

Labour law: Directives on information and consultation of employees



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Structure

1. What directives deal with employees' rights to information and consultation?
2. Overall context
3. Provisions of the main directives
4. Main issues for transposition
5. Conclusions

1. The main directives on informing and consulting employees

a. Particular situations or issues:

- Collective redundancies (98/59/EC)
- Health and safety issues (89/391/EC)
- Transfers of undertakings (2001/23/EC)

b. Particular types of organisation:

- Community-scale undertakings (94/45/EC 'Works Councils') *
- European Companies ('Societas Europa') (2001/86/EC)*
- European Co-operative Societies (2003/72/EC)*

c. More general application

- Information and Consultation Directive (2002/14/EC)*

2. Overall context

- Every year, 10% of European enterprises are set up and destroyed
- Every day, between 5 000 and 15 000 jobs are created and destroyed on average in each of the Member States
- Change is necessary, but involves costly transformations for the enterprises and employees concerned. More vulnerable workers and regions are hit first
- Europe is facing an unsolved challenge: anticipating, and managing, change more effectively
- COM (2005)120 ('Restructuring')

2.b Overall context

- **Importance of involving employees**
- *"Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices"*

**Charter of fundamental rights of the European Union,
Art.27 – Constitution Art.II-87**

3.1 European Works Councils Directive (94/45/EC)...

- **Only applies to Community-scale undertakings** or groups of undertakings: *(1000/+ employees within EU, and 150/+ in each of two Member States)*
- **Each MS must ensure compliance** by undertakings within its territory (even if central management is located elsewhere).
- Directive aims to 'improve the **right to information & consultation of employees**' in such undertakings (Art 1)
- Consultation = incl. exchange of views and establishing **dialogue** (Art 2)
- Employer **must** facilitate setting up a Works Council, if 100/+ employees, or employees' representatives from at least 2 Member States, so **request**
- Scope, composition, functions and term of office of EWC are to be **negotiated by written agreement: wide flexibility for partners to decide their own rules by agreement**
- A **Special Negotiating Body (SNB)** is set up to negotiate with management (national law decides how members are elected/appointed).....

3.1 ... Works Councils Directive (94/45/EC) ...

- SNB must include minimum 1 employee representative from each MS where undertaking is located
- Obligation on both sides to negotiate *'in a spirit of co-operation with a view to reaching an agreement...'* (Art 5)
- If management refuses to enter negotiations, or negotiations do not reach agreement within 3 years, then automatic provisions apply.** These are provided by MS, but must satisfy (at minimum) the provisions set out in Annex to the Directive.
- Annex requires: I&C, annual written report & meeting with management, on a range of specified topics regarding business progress and prospects; more if relocation/closure/redundancies/
- Annex: Only **Community-scale issues** (minimum: affecting operations in at least 2 MS)
- If employee side terminates negotiations, Annex does not apply: 2 year delay before they can request again

3.1 ..Works Council Directive in practice

- 750 EWCs now in operation
 - about 450 under Article 13
 - about 300 under Article 6
- Agreements cover 13 million employees (about 60% of employees within the scope) and 40% of companies within the scope
- EWCs involve more than 10,000 representatives
- Incorporated into existing industrial relations systems without difficulty.

3.2 The Information & Consultation Directive (2002/14/EC)

- 'New' directive: for transposition within EU by 24 March 2005
- Objective: to establish a *general* framework of minimum I&C requirements
- Applies to *all larger* undertakings or establishments located within the territory of a Member State
- MS may exempt either establishments with fewer than 20 employees in the MS, or undertakings with fewer than 50 employees in the MS
- Sets out *general principles*; *practical arrangements* are to be defined by MS, in such a way as to ensure their effectiveness (no regression)
- Management **must** provide employee representatives with **information** and **consultation** on:
 - recent and probable development of business and of its economic situation,
 - state and probable development of employment within the business, and any threat to employment, or anticipatory measures against such threat
 - any decisions likely to lead to substantial changes in work organisation or contractual relations....

3.2 ...The Information & Consultation Directive (2002/14/EC)

- Information must be given with *appropriate timing, manner and content* to enable employee representatives to adequately prepare for consultation
- **Consultation:**
 - must be appropriate as to timing, method & content
 - includes dialogue: meetings with relevant level of management, formulating an opinion, and obtaining reasons for management's reply
 - must be 'with a view to reaching agreement', on certain decisions (those within the employer's power which are likely to lead to substantial changes in work organisation or contractual relations)
- Flexibility for alternative arrangements agreed between social partners
- Exemption for information which is objectively damaging to the business (MS to formulate)
- Also: defence of rights, protection of confidentiality

3.3 Directive 2001/86/EC (European Company/Societas Europa) ...

- **Only applies** to businesses established as a 'European Company' (SE/Societas Europa) under Council Regulation EC 2157/2001
- Each MS is responsible for compliance by SEs with subsidiaries, participating companies or a registered office in its territory (Art 12).
- Only applies to transnational matters
- No employee request is needed: management **must** establish arrangements for informing and consulting employees (Special Negotiating Body). Similar procedure to Works Council Directive.
- Principle: agreement between companies and workers' representatives on employees' involvement (information, consultation, participation)
- Negotiation in a spirit of co-operation with a view to reaching written agreement on specified range of matters
- Where no agreement can be reached, automatic provisions apply. These are provided by MS, but must satisfy (at minimum) the provisions set out in Annex to the Directive.

3.3 ... Directive 2001/86/EC (European Company/Societas Europa)

Standard rules:

- Right to be informed and consulted and to meet the competent organ of the SE at least once a year.
- In case of exceptional circumstances which significantly affect the employees' interests, right to meet and to be informed and consulted.
- Right to a further meeting if the competent organ does not follow the employees' opinion
- Right to participate in the management/supervisory organs of the SE, if such a right existed before the establishment of the SE

'New' Directive: for transposition within EU by 8 October 2004

3.4 Directive 2003/72/EC (European Co-operative Society) ...

- **New directive: transposition required in EU by 18 August 2006**
- **Only applies** to businesses established as a 'European Co-operative Society' (SCE) under Council Regulation EC 1435/2003
- **Each MS is responsible** for compliance by SCEs with a subsidiary, participating entity, or a registered office in its territory (Art. 14).
- Only applies to **transnational** matters (Art. 2)
- Two different situations regarding I&C of employees:
 - a) **SCEs established by transformation, or by at least 2 legal entities:**
See rules given on next slide
 - b) **SCEs established by natural persons, or by 1 legal entity and natural persons:**
 - * *If employing 50/+ employees in 2/+ Member States, then the same rules apply as for group a).*
 - * *If employing fewer than 50, or if more than 50 employees but in only 1 Member State, then subject to the national law of the MS where the SCE, or the relevant subsidiary, is located.*

3.4 ... Directive 2003/72/EC (European Co-operative Society)

Rules applicable to group a) from previous slide:

- No employee request is needed: management **must** establish arrangements for informing and consulting employees (Special Negotiating Body). Broadly similar procedure to Works Council Directive.
- Principle: agreement between management and workers' representatives on employees' involvement (information, consultation, participation)
- Negotiation in a spirit of co-operation, with a view to reaching written agreement on specified range of matters
- Employees may be entitled to participate in the ESC's General Meeting (Art 9)
- Where no agreement can be reached, automatic provisions come into effect. These are provided by the MS, but must satisfy (at minimum) the provisions set out in Annex to the Directive
- Provisions of Annex: similar to Works Council and SE Directives.

4. Main issues for transposition

Works Council Directive:

Already happening in advance of legal requirement

- Two thirds of companies with an EWC, already have operations in the new Member States
- Many EWCs anticipated the 2004 enlargement: by mid 2003, one in four had already extended their EWC to include acceding countries
- Potential for new agreements

Information and Consultation Directive 2002/14:

- relatively recent, no caselaw as yet

5. Information and consultation so far...

- A learning process. Good experience with Works Councils.
- Issues discussed : not only economic/employment, also strategic, health & safety, training, mobility,..
- Importance of continuity
- Importance of good links between transnational, national and local representatives
- Examples of informal and formal negotiation, notably on fundamental rights, health and safety, restructuring...