

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 C (b) of the EC Treaty

ON THE COMMON POSITION OF THE COUNCIL ON THE AMENDED  
PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ESTABLISHMENT  
OF EUROPEAN COMMITTEES OR PROCEDURES IN COMMUNITY-  
SCALE UNDERTAKINGS AND COMMUNITY-SCALE GROUPS OF  
UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND  
CONSULTING EMPLOYEES

## **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT**

### **ON THE COMMON POSITION OF THE COUNCIL ON THE AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ESTABLISHMENT OF EUROPEAN COMMITTEES OR PROCEDURES IN COMMUNITY- SCALE UNDERTAKINGS AND COMMUNITY-SCALE GROUPS OF UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND CONSULTING EMPLOYEES**

#### **1 BACKGROUND**

On 27 April 1994, the Commission transmitted to the Council the above-mentioned proposal for a Directive on the basis of Article 2, paragraph 2 of the Agreement on Social Policy annexed to the Treaty establishing the European Community.

The Economic and Social Committee delivered its opinion on the proposal on 1 June 1994.

Following the opinion of the European Parliament adopted on 4 May 1994, the Commission on 3 June 1994 presented to the Council an amended proposal which incorporates some of the amendments made by the European Parliament.

The Council adopted a Common Position on the proposal for a Directive on 18 July 1994.

The Common Position was adopted unanimously by 11 Member States, with only Portugal abstaining.

#### **2 GLOBAL ASSESSMENT OF THE COMMON POSITION**

The Commission considers that the Council's Common Position is a remarkably balanced text which is quite commensurate with current needs as regards consulting and informing employees in Community-wide undertakings and groups of undertakings.

This text endorses solutions designed to embrace and synthesise the viewpoints of all the parties concerned, notably the main organisations of employers and workers in Europe. On this politically extremely sensitive issue the Council has succeeded in working out a broad consensus between the delegations while retaining all the main features of the Commission's initial proposal.

The Council's Common Position is commensurate with current needs because it lays down simple, effective and easily-manageable mechanisms for implementation.

It respects the subsidiarity principle and gives substantial leeway to those who wish to apply it - first and foremost the Member States and ultimately the social partners at the level of undertakings and groups of undertakings - to identify the solutions best attuned to their traditions, legal and social environment and practical needs.

Hence the Commission invites the European Parliament to give its seal of approval to this consensus at the second reading following the Council's Common Position, even if not all the suggestions made during the Parliament's first reading have been taken up.

### **3 DETAILED ASSESSMENT OF THE COMMON POSITION**

#### **3.1 Main amendments by comparison with the Commission's proposal**

The Council's Common Position contains a certain number of textual emendations designed to clarify the content of certain provisions and to pinpoint the Directive's objectives. The justification for these emendations is obvious and so we will not analyse them here in detail.

As regards alterations of this kind it will suffice to mention, because of its symbolic value, the modified title of the directive (Council Directive on the establishment of a European Works Council or procedures in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees).

The Council has also, with the Commission's agreement, introduced a certain number of changes, although they concern non-core features of the proposal.

Below we recapitulate these changes and explain their significance.

##### **3.1.1 Article 1, paragraph 5 (new)**

This new provision leaves the Member States free not to apply national rules for transposing the directive to merchant navy crews.

With a view to facilitating the conclusion of the Common Position, the Commission has accepted this amendment, which was already an integral part of the compromise within the Council in October 1993.

*3.1.2 Article 2, paragraph 1*

The second threshold relating to the number of employees, with a view to defining a Community-scale undertaking or Community-scale group of undertakings, has been raised from 100 to 150 workers.

The Commission accepted this increase in the context of the global compromise within the Council, which here includes the terms of the October 1993 compromise. At any rate this amendment does not significantly reduce the scope of the directive.

*3.1.3 Article 5, paragraph 6 (and Annex, point 7)*

The Common Position leaves it to the Member States to lay down budgetary rules regarding the operation of the special negotiating body and the European Works Council, notably by limiting funding to cover one expert only.

This solution is an acceptable compromise between the divergent positions expressed within the Council on this difficult topic. The Commission has welcomed it because employees' representatives retain the right to consult the experts of their choice, while at the same time the costs incurred by undertakings are kept within bounds.

*3.1.4 Article 7, paragraph*

The time limit for negotiations between the special negotiating body and the central management with a view to concluding an agreement under the terms of Article 6 has been raised from two to three years. The Commission considers this to be a reasonable solution, because it encourages the conclusion of agreements without compromising the Directive's effectiveness.

*3.1.5 Article 8, paragraph 3 (new)*

The new paragraph 3 of Article 8 gives Member States the opportunity to lay down particular provisions for the central management of establishments and undertakings which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions.

This provision is justified given the desire to reach agreement within the Council. The Commission remains convinced that the Member States will make very limited use of this option and that it will not compromise the central principles and objectives of the Directive.

### *3.1.6 Article 11, paragraph 4*

The final part of this provision stipulates that Member States are free to adopt rules designed to prevent the divulgence of information associated with a dispute which is the subject of administrative or judicial appeal procedures.

This new provision is quite justified in the light of the values protected by the provisions of Articles 8 and 11. Hence the Commission has given it a positive reception.

### *3.1.7 Article 15*

The time limit laid down by the Commission for reviewing the operation of the Directive has been reduced from seven to six years (and not five years as desired by the European Parliament).

The Commission considers that this is quite an acceptable compromise solution and which will allow it to conduct a serious and in-depth analysis at a time when the directive will be well on the way to being implemented.

### *3.1.8 Annex, point 1 c)*

In the text of the Common Position the maximum number of members of the select committee (formerly called bureau) of the European Works Councils is reduced from 5 to 3 members.

This amendment derives from the new rule in point 3 of the annex, according to which those members of the European Works Council who have been elected or appointed by the establishment and/or undertakings which are directly concerned by the measures in question shall also have the right to participate in consultations other than the annual meeting.

### *3.1.9 Annex, point 4*

The Member States are now free to lay down the rules on the chairing of information and consultation meetings, which will enable the directive's provisions to be adapted to all the national systems.

## **3.2 The Common Position and the amendments of the European Parliament accepted by the Commission**

At the May session of the European Parliament the Commission informed Parliament that it could accept a certain number of amendments adopted by the Parliament. These amendments are Nos 1, 7, 12, 45, 20, 24, 29 and 47.

The Commission's amended proposal<sup>1</sup> contains the amendments in question. The Council has had the opportunity to scrutinise this new proposal and Parliament's views on the subjects in question, and the Common Position shows that the Council has to a very large degree accepted the amendments proposed by the European Parliament and endorsed by the Commission.

Amendments Nos 1, 12, 45 (in part) and 24 (rephrased) have been adopted as is in the Common Position.

Amendment No 20 is superfluous, because the text it was designed to clarify has been changed satisfactorily.

Amendments No 7 and 47 have not been explicitly incorporated, although the text of the Common Position must be interpreted in the sense of these amendments.

Finally, amendment No 29 was not explicitly accepted by the Council. At any rate the Commission considers that since the obligation to consult the select committee was introduced into the directive in the interests of the central management, the latter could always, in line with general principles of law, honour this obligation by organising a consultation meeting with the entire European Works Council.

### **3.3 The Common Position and the amendments by the European Parliament not accepted by the Commission**

The Commission considers it useful to restate its position taken during the first reading concerning a certain number of amendments proposed by the European Parliament which it was not able to accept.

Notably amendments (such as Nos 39 and 48) designed to change the quantitative thresholds or the scope of the directive are very difficult to accept, all the more so now that the Council has come to a unanimous agreement.

The same applies to amendments mandating application of the provisions of the annex in the event of agreement between the social partners (amendments Nos 6 and 10). The Commission is happy to have the backing of the social partners (notably the European employees' organisations, who would be expected to be the keenest advocates of this type of amendment) and intends to enshrine the new approach of the directive in this regard, which fully respects the independence of the social partners and their freedom to negotiate.

Finally, the Commission is quite adamant as regards the amendments proposed by the European Parliament at the first reading which would interfere excessively with procedures for electing or nominating workers' representatives or the establishment of

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<sup>1</sup> COM (94) 228 final of 3 June 1994, OJ L .....

their positions (amendments Nos 51, 35, 52, 21 and 26). The approach of the Common Position in this regard, like the directive in its entirety, is to give Member States the greatest possible freedom to regulate aspects which can be catered for at national level without damaging the effective operation of the mechanisms provided for in the directive. The Commission does not intend to reconsider this approach, which fully respects the principles of subsidiarity.

#### 4 CONCLUSION

The Commission reaffirms its support for the text of the Common Position. It took thirteen years and eight months for the Council of Ministers to agree on a draft directive concerning information and consultation of employees in multinational undertakings and groups of undertakings. The Council's Common Position is a real consensus which can be a good springboard for improving information and consultation of employees in the undertakings in question. European organisations of employees support this text wholeheartedly, while the employers' organisations, even if they are not completely satisfied with the Common Position, acknowledge that the text is an improvement on preceding versions.

The Commission is very happy with the remarkable progress made in recent months on this controversial dossier and calls on the European Parliament to join in with the consensus and hence facilitate the definitive and rapid adoption of the proposal which it has presented to the Council on the basis of the excellent compromise reflected in the Common Position.