

PAPER

on

CONSULTATION OF MANAGEMENT AND LABOUR AT COMMUNITY LEVEL ON
INFORMATION AND CONSULTATION PROCEDURES
IN COMMUNITY-SCALE UNDERTAKINGS
AND GROUPS OF UNDERTAKINGS

INTRODUCTION

1. 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, wishing to continue along the path laid down in the 1989 Social Charter, have adopted among themselves an Agreement on Social Policy.

The coming into force the 1 November 1993 of the Treaty on European Union and particularly its Protocol on Social Policy and annexed Agreement allows the Council on a proposal from the Commission to adopt by qualified majority, directives relating to the field of information and consultation of workers (Article 2, third indent of the Agreement on Social Policy). However, before submitting proposals in the social field, the Commission shall consult management and labour on the possible direction of Community Action (Article 3(2) of the Agreement).

2. This Paper aims to consult management and labour at Community level on the possible direction of Community Action in the field of information and consultation procedures within European-scale undertakings and groups of undertakings operating in the Member States.
3. The Community Charter of Basic Social Rights for Workers envisages, in Articles 17 and 18, procedures of information, consultation and participation of workers, particularly within undertakings or groups of undertakings operating in more than one Member State.

In its Communication concerning its Action Programme relating to the implementation of the Community Charter, the Commission announced that it would undertake Community measures on procedures for the information, consultation and participation of the workers of European-scale undertakings.

4. On 5 December 1990 the Commission adopted a 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⁽¹⁾.

The adoption of the EWC Proposal was preceded by a process of consultation with management and labour at Community level; to this effect meetings were held: with UNICE, CEEP and ETUC on 11 September 1990 and 18 October 1990. The Joint Committees on transport and fisheries were consulted on 22 September 1990; the Joint Committee on agriculture on 5 November 1990 and different sectors (textile, footwear, banking, insurance and commerce) were also consulted on 9 and 12 November 1990.

⁽¹⁾ OJ No C 39/10 of 15.02.91

5. The Economic and Social Committee rendered a favourable Opinion on 18 March 1991 and the European Parliament adopted its Opinion on 10 July 1991, including 43 amendments to the Commission's original proposal.
6. On 16 September 1991 the Commission, pursuant to Article 149 of the EEC Treaty submitted to the Council an amended proposal⁽²⁾ incorporating some of the amendments proposed by Parliament as well as a number of suggestions put forward by the Economic and Social Committee.
7. The European Works Council Proposal and amended proposal were subject to a long and intense debate within the Council of Ministers in the course of fourteen meetings at Working Group level, five at the Coreper and five at Council of Ministers level.

In its 1691 session which took place the 12 October 1993, the Council of Ministers (Employment and Social Affairs) did not reach the unanimity vote required by Article 100 of the EECT for the adoption of the directive. The Council did, however, acknowledge the existence of a large consensus between most of the delegations on the text submitted by the Belgian Presidency (DOC. 8709/93 -SOC 255).

The Council took also notice of the Commission's intention to initiate from 1 November 1993 the procedure laid down in the Agreement on Social Policy annexed to the Social Protocol on the basis of both the Directive draft submitted by the Presidency and the considerations made in the course of the Council debate.

GENERAL CONSIDERATIONS

8. The dismantling of internal frontiers brought about by the completion of the internal market, as well as the globalisation of the economy and technological change, is already resulting in major corporate reorganisations within the Community involving a significant increase in mergers, takeovers, relocations, transfers and ventures leading to a growing concentration in company ownership. The total number of acquisitions (majority holdings or mergers) made by the top 1 000 European industrial enterprises is constantly increasing. A recent Commission Report⁽³⁾ shows that the number of such operations doubled every three years during the eighties, rising from 29 in 1983 to 257 in 1990.
9. However, whereas firms have become "European" by expanding their operations and setting up subsidiaries or establishments in several Member States, their employees continue to be informed and consulted in a segmented fashion, in accordance with national procedures which have effect only within the legal framework of the country in question, only benefit the employees of that country and generally relate only to activities carried out within national boundaries.

It may therefore be argued that even the most developed system of employee involvement within an individual Member State cannot mirror the transnationalisation of industry. Consequently, it cannot be acceptable that while businesses are free to operate unfettered across the European Community, their workforces who may be affected by their actions remain confined and reliant on whatever systems of information and consultation may be provided under domestic law and industrial relations practice. Overcoming the limitations of national laws by providing procedures for informing and consulting employees in

⁽²⁾ OJ No C 336 of 31.12.91

⁽³⁾ Twentieth Report on Competition Policy

transnational undertakings and groups of undertakings operating within the Community requires, in the opinion of the Commission, Community action on this matter. The Commission believes that the multiplication of mergers, takeovers, transfers, relocations and concentration of undertakings in general arising out of the completion of the single market, the globalisation of the economy and technological change makes it advisable to impose the information and consultation procedures of employees of European-scale undertakings or groups of undertakings.

It is therefore evident, given the dimension, scope and implementation requirements of the tasks involved, that a Community action in this field would be more effective than actions individually undertaken by Member States.

10. The employees' entitlement to information and consultation on matters affecting them is, on the other hand, a fundamental right. The Community Charter of the Fundamental Social Rights of Workers states that "information and consultation for workers must be developed along appropriate lines especially in companies or groups of companies having establishments or companies in two or more Member States," (point 17). Furthermore, the existence of employees' representatives is a common feature in the industrial relations systems of the Member States which provide for information and consultation procedures on national corporate restructuring.

The European Social Partners are also of the opinion⁽⁴⁾ that procedures for informing and consulting employees facilitate the success of businesses and are beneficial to both companies and their workforces. That is also the view of all Member States of the Community. Differences exist, however, as to the voluntary or statutory nature of such procedures.

PROPOSED POINTS FOR DISCUSSION

11. In the light of these considerations, the Commission - having regard to Article 2(2) of the Agreement on Social Policy annexed to the Protocol on Social Policy, to the outcome of the discussions within the Council of Ministers on the European Works Council amended Proposal and in particular to the progress made in the Council of Ministers (Employment and Social Affairs) of 12 October 1993 and on the development of information and consultation practices in an increasing number of multinational undertakings - continues to believe that Community action in the field of procedures of information and consultation of employees within multinational undertakings or groups of undertakings is necessary.

Before the Commission considers whether to submit to the Council of Ministers a proposal for a Council Directive on the basis of Article 2(1), third indent and 2(2) of the Agreement on Social Policy concluded between the Member States of the European Community, with the exception of UK, annexed to the Protocol on Social Policy which is annexed to the Treaty establishing the European Community, it wishes to seek again the view of the Social Partners on this issue.

The key elements should be:

- (i) the scope of the proposal would be limited to procedures of information and consultation of employees in large undertakings or groups of undertakings operating in at least two Member States;

⁽⁴⁾ Joint Opinion of 06.03.87 on information and consultation on new technologies

- (ii) the information and consultation procedures would be effected through the setting up of adequate mechanisms at group level or at the level of the multi-plant undertaking or through the establishment of alternative procedures;
 - (iii) the powers and mode of operation of such mechanisms or the content of the alternative procedures would be laid down by agreement concluded by the central management and a delegation of employees. The content of such an agreement would not be subject to statutory rules;
 - (iv) should negotiations not lead to an agreement, a set of statutory information and consultation requirements would apply;
12. In this context the Commission, pursuant to Article 3(2) of the Agreement on Social Policy annexed to the Social Protocol, requests your written opinion on the possible direction of Community action in the field in question and, in particular, on the opportuneness, convenience and viability of:
- (i) undertaking Community Action in the field of procedures of information and consultation of employees within multinational undertakings and groups of undertakings;
 - (ii) scope for the negotiation of an agreement between the Social Partners under Article 4;
 - (iii) proposing a legal instrument on the issue under Article 2(2) of the abovementioned Agreement on Social Policy;
 - (iv) limiting the proposal's scope to large undertakings or groups of undertakings operating in more than one Member State;
 - (v) channelling the information procedures through an adequate mechanism or through alternative procedures;
 - (vi) determining by agreement the powers, competence and mode of operation of the above-mentioned mechanism or the content and modalities of application of the information and consultation procedure and, in the absence of an agreement, laying down statutory requirements which should be complied with.
13. If after this consultation the Commission considered Community action advisable, it would, pursuant to Article 3(3) of the Agreement on Social Policy, again consult management and labour at Community level on the content of the envisaged proposal. In the course of such a consultation, management and labour may inform the Commission of their wish to initiate negotiations with a view to concluding an agreement on the issue in question (Article 3(4) of the Agreement on Social Policy).

To this end, would you inform the Commission, along with your opinion on matters referred to under point 12, of your willingness to enter the second phase of consultation with a view to initiating at Community level the negotiations envisaged by the above-mentioned provision.