

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 581 final

Brussels, 25 January 1991

Proposal for a

COUNCIL DIRECTIVE

on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees

(presented by the Commission)

EXPLANATORY MEMORANDUM

TABLE OF CONTENTS

	Paragraphs
I. INTRODUCTION	1 - 6
II. THE CONTEXT	
A. The impact of the internal market	7 - 8
B. Proposals on information, consultation and participation of employees in the Community	9 - 12
C. The views of the other Community instances	13 - 16
D. Other considerations	17 - 18
III. THE ELEMENTS OF THE PROPOSAL	19 - 21
IV. CONCLUSIONS	22 - 23

1. INTRODUCTION

1. In the context of the establishment of the Single European Market, the European Councils of Hanover, Rhodes and Madrid considered that the same importance should be attached to social as to economic aspects and that they should therefore both be developed in a balanced manner. The European Parliament (in numerous own-initiative resolutions) and the Economic and Social Committee (in its opinion of 22 February 1989) have taken a similar view.
2. In developing this approach, the Community Charter of the Fundamental Social Rights of Workers states, in point 17, *inter alia*, that procedures for informing and consulting workers must be developed along appropriate lines, taking account of the practices in force in the various Member States and that, in particular, "this shall apply especially in companies or groups of companies in two or more Member States of the European Community".
3. With this in mind, in its Action Programme relating to the implementation of the Charter, the Commission outlined the scope for a new Community instrument on the procedures for information and consultation of workers in European-scale undertakings. The Commission considered that "procedures for informing and consulting employees as embodied in legislation or practices in Member States do not always correspond with the complex structure of undertakings having establishments in more than one Member State. As information and consultation procedures do not apply beyond national boundaries, employees affected by decisions taken elsewhere by the main undertaking or by the association of undertakings could be unequally treated. This situation is bound to have a direct effect on the operation of the internal market and on the multiplication of mergers, take-overs and concentration of enterprises resulting therefrom. It would therefore be desirable to improve the information and consultation of the workers of these companies which employ a large number of people in the Community".
4. The need to institute effective information and consultation procedures for Community-scale undertakings and groups must bear in mind the autonomy of the social partners. Once the conditions have been met for the setting-up of a European Works Council, it will be up to them in the first instance to decide on the nature, composition, functions and powers of the Council and the way it goes about its work. Only where it proves impossible to reach agreement will it be necessary to apply certain minimum provisions. This approach is intended to give full effect to the subsidiarity principle.

5. In a similar spirit, this proposal by the Commission is concerned only with Community-scale undertakings and groups and will have no effect whatever on Member States' internal information and consultation procedures for national firms, which will remain subject to national legislation and practices. In giving priority to transnational situations, the Commission is in effect reaffirming its commitment to the principle of subsidiarity by proposing to regulate at Community level only the kind of thing which, given the nature of the undertakings concerned, cannot be regulated at Member State level.
6. Finally, it is worth pointing out that the minimum provisions contained in the proposal regarding information and consultation of employees have been drawn up in the light of the joint opinion adopted in March 1987 under the Val Duchesse social dialogue by the ETUC, UNICE and CEEP for cases where the introduction into firms of technological innovations has significant consequences for the workforce.

II. THE CONTEXT

A. The impact of the internal market

7. The internal market is, according to Article 8a of the EEC Treaty "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty". The dismantling of internal frontiers is already resulting in major corporate re-organizations in the Community, and will continue to do so, particularly in the form of concentrations. The accelerating pace of transfrontier economic restructuring associated with this process, involving an increase in mergers, take-overs, transfers and joint-ventures, will result in more and more employees being subject to key corporate decisions taken outside the country where their establishment or undertaking is located.

As a result of changes in the structure of undertakings, the procedures for consulting and disclosing information to employees are often no longer consistent with these new structures. Whereas firms have become more complex in that they have grown or expanded their operations by setting up subsidiaries or establishments in several Member States, their employees continue to be informed and consulted in a segmented fashion, reflecting the scope of existing national laws and practices.

8. Existing procedures for informing and consulting employees in a national context only have effect within the legal framework of that country, only benefit the employees of that State and generally only relate to activities carried out within national boundaries.

The same applies to Community directives on procedures for informing and consulting employees in the event of collective redundancies and transfers of undertakings. Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽¹⁾ and Council Directive 77/187/EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses⁽²⁾ incorporate procedures for informing and consulting the representatives of those employees affected by the operations in question. However, these information and consultation requirements do not extend specifically to situations in which the decision-making centre is not situated in the Member States in which the employees affected by its decision are employed.

B. Proposals on information, consultation and participation of employees in the Community

9. Procedures for informing and consulting employees of European-scale undertakings have been the subject of various Community proposals. The original Commission proposals of 1970⁽³⁾ and 1975⁽⁴⁾ for a European Company Statute provided for both worker participation in a Supervisory Board and the representation of the interests of workers in a European Works Council or Group Works Council.
10. However, the 1985 White Paper "Completing the Internal Market", provided for the preparation of a new European Company Statute, discussion of the amended 1975 proposal having been suspended by the Council in 1982. Accordingly, proposals for a Council regulation on the Statute for a European Company⁽⁵⁾ and for a Council directive complementing the Statute with regard to the involvement of employees in the European Company⁽⁶⁾ were presented by the Commission to the Council on 25 August 1989. The draft directive sets out measures to enable employees "to participate in the supervision and strategic development" of companies which are voluntarily formed throughout the Community in the form of a European public limited company (Societas Europaea, "SE"). Undertakings operating in more than one Member State, other than companies formed as European Companies, are not affected by its provisions, European Company status being optional for the undertakings concerned. The European Parliament is expected to give its opinion on first reading on this dual proposal in the near future.

(1) OJ No L 48, 22.2.1975.

(2) OJ No L 61, 5.5.1977.

(3) OJ No C 124, 10.10.1970.

(4) COM/75/150 final.

(5) OJ No C 263, 16.10.1989.

(6) OJ No C 263, 16.10.1989.

11. By the same token, it is worth stressing the importance of the revised proposal known as the "Fifth Directive" (19 August 1983), which is still on the table at the Council, providing for employee participation in undertakings employing at least 1000 people (but not in groups of undertakings) on a management or administrative board, a body representing the employees or systems adopted by collective agreement.

12. In contrast, the proposal for a Council directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings⁽⁷⁾, submitted to the Council on 24 October 1980 and amended on 13 July 1983⁽⁸⁾, covered all undertakings or groups of undertakings having one or more establishments or subsidiaries in the Community and employing as a whole at least 1000 employees in the Community. The proposal provided that EC or non-EC undertakings or parent undertakings, having establishments or subsidiaries in the EC, must regularly inform and consult via the local management the employees' representatives provided by the law or practice of the Member States. No single body for employee representation was set up and the information and consultation procedures envisaged were channelled throughout the existing national representation structures. After lengthy discussion, the amended proposal for a Council directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings, did not find enough support among the Member States.

The Council subsequently adopted a Resolution⁽⁹⁾ relating to the Commission's amended proposal, which acknowledged the political and economic importance of the problem and emphasized the importance of a social area in the context of the completion of the Community internal market and the need for greater convergence between the rights of employees in the Member States to be informed and consulted regarding major decisions in the undertakings concerned. The Resolution also called on the Commission to continue its work on this subject and, where appropriate, to present another proposal, drawing the attention of the social partners in the Community to the importance of arriving at agreements at the appropriate level which provide for information and consultation of employees with regard to the provisions of Article 118b of the Treaty.

C. The views of other Community instances

13. With this Council Resolution in mind, the Commission has examined the opinions of the two sides of industry reached at Community level within the framework of the social dialogue, the opinion of the Economic and Social Committee on the social consequences of cross-frontier mergers⁽¹⁰⁾ and the views and resolutions of the European Parliament.

(7) OJ No L 297, 15.11.1980. Supplement 3/80, Bulletin EC.

(8) OJ No C 217, 12.08.1983. Supplement 2/83, Bulletin EC.

(9) OJ No C 203, 12.08.1986.

(10) OJ No C 329, 30.12.1989.

14. At European level, within the framework of the Val Duchesse social dialogue, in spite of the complexity of the issue and notwithstanding their different approaches, the two sides of industry have been able to identify some common ground as to the desirability of information and consultation in connection with the introduction of new technology. In particular the joint opinion adopted by ETUC, UNICE and CEEP states :

"The participants stress the need to motivate the staff at all levels of responsibility in firms and to develop their aptitude to change, amongst other ways by means of good information and consultation practices.

They consider that such motivation will be all the higher if all the staff are in a position to understand the economic and social need for structural and technological change and the potential which such change offers to firms and to the workforce...

Both sides take the view that, when technological changes which imply major consequences for the workforce are introduced in the firm, workers and/or their representatives should be informed and consulted in accordance with the laws, agreements and practices in force in the Community countries. This information and consultation must be timely".

15. The Economic and Social Committee, in its opinion of 18 October 1989 on the social consequences of cross-frontier concentrations between undertakings⁽¹¹⁾, stated : "Since, independently of [the European Company Statute], there is a need for information and participation rights for employees' representatives in connection with cross-frontier concentrations between undertakings, a Community framework should be devised for this. This framework ought to be based on national arrangements for employee representation, and provide for regular information and consultation of employees' representatives at European level". The Economic and Social Committee's opinion went on to propose that in cross-frontier undertakings and groups, "a European advisory committee of employee representatives [should] be set up alongside the group/undertaking management", and that Community legislation should cover issues such as the composition of such a committee, the need for clearly defined information and consultation rights, the frequency of meetings, and the responsibility of the undertaking or group for meeting the operating costs of the committee.
16. The Commission has taken due consideration of various resolutions of the European Parliament, particularly its resolution of 16 March 1989⁽¹²⁾ on the Commission's Memorandum on the European Company Statute, in which the European Parliament called for the inclusion of provisions requiring the establishment of European Works Councils (as originally provided by the 1970 and 1975 proposals),

(11) OJ No C 329, 30.12.1989.

(12) OJ No C 96, 17.4.89.

and the Resolution of 15 February 1990 on the most important legislative proposals in the social field to be included in the Commission's programme for 1990⁽¹³⁾ which recommends, inter alia, "the setting up of European consultative committees in multinational undertakings".

D. Other considerations

17. The Commission has also taken note of the development of European-level information and consultation bodies in a number of large transnational undertakings or groups of undertakings and indeed in drawing up its proposals has sought the views of management and employee representatives party to certain of these arrangements. Similar arrangements operate informally in certain other companies or groups. The Commission is also aware that discussions on the establishment of European-level information and consultation committees are taking place in a number of other major European transnational groups of enterprises which employ a substantial number of employees across the Community.

18. In making its proposal, the Commission has taken into account a range of other factors :

- a) The aims pursued by certain non-binding international instruments such as the OECD guiding principles and the ILO tripartite declaration.
- b) The role of legislation in promoting employee involvement.

A clear distinction can be drawn between representative or indirect forms of employee involvement (e.g. works councils, employee board-level representation) and individual or direct forms (e.g. team briefings or communications groups, profit sharing, employee share ownership). A recent study⁽¹⁴⁾ shows that not only do these two distinct types of employee involvement fulfil different functions, but they also rely on statutory provision to very different degrees. The study concludes that legal requirements have played a limited role in the development of direct forms of involvement, but that legislation has been a necessary precondition for the widespread establishment of works councils and employee board-level representation in virtually every Member State where they exist (the exception being the co-operation committees in Denmark which operate without statutory backing).

- c) The scope of the proposal: which companies and workers are covered?

(13) OJ No C 68, 19.3.1990.

(14) M. Gold and M. Hall, "Legal Regulation and the Practice of Employee Participation in the European Community", European Foundation for the Improvement of Living and Working Conditions, Dublin, (1990).

The aim of the Commission is to stimulate a process of information and consultation at European level without creating an unduly heavy burden on undertakings. The Commission wants to introduce these procedures only in large enterprises. Although large enterprises are in official statistics classified as undertakings with more than 500 employees, the Commission wants to limit its proposal to enterprises or groups of enterprises with at least 1000 employees within the Community having establishments or undertakings with at least 100 employees in at least two Member States.

According to statistics for 1986, large businesses (i.e. those with more than 500 employees) accounted for less than 1% of the total number of firms, but provided 28% of employment. (15)

As the objective of the proposal is to overcome the territorial limitations of national laws on information and consultation procedures by the setting up of a European Works Council, multiplant national undertakings and national groups or undertakings are not covered. On the other hand, via national laws implementing Council Directives 75/129 and 77/187 concerning respectively procedures for informing and consulting employees in the case of collective redundancies and transfers of undertakings, multiplant national undertakings are subject to the same or similar obligations as are single national undertakings and, in the majority of Member States, they are also subject to procedures for information and consultation equivalent to those envisaged by the present proposal.

With respect to national groups of undertakings, it should be added that there is legislation concerning national group-level works councils in four Member States (France, the Federal Republic of Germany, the Netherlands and Portugal) and well developed case-law in many Member States concerning the determination of the real employer behind a group structure.

d) Flexibility and costs.

The setting up of a transnational tier for information and consultation does not run counter to the necessary flexibility and, where appropriate, the decentralization of management responsibilities and functions. As is quite often the case, increased flexibility within a complex undertaking or within a group has to be accompanied by some central monitoring or supervisory or strategic function. It is in this general context that the proposal has to be considered.

(15) Enterprises in the European Community. Luxembourg, 1990, page 37.

III. THE ELEMENTS OF THE PROPOSAL

19. The first thing to note is that this proposal is the product of a wide measure of consultation among the two sides of industry, both at multisector level (under the social dialogue and based on the joint opinion of March 1987) and on an industry basis - involving all types of undertaking, including small and medium-sized businesses. These consultations have enabled the Commission to take note of the various points of view regarding both the timeliness of a Community proposal in this field and the legal nature and content of the proposed instrument. The Commission's proposal is therefore a product of these consultations, bearing in mind the experience gained with the "Vredeling" Directive.

(i) Objective

The object of the proposal is to improve the information and consultation of employees in Community-scale undertakings and groups of undertakings. The risk here is that this aim may become dissipated in a range of procedures which makes it impossible to keep track of what is going on, and to this end it is proposed to set up a European Works Council where requested by employees or their representatives according to a clear, transparent procedure. Of course, the initiative in setting up a Council of this kind can come from the central management of the undertaking or group of undertakings, but must receive the agreement of the employees.

(ii) Scope

It is proposed that the European Works Council be restricted to Community-scale undertakings and groups of undertakings with at least 1000 employees and at least two establishments in different Member States each employing at least 100 people. The thinking behind this dual threshold is that:

- small businesses should not be burdened with additional obligations which might be detrimental to their development;
- this proposal should have no effect whatever on existing information and consultation procedures in Member States based on national legislation and practices. The idea here is that, under the subsidiarity principle, only Community-scale undertakings should be affected, inasmuch as Member States are, in the absence of provisions common to all, unable to make provision individually for transnational information and consultation procedures. The Commission proposal also covers cases where Community-scale undertakings or groups of undertakings have their headquarters outside the Community. Where

this is the case, the Commission takes the view that such businesses should be treated in a similar way based on either the representative agent of the undertaking or group of undertakings or the undertaking with the highest number of employees in the Community.

(iii) The legal concepts of "controlled undertaking", "controlling undertaking" and "representatives of the employees"

Articles 2 and 3 of the proposal spell out what is meant by the terms "controlled undertaking", "controlling undertaking" and "representatives of the employees" for the purposes of this Directive. The first two definitions are based on Directive 88/627/EEC⁽¹⁶⁾ on the information to be published when a major holding in a listed company is acquired or disposed of, and on Directive 83/349/EEC⁽¹⁷⁾ on consolidated accounts. The concept of "representatives of the employees" is taken from Council Directives 75/129/EEC on collective redundancies and 77/187/EEC on transfers of undertakings. However, unlike the above Directives, this proposal says that, where there is no employees' representative, the body of employees is entitled to elect representatives on the special negotiating body and on the European Works Council.

(iv) Proposed approach

As indicated above, institution of a European Works Council must, under the terms of this Directive, result from a request put forward either by the central management of the undertaking or group of undertakings, or by the employees or their representatives. In other words, there can be no question of imposing a Council from the outside. The approach proposed by the Commission gives employees' elected representatives the chance, in the first instance, to decide unanimously not to seek the setting up of a European Works Council.

Once negotiations have begun, the concluding agreement between the two parties will define the nature, functions and powers and operating procedure of a Council. If the need for a Council is apparent to all parties, the Commission takes the view that, under the principle of autonomy of the two sides of industry, it is up to workers and management to decide by agreement on the essential characteristics of the Council, including the possibility of using existing structures to this effect. In fact, so long as the aims and minimum provisions of the Directive regarding information and consultation are expressly met, the decision may be not to set up a Council at all. The flexible approach proposed by the Commission reflects the special situations of Community-scale undertakings and groups of undertakings, and is designed to ensure that such Councils are set up on the basis of agreement between the parties concerned.

(16) OJ No L 348, 17.12 1988.

(17) OJ No L 193/1, 18.7.1983.

(v) Absence of agreement

It may happen that, after negotiation, the parties concerned are unable to reach agreement on the nature, functions and powers of the Council, or on its operating procedure. To meet the stated objective as regards Community-scale undertakings and groups of undertakings in this situation, the proposal provides for a number of minimum requirements to be met. These are set out in the Annex to this Directive and form an integral part of it. They are mainly concerned with the nature and content of information and consultation, but also deal with the composition and operating procedures of the Council.

As regards these minimum requirements, the following points apply:

- On the question of competence, the requirements deal with matters affecting Community-scale undertakings or groups of undertakings as such located in the Community, to the exclusion of matters covered by national legislation or national practices in establishments or undertakings in the Member States, and, in the case of undertakings or groups of undertakings with headquarters outside the Community, matters relating to establishments or undertakings located outside the Community. Matters relating to information and consultation are defined in the spirit of the joint opinion adopted in March 1987 by the two sides of industry at Community level on the understanding that such consultation take place in good time. The proposal does not provide for by-pass procedures, nor does it lay down a fixed period within which decisions subject to consultation cannot be put into practice in the absence of an opinion on the part of the employees' representatives on the Council. The Commission takes the view that the desire for dialogue reflected in the setting up of a Council should lead to the two parties working naturally together in an open and constructive atmosphere.

- As regards the composition and operating procedures of the Council, the frequency of meetings and its operating methods, the minimum requirements set out in the Annex are both modest and realistic in terms of both the number of meetings of the Council (at least one per year and one special meeting where necessary) and the funding (borne by the Community-scale undertaking or group of undertakings). It should be stressed that this approach reflects current practice on the part of undertakings and groups which have already set up councils of this kind. Given the substantial advantages that such councils can bring for the two parties in contributing to a better mutual flow of information and a constructive dialogue, it seems reasonable to suppose that these minimum requirements will not impose a significant additional burden on central management - quite the opposite!

(vi) Miscellaneous provisions

The Commission's proposal features a number of provisions designed to ensure that the Council functions efficiently. These are primarily concerned with confidentiality - i.e. members of the Council are required to respect the confidentiality of information received, and the Directive authorizes undertakings to withhold any information which, if disclosed, would substantially damage their business interests. Should anyone object that imposing confidentiality provisions of this kind runs counter to a genuine flow of information and would make the other side "hostages" to management, the Commission would point to the "transparency" and respect elements between the parties. By the same token, however necessary the confidentiality provisions are, their aim is not to encourage a systematic desire to "conceal" information. The European Works Council can only work efficiently and effectively for information and consultation of employees if both sides agree to play the game. On the basis of past experience in existing Councils, the Commission has every reason to believe that this will work.

(vii) Legal basis

Article 100 of the Treaty has been chosen as the legal basis for this Directive since the lack of consistency between information and consultation procedures on the one hand and the transnational structure of undertakings on the other have a direct effect on the operation of the Common Market.

20. There are a number of significant differences between the approach proposed in relation to the proposals on the Fifth Directive and the European public limited company and the approach adopted for this proposal for a Directive. They may be summarized as follows:

(i) As regards the scope, the Fifth Directive is aimed at public limited companies - but not Community-scale groups of undertakings - employing at least 1000 people. There is no threshold as regards the limited company, which must however be constituted in the form of a European Limited Company and does not cover groups of undertakings.

(ii) As regards the aims, the Fifth Directive is concerned with worker participation in the undertaking's decision-making bodies, or deals with information and consultation procedures prior to the adoption of certain decisions. The proposal on the role of workers in the European Company is concerned with worker participation in the supervision and strategic development of companies, either by participation in the decision-making bodies or by the setting-up of a separate body, a collegiate body or other models established by agreement.

(iii) On the question of the right to be informed and consulted, the options laid down in the Fifth Directive and the proposal on the European Company feature much more exhaustive and precise rules than those set out in this proposal, which deal only with matters concerning Community-scale undertakings or group of undertakings as such or at least two of these establishments or undertakings.

21. Having made these distinctions, it may be that a public limited company under the Fifth Directive and with at least 1000 employees in the Community and at least two establishments in different Member States each employing 100 people will also be covered by this proposal. In such cases, if worker participation in the decision-making bodies has been opted for, a European Works Council should also be set up. On the other hand, if it was decided to opt for a separate body representing employees, the secondary directive should enable Member States, with a view to avoiding the coexistence of two similar bodies, to authorize a single representative body on condition that the material content regarding information and consultation as provided for in the two directives be adhered to. These same considerations will apply mutatis mutandis to European Companies which are also Community-scale undertakings within the meaning of this Directive.

IV. CONCLUSIONS

22. In the light of the foregoing, the Commission considers that :

(i) there is a Community need to provide procedures for informing and consulting employees as far as they are affected by corporate decisions taken by a head-office or controlling undertaking located outside the Member State in which they are employed (and therefore outside the scope of the national information and consultation rights which the employees concerned may have);

(ii) the action required to fulfil that need can be undertaken more effectively at Community level, as the dimension and effects of it extend beyond national boundaries;

(iii) the present proposal, in accordance with the principle of subsidiarity and unlike the "Vredeling" proposal, does not cover purely national undertakings or groups of undertakings, nor does it channel the information and consultation procedures, as the above-mentioned proposal did, through the existing national employees' representatives alone;

(iv) at the request of one of the two parties, and on the basis of a written agreement between them, a European Works Council must be responsible for informing and consulting employees on matters likely to be of particular concern to them;

(v) In the event of lack of agreement, it is important that certain minimum provisions be applied regarding the composition, functions and powers and the operating procedures and financial resources of the European Works Council.

23. By presenting this proposal to the Council and requesting its adoption as soon as possible, bearing in mind the opinions of the European Parliament and the Economic and Social Committee, the Commission feels that a major step can be taken towards implementing all aspects of the internal market.

Proposal for a
COUNCIL DIRECTIVE

on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community and, in particular, Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information and consultation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States; whereas the Charter states that "this shall apply especially in companies or groups of companies having establishments or companies in two or more Member States";

Whereas the completion of the internal market is bound to generate a process of concentrations of undertakings, cross-border mergers, take-overs, joint-ventures and consequently, a transnationalization of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, this situation requires that undertakings and groups of undertakings operating in more than one Member State must inform and consult the representatives of their employees affected by their decisions;

Whereas procedures for informing and consulting employees as embodied in legislation or practice in Member States are often inconsistent with the transnational structure of the entity which takes the decisions affecting those employees; whereas this may lead to unequal treatment of employees affected by the decisions of one and the same undertaking, or group of undertakings;

Whereas Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽¹⁾ and 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⁽²⁾ incorporate compulsory procedures for informing and consulting the representatives of the employees affected by the operations in question;

Whereas these information and consultation requirements do not aim to cover all situations likely to affect the employees' interests and, in particular, do not extend specifically to situations in which the decision-making centre is not situated in the Member State in which the employees affected by its decisions are employed;

Whereas this situation has a direct effect on the operation of the internal market and consequently needs to be remedied;

Whereas appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or groups of undertakings are properly informed and consulted in cases where decisions likely to affect them are taken outside the Member State in which they are employed;

Whereas, in order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, a European Works Council must, in principle, be set up;

(1) OJ No L 48, 22.2.1975, p. 29.

(2) OJ No L 61, 5.3.1977, p. 26.

Whereas European Works Councils in such undertakings or groups must encompass all establishments or, as the case may be, group undertakings located in the Community, irrespective of whether the undertaking or, in the case of a group, the controlling undertaking, has its central management outside the Community;

Whereas, in accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the controlling undertaking in a group to determine by agreement the nature, composition, competence, mode of operation, procedures and financial resources of the European Works Council so as to suit their own particular circumstances;

Whereas, however, in the absence of such an agreement, certain minimum requirements in respect of the composition, functions and powers, procedures and financial resources of the European Works Council should apply;

Whereas, moreover, the employees' representatives may unanimously agree not to seek the setting up of a European Works Council and, in these circumstances, the parties may decide upon an alternative procedure for informing and consulting employees on condition that such an alternative procedure meets certain basic conditions;

Whereas the European Works Council must be kept informed as to the activities and prospects of the undertaking or group of undertakings so that it may assess the possible impact on the workers' interests; whereas, to this end, the undertaking or the controlling undertaking should be required to communicate to the European Works Council, on the occasion of an annual meeting, general information directed towards the interests of the employees and information relating more specifically to those aspects of the undertaking's or group of undertakings' activities and prospects which are liable to affect the employees' interests;

Whereas, before the implementation of any decision significantly affecting the employees' interests, the European Works Council should also be informed in good time and invited to give its opinion;

Whereas the information and consultation requirements laid down by this Directive should be implemented in the case of an undertaking or, in a group, a controlling undertaking, having its central management in a non-member country, by its representative agent in the Community or, in the absence of such an agent, by the establishment or controlled undertaking employing the highest number of employees in the Community;

Whereas appropriate remedies must be provided by Member States in the event of failure to comply with the obligations provided for by this Directive,

HAS ADOPTED THIS DIRECTIVE :

Section 1

General

Article 1

1. The object of this Directive is to improve the provision of information to and the consultation of employees in Community-scale undertakings and groups of undertakings.
2. To this end, a European Works Council (hereinafter "EWC") shall be established in every Community-scale undertaking and group of undertakings, where this is requested in the manner provided for by Article 5(3), with the purpose of informing and consulting their employees upon the terms, in the manner and with the effects laid down by this Directive.

Article 2

For the purposes of this Directive:

- (a) "Community-scale undertaking" means an undertaking with at least 1 000 employees within the Community and with at least two establishments in different Member States each employing at least 100 employees;
- (b) "Community-scale group of undertakings" means a group of undertakings with at least 1,000 employees within the Community and with at least two group undertakings in different Member States each of which employs at least 100 employees within the Community;
- (c) "group of undertakings" comprises a controlling undertaking and its controlled undertakings.
- (d) "representatives of the employees" means the employees' representatives provided for by the laws or practice of the Member States, with the exception of members of administrative, managing or supervisory bodies of companies who sit on such bodies as employees' representatives.

Article 3

1. For the purpose of this Directive, a "controlling undertaking" is an undertaking which :
 - (a) has a majority of the shareholders' or members' voting rights of another undertaking (controlled undertaking);or
 - (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory board of another undertaking, and is at the same time a shareholder in, or member of, that undertaking (controlled undertaking);

or

- (c) has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum and articles of association, where the law governing that undertaking (controlled undertaking) permits its being subject to such contracts or provisions;

or

- (d) is a shareholder in or member of an undertaking, and :

- (i) has had the power to appoint, solely as a result of the exercise of its voting rights, a majority of the members of the administrative, management or supervisory bodies of that undertaking (controlled undertaking) who have held office during the financial year and during the preceding financial year; or

- (ii) alone controls, pursuant to an agreement with other shareholders in or members of that undertaking (controlled undertaking), a majority of shareholders' or members' voting rights in that undertaking.

- 2. For the purposes of paragraph 1(a), (b) and (d), the controlling undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

Article 4

1. EWCs shall encompass :
 - (a) in the case of Community-scale undertakings, all the establishments located within the Community each of which employs at least 100 employees;
 - (b) in the case of a Community-scale group of undertakings, all the group undertakings located within the Community each of which employs at least 100 employees.
2. The setting up of the EWC shall be the responsibility of the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the central management of the controlling undertaking.
3. Where a Community-scale undertaking or, in the case of a Community-scale group of undertakings, the controlling undertaking, has its central management outside the Community, the responsibility referred to in paragraph 2 shall lie with its representative agent in the Community to be designated, if necessary, or, in the absence of such an agent, by the management of the establishment employing the highest number of employees in a Member State, or the central management of the group undertaking employing the highest number of employees in the Community.
4. The law applicable in order to determine whether an undertaking is a "controlling undertaking" shall be the law of the Member State which governs that undertaking. Where the law governing the undertaking is not that of a Member State, the law applicable shall be the law of the Member State in which the representative agent of the undertaking or, in the absence of such an agent, the central management of the group undertaking which employs the highest number of employees in the Community is situated.

Section 11

The EWC Agreement

Article 5

1. The nature, composition, competence and mode of operation of the EWC shall be determined by means of a written agreement concluded between the central management of the Community-scale undertaking, or, in the case of a Community-scale group, the controlling undertaking, and a special negotiating body drawn from the representatives of the employees of the undertaking or group. Where there are no employee representatives within the meaning of Article 2(d), the employees concerned shall be entitled to elect from among their number representatives for the purpose of this Article.
2. The special negotiating body shall include at least one employee representative from each Member State in which the Community-scale undertaking employs at least 100 employees or, in the case of a Community-scale group of undertakings, from each group undertaking employing at least 100 employees within the Community. Member States shall make provision for the special negotiating body to include additional representatives, up to a maximum of five, to be drawn from Member States or, as the case may be, group undertakings in which significantly more than 100 employees are employed. The additional representatives shall be allocated in accordance with systems which take into account the number of staff they represent.
3. At the written request of any employees or of their representatives, or on the initiative of the central management of a Community-scale undertaking or, in the case of a Community-scale group, of a controlling undertaking, a meeting of the special negotiating body shall be convened by the said central management. The composition of this body shall be determined in accordance with paragraph 2. At the

end of the aforesaid meeting, the special negotiating body shall inform the central management in writing of its request for the opening of negotiations with a view to concluding the agreement referred to in Article 6(1). For the purpose of such negotiations, it may be assisted by experts of its choice. However, the special negotiating body may decide unanimously not to request the setting up of a EWC.

4. Member States shall also make provision for the costs of the discussions held under paragraphs 1 and 3 to be met by the undertaking or, in the case of a group, by the controlling undertaking.
5. Each Member State shall determine the manner in which representatives of employees or, in the absence thereof, the body of employees, employed in its territory by Community-scale undertakings or groups of undertakings shall appoint or elect members of the special negotiating body.
6. For the purpose of identifying the representatives of employees employed in other Member States, each Member State shall refer to the appropriate laws which implement paragraph 5 in the other Member States .

Article 6

1. The agreement between the central management of the Community-scale undertaking or, in the case of a Community-scale group, the controlling undertaking and the special negotiating body shall determine :
 - (a) the nature and composition of the EWC, the number of members, the allocation of seats and the method and duration of appointment or election of the members;
 - (b) the functions and powers of the EWC;

- (c) the procedure for informing and consulting the EWC;
- (d) the place, frequency and duration of meetings of the EWC;
- (e) the financial and material resources to be allocated to the EWC.

2. However, by written agreement between the central management of the Community-scale undertaking or, in the case of a group, the controlling undertaking and the special negotiating body entered into at the conclusion of the negotiations, it may be decided not to set up a EWC but only on condition that the minimum requirements in relation to information and consultation set out at paragraphs (a), (c), (d), (f) and (g) of the Annex, as well as in Article 9 of this Directive are respected mutatis mutandis.

Section III

Absence of Agreement

Article 7

1. Where the central management of the Community-scale undertaking, or the controlling undertaking in a Community-scale group of undertakings, and the special negotiating body so decide, or in so far as they fail to reach the agreement mentioned in Article 6 within one year of the initial request to convene the special negotiating body referred to in Article 5(3), the minimum requirements laid down by the legislation of the Member State in which the central management of the undertaking or, in the case of a group, the controlling undertaking is situated, shall apply.
2. The minimum requirements referred to in paragraph 1 shall be subject to the rules contained in the Annex.

Section IV

Miscellaneous

Article 8

1. Each Member State may provide that the central management of the Community-scale undertakings or controlling undertakings situated in its territory has the right to withhold information which, if disclosed, would substantially damage the interest of the undertakings concerned.
2. Member States shall provide that members of the EWC or the employees to whom they refer, shall not reveal to third parties any information which has been provided to them in confidence.

Article 9

The members of the special negotiating body and the members of the EWC shall enjoy, in the exercise of their functions, the same protection and guarantees provided for employees' representatives by the national legislation or practice in force in the country of employment. In any event they must be allowed to attend meetings of the special negotiating body or the EWC and those members who are employees of the Community-scale undertaking or group undertaking must be guaranteed payment of full wages for the duration of any absence from work in connection with their duties.

Section V

Final provisions

Article 10

1. Each Member State shall ensure that the management of the establishments or group undertakings situated in its territory and

their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, irrespective of whether the central management of the Community-scale undertaking or of the controlling undertaking is situated in its territory.

2. Member States shall provide for appropriate remedies in the event of failure to comply with this Directive, and, in particular, shall ensure that adequate procedures exist at the suit of the EWC for the enforcement of obligations under this Directive.

Article 11

1. This Directive shall be without prejudice to measures taken pursuant to Directive 75/129/EEC and Directive 77/187/EEC.
2. Nothing in this Directive shall affect the operation of the laws or practice of the Member States in respect of the provisions of information to and the consultation of employees at group level, undertaking level and establishment level.
3. This Directive shall not affect the right of the Member States to apply or introduce laws, regulations or administrative provisions more favourable to employees.

Article 12

Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 13

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

A n n e x

Minimum requirements

1. The minimum requirements referred to in Article 7(1) shall cover the matters set out in Article 6(1) and shall be subject to the following conditions :

(a) The competence of the EWC shall be limited to those matters which concern the Community-scale undertaking or group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States. In the case of Community-scale undertakings or groups of undertakings referred to in Article 4, paragraph 3 of this Directive the competence of the EWC shall be limited to those matters concerning all their establishments or group undertakings located inside the Community or concerning at least two of their establishments or group undertakings in different Member States.

(b) The EWC shall :

- (i) subject to paragraph b(ii), have a minimum of three members and a maximum of 30;
- (ii) include at least one member from each Member State in the territory of which a Community-scale undertaking has an establishment employing at least 100 employees or, in the case of a group, at least one member from each group undertaking employing at least 100 employees;
- (iii) be composed of representatives of the employees of the undertakings in question who are appointed, elected,

replaced and removed by the representatives of employees or, in the absence thereof, by the body of employees, in accordance with systems which take into account, in an appropriate manner, the number of staff they represent.

- (c) The EWC shall have the right to meet with the central management of the undertaking or controlling undertaking at least once a year, to be informed of the progress of the undertaking's or group of undertakings' business and of its prospects. This information shall relate in particular to its structure, economic and financial situation, the probable development of the business and of production and sales, the employment situation and probable trend, and investment prospects.
- (d) Subject to subparagraph (a) above, the EWC shall have the right to be informed and consulted by the central management of the undertaking or controlling undertaking about any management proposal likely to have serious consequences for the interests of the employees of the undertaking. This consultation shall be timely and shall be carried out on the basis of a report from the central management of the undertaking or group of undertakings, on which the EWC may put forward its opinion. The final decision shall be exclusively the responsibility of the central management of the undertaking or controlling undertaking.
- (e) In addition to the annual meeting provided for by paragraph (c), at least one special meeting between the EWC and the central management of the undertaking or controlling undertaking shall be held per year where necessary for the purposes of paragraph (d) above. This shall be convened by the central management of the undertaking or controlling undertaking at the request of the EWC.
- (f) The members of the EWC shall inform the workers' representatives at establishment or at group undertaking level or, in the absence thereof, the body of employees, of the content and outcome of the information and consultation process carried out in accordance with this Annex.

(g) The operating expenses of the EWC shall be borne by the central management of the undertaking or controlling undertaking. The central management concerned shall provide the members of the EWC with such financial and material resources as enable them to meet and perform their duties in an appropriate manner. In particular, the cost of the meeting facilities and interpretation, and the accomodation and travel expenses of members of the EWC, shall be met by the central management of the undertaking or controlling undertaking.

2. Article 5, paragraphs 5 and 6, of this Directive shall apply mutatis mutandis.

Competitiveness and employment impact statements

Proposal for a Council Directive on the establishment of European Works Councils.

I. What is the main reason for introducing the measure ?

The completion of the internal market is bound to generate a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and consequently, a transnationalization of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, this situation requires that undertakings and groups of undertakings operating in more than one Member State must inform and consult the representatives of their employees affected by their decisions.

As a result of changes in the structure of undertakings, the procedures for consulting and disclosing information are often no longer consistent with these new structures. Whereas firms have become more complex, in that they have grown or expanded their operations by setting up subsidiaries or establishments in several Member States, their employees continue to be informed and consulted in a segmented fashion, reflecting the scope of existing national laws and practices.

Existing procedures for informing and consulting employees in a national context only have effect within the legal framework of that country, only benefit the employees of that State and generally only relate to activities carried out within national boundaries. Community legislation intended to overcome the territorial limitations of national law with respect to information and consultation of employees of European-scale undertakings or groups is therefore needed.

II. Features of the type of business in question

This proposal is intended to apply to : (a) undertakings with at least 1,000 employees within the Community and with at least two establishments in different Member States each employing at least 100 workers; and (b) groups of undertakings with at least 1,000 employees within the Community and with at least two group undertakings in different Member States which each employ at least 100 employees within the Community. Small and medium-sized undertakings are not covered.

III. What obligations does this measure impose directly on businesses ?

Undertakings and groups of undertakings covered by this proposal shall establish European Works Councils for the purpose of informing and consulting their employees.

The European Works Council shall encompass all the establishments or group undertakings located within the Community which employ at least 100 workers. The composition, functions and mode of operation of the EWC may be determined by a written agreement between the representatives of employees and the management concerned. If there is no agreement a standard model shall apply.

The standard model lays down rules on the composition, function and powers, and mode of operation of the EWC. It shall be composed of employees' representatives and include a minimum of three members and a maximum of 30. It should meet with management once a year, or twice if consultation is required, and should be informed about the activities and prospects of the undertaking and consulted before the implementation of any decision significantly affecting the employees' interest.

IV. What indirect obligations are national, regional or local authorities likely to impose on business ?

None.

V. Are there any special provisions in respect of SME ?

SMEs are not covered by the proposal.

VI. What is the likely effect on :

(a) the competitiveness of businesses?;

The competitiveness of a company depends on a number of factors, one of them labour costs. The costs involved in setting up and maintaining a European Workers Council (E.W.C.) can be considered as an element of labour costs.

For the calculation of the costs of a meeting of the E.W.C. the following factors are essential :

1. The number of participants - In the proposal of the annex a maximum of 30 is given
2. The number of Member states covered - between 2 and 12
3. The travel expenses
4. The need of interpreters and the organisation of interpretation (boxes, equipment).

5. Accommodation

6. Absence from work of the employees participating in the E.W.C.

7. Costs of preparation of the meeting including written documentation in different languages.

A Community undertaking which is not a Community wide undertaking but concentrated in only some Member states eg, the Benelux or Iberian Peninsula will have much lower costs and probably less participants than the company with an E.W.C. with representatives coming from 12 Member States. Even in the last situation the cost picture will be quite varied. In some situations interpretation in 9 languages is needed, in other companies there might be a company culture involving work in the "Company language" or in only some languages. It might be necessary to hire a meeting room and install all the equipment for interpretation. Participants may travel by air and stay two nights in a hotel.

It might also be the case that the undertaking has its own facilities at its disposal or that the meeting can be combined with other meetings.

Another difficult element to calculate is the cost of preparation. In some cases special reports, papers etc. have to be prepared and other preparatory work has to be done. In other cases existing material - in different languages - can be used.

Taking these elements into account a theoretical calculation based on doubtful assumptions seems not very useful. Still taking as a basis of calculation figures used for meetings organised by European institutions, a meeting of 30 experts coming from most Member states with interpretation in a number of languages will cost some tens of thousands of ECU's. But in such a case this Community wide company will have at least some thousands of workers in the Community. Therefore the wage cost per worker will increase by at maximum 10 ECU per year. In most cases it can be expected that the wage cost increase per worker will be less.

It can be said that such a small increase is necessary as a complement of the process of concentration of undertakings brought about by the completion of the internal market.

It should be added that labour costs themselves are not the decisive factor for competitiveness but unit labour costs taking into account productivity. When - as the Commission expects - industrial relations are improved by the setting up of a E.W.C. and increased involvement of the employees, then this might lead to an increase in productivity which will more than compensate for this marginal cost increase.

(b) employment ?

This impact is hardly measurable.

VII. Have the relevant representative organizations been consulted ?

A comprehensive consultative process has been carried out with both sides of industry and some of the observations and comments of the parties consulted have been incorporated into the final draft of this proposal.

ISSN 0254-1475

COM(90) 581 final

DOCUMENTS

EN

04

Catalogue number : CB-CO-91-034-EN-C
ISBN 92-77-69138-7

PRICE	1 - 30 pages: 3.50 ECU	per additional 10 pages: 1.25 ECU
-------	------------------------	-----------------------------------

Office for Official Publications of the European Communities
L-2985 Luxembourg