

COMMON POSITION (EC) No 32/94 adopted by the Council on 18 July 1994 with a view to adopting Council Directive 94/. . ./EC of . . . 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

COMMON POSITION (EC) No 32/94 adopted by the Council on 18 July 1994 with a view to adopting Council Directive 94/. . ./EC of . . . 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 (94/C 244/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on Social Policy annexed to Protocol 14 on Social Policy annexed to the Treaty establishing the European Community, and in particular Article 2 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure referred to in Article 189c of the Treaty (3),

(1) Whereas, on the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Portuguese Republic (hereinafter referred to as the Member States), desirous of implementing the Social Charter of 1989, have adopted an Agreement on Social Policy;

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

(3) Whereas, pursuant to Article 1 of the Agreement, one particular objective of the Community and the Member States is to promote dialogue between management and labour;

(4) Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States; 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';

(5) Whereas the Council, despite the existence of a broad consensus among the majority of Member States, was unable to act on the 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 (4), as amended on 3 December 1991 (5);

(6) 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 Community-scale undertakings and Community-scale groups of undertakings;

(7) Whereas the Commission, considering after this consultation that Community action was advisable, has again consulted management and labour on the context of the planned proposal, pursuant to Article 3 (3) of the said Agreement, and management and labour have presented their opinions to the Commission;

(8) Whereas, following this second phase of consultation, management and labour have not informed the Commission of their wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 4 of the Agreement;

(9) Whereas the functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, takeovers, joint ventures and, consequently, a transnationalization of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in

two or more Member States must inform and consult the representatives of those of their employees that are affected by their decisions;

(10) Whereas procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees; whereas this may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings;

(11) Whereas appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed;

(12) 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, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees;

(13) Whereas it is accordingly necessary to have a definition of the concept of controlling undertaking relating solely to this Directive and not prejudging definitions of the concepts of group or control which might be adopted in texts to be drafted in the future;

(14) Whereas the mechanisms for informing and consulting employees in such undertakings or groups must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States;

(15) 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 group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances;

(16) Whereas, however, provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations;

(17) Whereas, moreover, employees' representatives may decide not to seek the setting-up of a European Works Council or the parties concerned may decide on other procedures for the transnational information and consultation of employees;

(18) Whereas, without prejudice to the possibility of the parties deciding otherwise, the European Works Council set up in the absence of agreement between the parties must, in order to fulfil the objective of this Directive, be kept informed and consulted on the activities of the undertaking or group of undertakings so that it may assess the possible impact on employees' interests in at least two different Member States; whereas, to that end, the undertaking or controlling undertaking must be required to communicate to the employees' appointed representatives general information concerning the interests of employees and information relating more specifically to those aspects of the activities of the undertaking or group of undertakings which affect employees' interests; whereas the European Works Council must be able to deliver an opinion at the end of that meeting;

(19) Whereas certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible;

(20) Whereas the information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States, by its representative agent, to be designated if necessary in one of the Member States or, in the absence of such an agent, by the

establishment or controlled undertaking employing the greatest number of employees in the Member States;

(21) Whereas special treatment should be accorded to Community-scale undertakings and groups of undertakings in which there exists, at the time when this Directive is brought into effect, an agreement, covering the entire workforce, providing for the transnational information and consultation of employees;

(22) Whereas the Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive,

HAS ADOPTED THIS DIRECTIVE:

SECTION I GENERAL

Article 1

Objective

1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5 (1), with the purpose of informing and consulting employees under the terms, in the manner and with the effects laid down in this Directive.

3. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2 (1) (c) comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2 (1) (a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.

4. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

5. Member States may provide that this Directive shall not apply to merchant navy crews.

Article 2

Definitions

1. For the purposes of this Directive:

(a) 'Community-scale undertaking' means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States,
- at least two group undertakings in different Member States, and
- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

(d) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;

(e) 'central management' means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

(f) 'consultation` means the exchange of views and establishment of dialogue between employees' representatives and central management or any other more appropriate level of management;

(g) 'European Works Council` means the council established in accordance with Article 1 (2) or the provisions of the Annex, with the purpose of informing and consulting employees;

(h) 'special negotiating body` means the body established in accordance with Article 5 (2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1 (2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

Article 3

Definition of 'controlling undertaking`

1. For the purposes of this Directive, 'controlling undertaking` means an undertaking which can exercise a dominant influence over another undertaking ('the controlled undertaking`) by virtue, for example, of ownership, financial participation or the rules which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking, an undertaking directly or indirectly:

(a) holds a majority of that undertaking's subscribed capital; or

(b) controls a majority of the votes attached to that undertaking's issued share capital; or

(c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment 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.

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking` with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (6).

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. 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 that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

SECTION II ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

Article 4

Responsibility for the establishment of a European Works Council or an employee information and consultation procedure

1. The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure, as provided for in Article 1 (2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2 above, shall be regarded as the central management.

Article 5

Special negotiating body

1. In order to achieve the objective in Article 1 (1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

(a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

(b) The special negotiating body shall have a minimum of three and a maximum of 17 members.

(c) In these elections or appointments, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,
- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(d) The central management and local management shall be informed of the composition of the special negotiating body.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

For the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened. Such a decision shall stop the procedure to conclude the agreement referred to in Article 6.

Where such a decision has been taken, the provisions in the Annex shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 6

Content of the agreement

1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1 (1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 between the central management and the special negotiating body shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council;

(d) the venue, frequency and duration of meetings of the European Works Council;

(e) the financial and material resources to be allocated to the European Works Council;

(f) the duration of the agreement and the procedure for its renouation.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of the Annex.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

Article 7

Subsidiary requirements

1. In order to achieve the objective in Article 1 (1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide, or

- where the central management refuses to commence negotiations within six months of the request referred to in Article 5 (1), or

- where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for

in Article 5 (5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in the Annex.

SECTION III MISCELLANEOUS PROVISIONS

Article 8

Confidential information

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorized to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them. A Member State may make such dispensation subject to prior administrative or judicial authorization.

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions.

Article 9

Operation of European Works Council and information and consultation procedure for workers
The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

Article 10

Protection of employees' representatives

Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6 (3) shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6 (3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

Article 11

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of

whether or not the central management is situated within its territory.

2. Member States shall ensure that the information on the number of employees referred to in Article 2 (1) (a) and (c) is made available by undertakings at the request of the parties concerned by the application of this Directive.

3. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

4. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

Article 12

Link between this Directive and other provisions

1. This Directive shall apply without prejudice to measures taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (7), and to 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 (8).

2. This Directive shall be without prejudice to employees' existing rights to information and consultation under national law.

Article 13

Agreements in force

1. Without prejudice to paragraph 2, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, on the date laid down in Article 14 (1) for the implementation of this Directive or the date of its transposition in the Member State in question, where this is earlier than the abovementioned date, there is already an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.

2. When the agreements referred to in paragraph 1 expire, the parties to those agreements may decide jointly to renew them.

Where this is not the case, the provisions of this Directive shall apply.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than . . . (9*) or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 15

Review by the Commission

Not later than . . . (10**), the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular, examine

whether the workforce-size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary.

Article 16

This Directive is addressed to the Member States.

Done at . . .

For the Council

The President

(1) OJ No C 135, 18. 5. 1994, p. 8.

(2) Opinion delivered on 1 June 1994 (not yet published in the Official Journal).

(3) Opinion of the European Parliament of 4 May 1994 (not yet published in the Official Journal), Council common position of . . . (not yet published in the Official Journal) and Council Decision of . . . (not yet published in the Official Journal).

(4) OJ No C 39, 15. 2. 1991, p. 10.

(5) OJ No C 336, 31. 12. 1991, p. 11.

(6) OJ No L 395, 30. 12. 1989, p. 1.

(7) OJ No L 48, 22. 2. 1975, p. 29. Regulation as last amended by Directive 92/56/EEC (OJ No L 245, 26. 8. 1992, p. 3).

(8) OJ No L 61, 5. 3. 1977, p. 26.

(9*) Two years after the adoption of this Directive.

(10**) Six years after the adoption of this Directive.

ANNEX

SUBSIDIARY REQUIREMENTS referred to in Article 7 of the Directive

1. In order to achieve the objective in Article 1 (1) of the Directive and in the cases provided for in Article 7 (1) of the Directive, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale 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 undertakings or groups of undertakings referred to in Article 4 (2), the competence of the European Works Council shall be limited to those matters concerning all their establishments or group undertakings situated within the Member States or concerning at least two of their establishments or group undertakings situated in different Member States.

(b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The selection or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice.

(c) The European Works Council shall have a minimum of three members and a maximum of 30. Where its size so warrants, it shall elect a select Committee from among its members, comprising at most three members.

It shall adopt its own rules of procedure.

(d) In the election or appointment of members of the European Works Council, it must be ensured:

- firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,
- secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.

(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council.

(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 of the Directive or to continue to apply the subsidiary requirements adopted in accordance with this Annex.

Articles 6 and 7 of the Directive shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 6 of the Directive, in which case 'special negotiating body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organization, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

3. Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select Committee or, where no such Committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the measures in question shall also have the right to participate in the meeting organized with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select Committee, where necessary enlarged in accordance with the second paragraph of point 3 above, shall be entitled to meet without the management concerned being present.

5. Without prejudice to Article 8 of the Directive, the Members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Annex.

6. The European Works Council or the select Committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

7. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European works council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organizing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only.

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

1. On 27 April 1994 the Commission submitted a proposal based on Article 2 (2) of the Agreement on Social Policy attached to Protocol 14 on Social Policy annexed to the EC Treaty, 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.

The proposal was based on the compromise text on which broad consensus was reached at the meeting of the Council (Labour and Social Affairs) on 12 October 1993.

2. The European Parliament and the Economic and Social Committee delivered their opinions on 4 May and 1 June 1994 respectively.

In the light of these opinions, the Commission submitted an amended proposal on 3 June 1994.

3. On 18 July 1994 the Council adopted its common position in accordance with Article 189c of the Treaty.

II. Objective

The proposed Directive provides that, following agreement between central management and a special negotiating body, a European Works Council or a procedure for informing and consulting employees should be established in every Community-scale undertaking (an undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States) and in every Community-scale group of undertakings, in order to improve employees' rights to information and consultation.

III. Analysis of the common position

1. Chief amendments to the Commission proposal

(a) Drafting amendments

The common position contains a number of drafting changes designed to clarify the scope of the text.

In particular, the Council has taken care to specify, by additions to Articles 1, 2, 4 to 7 and point 1 of the Annex, that the proposed Directive is concerned only with the information and consultation of workers referred to in Article 2 (1) of the Agreement on social policy.

The Council has also preferred to keep to the generally accepted expression 'European Works Council', rejecting the expression 'European Committee'.

(b) Other amendments

The Council has made other changes to the text, as follows:

Article 1 (5) (new)

The new provision allows Member States to provide that the Directive does not apply to merchant navy crews.

This provision goes back to Article 2 (3) as proposed by the Commission and an addition to Article 4 agreed in Council on 12 October 1993.

Article 2 (1) and (c) third indent

The common position raises the second threshold for the number of employees - part of the definition of a Community-scale undertaking or a Community-scale group of undertakings - from 100 to 150 employees.

The figure of 150 is in line with the wishes expressed by most delegations and already featured in the compromise text of 12 October 1993.

Second subparagraph of Article 5 (6) and third subparagraph of point 7 of the Annex

The Commission proposed that the special negotiating body and the European Works Council should be able to obtain assistance from experts of their choice (second subparagraph of Article 5 (4) and point 6 of the Annex).

In order to reconcile the interest of employees' representatives in being able to call on experts of their choice and undertakings' interest in avoiding high costs, the common position allows Member States to lay down budgetary rules regarding the operation of the special negotiating body and of the European Works Council, in particular to limit funding to cover one expert only.

Article 7 (1)

The common position increases from two to three years the time allowed for negotiations between central management and the special negotiating body in order to reach agreement in accordance with Article 6.

The Council felt that giving more time would increase the chances of concluding an agreement.

Article 8 (3) (new)

The new provision gives Member States the option of laying down particular provisions for the central management of undertakings in their territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions.

This provision, which is limited in scope, was already contained in the compromise text of 12 October 1993.

Second subparagraph of Article 11 (4)

The Commission proposed in the first subparagraph of Article 11 (4) that where Member States apply Article 8 on confidential information, they should make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

The new provision specifies that such procedures may include provisions designed to protect the confidentiality of the information concerned in the appeal.

Article 12 (3) (deleted)

The Commission proposed that the Directive should not affect Member States' right to apply or introduce laws, regulations or administrative provisions which are more favourable to employees or to allow or give priority to the application of collective agreements which are more favorable to employees.

The Council did not consider it appropriate to adopt the proposed paragraph 3 in the Directive.

Article 15

The common position reduces from seven to six years the time allotted to the Commission for review of the operation of the Directive (and not to five years as the European Parliament wanted).

The Council felt the Commission should be able to make a full study of the implementation of the Directive within the period adopted.

Annex, point 1 (c)

The common position reduces the maximum number of members of the select committee (previously an 'executive' Committee) from five to three.

This amendment is the corollary of the new second subparagraph of point 3 of the Annex, to the effect that those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the measures affecting employees' interests have the right to participate in the meeting organized with the select Committee.

Annex, first subparagraph of point 4 (new)

The common position allows Member States to lay down rules on the chairing of information and consultation meetings.

This option should make it easier to adapt the provisions of the proposed Directive to the various national systems.

2. Amendments proposed by the European Parliament

(a) Amendments accepted by the Commission

In its amended proposal, the Commission has accepted amendments Nos 1, 7, 12, 45, 20, 24, 29 and 47 proposed by the European Parliament.

Generally speaking the Council welcomed these amendments.

It has taken on board amendments Nos 1, 12, 45 (in part) and Nos 24 and 47 (with one drafting change).

It no longer sees any need to follow amendment No 20, in view of the arrangement described in 1 (b) above regarding point 1 (c) of the Annex.

As regards amendment No 7, it has taken into consideration the definition referred to in Article 2 (1) (d).

The Council has not followed amendment No 29, in view of all the different factors contained in point 3 of the Annex.

(b) Amendments not accepted by the Commission

The Council was not able to consider amendments Nos 39 and 48 on the quantitative thresholds and the scope of the Directive.

Nor was it able to take on board amendments Nos 6 and 10 designed to make implementation of the provisions of the Annex compulsory if this was agreed between management and labour.

It also decided not to interfere with the procedures for electing or appointing employees' representatives or forming their positions (see amendments Nos 51, 35, 52, 21 and 26), as it felt the Member States should have appropriate discretion in this field.

Lastly, the Council has not adopted the other amendments proposed by the European Parliament which were not accepted by the Commission (Nos 43, 8, 9, 33, 44, 14, 16, 18, 22, 34, 25 and 46).

IV. Conclusions

In the Council's opinion, the common position is a balanced text, geared to the information and consultation needs of employees in Community-scale undertakings and Community-scale groups of undertakings.

The common position is a balanced one in that:

- the arrangements adopted seek to take account of the points of view of all the parties concerned, in particular employers' and employees' organizations at Community level;
- on a subject of high political sensitivity, the text constitutes a compromise acceptable to the Member States while still retaining the key elements of the Commission proposal.

The common position is geared to people's needs in that it contains clear objectives and simple and efficient implementation procedures.

In compliance with the principle of subsidiarity, it leaves Member States and the two sides of industry sufficient leeway to seek and find the arrangements that suit them best.

