SECOND-STAGE CONSULTATION

Consultation of management and labour at Community level
on information and consultation procedures in Community-scale
undertakings and groups of undertakings pursuant to
Article 3(3) of the Agreement on Social Policy

1. On 17 November 1993 the Commission decided to initiate the procedure laid down in
the Agreement on Social Policy annexed to the Protocol on Social Policy, on the issue
of procedures for informing and consulting employees in Community-scale
undertakings and groups of undertakings.

To that effect, a six week first stage consultation was opened from 18 November 1993
by submitting to management and labour at Community level a first consultation
document on the possible direction of Community action. The above-mentioned
document outlined the historic background of the issue in question examined the scope
of the problem and put forward a series of questions concerning the scope and
contents of a potential Community instrument.

2. The associations, federations and confederations of employers and trade unions at
Community level consulted, gave their general responses to the Commission. A
summary analysis of the social partners' reactions to the Commission's first
consultation document is given in Annex I.

The Commission is glad to note that a meaningful consensus on the general principles
inspiring a future Community action on employees' transnational information and
consultation procedures is beginning to emerge. In effect both management and
labour at Community level share the opinion that information of employees are part of
good management practice, facilitate the success of businesses and are beneficial to
both companies and their workforces.

Secondly, both the ETUC and its trade union committees on the one hand and the two
interprofessional employers organisations (UNICE and CEEP) together with the
sectoral organisations (European Federation of Banks, European Association of
Cooperative Banks and European Construction Industry Federation) on the other,
could consider a Community legal instrument on flexible information and consultation
mechanisms within large multinational undertakings and groups of undertakings. The
information and consultation arrangements would be laid down by agreement between
the parties who should be free to set up the procedures best suited to their specific
situations and in the absence of an agreement a set of subsidiary minimum rules on
information and consultation would apply.

3. In the light of the general considerations made in points 8 to 10 of the first consultation
document, the historic background referred to in points 3 to 7 of the latter, and in
particular, the views expressed by the social partners in the course of the first-stage
consultation, the Commission considers that in order to ensure the operation of
appropriate mechanisms for informing and consulting employees in Community-scale
undertakings and groups of undertakings a response at Community level appears
necessary.
4. The Commission, pursuant to Article 3(3) of the Agreement on Social Policy, has decided to consult management and labour at Community level on the content of the envisaged proposal including the legal basis upon which that proposal could be founded.

To this end the Commission has undertaken further work and on the basis of the progress made by the European Works Council dossier in the Council of Ministers and the representations made by the social partners has drafted a paper - enclosed as Annex II - on the possible content of the envisaged proposal. The aims of that paper are to facilitate the second-stage consultation, during the course of which the social partners should either forward the Commission an opinion or, where appropriate, a recommendation or inform it of their wish to initiate the process laid down in Article 4 of the above-mentioned Agreement. The social partners to be consulted are referred to in Annex III.

5. In determining the content of the envisaged proposal, the Commission has taken into account the Belgian text as submitted to the Council of Ministers (Employment and Social Affairs) of 12 October 1993 by the Belgian Presidency, as well as the representations made by the social partners in the course of the first-stage consultation.

The text submitted to the consultation of the social partners - Annex II - respects the principles and essential elements of the Belgian text, which is favoured by the ETUC and its trade union committees, but incorporates a higher degree of flexibility, ensures a greater respect for the autonomy of the parties concerned, lays down more stringent requirements for the triggering off of the procedure, strengthens the confidentiality clause and weakens the Annex's consultation requirements, notably the number of consultation meetings.

In the light of the foregoing, the title of the proposal has been changed, the term "European Works Council" deleted and the minimum rules imposed upon the agreement referred to in Article 6 and upon the existing information and consultation agreements mentioned in Article 13 have been taken away.

Furthermore the new proposal applies only to the eleven Member States which have signed the Agreement on Social Policy and which would therefore be considered to be, by the Directive's Preamble, the "Member States" within the meaning of the future instrument.

The legal basis would be Article 2(2) of the Agreement on Social Policy.

6. In this context the Commission, pursuant to Article 3(3) of the Agreement on Social Policy annexed to the Social Protocol requests your written opinion or recommendation on the proposed content of the envisaged instrument and in particular on:

(i) the general approach adopted by the Commission,
(ii) the draft proposal contained in Annex II including its articles and main provisions,
(iii) the proposed legal basis,
(iv) the threshold requirements laid down by Article 2(i)(a) and (c) and Article 2(2);
Article 5(1); Articles 5(5) and Article 6(4),

(v) the one year negotiation period envisaged by in Article 7(1),

(vi) the confidentiality clause provided for by Article 8,

(vii) the maintenance of existing information and consultation agreements covering European-scale undertakings or groups of undertakings, and

(viii) the subsidiary rules enshrined in the Annex, in particular those prescribing composition, competence and the information and consultation requirements.

If in the course of the present consultation phase management and labour do not inform the Commission of their wish to initiate negotiations on the issue or if having initiated negotiations these do not conclude in agreement within the period of nine months, which may jointly be extended, the Commission may submit to the Council of Ministers a proposal for a Council Directive on the basis of Article 2(2) of the Agreement on Social Policy.

8. The second-stage consultation will last for a period of six weeks starting from the date of receipt of this document.

ANNEX I Summary analysis of social partners' reactions to the Commission first consultation document.

ANNEX II Content of the envisaged proposal.

ANNEX III List of social partners to be consulted in the second-stage consultation.
SUMMARY OF CONTRIBUTIONS RECEIVED
DURING THE FIRST CONSULTATION OF SOCIAL PARTNERS

1. The Commission of the European Communities consulted the social partners on the basis of Article 3(2) of the Agreement on Social Policy appended to the Maastricht Social Protocol on the topic referred to.
The organisations listed in Point II of this Annex sent contributions to the Commission whose content is summarised below.

a) On the feasibility and advisability of Community action on worker information and consultation procedures in multinational groups and companies, all the organisations consulted agreed that there was a need for appropriate employee consultation and information machinery in transnational concerns. But there is a difference of approach between the employers' organisations and the trade union confederations: the latter implicitly endorse the principles and rules set out in the text which the Belgian Presidency submitted to the Member States at the Employment and Social Affairs Council on 12 October 1993, and which met with a broad consensus of the Eleven, whereas the employers' organisations prefer a broader voluntary approach which deviates in some respects from the proposals made in the text (see below). Of the employers' organisations consulted, HOTREC, the ACE, the UEAPME and Eurocommerce believe that Community action in this field is not appropriate.

b) On the possibilities for negotiating an agreement between the social partners, in accordance with Article 4 of the Agreement on Social Policy, UNICE and CEEP were willing to begin negotiations with ETUC, while other employers' organisations preferred not to state their position until the second stage of consultation. ETUC did not pronounce on this topic. The CEC said that they were open to negotiations, particularly within the scope of Article 2.2 of the social agreement (Directive). UEAPME has declared that - were the Commission to decide that Community action was necessary - an agreement between the social partners was the most appropriate solution.

c) On the feasibility and advisability of proposing Community legislation under Article 2(2) of the Agreement on Social Policy, ETUC's verdict was favourable, taking the view, as mentioned above, that the proposal should be based on the Belgian Presidency's text. In general, the employers' organisations expressed a preference for a Recommendation, but were prepared to accept a more binding act of Community legislation (Directive) as a last resort. The exceptions were HOTREC, the ACE and UEAPME who were opposed to any form of Community legislation, and EUROCOMMERCE, which would only accept a Recommendation.

d) On the subject of restricting the scope of proposals to large concerns or groups of companies operating in several Member States, the organisations consulted were generally in favour, but did not mention any size limits or other conditions, apart from UEAPME and EUROCOMMERCE, which suggested a threshold of 10 000 full-time workers over the whole group and at least 1 000 in at least two Member States. The CEC would like to clarify the proposal's field of application to small and medium
transnational companies.

e) On the subject of channelling information and consultation procedures via appropriate machinery or by way of alternative procedures, the employers generally felt that procedures should be adapted to suit the real situation and the structure of the company or group and based on voluntary cooperation, without binding standard procedures laid down by Community legislation. Although there was broad acceptance that minimum binding requirements would have to be laid down if no agreement could be reached, it was felt that any requirements should be sufficiently flexible to safeguard the abovementioned principle.

f) On the advisability of concluding an agreement on the powers, area of competence and mode of functioning of the of the information and consultation machinery, or, in the absence of an agreement, laying down the minimum requirements, ETUC and the CEC implicitly endorsed the principles and rules outlined in the Belgian Presidency text; UNICE and CEEP emphasised that information and consultation arrangements should depend on voluntary cooperation, and the agreements reached should not form part of rules laid down in the statutes. Since UNICE, CEEP and the other employers' organisations listed in the Annexe, apart from HOTREC and EUROCOMMERCE, accepted that minimum requirements could be laid down in the absence of an agreement, the Community legislation should be sufficiently flexible in this respect to allow companies and groups to adapt the procedures to their structure. According to UNICE, these minimum requirements should state that:

- information and consultation of workers or their representatives is carried out by the employer, especially at local level;
- the employer is obliged to provide information at least once a year on the functioning of the company or group;
- consultation takes place on all transnational matters liable to have serious consequences for workers' interests;
- CEEP wishes the general information and consultation obligations to include in addition the obligation to hold a dialogue with workers' representatives on all topics of general interest liable to have consequences for the personnel of two or more establishments in different Member States of the European Union.
II. LIST OF ORGANISATIONS WHICH SENT CONTRIBUTIONS TO THE COMMISSION ON THE CONSULTATION DOCUMENT

Association of Cooperative Banks of the EC

CEC (European federation of managerial staff)

CEEP (European Centre of Enterprises with Public Participation)

ECSA (European Community Shipowners Association)

Employers' Group of the Committee of Agricultural Organizations in the EEC (COPA)

ETUC (European Trade Union Confederation)

EUROCOMMERCE (Retail, Wholesale and International Trade Representation to the EC)

European Federation of Banks

FIEC (European Construction Industry Federation)

HOTREC (Committee of the Hotel and Restaurant Industry in the EC)

UEAPME (European Union of Crafts and Small and Medium-Sized Enterprises)

UNICE (Union of Industrial and Employers' Confederations of Europe)

European Savings Banks Group

IRU (International Road Transport Union)

ACI Europe (Airports Council International)

Euro-Fiet (European Regional organisation of the International Federation of Commercial, Clerical, Professional and Technical Employees)

Community of European Railways

ACE (The European Community's Independent Airline Association)

AEA (Association of European Airlines)