

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community

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PARLIAMENT AND OF THE COUNCIL

of 11 March 2002

establishing a general framework for informing and consulting employees in the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

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

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

Having regard to the opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure referred to in Article 251⁽⁴⁾, and in the light of the joint text approved by the Conciliation Committee on 23 January 2002,

Whereas:

- (1) Pursuant to Article 136 of the Treaty, a particular objective of the Community and the Member States is to promote social dialogue between management and labour.
- (2) 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.
- (3) The Commission consulted management and labour at Community level on the possible direction of Community action on the information and consultation of employees in undertakings within the Community.
- (4) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour on the contents of the planned proposal; management and labour have presented their opinions to the Commission.
- (5) Having completed this second stage of consultation, management and labour have not informed the Commission of their wish to initiate the process potentially leading to the conclusion of an agreement.
- (6) The existence of legal frameworks at national and Community level intended to ensure that employees are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting

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employees from being taken and made public without adequate procedures having been implemented beforehand to inform and consult them.

- (7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.
- (8) There is a need, in particular, to promote and enhance information and consultation on the situation and likely development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the possible anticipatory measures envisaged, in particular in terms of employee training and skill development, with a view to offsetting the negative developments or their consequences and increasing the employability and adaptability of the employees likely to be affected.
- (9) Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work.
- (10) The Community has drawn up and implemented an employment strategy based on the concepts of 'anticipation', 'prevention' and 'employability', which are to be incorporated as key elements into all public policies likely to benefit employment, including the policies of individual undertakings, by strengthening the social dialogue with a view to promoting change compatible with preserving the priority objective of employment.
- (11) Further development of the internal market must be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.
- (12) Entry into the third stage of economic and monetary union has extended and accelerated the competitive pressures at European level. This means that more supportive measures are needed at national level.
- (13) The existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively a posteriori approach to the process of change, neglect the economic aspects of decisions taken and do not contribute either to genuine anticipation of employment developments within the undertaking or to risk prevention.
- (14) All of these political, economic, social and legal developments call for changes to the existing legal framework providing for the legal and practical instruments enabling the right to be informed and consulted to be exercised.
- (15) This Directive is without prejudice to national systems regarding the exercise of this right in practice where those entitled to exercise it are required to indicate their wishes collectively.

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- (16) This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives.
- (17) Since the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the object is to establish a framework for employee information and consultation appropriate for the new European context described above, and can therefore, in view of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (18) The purpose of this general framework is to establish minimum requirements applicable throughout the Community while not preventing Member States from laying down provisions more favourable to employees.
- (19) The purpose of this general framework is also to avoid any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings. To this end, the scope of this Directive should be restricted, according to the choice made by Member States, to undertakings with at least 50 employees or establishments employing at least 20 employees.
- (20) This takes into account and is without prejudice to other national measures and practices aimed at fostering social dialogue within companies not covered by this Directive and within public administrations.
- (21) However, on a transitional basis, Member States in which there is no established statutory system of information and consultation of employees or employee representation should have the possibility of further restricting the scope of the Directive as regards the numbers of employees.
- (22) A Community framework for informing and consulting employees should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.
- (23) The objective of this Directive is to be achieved through the establishment of a general framework comprising the principles, definitions and arrangements for information and consultation, which it will be for the Member States to comply with and adapt to their own national situation, ensuring, where appropriate, that management and labour have a leading role by allowing them to define freely, by agreement, the arrangements for informing and consulting employees which they consider to be best suited to their needs and wishes.
- (24) Care should be taken to avoid affecting some specific rules in the field of employee information and consultation existing in some national laws, addressed to undertakings or establishments which pursue political, professional, organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions.

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- (25) Undertakings and establishments should be protected against disclosure of certain particularly sensitive information.
- (26) The employer should be allowed not to inform and consult where this would seriously damage the undertaking or the establishment or where he has to comply immediately with an order issued to him by a regulatory or supervisory body.
- (27) Information and consultation imply both rights and obligations for management and labour at undertaking or establishment level.
- (28) Administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on this Directive.
- (29) This Directive should not affect the provisions, where these are more specific, of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁽⁵⁾ and of Council Directive 2001/23/EC of 12 March 2001 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 undertakings or businesses⁽⁶⁾.
- (30) Other rights of information and consultation, including those arising from Council Directive 94/45/EEC of 22 September 1994 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⁽⁷⁾, should not be affected by this Directive.
- (31) Implementation of this Directive should not be sufficient grounds for a reduction in the general level of protection of workers in the areas to which it applies,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 2, 5.1.1999, p. 3.](#)
- (2) [OJ C 258, 10.9.1999, p. 24.](#)
- (3) [OJ C 144, 16.5.2001, p. 58.](#)
- (4) Opinion of the European Parliament of 14 April 1999 ([OJ C 219, 30.7.1999, p. 223](#)), confirmed on 16 September 1999 ([OJ C 54, 25.2.2000, p. 55](#)), Council Common Position of 27 July 2001 ([OJ C 307, 31.10.2001, p. 16](#)) and Decision of the European Parliament of 23 October 2001 (not yet published in the Official Journal). Decision of the European Parliament of 5 February 2002 and Decision of the Council of 18 February 2002.
- (5) [OJ L 225, 12.8.1998, p. 16.](#)
- (6) [OJ L 82, 22.3.2001, p. 16.](#)
- (7) [OJ L 254, 30.9.1994, p. 64.](#) Directive as amended by Directive 97/74/EC ([OJ L 10, 16.1.1998, p. 22](#)).