter the substance of the above-mentioned Directives.

Commission proposal

i. Legal base

Directive 94/45/EC requires undertakings and groups of undertakings operating in more than one Member State to inform and consult the representatives of their employees affected by their decisions and aims, therefore, to improve the dialogue between management and labour, as referred to in Article 1 of the Agreement on Social Policy. It is obvious that the extension of these provisions to the United Kingdom of Great Britain and Northern Ireland will facilitate attainment of this objective. Bringing the legislation of the United Kingdom of Great Britain and Northern Ireland into line with Council Directive 94/45/EC will, therefore, have a direct

¹ OJ L 254 of 30.9.1994, p. 64

impact on the functioning of the common market. In consequence, the appropriate legal base for the Commission's proposal is Article 100 of the Treaty.

ii. Articles

Article 1

The purpose of this proposal is to extend Council Directive 94/45/EC to the United Kingdom of Great Britain and Northern Ireland. Without prejudice to the technical adaptations laid down by Article 2, the proposal does not affect the provisions of Council Directive 94/45/EC which will remain in force.

The consequences of its application affect the implementation of the Directive in all the Member States however. The Member States currently covered by Council Directive 94/45/EC will also have to provide for the necessary provisions to comply with this Directive, notably as regards its transnational aspects.

Article 2

Article (2) increases the maximum number of employee representatives on the special negotiating body from 17 to 18 members. The current maximum corresponds to the 14 Member States which are party to the Agreement on Social Policy plus the remaining three Contracting Parties of the European Economic Area. As the adoption of this Directive will bring the number of States covered by Directive 94/45/EC to 18, it is necessary to increase the existing maximum to cater for Community-scale undertakings or groups of undertakings which have at least one establishment or one group undertaking in each of the 18 Contracting Parties of the European Economic Area.

Article 3

Along the same lines as Article 13 of Council Directive 94/45/EC, Article 3 allows undertakings to comply with the Directive on a voluntary basis by concluding an agreement. This proved to be an extremely successful measure and should therefore be granted to those undertakings which, through the extension to the Kingdom of Great Britain and Northern Ireland, will fall within the scope of Council Directive 94/45/EC. Undertakings already falling within the scope of Council Directive 94/45/EC will, however, not benefit therefrom.

Article 4

It is proposed that the United Kingdom of Great Britain and Northern Ireland, as well as all other Member States, be granted a period of two years from the adoption of this Directive to comply with its provisions.

**PROPOSAL FOR A
COUNCIL DIRECTIVE**

97/0238 (CNS)

on the extension of 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 to the United Kingdom of Great Britain and Northern Ireland

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 on social policy annexed to the Treaty establishing the European Community, and in particular Article 2 (2) thereof, adopted on 22 September 1994 Council Directive 94/45/EC⁽⁴⁾ 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; whereas, therefore, Council Directive 94/45/EC 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 EC Treaty and also noted that a means should be found to give legal effect to the

⁴ OJ L 254 of 30.9.1994, p. 64

wish of the United Kingdom of Great Britain and Northern Ireland to accept the directives which have already been adopted on the basis of that Agreement before the signature of the Amsterdam Treaty; whereas the present directive seeks to achieve this aim by applying Council Directive 94/45/EC to the United Kingdom of Great Britain and Northern Ireland.

Whereas the fact that Council Directive 94/45/EC is not applicable in the United Kingdom of Great Britain and Northern Ireland directly affects the functioning of the common market; whereas its implementation in all the Member States will improve the functioning of the common market.

Whereas Council 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 the Directive 94/45/EC to 18; whereas therefore the above mentioned 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 undertaking has the controlling undertaking or one or more controlled undertakings is represented;

Whereas Council 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 Council Directive 94/45/EC solely as a result of its application to the United Kingdom of Great Britain and Northern Ireland, 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 of Great Britain and Northern Ireland.

Whereas Member States were required to bring into force the laws, regulations and administrative provisions to comply with Council Directive 94/45/EC no later than two years after the adoption of the latter Directive; whereas a similar period should be granted to the United Kingdom of Great Britain and Northern Ireland, as well as to the other Member States of the European Union, to bring into force the necessary provisions 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

1. In Article 5(2) (b) of Directive 94/45/EC "17" is hereby replaced by 18.

Article 3

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) for the implementation of this Directive or the date of its transposition in the Member State in question where this is earlier than the above-mentioned date, there is already an agreement covering the entire workforce providing for the transnational information and consultation of employees.

When the agreements referred to in the first subparagraph expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of Council Directive 94/45/EC as amended 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 ... (2 years after the adoption) 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 Member States.

Article 5

This Directive is addressed to the Member States.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL FOR BUSINESS

with special reference to small and medium-sized enterprises (SMEs)

Title of the proposal:

Proposal for a Council Directive on the extension of 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, to the United Kingdom of Great Britain and Northern Ireland

The proposal:

1. Taken account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

The aim of this proposal is to extend 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 to the United Kingdom of Great Britain and Northern Ireland.

Directive 94/45/EC was adopted on 22 September 1994 under Article 2 (2) of the Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community. It does not apply to the United Kingdom of Great Britain and Northern Ireland.

Since the fact that Directive 94/45/EC is not applied in the United Kingdom negatively affects the functioning of the common market, a Directive is, therefore, proposed, based on Article 100 of the EC Treaty.

2. Who will be affected by the proposal?

Directive 94/45/EC applies to: (a) undertakings with at least 1000 employees in all the Member States and with at least two establishments in different Member States, each employing at least 150 workers; and (b) groups of undertakings with at least 1000 employees in all the Member States and with at least two group undertakings in different Member States which each employ at least 150 employees. Small and medium-sized undertakings are not covered.

The proposal applies to all sectors of business throughout the European Union.

This proposal affects companies in the United Kingdom as well as in the other Member States which, taken into account their total numbers of workers in all the Member States, fall within

the scope of this proposal, but did not fall within the scope of Directive 94/45/EC as adopted on 22 September 1994.

3. What will business have to do to comply with the proposal.

Undertakings and groups or undertakings covered by this proposal must establish European Works Council or set up some other procedure for informing and consulting their employees, as set out in Directive 94/45/EC.

4. What economic effects is the proposal likely to have?

As for Directive 94/45/EC, the cost is depending on the size of the company and on the outcome of the negotiations between management and labour. In most cases the actual wage cost increase per worker is likely to be less than 10 ECU per year.

For companies that were already covered by the Directive 94/45/EC, the cost of this proposal is limited to the inclusion of employees in the United Kingdom in the European works council. This is a theoretical extra cost, since nearly all companies have anticipated this proposal on a voluntary basis.

This proposal aims at improving industrial relations and worker involvement throughout all the Member States, including United Kingdom. This might lead to an increase in productivity which will more than compensate for the marginal cost increase.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

This proposal does not apply to small and medium-sized business.

SUMMARY

The aim of this proposal is to extend Council Directive 96/34/EC of 3 June 1996, on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, to the United Kingdom of Great Britain and Northern Ireland.

Directive 96/34/EC was adopted on 3 June 1996 on the basis of Article 4(2) of the Agreement on Social Policy annexed to Protocol (No. 14) to the Treaty establishing the European Community. It does not currently apply to the United Kingdom of Great Britain and Northern Ireland.

The European Council meeting held at Amsterdam on 16-17 June noted with approval the agreement of the Intergovernmental Conference to incorporate the Social Agreement in the EC Treaty.

At the said European Council the Members of the European Council whose States are party to the Agreement on Social Policy annexed to Protocol 14 to the Treaty on European Union welcomed wholeheartedly the decision of the United Kingdom to accede to the social provisions of the new Treaty. They noted with great satisfaction the willingness of the United Kingdom to accept the Directives which have already been adopted on the basis of that Agreement. The European Council noted that a means had to be found, in advance of the signature of the Amsterdam Treaty, to give legal effect to these wishes.

At the Council of 24 July 1997, the Council and the Commission agreed to put into effect the conclusions adopted at the Amsterdam European Council. To this effect, they agreed that the European Works Council and the Parental Leave Directives should be applied to the United Kingdom by the adoption of Article 100 ECT Directives. To this end, the Commission should as soon as possible submit to the Council the relevant proposals. Such proposals should without prejudice to the necessary technical adjustments, not alter the substance of the above-mentioned Directives.

Since the fact that Directive 96/34/EC is not applied in the United Kingdom negatively affects the functioning of the common market, a Directive is, therefore, proposed, based on Article 100 of the EC Treaty.

EXPLANATORY MEMORANDUM

Introduction

The aim of this proposal is to extend Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland.

Council Directive 96/34/EC, adopted on the basis of Article 4(2) of the Agreement on Social Policy annexed to Protocol (No 14) to the Treaty establishing the European Community, does not apply to the United Kingdom of Great Britain and Northern Ireland.

The Amsterdam European Council held at 16-17 June 1997 noted with approval the agreement of the Intergovernmental Conference to incorporate the Social Agreement in the Treaty.

At the said meeting of the European Council the Members of the European Council whose States are party to the Agreement on Social Policy annexed to Protocol 14 to the Treaty on European Union welcomed wholeheartedly the decision of the United Kingdom to accede to the social provisions of the new Treaty. They noted with great satisfaction the willingness of the United Kingdom to accept the Directives which have already been adopted on the basis of that Agreement. The European Council noted, also, that a means had to be found, in advance of the signature of the Amsterdam Treaty, to give legal effect to these wishes.

At the Council of 24 July 1997, the Council and the Commission agreed to put into effect the conclusions adopted at the Amsterdam European Council. To this effect, they agreed that the European Works Council and the Parental Leave Directives should be applied to the United Kingdom by the adoption of Article 100 ECT Directives. To this end, the Commission should as soon as possible submit to the Council the relevant proposals. Such proposals should, without prejudice to the necessary technical adjustments, not alter the substance of the above-mentioned Directives.

The Commission's Proposal

i. Legal base

Directive 96/34/EC, which implements the framework agreement on parental leave, contributes in particular to the objective of improving working and living conditions, as referred to in Article 1 of the Agreement on Social Policy, and the reconciliation of family and working life. It is obvious that the extension of these provisions to the United Kingdom of Great Britain and Northern Ireland will lead to a better realisation of these objectives, ensuring that they will be pursued by all Member States. Bringing the legislation of the United Kingdom of Great Britain and Northern Ireland into line with Council Directive 96/34/EC will, therefore, have a direct impact on the functioning of the common market. In consequence the appropriate legal base for the Commission's proposal is Article 100 of the Treaty.

ii. Articles

Article 1

The application of Directive 96/34/EC to the United Kingdom may be effected by means of a Directive addressed to the Member States. No substantive amendment of Directive 96/34/EC will be necessary, the only amendment being the purely formal one of the date of implementation in the United Kingdom.

Article 2

With regard to implementation, the United Kingdom should be allowed the same length of time after adoption of the present Directive as was permitted for the other Member States after the adoption of Directive 96/34/EC.

PROPOSAL FOR A COUNCIL DIRECTIVE

extending Council Directive 96/34/EC of 3 June 1996, on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, to the United Kingdom of Great Britain and Northern Ireland.

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 on social policy annexed to the Treaty establishing the European Community, and in particular Article 4(2) thereof, adopted on 3 June 1996 Council Directive 96/34/EC,⁴ on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC ; whereas that Directive does not, therefore, apply to the United Kingdom of Great Britain and Northern Ireland;

Whereas the Amsterdam European Council held at 16-17 June 1997, noted with approval the agreement of the Intergovernmental Conference to incorporate the Agreement on social policy in the EC Treaty and also noted that a means had to be found to give legal effect to the wish of the United Kingdom of Great Britain and Northern Ireland to accept the directives which have already been adopted on the basis of that Agreement before the signature of the Amsterdam Treaty; whereas the present directive seeks to achieve this aim by applying Council Directive 96/34/EC to the United Kingdom of Great Britain and Northern Ireland;

Whereas the fact that Council Directive 96/34/EC is not applicable in the United Kingdom of Great Britain and Northern Ireland directly affects the functioning of the common market; whereas the implementation of the framework agreement, and in particular the principle of reconciliation of parental and professional responsibilities for working parents, in all the Member States will improve the functioning of the common market;

Whereas the implementation of the framework agreement aims, in particular, at achieving the objective of equal treatment between men and women with regard to

1

2

3

4

OJ L145/4 of 19.6.96.

labour opportunities and treatment at work, and reconciliation of working and family life,

Whereas the adoption of this Directive will make Directive 96/34/EC applicable in the United Kingdom of Great Britain and Northern Ireland, and whereas from the date of entry into force of this Directive the term "Member States" in Directive 96/34/EC should be construed as including the United Kingdom of Great Britain and Northern Ireland.

HAS ADOPTED THIS DIRECTIVE :

Article 1

Without prejudice to Article 2, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, shall apply to the United Kingdom of Great Britain and Northern Ireland.

Article 2

1. In Article 2 of Directive 96/34/EC, the following paragraph 1a is inserted:

"As regards the United Kingdom of Great Britain and Northern Ireland, the date of 3 June 1998 in Article 2 of Directive 96/34/EC shall be replaced by paragraph 1 shall be[2 years after adoption]."

Article 3

This Directive is addressed to the Member States.

Done at ...

**IMPACT ASSESSMENT FORM
THE IMPACT OF THE PROPOSAL ON BUSINESS**

**With special reference to small and medium-sized
enterprises (SMEs)**

TITLE OF PROPOSAL: Proposal for a Council Directive extending Council Directive 96/34 of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland

THE PROPOSAL:

- 1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?**

The aim of this Directive is to extend to the United Kingdom Directive 96/34/EC.

THE IMPACT ON BUSINESS:

- 2. Who will be affected by the proposal?**

All enterprises and all workers may be affected by the framework agreement, irrespective of the sector or size of the enterprise concerned.

- 3. What will business have to do to comply with the proposal?**

The enterprises have several options to make up for the absence of workers on parental leave, the main being as follows:

- hiring of replacements;
- sharing of the work between colleagues;
- postponing work until the persons concerned return to work.

- 4. What economic effects is the proposal likely to have?**

Introduction of parental leave will also contribute to achieving the second priority set in Essen by the European Council - the introduction of new flexible ways of organizing work. Such flexibility should cater for the needs of enterprises which, in the face of international competition, must increase their competitiveness and for the interests of workers by enabling them to adjust their working time to their personal needs. the agreement between the social partners on this matter, which has been negotiated between employers and

workers, is the most suitable instrument for reconciling the interests of the two parties.

The job guarantee accompanying parental leave should normally underpin continuity in the labour market - whereas hitherto gainful employment had to be interrupted - to the benefit of workers and enterprises alike. Workers may be spared some of the cost of returning to working life and can maintain the benefits of their experience and their seniority with their employers. The employers keep the labour force which they have trained and, depending on the way in which they replace workers on leave, do not have to commit expenditure for recruitment or training of new personnel.

5. **does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?**

Yes. See paragraphs 17 to 21 of the Explanatory Memorandum of the original proposal.

ISSN 0254-1475

COM(97) 457 final

DOCUMENTS

EN

04 05 06

Catalogue number : CB-CO-97-471-EN-C

ISBN 92-78-24643-3

Office for Official Publications of the European Communities

L-2985 Luxembourg

17