



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

**establishing a general framework  
for informing and consulting employees in the  
European Community**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### I. INTRODUCTION

Information and consultation of employees has been a major preoccupation of the European Community's for many years.

- Several Community texts have put the principles of information and consultation into practise: Council Directive 75/129/EEC of 17 February 1995 on the approximation of the laws of the Member States relating to collective redundancies<sup>1</sup>, Council Directive 77/187/EEC of 14 February 1977 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> and 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<sup>3</sup>.
- Giving priority to negotiation between the social partners has been a constant concern of the Commission. Already, on 14 November 1995, the "Communication on worker information and consultation" encouraged the social partners to identify the arrangements for a general framework for the information and consultation of employees in the European Community.

This Communication gave rise to initial responses from the social partners, and the Commission subsequently initiated the procedures provided for in the Protocol on Social Policy.

In launching the second stage consultation on 5 November 1997, the Commission stated its conviction that a Community initiative to establish binding rules on information and consultation was necessary. In accordance with its well-established practice, the Commission favoured the social partners establish these rules themselves

The social partners had this possibility, during the second consultation phase. However, while some of them, particularly the ETUC and CEEP, indicated their willingness to enter into Community-level negotiations on the subject, UNICE declined to do so, giving as its reasons the non-conformity of such a move with the principle of subsidiarity, the existence of adequate legal frameworks at national level, the lack of any link between employee information and consultation and job security, the view that labour management should be the exclusive preserve of the company's internal organisation and management, and the risks inherent in a measure which would prejudice the company's own management prerogatives.

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<sup>1</sup> OJ L 48, 22.2.1975, p. 29. This Directive was amended by Council Directive 92/56/EC of 24 June 1992 (OJ L 245, 26.8.1992, p. 3). The two Community acts have been consolidated by Council Directive 98/59/EC of 20 July 1998 (OJ L 225, 12.8.1998, p. 16).

<sup>2</sup> OJ L 61, 5.3.1977, p. 26. This Directive was amended by Council Directive 98/50/EC of 29.6.1998 (OJ L 201, 17.7.1998, p. 88).

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

While respecting the different points of view expressed during this extensive consultation exercise, which has lasted three years, the Commission regrets this lack of willingness to negotiate on the part of the social partner organisations most directly concerned by the subject in question. That is why the Commission is presenting, following this exercise, the current proposal for a Directive to establish a general framework for employee information and consultation in the European Community, to take its place in a Community and national legal process which has been consolidated over the past few decades.

## II. THE BASIS OF THE PROPOSAL

### Information and consultation: an essential tool for adaptability

In the context of constant change, the adaptability of employees takes on a crucial role, and is an integral part of the employment strategy adopted by the European Council in Luxembourg. The Commission believes, however, that the adaptability of the workforce must be conceived and achieved through information and consultation procedures which allow employees to face and anticipate change. Such an approach is beneficial both to employers and employees: different reports transmitted to the Commission<sup>4</sup>, as well as good practices in companies, allow us to conclude that information and consultation are factors for productivity as they contribute to the creation of a highly skilled and committed workforce.

This aspect is also a central theme of the Green Paper "*Partnership for a new organisation of work*" adopted by the Commission in April 1997, which has since been widely discussed at European level.

### The weaknesses of Community and national provisions

In the course of the two-stage consultation of the social partners, the Commission has explained in detail the justification and the need for a Community initiative in this field. Several events, which have given rise to enormous political and media attention, have illustrated the weakness of national and Community law. In fact, it has become clear that, even where information and consultation provisions existed, they were not effective as they were either only ritual in nature or only effective *a posteriori*.

As illustrated in the Annex to this proposal, almost all the Member States of the European Union have a statutory or negotiated legal framework aimed at ensuring an effective exercise of the rights of employees to be informed and consulted. The aim of the present initiative consists in supplementing the existing Community and national frameworks, thus contributing to the achievement of its final goals: to prepare change, to ensure that corporate restructuring is done in a socially acceptable way and to guarantee that the employment objective is given the priority it requires in the current climate.

### The economic and social context

In the context of European competitiveness, the process of restructuring has become a high profile issue. Therefore, the European Council in Luxembourg decided that "particular attention should be given to sectors undergoing substantial industrial changes". It requested a High-Level Group of experts to analyse such developments and to present a report on the

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<sup>4</sup> Davignon Report ("European Systems of Worker Involvement, with regard to the European Company Statute and other pending proposals") . Gyllenhammar Report (Interim Report of the High Level Expert Group on the Economic and Social Impact of Industrial Change).

ways and means to anticipate changes and to alleviate their economic and social effects. In its interim report the Group, chaired by Mr Per Gyllenhammar, emphasised the importance of proper information and consultation of employees for the success of the restructuring process, and agreed on the need to create a European framework on this subject. The Group did not recommend binding rules at Community level but rather, like the Commission, hoped that arrangements could be put in place by the social partners themselves.

European competitiveness is reinforced by two factors which have, over the past few years, become increasingly important: the completion of the Internal Market and Economic and Monetary Union.

Completion of the internal market leads to the disappearance of fragmented national markets. This process will be reinforced by the third stage of Economic and Monetary Union, which will complete the transformation of Europe into a single and transparent market. These developments must be accompanied by a reinforcement of the social dimension which will, in turn, allow even greater benefit to be drawn. With this in mind, the Commission included the subject of information and consultation of employees as a political priority within its Action Plan for the Single Market<sup>5</sup>.

Finally, the employment strategy launched by the European Council in Luxembourg, as well as the Guidelines which were adopted there, underline the importance of adaptability within undertakings and the role of social partners in modernising work organisation.

### The legal context

#### At national level

The report on "Employee representatives in Europe and their economic prerogatives"<sup>6</sup> drawn up at the Commission's request, is a comparative analysis incorporating all these aspects. The main conclusions drawn by the Commission from this report are set out below.

- The vast majority of the European Union Member States have a statutory or negotiated legal framework establishing information and consultation procedures at various management levels (establishment, undertaking, group of undertakings), which are detailed in the Annexes to this proposal. However,
- These social rights are not always respected in practice.
- In some Member States, the manner in which information and consultation of employees is carried out on policy or economic decisions is not always commensurate with the social impact of those decisions, often because the employee representatives are involved too late in the decision-making process, where they can only try to repair the effects of an irreversible situation.
- Anticipation of problems is essential and implies that a genuine policy of prevention and support measures be put in place to accompany any strategic decisions, including those which might affect employment (training, restructuring, redeployment, etc.), or are intended to increase worker employability. Such a policy should not be developed to deal

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<sup>5</sup> Communication from the Commission to the European Council, Doc. ESC(97)I final of 4 June 1997.

<sup>6</sup> Supplement 3/96 "Social Europe".

with job cuts or redundancies, but should be seen as a permanent and fundamental factor contributing to the success of the undertaking.

#### At Community level

The Community Directives on collective redundancies and on the transfer of undertakings, referred to above, made reference to the information and consultation of workers. More recently, the European Works Council Directive has implemented these same principles at transnational level.

The analysis set out by the Commission in its Communication of 14 November 1995 and subsequently included in successive consultation documents for the social partners still applies. On the subject of informing and consulting workers, existing Community law is fragmented: the European Union has developed general legislation on information and consultation of workers at transnational level and specific legislation on information and consultation at national level, in the specific cases of imminent collective redundancies and transfers of undertakings (and in the area of health and safety at work).

Another problem is that the current Community provisions do not contain adequate provisions for sanctioning decisions which are taken in contravention of workers' rights to information and consultation. The entitlement to information and consultation does not, therefore, at Community level, enjoy the degree of protection which ought to apply to all social legislation.

#### *A general and flexible framework*

The above analysis demonstrates the need and justification for a Community framework on information and consultation of employees. This framework will on the one hand supplement the two existing Community directives and, on the other hand, will fill the gaps in national laws and practices.

While the principle of information and consultation must be consolidated through a Community directive, at the same time it is the Commission's intention to refer to national systems for its implementation. Within these systems, the importance of negotiations between social partners, at all levels, is emphasised. This is coherent with the long established policy of the Commission, believing that successful implementation depends in large part on the involvement of the social partners.

The present Directive is also intended to fit in with the principle of proportionality. This is illustrated particularly by:

- the fact that the proposed Directive will only apply to companies with 50 or more employees, which excludes 97% of companies in the EU with salaried employees, and therefore a high proportion of the SMEs who would be most affected by the administrative requirements of the Directive;
- the topics which are to be the subject for information and consultation, which are limited to the most essential issues;

### III. OBJECTIVES

The proposed framework is designed to fill the gaps and counter the shortcomings identified in the preceding sections, in the employee information and consultation provisions currently in force at national and Community levels. The objectives are therefore to:

- ensure existence of the right to regular information and consultation of employees on economic and strategic developments in the undertaking and on the decisions which affect them in all Member States of the European Community;
- consolidate the social dialogue and relations of trust within the undertaking in order to assist risk anticipation, develop the flexibility of work organisation within a framework of security, enhance employees' awareness of the need to adapt, encourage them to participate in measures and operations designed to boost their employability, promote employee involvement in the operation and future of the undertaking, and make the undertaking more competitive;
- include the situation and anticipated development of employment within the undertaking among the subjects of information and consultation;
- ensure that workers are informed and consulted prior to decisions which are likely to lead to substantial changes in work organisation or in contractual relations;
- ensure the effectiveness of these procedures by introducing specific penalties for those who seriously violate their obligations in this field.

### IV. THE PROPOSED PROVISIONS AND THEIR IMPACT ON NATIONAL SYSTEMS

In this section, the Commission sets out its reasons for proposing each of the planned provisions, accompanied, wherever appropriate, by a brief reference to national provisions in force (see appended tables). This exercise makes it easier to assess the impact which the proposed Directive will have on national law.

#### Article 1

Article 1 establishes the objective (to establish a general framework for informing and consulting employees in the European Community) and principles (co-operation between the parties, consideration of reciprocal rights and obligations, and the need to take account of the interests of both undertaking and employees) of the proposed Directive. The attached *Table I* shows the origin and status of employee information and consultation in the Member States.

#### Article 2

Article 2 (Definitions and scope) constitutes a central provision of the Directive. Its importance is increased by the fact that the Directive gives the Member States a large measure of flexibility in implementing these concepts in practice.

The first part of the definition of "undertaking" (paragraph (a)) is based on the text adopted by the Council (Social Affairs) concerning the revision of Directive 77/187/EEC (Directive 98/50/EC of 17.7.1998) and on the case law of the Court of Justice. This concept contributes indirectly to the definition of a threshold, in terms of workers employed, for application of the Directive.

This threshold, of 50 employees, ensures that appropriate consideration is given to the specific features of very small undertakings and also provides further evidence that the initiative is consistent with the principle of proportionality.

Regarding a relatively innovative aspect of the proposed Directive (the emphasis placed on information and consultation concerning employment trends, cf. Article 4(1)(b)), Member States will have the option of raising the threshold to 100 employed workers.

The definition of "employer" proposed in paragraph (b) is well established in all national laws.

The concept of "employees' representatives" used in paragraph (c) has become a classic aspect of Community law, in the sense that it refers to national law and/or practice as regards determination of forms of representation (see *Tables II and III*). This formulation allows Member States, for the purposes of application of the Directive, to use not only collegiate forms of employee representation, but also individual representatives (workforce delegates, trade union delegates, and others). The attached *Table II* shows the existing situation in this field at national level.

The concept of "information" (paragraph (d)) incorporates all the necessary elements to ensure the useful effect of this procedure, as developed by the Court of Justice of the European Communities and by important national case law. The attached *Table IV* shows that these elements are found, either explicitly or implicitly, in the majority of national systems.

The concept of "consultation" (paragraph (e)) also includes elements usually found in national law (see *Table II*), particularly the need to ensure a useful effect, the reference to the instrumental nature of information, and the right of employees' representatives to express an opinion, meet the employer and obtain a reasoned reply to that opinion, as well as the obligation to seek agreement, limited of course to instances of decisions covered by the employer's management prerogatives.

Article 2(2) contains an identical provision to Article 8(3) of Directive 94/45/EC (European works councils). It has been included in the proposed text in order to avoid any effects on national legislation, which in some Member States contains certain specific elements on this subject. This provision is 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.

### **Article 3**

Once the basic principles and concepts have been established in Articles 1 and 2, the Directive then authorises Member States to allow the social partners to determine the procedures for implementation.

In many cases, the Directive will probably be transposed into national law in such a way as to make use of existing provisions and instruments, making the adjustments needed to bring the national system into line with the new Community provisions. The Commission prefers, in this connection, to provide an option for Member States, rather than imposing an obligation on them.

In any event the Commission remains very committed to strengthening the role of the social partners in establishing the rules governing the general involvement of employees in the affairs of the undertaking. This is why the proposed directive authorises social partners,

under conditions and within limits to be determined by the Member States, to derogate from the provisions in Article 2(1) (d) and (e) and Article 4.

#### **Article 4**

Article 4(1) lays down the subjects to be covered by information and consultation insofar as the social partners have not entered into an agreement as referred to in Article 3.

There are three types of subject: economic or strategic matters (paragraph (a)), employment trends within the undertaking and associated measures (paragraph (b)) and specific decisions concerning work organisation or contractual relations (paragraph (c)). Taking into account the fact that the matters referred to in paragraph (a) are generally outside the control of the employer, these matters are only subject to information.

Existing provisions or practices in Member States in these three fields are summarised in *Tables Va, Vb and Vc*. The changes required to national legislation are in most cases not substantial, though paragraph (b) (employment) is the most likely to necessitate more extensive changes.

Paragraph 2 allows the Member States to determine procedures for ensuring information and consultation of employees, the only constraint (albeit a major one) being that the useful effect of the procedures in question must be ensured.

Paragraph 3 allows Member States to limit the scope of information and consultation procedures concerning employment trends, as referred to in paragraph 1(b), to undertakings with at least 100 employees, providing a measure of flexibility which the Commission feels is appropriate in view of the relative novelty of these obligations.

#### **Article 5**

Article 5 deals with the confidentiality of the information provided, and the right to withhold certain information. The text is identical to that of Directive 94/45/EC.

These provisions are indispensable to the extent that the Directive creates information and/or consultation obligations on economic matters and on management decisions which may address sensitive issues. In extreme cases, these obligations could prove to be in conflict, if they were to lead to premature public disclosure, with other obligations deriving, for example, from the regulations on the stock exchange. Therefore, the access by employees' representatives to this type of information must be counterbalanced by imposing upon them the duty to respect their confidential nature, as asserted by the employer. Article 7(1) provides for procedures allowing the employees' representatives to challenge the confidential nature of such information, as well as allowing the employer to ensure respect of the obligation of confidentiality (see Article 7, §1).

*Table VI* shows that in most cases application of these provisions will not require any substantial amendments to national legislation.

#### **Article 6**

Article 6, which is also based on the corresponding article of Directive 94/45/EC, establishes the principle of protection of employees' representatives. The general wording proposed by the Commission is justified by the fact that all Member States already have an adequate body of rules on this subject, as can be seen from *Tables VII and VIII*.

#### **Article 7**



Article 7(1) and (2) imposes a number of obligations on Member States regarding protection of the rights created by the proposed Directive. The wording of these two provisions is broadly based on current Community law and the case law of the Court of Justice of the European Communities in this field.

Paragraph 1 relates to enforcement procedures (access to justice) to enable the obligations deriving from this Directive to be enforced, as well as procedures allowing for settling litigation related to the application of Article 5(1) and (2). Paragraph 2 relates to remedies themselves.

Paragraph 3 contains a provision which does not have a precedent in the Community directives on employee information and consultation. It states that decisions taken in serious violation of obligations under the Directive do not give rise to legal effects in respect of the contracts or employment relationships of the employees concerned. This relates to the decisions referred to in Article 4(1)(c), where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relationships. By its nature this suspension has no effects in respect to third parties.

It is not a matter of rendering the decision null and void in itself, but of preventing it from having legal effects on the employment contracts of the employees concerned until the moment when the employer has fulfilled his obligations or, if this is no longer possible anymore, adequate redress has been established.

*Table IX* shows the penalties existing under national law. It shows that only paragraph 3 of this Article is likely to require significant changes to some national systems of protection of rights.

#### **Articles 8, 9 and 10**

Article 8 sets out the links between the proposed Directive and Directives 98/59/EC, 77/187/EEC and 94/45/EC, as well as other national provisions in force in this field. As the present Directive applies to the subjects referred to by the first two directives mentioned, the more stringent and/or specific provisions of which will remain applicable. This means that national arrangements relating to collective redundancies and transfers of undertakings will have to be consistent both with this framework Directive and the two individual Directives. Of course, the proposed Directive is without prejudice to other information and consultation rights, including those pursuant to Directive 94/45/EC (European Works Councils).

Article 9 is the standard provision on the transposition of directives, stipulating a period of two years from the date of adoption.

Article 10 requires a review of the operation of the Directive by the Commission in consultation with the Member States and social partners.

## **V LEGAL BASIS**

The legal basis for the proposed Directive is Article 2(1) and (2) of the Agreement on Social Policy appended to the Protocol on Social Policy annexed to the Treaty establishing the European Community.

**Proposal for a  
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**establishing a general framework for improving information and consultation rights  
of employees in the European Community**

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;

Having regard to the proposal from the Commission;

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

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

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;

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

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;

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 among appropriate lines, taking account of the practices in force in different Member States";

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;

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;

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;

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;

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;

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;

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 change compatible with preserving the priority objective of employment;

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;

Whereas the third stage of economic and monetary union will extend and accelerate the competitive pressures at European level; whereas this will mean that more supportive measures are needed at national level;

Whereas the existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively *a posteriori* 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;

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;

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, and whereas the present Directive constitutes no more than the minimum necessary to achieve these objectives;

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;

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;

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;

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;

Whereas undertakings must be protected against public disclosure of certain particularly sensitive information;

Whereas modernisation of work implies both rights and obligations for the two social partners at undertaking level;

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;

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>7</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>8</sup>; 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

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<sup>7</sup> OJ L 225, 12.8.1998 p. 16.

<sup>8</sup> OJ L 61, 5.3.1977, p.26, and OJ L 201, 17.7.1998, p. 88.

undertakings for the purposes of informing and consulting employees<sup>9</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 for informing and consulting employees in undertakings within the European Community.
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.

### *Article 2*

#### **Definitions and scope**

1. For the purposes of this Directive:
  - 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);
  - b) "employer" means the natural or legal person party to employment contracts or employment relationships with employees;
  - c) "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;
  - 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),

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<sup>9</sup> OJ L 254, 30.9.1994, p. 64.

- 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**

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 developments 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;

- 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.

#### *Article 5*

#### **Confidential information**

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.

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.

#### *Article 6*

#### **Protection of employees' representatives**

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*

#### **Protection of rights**

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.

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.

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.

## ANNEX

**Table I: STATUS AND AIM OF NATIONAL PROVISIONS ON INFORMATION AND CONSULTATION**

	Main legal basis or agreement	Status of information and consultation	Aim
<b>Germany</b>	Act. Collective agreements may provide for additional representation or derogations.	Obligation + right.	Employer and works council must co-operate in a spirit of trust (...) for the well-being of employees and smooth running of the establishment. They must address contentious matters with a genuine desire to reach agreement and present proposals intended to settle differences between their points of view.
<b>United Kingdom</b>	Code of conduct. Act: collective redundancies, transfers, information on negotiations.	Voluntary, except information on negotiations and transposition of directives.	Information with a view to negotiating with recognised unions.
<b>Ireland</b>	Code of conduct. Act: collective redundancies, transfers. Three-year agreement	Voluntary, except transposition of directives.	Information with a view to negotiating. In Partnership 2000, agreement: to develop partnership at undertaking level.
<b>Belgium</b>	Act, royal decrees and collective labour agreements.	Right + obligation.	The function of the works council is to involve employees more closely in the running of the undertaking and forward-looking employment policy with a view to creating a better climate between employers and employees by improving organisation of the right to information and consultation enjoyed by employees' representatives, while respecting the head of the undertaking's management responsibilities and rights.
<b>Luxembourg</b>	Act (+ undertaking agreements).	Obligation	Workforce delegation: to safeguard and protect employees' rights. Joint committee: non-specified general scope, various duties
<b>Netherlands</b>	Act + collective agreements.	Obligation	Works council: in the interests of the smooth running of the undertaking in all respects, and to the benefit of consultation with the workforce representation.
<b>Denmark</b>	Inter-federation agreement. Act: coll. redundancies, transfers.	Obligation	Implementation of permanent co-operation. The parties attempt to reach agreement by codetermination within the Co-operation Committee.
<b>Italy</b>	Constitution + Act + inter-federation agreement + sectoral collective agreement.	Right. Obligation under some collective agreements	Constitution: with a view to the employee's economic and social development and in line with production requirements, the State recognises the right of employees to participate in undertaking management in the manner and within the limits laid down by the law. Inter-federation agreement: joint assessment of the situation and development of the undertaking, treatment of the social effects of changes and restructuring, regulations on negotiations
<b>Spain</b>	Act (+inter-federation agreement).	Right + obligation.	Employees are entitled to participate in the management of their undertaking through their representative bodies. Inter-federation agreement: through negotiation, improvement of communication and dialogue at all levels.
<b>Portugal</b>	Act	Right	To protect employees' interests and play a democratic role in the life of the undertaking.
<b>Greece</b>	Act	Right	Participation and consultation role (...) with the aim of improving workers' terms and conditions of employment in connection with the development of the undertaking.
<b>France</b>	Act	Obligation	Collective voice of employees, allowing their interests to be considered whenever decisions are being made on the undertaking's economic and financial development, work organisation, vocational training, and production processes.
<b>Sweden</b>	Act	Obligation	Union representation of employees.
<b>Finland</b>	Act + collectives agreements.	Obligation	With the aim of developing the undertaking's activities, improving working conditions, and encouraging codetermination between employer and employees and within the workforce, it is necessary to offer employees greater scope for influencing matters relating to work and the workplace.
<b>Austria</b>	Act	Obligation	To safeguard and promote employees' economic, social, health and cultural interests, to permit compensation of interests for the good of both employees and undertaking.

**Table II: INFORMATION AND CONSULTATION THRESHOLDS**

	<b>Body or arrangement</b>	<b>Base level</b>	<b>Threshold (number of employees)</b>
<b>Germany</b>	Betriebsrat (works council) Economic committee	Establishment Undertaking	5 permanent employees 100 permanent employees
<b>United Kingdom</b>	Recognised union or elected representatives	Establishment	20 employees for information/consultation in the event of collective redundancies
<b>Ireland</b>	Recognised union	Establishment	no threshold
<b>Belgium</b>	Works council  Information and consultation through committee on health and safety at work or trade-union delegation	Establishment (or undertaking) Establishment	100  20-100
<b>Luxembourg</b>	Workforce delegation Joint committee	Establishment Undertaking	15 150
<b>Netherlands</b>	Works council Direct information and consultation on economic and social matters	Establishment Establishment	35 10-35
<b>Denmark</b>	Co-operation committees Tillidsmanden (shop steward)	Undertaking Undertaking	35 5-6 depending on collective agreement
<b>Italy</b>	Trade union representation Agriculture	Establishment Establishment	15 5
<b>Spain</b>	Workforce delegates Works council	Establishment Establishment	6-50 50
<b>Portugal</b>	Workers' committee	Undertaking	no threshold
<b>Greece</b>	Trade union organisation Workers' council	Undertaking Establishment	20 50
<b>France</b>	Workforce delegates Works council	Establishment Undertaking	11 50
<b>Sweden</b>	Union delegates	Establishment	no threshold
<b>Finland</b>	Codetermination Act (Union delegates) Collective redundancy (Union delegates)	Undertaking Establishment	30 20
<b>Austria</b>	Betriebsrat (works council)	Establishment	5 permanent employees

**Table III: LEVELS OF EMPLOYEE REPRESENTATION REGARDING INFORMATION AND CONSULTATION**

	Establishment	Inter-establishment or undertaking		National group		European (Directive 94/45 CE)
<b>Germany</b>	Works council	General works council	statutory	Group works council	arrangements variable	Transposing Act
<b>United Kingdom</b>	Shop stewards if unions recognised Joint consultative committee voluntary	Single-employer combined committee Higher level joint committee	irregular -  irregular	Delegates' committees	few	Voluntary until December 1999
<b>Ireland</b>	Shop stewards	Co-ordination	some cases			Transposing Act
<b>Belgium</b>	Works council	Joint meetings	possible			Act + transposing collective agreement
<b>Luxembourg</b>	Workforce delegation	Joint works council	statutory			Act pending
<b>Netherlands</b>	Works council	Central works council	optional	Group works council	arrangements variable	Transposing Act
<b>Denmark</b>	Co-operation committee	Central or main committee	optional			Transposing Act
<b>Italy</b>	Single union representation	Co-ordination	usual	Co-ordination	in most groups	Transposing inter- federation agreement
<b>Spain</b>	Works council	Inter-centre committee	depending on collective agreement			Transposing Act
<b>Portugal</b>	(Sub-committee)	Workers' committee	optional			Act pending
<b>Greece</b>	Workers' council	Co-ordination	possible	Co-ordination	possible	Transposing decree
<b>France</b>	Establishment committee	Central undertaking council	statutory	Group council	statutory	Transposing Act
<b>Sweden</b>	Union delegates	Negotiating body	usual	Negotiating body	usual	Transposing Act
<b>Finland</b>	Union delegation	Union delegation	Codetermination rights at undertaking level	Form of co-operation	according to agreement + subsidiary requirements	Transposing Act
<b>Austria</b>	Works council	Central works council	statutory	Group representation	enlarged option since 1993	Transposing Act

**Table IV: OBJECT AND MANNER OF INFORMATION AND CONSULTATION**

	<b>Information</b>	<b>Consultation</b>
<b>Germany</b>	The works council, in performing its tasks (...), must be informed fully and in good time by the employer. Documents essential to the performance of its tasks must be placed at its disposal on request at any time.	Consultation prior to decisions Right to be consulted, usually after a period of thinking time with a view to expressing an opinion in full knowledge of the facts. Favourable opinion or agreement needed in some cases.
	Information and consultation compulsory in the event of collective redundancies and transfers. Voluntary in other cases.	
<b>United Kingdom</b>	Provision of information to unions with a view to collective bargaining	Voluntary in other cases.
<b>Ireland</b>	Information and consultation compulsory in the event of collective redundancies and transfers. Voluntary in other cases.	
<b>Belgium</b>	Information prior to decisions, coherent and comparable in time, is the subject of comments and exchanges of views. The members of the works council may ask for additional information, put questions, and express criticism, suggestions and opinions; the head of the undertaking must say how he intends to follow these up. Economic and financial information must be supplemented, where appropriate, by similar information on the legal entity and information on the economic and financial entity which the undertaking forms part of. A written report is required in certain cases .	Consultation prior to decisions. In the event of major changes: information in good time and before dissemination , proper consultation in advance, especially on the repercussions on employment. If collective redundancies are planned: a series of meetings with the representative bodies, possibility of presenting arguments to avoid or limit the effects, possibility of proposing alternative solutions. The employer must consider and reply to questions, arguments and proposals.
<b>Luxembourg</b>	Transmission of information to representatives on the running and status of the undertaking + annual general report.	Regular consultation, also in writing. Reasoned replies to Joint Committee opinions + consultation prior to decisions likely to have a decisive influence.
<b>Netherlands</b>	The head of the undertaking is required, on request, to provide (...) full information and details which the central works council needs in order to perform its functions. On request: in writing + specific information.	The head of the undertaking must request an opinion, in time for it to influence the decision to be taken, by transmitting details of the reasons for decisions and the consequences. A consultation meeting must take place before the works council expresses its opinion. When the works council has expressed an opinion, it must be notified of the decision in writing by the head of the undertaking, together with the reasons why it is not consistent with the opinion where this is the case.
<b>Denmark</b>	Information must be presented in accessible form, early enough for an opinion to be expressed and proposals made.	The parties attempt to reach an agreement.

	Information	Consultation
	Information./consultation: according to sectoral collective agreement + compulsory in the event of redundancies and transfers.	
<b>Italy</b>	+ assessment of the situation by the parties to obtain common information needed to define the objectives of undertaking negotiations.	+ contacts prior to negotiations.
	Information/consultation: different procedures depending on subject.	
<b>Spain</b>	+ information for employees on subjects likely to have direct or indirect repercussions on industrial relations.	Prior consultation in the event of changes likely to affect employees.
<b>Portugal</b>	Right to receive all information they need in order to perform their functions.	Opinion prior to decisions.
<b>Greece</b>	Regular information + before implementation of decisions.	Deliberation with the employer .
<b>France</b>	Regular information + on certain occasions + right to carry out studies and research needed for performance of functions. Different procedures depending on subject.	The works council must, in order to draw up a reasoned opinion, be provided with precise information in writing, sufficient time to consider the matter, and the employer's reasoned response to its observations. Consultation must precede the taking and implementing of decisions.
<b>Sweden</b>	The employer must keep the trade union organisations (...) regularly informed of production and financial developments, as well as the main points of staff policy. If possible without excessive cost or inconvenience, the employer must, at the request of the trade union organisations, provide them with copies of documents and help them to examine the various matters (accounts, economic aspects).	Before deciding on a major change in activity, the employer must, on his own initiative, negotiate with the trade union organisation (...). The employer must suspend his decision during negotiations.
<b>Finland</b>	Information must be presented in a way that permits discussion on the subject.	Before any major decision, the employer must negotiate with the employees concerned or their representatives (...) to discuss the reasons for the planned decision, its effects and the possible alternatives. Proposals must be tabled in writing five days before the start of negotiations.
	The works council may request copies of available documents.	Consultation on current matters at least once every three months, or once a month at the works council's request.
<b>Austria</b>	Information and consultation: the employer is required to keep the works council informed and consult it at its request. Procedures depending on subject. If changes are planned, the plans must be transmitted as soon as possible, and in any event early enough to permit consultation. The works council may make proposals.	

**Table V a: SUBJECTS AND PROCEDURES FOR INFORMATION AND CONSULTATION - Economic matters**

Information and consultation of specific workforce representation; does not take account of any possible participation of representatives in the undertaking's social bodies

e = establishment / u = undertaking / n = threshold / - = no threshold

	<b>Structure</b>	<b>Economic and financial situation</b>	<b>Development of activities</b>	<b>Production and sales</b>	<b>Investment projects</b>
<b>Germany</b>	Immediate information and prior consultation in the event of structural changes e20.	Information: once a year (assembly) e5 Information: 4 times a year, e20 (orally) e1000 (in writing) Meeting to discuss annual balance sheet. u100 Economic committee to be provided with full and immediate information u100	Information: once a year (assembly) e5 Information: 4 times a year in writing  Economic committee to meet once a month. u100	Full and immediate information.  u100	Full and immediate information.  u100
<b>United Kingdom</b>	Information and consultation voluntary				
<b>Ireland</b>	Information and consultation voluntary				
<b>Belgium</b>	Basic dossier every 4 years. Articles, organisation, financial structure.  e50	Basic dossier every 4 years: competition position, productivity, cost prices, personnel costs. Information once a year: balance over 3 years. Profit and loss accounts: report in writing + auditor + meeting Information 4 times a year: anticipated development of costs, cost prices, budget management, possibly by objective. Written summary 15 days before meeting. e50	Information once a year: written report + auditor + meeting. Information 4 times a year on situation as regards achievement of production and productivity objectives. Written summary 15 days before meeting.  e50	Basic dossier every 4 years Production, productivity: Information once a year: state of the market, order book. Information 4 times a year: anticipated sales trends, orders, market, stocks: Meeting + written report 15 days before meeting.  e50	Information once a year: development programmes  e50
<b>Luxembourg</b>	Annual report Written report and consultation twice a year on developments. Prior information and consultation on decisive changes. e15	Annual report e15 Information and consultation once a year: accounts u150 Written report, consultation twice a year developments u150	Annual report e15 Written report and consultation twice a year. u150 Information on running of undertaking once a month u150	Annual report e15 Written report and consultation twice a year on developments u150	Annual report on investments made e15 + written report and consultation twice a year u150 Prior information and consultation on investment policy repercussions u150

	Structure	Economic and financial situation	Development of activities	Production and sales	Investment projects
<b>Netherlands</b>	Basic information in writing every 2 years <b>e35</b> Consultation on transfer of authority <b>e35</b> explanation of reasons and consequences, consultation meeting, opinion with 1-month staying effect.	Annual report on accounts + chartered accountant. Information on forecast documents. Information twice a year on undertaking results and forecasts. <b>e10</b> <b>(direct)</b> <b>e35</b>	Information twice a year on the undertaking's operation, activities and forecasts. <b>e10</b> <b>(direct)</b> <b>e35</b>	Information twice a year on activities and forecasts. <b>e10</b> <b>(direct)</b> <b>e35</b>	Information twice a year on investments in the Netherlands and abroad. Explanation of reasons and consequences, consultation meeting, opinion with 1-month staying effect. <b>e35</b>
<b>Denmark</b>	Information 6 times a year on situation and forecasts <b>u35</b> .				
<b>Italy</b>	Procedures depend on branch and undertaking agreements <b>e15 (5 agricultural sector)</b>				
<b>Spain</b>	Prior information and consultation on changes in articles. Opinion within 15 days. <b>e6</b>	Examination of accounts. Regular information on the economic situation in the sector. <b>e6</b>	Information 4 times a year <b>e6</b>	Information 4 times a year on the situation + production programme <b>e6</b>	<b>e6</b>
<b>Portugal</b>	Information on plans for changes. <b>u-</b>	Information on the situation regarding accounts, budget and financing procedures. Opinion on budget and financial plans. <b>u-</b>	Information on general activity plan - Plans for changes <b>u-</b>	Information on production organisation, rates of use of personnel and equipment. Information on forecasts, sales volume and administration, supplies <b>u-</b>	Information and opinions on plans and budgets <b>u-</b>
<b>Greece</b>	Prior information and consultation on reasons for and effects of changes <b>u20</b>	Possibility of requesting any information on the economic situation and policy. Annual information <b>e50</b> Negotiations <b>u20</b> General operation <b>u20 e50</b>	Annual information <b>e50</b> Negotiations, general operation <b>u20 e50</b>	Annual information. Proposals on means of improving productivity of all production factors. <b>e50</b>	Prior information <b>e50</b>
<b>France</b>	Basic document every 2 years <b>u50</b> Annual report on transfers of capital. Information to group committee <b>u50</b>	Annual report containing turnover and profit figures, distribution, etc. <b>u50</b> Annual accounting documents + analysis by chartered accountant <b>u50</b>	Basic document every 2 years <b>u50</b> Annual report <b>u50</b> Consultation on the general running of the undertaking <b>u50</b>	Annual report: 4 times a year trends in orders and development of production programme - oral <b>u300</b>	Annual report on investments. <b>u50</b>
<b>Sweden</b>	Information in the event of changes <b>e-</b> Obligation to negotiate, with staying effect in the event of major change.	Regular information. Possibility of examining accounts. <b>e-</b>	Regular information. Obligation to negotiate, with staying effect in the event of major change. <b>e-</b>	Regular information. <b>e-</b>	Obligation to negotiate, with staying effect in the event of major change. <b>e-</b>



	<b>Structure</b>	<b>Economic and financial situation</b>	<b>Development of activities</b>	<b>Production and sales</b>	<b>Investment projects</b>
<b>Finland</b>	Immediate information in the event of important changes.  <b>u30</b>	Information on accounts. Report twice a year on the economic situation and outlook + at group level where appropriate.  <b>u30</b>	Report twice a year on the economic situation. Immediate information in the event of important changes in economic and financial trends. Obligation to negotiate, on the basis of written proposals, before any change in activities affecting the situation of the workforce: 6-week staying effect if the workforce is to be cut. <b>u30</b>	Report twice a year on the situation, indicating the outlook in terms of production, markets and cost structure + at group level where appropriate.  <b>u30</b>	Obligation to negotiate, on the basis of written proposals, before any major investment: 6-week staying effect if the workforce is to be cut.  <b>u30</b>
<b>Austria</b>	Information and consultation in the event of changes.  <b>e5</b>	Transmission annual balance sheet + necessary explanations. Information and consultation on the economic and financial situation. Access to available documents. <b>e5</b>	Information and consultation on the situation and outlook, with access to available documents. Consultation 4 times a year (once a month on request) on current matters. The works council may request documentation <b>e5</b>	Information and consultation on the order situation and the nature and volume of production. Access to available documents.  <b>e5</b>	Information and consultation on investment projects. Access to available documents.  <b>e5</b>

**Table V b: SUBJECTS AND PROCEDURES FOR INFORMATION AND CONSULTATION - Employment**

	<b>Situation</b>	<b>Structure</b>	<b>Anticipated developments</b>	<b>Anticipatory measures Employability</b>	<b>Training plan</b>
<b>Germany</b>	Information once a year (assembly). Regular information.  e5	Regular information . Codetermination on assessment and remuneration rules. Agreement on selection rules and individual measures. e5	Full and prompt information, prior consultation. The works council may present proposals.  e5	Full and prompt information, prior consultation. e5 Codetermination on application measures: agreement between works council and employer, conciliation committee if no agreement reached. e20	
<b>United Kingdom</b>	Information and consultation voluntary				
<b>Ireland</b>	Information and consultation voluntary				
<b>Belgium</b>	Annual information in writing, by subject. Consultation on personnel policy.  e50		Annual information in writing, by subject. Information 4 times a year on anticipated employment developments - written summary 15 days before meeting. Information in writing 4 times a year on achievement of forecasts, discrepancies between objectives and achievements, changes to forecasts. e50	Annual information in writing, by subject. Consultation on employment policy. Consultation on vocational training and retraining measures.  e50	Consultation on vocational training and retraining measures.   e50
<b>Luxembourg</b>	Workforce delegation: opinion and proposal on improvement of terms and conditions of employment.  e15		Information and consultation once a year on current and expected labour force needs and training/further training/retraining measures which might result. Information and consultation on decisions with a decisive impact on planned social measures. u150		Information and consultation once a year Prior information and consultation on training measures before decisions. u150
			Consultation before transmission of application for overtime or part-time working. u150	Workforce delegation: opinion and proposal on improvement of terms and conditions of employment. u150	
<b>Netherlands</b>	Annual social report.  c35	Annual social report. Compulsory agreement on rules for recruitment, redundancy, promotion and assessment. c35	Annual social report. Consultation on recruitment, opinion with 1-month staying effect. c35	Annual social report. Compulsory agreement on rules for recruitment, redundancy, promotion, assessment and training. c35	Obligation to draw up a training plan. Compulsory agreement on training rules. c35
<b>Denmark</b>	Information and consultation 6 times a year u150				
<b>Italy</b>	Procedures depend on branch and undertaking agreements.				

	Situation	Structure	Anticipated developments	Anticipatory measures Employability	Training plan
Spain	Information on all employment contracts.  e6		Information 4 times a year on probable development of employment, expected new contracts.  e6	Information on mobility decisions. Information and consultation on assessments regarding jobs and restructuring. Opinion within 15 days. e6	Information and consultation. Opinion within 15 days.  e6
Portugal	Information on personnel management. Consultation on the social balance sheet. u-		Information on personnel management. Prior opinion on changes to classifications, promotions. u-		Recommendations on apprenticeships, retraining, further training. u-
Greece	Possibility of requesting any information on personnel management policy. u20				
		Prior information on changes u20 e50	Information u20 e50	Agreement on training u20 e50	Agreement on training u20 e50
France	Social balance sheet, annual summary of main statistics: information and consultation u50				
	Consultation on employment, working and training conditions. U50				
	Annual report u50 Productivity u300 Monthly analysis of employment situation: oral u50	Annual report including wage trends.  u50	Annual consultation on developments in employment, skills, annual/multiannual forecasts, explanations of discrepancies. Written report 15 days beforehand. u50	Annual consultation especially on planned and implemented health & safety and training measures. Written report 15 days beforehand. u50	Information and consultation on training results and plans, broken down by category, duration and type. u50
Sweden	Regular information on personnel policy. e-				
			Prior consultation before concluding or terminating employment contracts. Obligation to negotiate on management planning. e-	Obligation to negotiate on management planning.  e-	
Finland	Regular information on wage statistics by category.  u30		Group-level assessment of changes envisaged in the number and categories of employees. u30	Information on training results and plans, broken down by category, in conjunction with employment forecasts. u30	
		Obligation to negotiate on recruitment criteria.  u30	Obligation to negotiate on plans concerning employment and training and corresponding employment and training plans associated with cuts in the workforce or changes to contracts. Discussion of reasons for decisions, effects and possible alternatives. Written proposals to be submitted five days before the start of negotiations. u30		Obligation to negotiate on the vocational training budget.  u30
Austria	Consultation 4 times a year, on request. Once a month on topical matters. The works council may ask for documents. e5		Information on recruitment needs and associated personnel measures. e5	co-operation procedure on training and retraining: Agreement between works council and employer. Conciliation committee if no agreement reached. e5	

**Table V c: SUBJECTS AND PROCEDURES FOR INFORMATION AND CONSULTATION - Changes**

	<b>Work organisation</b>	<b>New technologies</b>	<b>Production transfers</b>	<b>Merger</b>	<b>Cutback / closure</b>	<b>Relocation</b>
<b>Germany</b>	Full and immediate information (e-) + consultation (e5) + codetermination. (agreement between works council and employer; conciliation committee if no agreement reached) (e20).					
<b>United Kingdom</b>	Information and consultation voluntary		Information and consultation in accordance with transfer and redundancy directives. e20			
<b>Ireland</b>	Information and consultation voluntary		Information and consultation in accordance with transfer and redundancy directives. e20			
<b>Belgium</b>	Information + comments + written summary of figures- if possible before implementation.	Consultation 3 months before implementation	Information + comments + written summary of figures- if possible before implementation. e50	Immediate information to works council and employees. E20	Information + comments + written summary of figures- if possible before implementation. e50	
	Consultation e50	e50	Effective prior consultation on repercussions, employment prospects, work organisation and employment policy. If collective redundancies are envisaged: Written report, series of meetings, replies to questions, arguments and alternative proposals e20			
<b>Luxembourg</b>	Prior to major decisions, information and consultation on employment repercussions. u150					
	Prior information and consultation e15		Information and consultation in the event of redundancies (e15) and transfers (u150)			
<b>Netherlands</b>	Compulsory agreement on conditions of employment. e35 Information and consultation e10 (direct) e35		Consultation: description of reasons and consequences, consultation meeting, with one-month staying effect. e35			
<b>Denmark</b>	Information and consultation 6 times a year u35		Information and consultation well in advance. u35 (u20 for collective redundancies)			
<b>Italy</b>	Consultation e-	Consultation e-	Procedures depending on collective agreement + information & consultation on collective redundancies. e20			
<b>Spain</b>	Information, consultation and negotiation prior to changes likely to affect employees. Opinion within 15 days. e6					
<b>Portugal</b>	Opinion prior to changes in classifications and working hours. Recommendations on improvements to terms and conditions of employment. u-	u-	Consultation: opinion prior to all measures leading to a significant cut in the workforce size or a substantial worsening of terms and conditions of employment. u-			
<b>Greece</b>	Prior information. e50 Consultation on changes to working hours. Proposals on improvements to terms and conditions of employment.	Prior information. e50	Prior information. e50	Prior information on reasons and effects. e50	Prior information. e50	
			Prior consultation where collective redundancies are planned. u20			

	Work organisation	New technologies	Production transfers	Merger	Cutback / closure	Relocation
France	Information on production method changes and effects on work and employment: 4 times a year u50		Information and consultation prior to changes in financial or legal organisation. u20			
			Collective redundancies e10			
	Consultation u50	Prior consultation Possibility of consulting experts u50	u50	Prior information in the event of takeover bids u50		
Sweden	Information and right of participation in the event of changes in work organisation or terms and conditions of employment e-		Obligation to negotiate prior to decisions on major changes in activities; decisions must be suspended during negotiations. If no agreement can be reached at local level, negotiations are transferred to the national-level social partner organisations. e-			
Finland	Reorganisation: obligation to negotiate: discussion of reasons for decision, effects and possible alternatives;  written proposals submitted 5 days before start of negotiations.  u30		Immediate information on all major changes in the economic and financial situation of the undertaking. Group employees to be informed when a decision is planned which will involve a significant change in the activities of the group or a group undertaking and affect the personnel situation. Obligation to negotiate: discussion of reasons for the decision, effects and possible alternatives. written proposals to be submitted 5 days before start of negotiations. In the event of workforce cuts: 6-week negotiating period, unless otherwise agreed. e20			
			Obligation to negotiate. Use of subcontracting. u30	Obligation to negotiate sufficiently in advance, stating reasons, financial and economic consequences + measures. Obligation to negotiate on employment changes and changes to contracts following a transfer or merger. u30		
Austria	Consultation e5	Consultation e5	Prior consultation. e5			
			In groups: information and right to consultation on current measures or measures planned by the dominant undertaking concerning changes to establishments or other cases with major implications for employees. e5 co-operation procedure in the event of changes: information as soon as possible, and well enough in advance to permit consultation on the policy adopted. The works council can make proposals. In the event of major disadvantages for employees, there must be an agreement between the works council and the employer. Conciliation committee in the event of failure to reach agreement. e20			

**Table VI: PROVISIONS ON THE CONFIDENTIALITY OF INFORMATION**

(national provisions relating to national representations or European works councils)

	<b>Provisions on confidentiality</b>	<b>Information excluded from information rights and obligations</b>
<b>Germany</b>	The members and alternate members of the works council must not reveal or exploit business secrets which they learn as a result of their works council activities and which the employer has specifically designated as confidential.	Where the undertaking's business secrets are implicated.
<b>United Kingdom</b>	Strict definition of confidentiality.	(Precise financial or economic data are rarely revealed).
<b>Ireland</b>	Respect for information provided in confidence (94/45/EC).	Information considered commercially sensitive by the management, if it can show that the release of such information would be detrimental to the group's economic and financial interests or if the information corresponds to the rules on non-release of information as agreed between management and workforce representatives. In the event on failure to agree on the provision of information: referral to "independent arbiter" (94/45/EC)
<b>Belgium</b>	The head of the undertaking may inform the works council that certain information is confidential and its dissemination is likely to seriously harm the undertaking's interests.	The head of the undertaking may be allowed exemptions from the principle of compulsory information, in respect of specific points (e.g. distribution margins), following a reasoned request to an official of the Ministry of Economic Affairs. Such requests are rare.
<b>Luxembourg</b>	Respect for the confidentiality of business secrets or information expressly provided by the undertaking in confidence.	
<b>Netherlands</b>	Respect for the confidentiality of business secrets or information provided by the undertaking in confidence or information which workforce representatives must treat as confidential. The management may not claim confidentiality without reasonable grounds and must specify the extent, duration and persons concerned.	If the head of the undertaking refuses to provide information requested by the works council, the "Industrial commission" must give a ruling. Where it is conceivable that the functioning of the group will be seriously harmed (94/45/EC).
<b>Denmark</b>	Obligation to treat confidential matters as such, specific cases justified by the undertaking's interests (94/45/EC).	Specific cases justified by the undertaking's interests, where the information would inconvenience or harm the undertaking (94/45/EC).
<b>Italy</b>	Respect for the confidentiality of information expressly provided by the undertaking in confidence and likely to seriously harm the functioning or activities of the undertaking. Respect for the confidentiality of industrial secrets or financial transactions (94/45/EC).	Information likely to disturb the market; disagreements on provision of information are dealt with by a tripartite conciliation committee (94/45/EC).

	<b>Provisions on confidentiality</b>	<b>Information excluded from information rights and obligations</b>
<b>Spain</b>	Observance of business secrets, especially on financial matters and those covered by a requirement to the effect that no document entrusted to the works council by the undertaking may be used outside the immediate scope of the works council or for purposes other than those for which it was made available.	Information on industrial, commercial or business secrets, manufacturing techniques or processes, strategic commercial data on markets, clients or suppliers (94/45/EC). Financial information, where dissemination or use thereof might seriously affect the operation of the undertaking or cause irreparable damage to its economic or financial competitiveness on the market or to public confidence in its solvency, functioning or product quality (94/45/EC).
<b>Portugal</b>	Members of workforce committees are bound to respect the confidentiality of information received in that capacity. The employer must justify the confidential nature of information.	
<b>Greece</b>	Obligation to treat information of particular importance to the undertaking with discretion, and possibility of agreement on the provision of information to third parties.	The subjects covered by confidentiality (bank and legal transactions, subjects of national importance, patents, etc.,) are excluded from the right to information.
<b>France</b>	Members of the works council and trade union representatives are obliged to observe confidentiality as regards manufacturing processes and to treat with discretion information of a confidential nature specified as such by the employer. Chartered accountants who assist works councils are required to observe professional secrecy.	
<b>Sweden</b>	A party required to provide information may negotiate on its confidentiality; if negotiations fail, and there is a serious risk of substantial damage to one of the parties or to a third party, confidentiality may be imposed by court order.	
<b>Finland</b>	A confidentiality obligation on employees, persons providing assistance to them, and their representatives applies to individual data on the undertaking's financial situation and state of health in the absence of an agreement on the part of the party concerned, and to commercial information presented as confidential by the employer, the publicising of which would be likely to harm the undertaking or one of its partners.	
<b>Austria</b>	Members of the works council and external persons are required to observe discretion with regard to personal data and business or manufacturing secrets which come to their knowledge, especially those concerning installations, processes and technical matters which are presented as confidential.	

**Table VII: PROTECTION OF EMPLOYEES' REPRESENTATIVES**

	<b>General provisions</b>	<b>Special protection</b>
<b>Germany</b>	The members of the works council may not be hindered in or prevented from performing their duties. They must not be favoured or placed at a disadvantage. Representatives are entitled to the same pay rises as would be normal for their original job.	Members of the works council may not be dismissed without the prior agreement of the works council or, failing that, the labour tribunal. Candidates also enjoy special protection for six months. A period of protection of one or two years, including training courses, follows the term of office of members.
<b>United Kingdom</b>	The exercising of union rights at the workplace is protected by legislation, which makes interference by the employer illegal.	Protection as individuals against redundancy in the event of discrimination on grounds of membership (or non-membership) of a union and against unfair dismissal after two years' service.
<b>Ireland</b>	Exercise of union rights.	Redundancy on account of union activities is illegal, regardless of whether such activities take place outside working time or are authorised under the terms of the person's employment contract.
<b>Belgium</b>	Representatives must not be favoured or placed at a disadvantage, which means they are entitled to promotion etc. in line with what is normal for their job category.	Workforce representatives and candidates enjoy special protection during their term of office; restrictions apply as regards redundancy and career development.
<b>Luxembourg</b>	General protection	Protection against redundancy for representatives, candidates (3 months) and former members (6 months).
<b>Netherlands</b>	General protection	Protection against redundancy for representatives, candidates and former members (for two years).
<b>Denmark</b>	General protection	Protection against redundancy and discrimination.
<b>Italy</b>	General protection	Protection against redundancy. Union agreement needed for transfer outside the establishment.
<b>Spain</b>	General protection	Protection against penalties, discrimination and redundancy for the duration of the term of office and the following year.
<b>Portugal</b>	General protection	Legal protection against redundancy for the duration of the term of office and the following five years.
<b>Greece</b>	General protection	Legal protection against transfer or redundancy for the duration of the term of office and the following year.
<b>France</b>	General protection Impeding union activity, i.e. interfering or attempting to interfere with the freedom of appointment, the proper exercising of workforce representatives' functions or the exercising of trade union rights in the undertaking, is a punishable offence.	Protection against discrimination and disciplinary procedures. Protection against redundancy for representatives, candidates (6 months) and former members (6 months). Protected employees cannot be dismissed without a prior opinion from the works council and the authorisation of the labour inspector.



	<b>General provisions</b>	<b>Special protection</b>
<b>Sweden</b>	Delegates may not be subjected to disadvantageous employment or working conditions because of their position and must, at the end of their term of office, be given a position which is identical or similar, in terms of employment or working conditions, to the one they would have been in if they had not held office.	Change of job: prior consultation with the union and discussions where appropriate. A delegate may not be dismissed for holding office. In the event of redundancies owing to a decline in business, the representative must be given priority for being retained, if this is particularly important for trade union activity at the workplace. If the representative can only be retained through a transfer, priority applies as long as he/she has the required skills. The union 's interpretation with regard to application of these provisions takes priority.
<b>Finland</b>	General protection	Protection against redundancy: Delegates may be dismissed for negligence only with the consent of the majority of employees represented. Delegates may not be made redundant on economic grounds unless their job is completely discontinued and it is not possible to assign them to another job commensurate with their occupational skills.
<b>Austria</b>	The members of the works council must not be hindered in the performance of their duties or placed at a disadvantage with regard to pay or promotion.	The members and alternate members of the works council may not be dismissed during their term of office or the following three months, except on the basis of a court decision. The same applies to candidates during the election process.

**Table VIII: RESOURCES AVAILABLE TO EMPLOYEE REPRESENTATIVES**

	<b>Time</b>	<b>Training</b>	<b>Material resources</b>	<b>Experts</b>
<b>Germany</b>	Release from work activity.	Release applies also for training. Each elected representative: 3 weeks during term of office (4 if newly elected). Training costs covered by employer.	Costs of works council's activities covered by employer, who must also provide the necessary premises, physical resources and clerical staff.	The works council may call upon experts where necessary to allow it to perform its functions properly, following a specific agreement with the employer.
<b>United Kingdom</b>	Where trade unions are recognised, free time must be granted, within reason, to union officials to allow them to carry out their duties and obtain training.	Free time for training.	By agreement.	By unions.
<b>Ireland</b>	By agreement.	By unions.	By agreement.	By unions.
<b>Belgium</b>	Meetings and the time needed to carry out duties are regarded as working time and paid as such. Minimum of 16 hours to examine basic information and annual information.	Time and facilities needed, with no loss of pay, for training. Training costs: compensation fund.	Premises and materials needed for meetings provided by head of undertaking. Facilities needed to carry out duties to be provided under the best possible circumstances.	The works council may call on the assistance of experts at the employer's expense, The auditor reports to the works council on the annual accounts and management report.
<b>Luxembourg</b>	Meetings during working hours. Time credit.	Possibility of attending training during working time.	Operating costs covered by the employer.	Advisers to either side may attend meetings.
<b>Netherlands</b>	Meetings during working hours. Time credit	Minimum of 5 days training a year (paid). Training costs covered by a tax.	Costs covered by the employer: possibility of agreement on annual budget. Facilities which the works council reasonably needs to perform its functions.	The works council may invite one or more experts. Consultation costs borne by employer if he is informed in advance of the costs to be incurred. Disagreements referred to Industrial Commission.
<b>Denmark</b>	Meetings regarded as working time. Amount of time by agreement.	By unions.	Costs covered by the parties.	By unions.
<b>Italy</b>	Time credit	By unions.	Premises provided.	By unions.
<b>Spain</b>	Time credit.	By unions.	Premises provided.	By unions.

	<b>Time</b>	<b>Training</b>	<b>Material resources</b>	<b>Experts</b>
<b>Portugal</b>	Time credit.	By unions.	The employer must provide the necessary resources.	Permitted, especially relating to safety and hygiene. Experts paid by unions.
<b>Greece</b>	Time credit.	By unions.	Provision of premises.	By unions.
<b>France</b>	Time credit.	Training on economic matters for 5 days per term of office. Regarded and paid as working time.	Provision of properly equipped premises and necessary equipment. Operating subsidy: 0.2% of wage bill.	The works council may ask a chartered accountant, paid by the management, to examine the annual accounts, forecasts, assistance for the economic committee, right of warning, collective redundancies. The works council may consult an expert, paid by the management, concerning the introduction of new technologies.
<b>Sweden</b>	Time spent carrying out duties is paid.	Possibility of attending union training without loss of pay.	Provision of meeting room as needed.	Possibility of appointing consultants before major changes. The undertaking must pay, as long as the costs remain reasonable.
<b>Finland</b>	Time spent on codetermination procedure is paid.	By unions.	Meeting room.	By unions.
<b>Austria</b>	Dispensation from work activity.	Training time 3 or 5 weeks per term of office, not paid by employer.	Possibility of setting up a works council fund, financed by employees' contributions of 0.5% of gross pay.	Possibility of consulting qualified persons and calling in experts when changes are planned.

**Table IX: PENALTIES**

	<b>Consequences of failing to comply with information and consultation obligations in the case of collective redundancies</b>
<b>Germany</b>	Redundancies invalid, may lead to reinstatement of employee or increased compensation. Penalties for hindering or disrupting works council's activities.
<b>United Kingdom</b>	"Protective award".
<b>Ireland</b>	"Protective award".
<b>Belgium</b>	Suspension of period of notice if in progress. If the employee has been dismissed, he or she will be entitled to request reinstatement and payment of lost wages. If the employee is not reinstated, he or she is entitled to extra compensation on top of normal redundancy pay. Penalties for impeding activities. Possible loss of federal government aids.
<b>Luxembourg</b>	Civil compensation. Penalties for impeding activities.
<b>Netherlands</b>	Employees entitled to request reinstatement (not compulsory). If the employer does not agree to reinstatement, he must pay additional compensation plus lost wages. After mediation by the Industrial Commission, the works council may take legal action to enforce compliance with the law.
<b>Denmark</b>	Fines.
<b>Italy</b>	The employer's notice placing employees under the "mobility scheme" is invalid. Immediate proceedings to enforce suspension of "anti-union attitude": penalties for failure to comply.
<b>Spain</b>	Redundancies invalid, with possibility of reinstatement or compensation / financial penalties. Penalties (serious infringements).
<b>Portugal</b>	Redundancies invalid. Fine
<b>Greece</b>	Redundancies invalid. Penalties for impeding activities.
<b>France</b>	Redundancy procedure and its effects invalid. Possibility of reinstatement or compensation. Administrative decision suspends procedure (obligation to restart the procedure) Penalties for impeding activities.
<b>Sweden</b>	Priority given to union interpretations during proceedings for failure to comply with negotiated or statutory provisions. Damages payable to unions. Fine
<b>Finland</b>	Additional compensation for employees. Fine for failure to cooperate.
<b>Austria</b>	The failure must be taken into account by the arbitration committee fixing compensation for employees. Fine.

## **IMPACT ASSESSMENT**

### **IMPACT OF THE PROPOSAL ON UNDERTAKINGS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)**

#### **Title of proposal:**

Proposal for a Council Directive establishing a general framework for employee information and consultation in the European Community

Reference n°: 98011

#### **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 increased importance attached by citizens to the social dimension in Europe, globalisation of the economy, completion and further development of the internal market, the new conditions imposed or prompted by the single currency and the European Employment Strategy necessitate the adaptation of national systems of employee involvement to allow employees to continue to play their fundamental role in economic and social development in Europe. This new situation gives them an additional, eminently European dimension. In view of the European dimension of what is at stake, this adaptation can only be brought about at the source of these factors of change, i.e. at Community level.

The weaknesses of Community and national law also justify action at Community level to define a general framework for informing and consulting workers in the European Community.

The aim of this initiative is to establish a flexible general framework to allow the social partners and Member States to apply the basic principles established at Community level. This framework is designed to fill the gaps and counter the inadequacies of the employee information and consultation provisions currently in force at national and Community levels. The objectives are therefore to:

- ensure existence of the right to permanent information and consultation of employees on economic and strategic developments in the undertaking and on the decisions which affect them in all Member States of the European Community;
- consolidate the social dialogue and relations of trust within the undertaking in order to assist risk anticipation, develop the flexibility of work organisation within a framework of security, enhance employees' awareness of the need to adapt, encourage them to participate in measures and operations designed to boost their employability, promote employee involvement in the operation and future of the undertaking, and make the undertaking more competitive;
- include the employment situation and anticipated developments within the undertaking among the essential subjects of information and consultation, provide for risk anticipation, and promote ongoing consultation on measures designed to maintain the level of employment and boost workers' employability;
- ensure that workers are informed and consulted prior to decisions which come under the employer's management prerogative but are likely to affect workers' interests;

- ensure the effectiveness of these procedures by introducing specific penalties for employers who seriously violate their obligations in this field.

## The impact on undertakings

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

The proposal will affect undertakings employing more than 50 workers, i.e. some 2.28% of undertakings with salaried employees. These employ 46.57% of workers in the European Community.

### 3. *What will undertakings have to do to comply with the proposal ?*

The undertakings concerned will have to apply employee information and consultation procedures for the subjects covered by the proposal. However, the proposal contains only a general framework, thus giving the Member States and social partners a large measure of flexibility in establishing the procedures to put these rules into practice. It should also be emphasised that rules and practices in this area are already common in most Member States. In other words, what is needed in the majority of cases is the adaptation of existing practices to the objectives of this proposal, rather than the introduction of new practices.

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

The proposal will have positive long-term economic effects in that it will help strengthen the social dialogue and relations of trust within the undertaking, and hence the competitiveness of the undertaking.

It will also assist risk anticipation, develop the flexibility of work organisation within a framework of security, enhance employees' awareness of the need to adapt, and encourage workers to participate in measures and operations designed to boost their employability.

#### a) *What will the impact be on*

##### - employment?

The Directive will help bring about a qualitative improvement in employment in undertakings (see above)

##### - capital investment and business startups?

In most cases, the Directive will have no effect on the conditions for setting up new undertakings, in particular SMEs. Moreover, it will affect only 2.78 % of undertakings in the EU with salaried employees.

##### - the competitiveness of undertakings?

Because of the increased commitment of employees to the running of undertakings and the improved ability of undertakings to cope with new, constantly changing situations (particularly where the organisation of work and restructuring are concerned), the Directive may help strengthen competitiveness.

#### b) *Do new administrative procedures need to be put in place?*

The Directive leaves it very much to the discretion of the Member States and the social partners to devise the practical arrangements for informing and consulting employees.

The only new requirement in the Directive (in the absence of an agreement between the social partners) is that the undertaking must inform and consult on employment in accordance with Article 4(1)(b). It is worth mentioning that Member States have the faculty of limiting this obligation to undertakings employing at least 100 employees.

Where the other obligations under the Directive are concerned, they mostly require just changes to existing procedures for informing and consulting employees.

c) *Cost-benefit in quantitative and qualitative terms*

Without prejudice to the reply to the following question, the costs resulting from this directive to undertakings will result from the implementation of the procedures for information and consulting employees, including the transmission of written information, the organisation of meetings, the time spent on this by employees representatives and management, etc. The advantages for undertakings will result from the increase in the commitment of the employees in the affairs of the undertaking, and their capacity to accept and deal with change and the challenges which they both face, as well as by a better use of resources. This will contribute to reinforce the competitiveness of undertakings.

d) *What will the Directive cost?*

The proposed Directive will establish a general framework for informing and consulting employees, leaving it to Member States and the social partners to determine the concrete procedures capable of ensuring the fulfilment of its objectives. In addition, the Directive will be implemented within systems of employee involvement which already exist at different levels (national, undertaking) and which will just require, in most cases, to be adapted. Therefore, it is not possible to quantify the concrete costs deriving from this Directive to companies. See also the reply to the previous question.

e) *What follow-up and evaluation requirements are there for undertakings?*

Companies will have to take the necessary steps to carry on the information and consultation procedures in accordance with the general objectives laid down in the Directive (see reply to question (c)). It is worth mentioning in this context the fact that most Member States have already arrangements for informing and consulting employees which can be used for these purposes. In addition, the Member States will be able to define freely the specific arrangements and procedures to be created and/or adapted. Finally, social partners will also have the possibility of defining freely the arrangements best suited to their needs, provided that Member States allow them to do so.

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

With a threshold of 50 employees, the proposal does not affect the truly small and medium-sized enterprises in the European Community, the vast majority of which are already covered by national provisions and/or practices concerning employee information and consultation. It also allows Member States to apply the most innovative rules (information and consultation on the employment situation and outlook within the undertaking) only to undertakings employing at least 100 workers, which account for 0.35% of all SMEs.

## Consultation

### 6. *List the organisations which have been consulted about the proposal and outline their main views.*

All representative organisations<sup>10</sup> have been able to express their opinions during the first and second phases of social partner consultation.

All the organisations which responded to consultation recognise the importance of employee information and consultation procedures in the management of an undertaking. However, different points of view have been expressed on the question of the need for Community action in this field.

The trade union organisations have come out in favour of a Community initiative and the introduction of binding rules in this field. This opinion is shared by management staff.

Generally speaking, employers' organisations have expressed opposition to action, mainly on account of the principle of subsidiarity, but also because their perception of the inadequacies of national and Community legislation in this field differs from that of the Commission. The employers' organisations maintain that there is already an adequate legal framework at national level, that appropriate penalties are already provided for, that management prerogatives should not be called into question, and that standard European rules on employment forecasting, etc., are not acceptable.

Nevertheless, the importance attached in general by employers to good information and consultation practices in undertakings should not be underestimated.

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<sup>10</sup> In accordance with the Commission Communication concerning the application of the Agreement on Social Policy (COM(93) 600 of 14 December 1993).



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