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Employee information and consultation procedures

Amended proposal

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**Amended proposal for a Council directive
on procedures for informing and consulting
the employees of undertakings with complex
structures, in particular transnational
undertakings**

(Presented to the Council by the Commission on 13 July 1983)

COM (83) 292 final
8 July 1983

Explanatory memorandum

The present proposal for a directive, based on Article 100 of the EEC Treaty, concerns procedures for informing and consulting employees of large-scale undertakings in the Community who work in subsidiaries controlled by parent undertakings whether located in the Community or outside it. It applies equally to employees in, for example, branches or offices geographically separated from the undertakings of which they are a part.

A first proposal was submitted to the Council on 24 October 1980.¹

The Economic and Social Committee² approved the proposal by 79 votes to 61 with 11 abstentions, subject to the structure of the directive being simplified.

The European Parliament³ approved the Commission initiative by 161 votes to 61 with 84 abstentions, subject to a certain number of amendments.

The amended proposal has been drafted in the light of these opinions and in accordance with the Commission's position as stated to the European Parliament on 17 November 1982. Account has also been taken of the consultations with the interested parties which took place in January and February 1983.

Structure of the directive

In accordance with the wishes of the Economic and Social Committee,² the structure of the directive has been simplified by merging Sections II and III.

Preamble

The preamble has been developed in order to define more precisely the objective in view, the scope of this proposal in relation to other Commission proposals in the information field, and the content of this proposal.

A new recital has also been added as a consequence of the Commission's decision to

comply with Parliament's wishes by dropping the provision which would have given employees the right to apply directly to the management of the parent undertaking (so-called 'by-pass' system). This recital specifies that the managements of subsidiaries should receive all appropriate information from the parent company and should have the necessary powers to conduct consultations with their employees in good faith. Such powers are particularly important when it is necessary to negotiate social and financial measures in favour of employees.

Comments on the articles of the directive

Article 1 (formerly Article 2)

Article 1(a) defines the concepts of 'parent undertaking' and 'subsidiary' by reference to the criteria adopted by the Council in the seventh company law Directive (consolidated accounts).⁴

As far as parent undertakings established within the Community are concerned, the question of whether an undertaking subject to the legislation of a particular Member State constitutes a parent undertaking will be a matter to be determined by that Member State by reference, in the legislation brought into force under this directive, to the criteria provided for on a compulsory or optional basis in the seventh Directive. The term subsidiary will therefore apply to any undertaking in respect of which another undertaking established within the Community is deemed, under the legislation to which the latter is subject, to be a parent undertaking. In this case, the information and consultation requirements provided for in this directive will be enforceable *vis-à-vis* both the parent undertaking and all its subsidiaries in the Community.

The second subparagraph of Article 1(a) deals with the relationship between a subsidiary located in the Community and a parent undertaking located outside the Community, stipulating that this is to be determined according to the law of the Member State to which the subsidiary is subject.

¹ OJ C 297, 15.11.1980; Supplement 3/80 – Bull. EC.

² OJ C 77, 29.3.1982.

³ OJ C 292, 8.11.1982; OJ C 13, 17.1.1983.

⁴ OJ L 193, 18.7.1983; Bull. EC 5-1983, point 2.1.26.

A definition of *establishment* has been introduced in response to the numerous queries on this point which arose in the course of the consultations held by the Commission's departments. The definition of *employees' representatives* is taken from the Council Directive 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.¹ The Commission has not followed the opinion of Parliament on this point; the latter was in favour, in particular, of the compulsory introduction in all Member States of a system of direct elections by secret ballot. The Commission has already informed Parliament that it approves the principle of direct elections, but that existing differences in industrial relations systems in the various Member States cannot be ignored. The Commission would like each Member State to be able to introduce the direct election system, but the purpose of this directive is limited to procedures for informing and consulting employees; it is not designed to change existing industrial relations systems in the Community. The Commission has also notified Parliament that it cannot agree to excluding all persons carrying out managerial duties from representing employees but that – as in the directive on employees' rights¹ – members of administrative, managing or supervisory bodies of companies will not constitute employee representatives for the purpose of this directive.

Article 2 (formerly Articles 1, 4 and 10)

This article brings about the fusion of the former Sections II and III as requested by the Economic and Social Committee. Parliament's position with regard to undertakings with political or religious 'tendencies', the press, etc. has been taken into account in Article 8 (final provisions, paragraph 2). The first indent (former Articles 1, 4 and 10) and the second indent (former Articles 1 and 9) of Article 2(1) are worded to take account of Parliament's view that a threshold of 1 000 employees should be introduced for the undertaking as a whole. Paragraph 2 (former Article 8) introduces a provision desired by Parliament: each subsidiary concerned in the Community will be held responsible in the event of a parent undertaking established outside the Community failing to fulfil its information and consultation obligations.

Article 3 (formerly Article 5)

This article has been amended in line with the wishes of Parliament. The information which was to be provided every six months is now to be given annually. The information must be 'general' and 'intelligible' so as to give a clear picture of the activities of the undertaking as a whole. The treatment of information deemed to be secret is dealt with in Article 7, but Article 3(4) clearly indicates that secret information within the meaning of Article 7 need not be communicated. Points (f),(g) and (h) of Article 3(2) have been deleted and point (e) does not refer to 'programmes' but only to investment 'prospects'. Employees' representatives may request oral explanations and obtain answers, if necessary on a confidential basis (see paragraph 4). Lastly, and again in line with the opinion of Parliament, employees' representatives will be able to apply 'in writing' to the management of the parent undertaking if the management of the subsidiary has not communicated the relevant information within 30 days (paragraph 5).

In line with the Commission's statement to Parliament, the amended proposal provides for the communication not only of 'general' information but also of 'specific' information on a particular sector of production or geographical area in which the subsidiary is active (see Article 3(1)). As the Commission has already pointed out to Parliament, the information supplied should not be the same as that published pursuant to the seventh Directive which, although indeed available to the public, is in a form that is relatively inaccessible to employees. The latter should receive a clearer presentation better suited to their requirements, although based largely on the information to be published under the seventh Directive.

In addition to information on past events, it is necessary to provide data on the probable development of production, sales and employment, and future investment prospects.

In this context – and in line with the intentions announced to Parliament – Article 3(3) provides that, where the information referred to in paragraph 2 is brought up-to-date or published

¹ OJ L 61, 5.3.1977.

more frequently by virtue of other directives (e.g. the seventh, or proposal for the fifth Directive)¹ or national legislation, the management of the parent undertaking must also forward the updated information to the management of its subsidiaries and establishments in the Community, with a view to its communication (with the exception of information deemed secret within the meaning of Article 7(1)) to the employees' representatives.

Article 3(6) deals with the problem of information rights for employees in sub-groups.

Article 4 (formerly Article 6)

This provision now reflects the amendments requested by Parliament. It specifies that the consultation procedure does not concern all employees in the Community but only those directly affected by a decision, indicates that a list of decisions is given purely by way of example (first sentence, paragraph 2) and requires prior consultation only if the decisions in question are liable to have serious consequences for the interests of employees. At the request of Parliament, measures on health protection and occupational safety have been added to the list. In line with its stated intentions, the Commission has also expanded the list to include major modifications in working practices or production methods resulting from the introduction of new technologies. The Commission has, however, felt unable to accept the deletion of point (d) or the establishment of long-term cooperation with other undertakings or the cessation of such cooperation since the new provisions concerning secrecy (Article 7(1)) will enable managements to withhold information where its disclosure would be liable to lead to the failure of the undertaking's plans or substantially damage its interests.

In accordance with the request of Parliament, the system permitting a direct approach to the parent undertaking (paragraphs 4 and 5 of the original proposal) has been removed. Instead, paragraphs 3 to 5 of the revised text impose an obligation on the management of the subsidiary which it will not be able to ignore without incurring penalties (Article 4(8)).

The Commission indicated in its statement to Parliament that consultation must take place before the final decision was taken but that the intention was not to impose a right of codetermi-

nation. In this context, Article 4(5) provides that the decision may be implemented as soon as the opinion of the employees' representatives is received. Failing this, management will be entitled to implement the decision following the expiry of the period accorded for the submission of an opinion (at least 30 days from the day on which the information was communicated).

There is, however, also provision for the employees' representatives to appeal to a tribunal or other competent authority for measures to be taken within a maximum period of 30 days to compel the management of the undertaking to fulfil its obligations. The purpose of this time limit is to ensure that implementation of the decision is not delayed unreasonably.

The fact that information is withheld on the grounds of secrecy does not release management from the obligation to consult the representatives of its employees on the measures planned in their respect (Article 4(6)).

Article 5 (formerly Article 7)

Paragraph 2 has been amended, in the light of the opinion of Parliament, to enable employees' representatives to decide whether they wish their right to be consulted to be transferred to a body representing employees at a higher level.

With a view to greater flexibility, paragraphs 4 and 5 have been taken from the Council directive on procedures for informing and consulting employees in the event of transfers of undertakings.²

Paragraph 4 replaces the original threshold of 100 employees per subsidiary with a more flexible base line. This has been made necessary by the introduction of a threshold of 1 000 employees per group, since the application of two rigid thresholds jointly would have produced results other than those intended. The threshold produced by the new provision will vary from country to country. Individual Member States will have the option of limiting the information and consultation procedures provided for in the directive to undertakings or establishments

¹ OJ C 131, 13.12.1972; Supplement 10/72 – Bull. EC.

² OJ L 61, 5.3.1977 (Article 6(4)).

which, in terms of number of employees, fulfil the conditions for the creation of a collegiate body representing the workforce (*Wirtschaftsausschuss*, works council, *conseil d'entreprise*, *comité d'entreprise*, etc.) which can receive the information to be communicated under Article 3 and conduct the consultations referred to in Article 4.

Paragraph 5 permits Member States which so wish to preserve the existing systems for informing and consulting employees directly which are in operation in many undertakings, without prejudice to the employees' right to demand the application of the directive in its entirety.

Article 6 (formerly Article 9)

This article has been simplified at the request of the Economic and Social Committee and following consultation with the parties concerned.

Article 7 (formerly Article 15)

In accordance with the opinion of Parliament, the management of subsidiaries or establishments need not divulge to employees' representatives confidential information the disclosure of which would lead to the failure of the undertaking's plans or substantially damage its interests.

'Interests of the undertaking' means not only the interests of the subsidiary but also those of the parent undertaking. In particular, the interests of an undertaking might be damaged where the legislation of the State (within or outside the Community) to which it was subject prohibited the communication to third parties of certain secret information. The violation of such a rule would be damaging to the interests of the undertaking (parent or subsidiary) within the meaning of Article 7.

The secrecy requirement concerns both regular information (new Article 3) and information communicated in the course of the consultation procedure (new Article 4), which is frequently the most 'sensitive' (merger or takeover projects, etc.).

The Commission has already informed Parliament about its position on this matter and its preference for a formula other than 'company

secret', 'business secret' or 'industrial' or 'trade' secret, all of which are difficult to define and might not cover all the types of information whose premature disclosure would seriously affect the undertaking. The wording adopted is based on a provision in the Council Directive of 15 February 1982 on information to be published on a regular basis by companies on the official stock-exchange listing.¹ The directive in no sense prejudices the parent undertaking's right to withhold from a subsidiary information which is secret within the meaning of Article 7. It does not attempt to regulate relations between management at the two levels (parent undertaking and subsidiary), but only relations between management and employees.

It would be unjust if the legitimate desire to safeguard the interests of undertakings were to deprive workers of the right to be informed and consulted with regard to measures directly affecting their employment or working conditions.

With this in mind, Article 4(6) provides that the employees' representatives must be informed and consulted at least 30 days before any decision on such matters is put into effect.

This formula is based on a similar provision in the directive on employees' rights (Article 6(1)).²

Parliament is also aware of the Commission's view that management cannot be the sole judge of the secret or confidential nature of information without any possibility of appeal to a tribunal. The wording employed in this provision is taken from the Commission's original proposal.

Article 8

The Commission intends that Member States should be able to protect the freedoms of charitable, political or public information bodies (freedom of the press). Article 8(2) is designed to achieve this purpose. Special provisions are, however, only authorized to the extent necessary to ensure that the undertakings in question may exercise the freedoms to which they are entitled under national law.

¹ OJ L 48, 20.2.1982 (Article 9(4)); Bull. EC 2-1982, point 2.1.28.

² OJ L 61, 5.3.1977.

Original text

Amended text

The Council of the European Communities,

No change

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Council adopted on 21 January 1974 a resolution concerning a social action programme;¹

Whereas in a common market where national economies are closely interlinked it is essential, if economic activities are to develop in a harmonious fashion, that undertakings should be subject to the same obligations in relation to Community employees affected by their decisions, whether they are employed in the Member State to whose legislation the undertaking is subject or in another Member State;

Whereas the procedures for informing and consulting employees as embodied in legislation or practised in the Member States are often inconsistent with the complex structure of the entity which takes the decisions affecting them; whereas this may lead to unequal treatment of employees affected by the decisions of one and the same undertaking; whereas this may stem from the fact that the information and consultation procedures do not apply beyond national boundaries;

Whereas this situation has a direct effect on the operation of the common market and consequently needs to be remedied by approximating the relevant laws while maintaining progress as required under Article 117 of the Treaty;

Whereas this directive forms part of a series of directives and proposals for directives in the field of company and labour law.

Whereas Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies¹ and Council Directive 77/187/

¹ OJ C 13, 12.2.1974, p. 1.

¹ OJ L 48, 22.2.1975.

EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses¹ incorporate compulsory procedures for informing and consulting the representatives of the employees affected by the operations in question and Council Directive 83/349/EEC of 13 July 1983 on the structure of public limited companies and the powers and obligations of their organs² makes provision for worker participation;

Whereas these information and consultation requirements do not aim to cover all situations likely to affect the employees' interests and, in particular, do not extend specifically to decisions taken at parent company level rather than independently by the employing subsidiary;

Whereas the concepts of 'parent undertaking' and 'subsidiary' should be defined using the same criteria as those adopted in Council Directive 83/349/EEC² on consolidated accounts; whereas it should thus be the responsibility of the Member State to whose legislation a parent undertaking is subject to ensure that the latter fulfils its obligations under the present directive *vis-à-vis* all its subsidiaries within the Community; whereas, in consequence, a Member State whose legislation is applicable to an undertaking deemed to be a subsidiary must ensure that the latter fulfils all its obligations under this directive;

Whereas appropriate provisions must be adopted to ensure that the employees of an undertaking within the Community are properly informed and consulted where the undertaking in question is a subsidiary of an undertaking outside the Community;

Whereas steps should be taken to ensure that workers employed by a subsidiary in the Community are kept informed as to the activities and prospects of the parent undertaking and the subsidiaries as a whole so that they may assess the possible impact on their interests; whereas, to this end, the undertaking should be required to communicate to the employees' representatives both general information similar to that which must be disclosed under Directive 83/349/EEC

¹ OJ L 61, 5.3.1977.

² OJ L 193, 18.7.1983.

Original text

Amended text

but angled towards the interests of the employees, and information relating more specifically to those aspects of its activities and prospects which are liable to affect the employees' interests;

Whereas steps should be taken to ensure that the employees' representatives are informed and invited to give their opinion in good time before the adoption of any decision significantly affecting the employees' interests and that they are consulted with a view to attempting to reach agreement on the measures to be taken in this context in respect of the employees concerned;

Whereas the management of each subsidiary must be in a position to communicate the requisite information to its employees' representatives and must have the necessary powers to conduct the consultations referred to above in good faith;

Whereas analogous rules should be introduced in respect of procedures for informing and consulting the representatives of employees working in the Community in establishments geographically separated from the decision-making centre of the undertaking of which they form part;

Whereas appropriate penalties should be imposed by Member States in the event of failure to comply with the information and consultation requirements provided for by this directive;

Whereas steps should be taken to ensure that these requirements can, insofar as possible, be fulfilled within the framework of institutions already established to represent employees under the laws and customary practices of Member States;

Whereas the requirement to communicate information provided for by this directive should not apply to certain information of a secret character and employees and their representatives should be required to maintain discretion as regards confidential information; whereas, however, disputes as to the secrecy or confidentiality of information should be settled by a tribunal or other national body;

has adopted this directive:

Original text

Amended text

Section I

Definitions and scope

Article 1

This directive relates to:

- procedures for informing and consulting employees employed in a Member State of the Community by an undertaking whose decision-making centre is located in another Member State or in a non-member country (Section II);
- procedures for informing and consulting employees where an undertaking has several establishments, or one or more subsidiaries, in a single Member State and where its decision-making centre is located in the same Member State (Section III).

Article 2

For the purposes of this directive the following definitions shall apply:

(a) Employees' representatives:

The employees' representatives referred to in Article 2(c) of 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.¹

(b) Management:

The person or persons responsible for the management of an undertaking under the national legislation to which it is subject.

(c) Decision-making centre:

The place where the management of an undertaking actually performs its functions.

Deleted and combined with the old Article 4 in the new Article 2.

Section I

Definitions and scope

Article 1

For the purposes of this directive the following definitions shall apply:

(a) Parent undertaking and subsidiary:

- an undertaking within the Community is a parent undertaking when another undertaking is its subsidiary according to the legislation applicable to the parent undertaking and the criteria of Article 1 of Directive 83/349/EEC;¹

- an undertaking outside the Community is a parent undertaking when another undertaking is its subsidiary according to the legislation applicable to that subsidiary and the criteria of Article 1 of Directive 83/349/EEC.¹

(b) Establishment: an entity, geographically separate from but not legally independent of the undertaking of which it is a part, in particular a workshop, branch, agency, factory or office.

(c) Decision-making centre: the place where an undertaking has its central administration.

¹ OJ L 61, 5.3.1977.

¹ OJ L 193, 18.7.1983.

Original text

Amended text

Article 3

1. For the purposes of this directive an undertaking shall be regarded as dominant in relation to all the undertakings it controls, referred to as subsidiaries.

2. An undertaking shall be regarded as a subsidiary where the dominant undertaking either directly or indirectly,

(a) holds the majority of votes relating to the shares it has issued, or

(b) has the power to appoint at least half of the members of its administrative, management or supervisory bodies where these members hold the majority of the voting rights.

Section II

Information and consultation procedures in transnational undertakings

Article 4

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in at least one other Member State shall be required to disclose, via the management of these subsidiaries, information to employees' representatives in all subsidiaries employing at least 100 employees in the Community in accordance with Article 5 and to consult them in accordance with Article 6.

(d) *Management*: the person or persons responsible for the management of an undertaking under the national legislation to which it is subject.

(e) *Employees' representatives*: the employees' representatives provided for by the laws or practice of the Member States, with the exception of members of administrative, managing or supervisory bodies of companies who sit on such bodies in certain Member States as employees' representatives.

Deleted.

Article 2

1. This directive relates to procedures for informing and consulting the employees:

- of a subsidiary in the Community when a total of at least 1 000 workers is employed in the Community by the parent undertaking and its subsidiaries taken as a whole;

- of an undertaking having in the Community one or more establishments when a total of at least 1 000 workers is employed in the Community by the undertaking taken as a whole.

Original text

Amended text

Article 8

Where the management of the dominant undertaking whose decision-making centre is located outside the Community and which controls one or more subsidiaries in the Community does not ensure the presence within the Community of at least one person able to fulfil the requirements as regards disclosure of information and consultation laid down by this directive, the management of the subsidiary that employs the largest number of employees within the Community shall be responsible for fulfilling the obligations imposed on the management of the dominant undertaking by this directive.

Article 5

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

- (a) structure and manning;
- (b) the economic and financial situation;
- (c) the situation and probable development of the business and of production and sales;
- (d) the employment situation and probable trends;
- (e) production and investment programmes;
- (f) rationalization plans;
- (g) manufacturing and working methods, in particular the introduction of new working methods;
- (h) all procedures and plans liable to have a substantial effect on employees' interests.

2. When the decision-making centre of an undertaking is located in a non-member country its management may be represented in the Community by an agent who is responsible for fulfilling the requirements regarding information and consultation laid down by this directive. In the absence of such an agent the management of each subsidiary concerned in the Community shall be held responsible for the obligations arising from Articles 3 and 4.

Section II

Information and consultation procedures

Article 3

1. At least once a year, at a fixed date, the management of a parent undertaking shall forward general but explicit information giving a clear picture of the activities of the parent undertaking and its subsidiaries as a whole to the management of each of its subsidiaries in the Community, with a view to the communication of this information to the employees' representatives as provided in paragraph 4. For the same purpose, the management of the parent undertaking shall forward to the management of each subsidiary concerned specific information on a particular sector of production or geographical area in which the subsidiary is active.

2. This information shall relate in particular to:

- (a) structure;
- (b) the economic and financial situation;
- (c) the probable development of the business and of production and sales;
- (d) the employment situation and probable trends;
- (e) investment prospects.

Original text

Amended text

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs 1 and 2 to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this article.

3. Where the information provided for in paragraph 2 is brought up to date after the date fixed accordance with paragraph 1, and communicated in implementation of the relevant legislation to shareholders and creditors, the management of the parent undertaking shall also forward it to the management of its subsidiaries, with a view to its communication to the employees' representatives.

4. The management of each subsidiary shall be required to communicate the information referred to in paragraphs 2 and 3 without delay to the employees' representatives, with the exception of secret information as defined in Article 7(1). The employees' representatives may ask the management for oral explanations of the information communicated. The management is required to provide such explanations, and, if necessary, to make it clear what information is to be treated as confidential under the terms of Article 7(2).

5. If the management of the subsidiary fails to fulfil its obligation to communicate the information required to its employees' representatives within 30 days of the date fixed, referred to in paragraph 1, or of the date of communication in the case of the up-dated information referred to in paragraph 3, the representatives of the employees of the subsidiary may approach in writing the management of the parent undertaking. That undertaking shall be obliged to communicate the relevant information without delay to the management of the subsidiary.

6. The terms of this article shall apply equally where the parent undertaking is at the same time the subsidiary of another parent undertaking, unless that undertaking itself meets the obligations resulting from this article.

7. Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this article.

Article 6

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is

Article 4

1. Where the management of a parent undertaking proposes to take a decision concerning the whole or a major part of the parent undertaking or of a subsidiary in the Community which is

Original text

Amended text

liable to have a substantial effect on the interests of its employees, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:

- the grounds for the proposed decision;
- the legal, economic and social consequences of such decision for the employees concerned;
- the measures planned in respect of these employees.

2. The decisions referred to in paragraph 1 shall be those relating to:

- (a) the closure or transfer of an establishment or major parts thereof;
- (b) restrictions, extensions or substantial modifications to the activities of the undertaking;
- (c) major modifications with regard to organization;

(d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to

liable to have serious consequences for the interests of the employees of its subsidiaries in the Community, it shall be required to forward precise information to the management of each subsidiary concerned in good time before the final decision is taken with a view to the communication of this information to the employees' representatives in the manner provided in paragraph 3. This information shall relate in particular to:

- the grounds for the proposed decision;
- the legal, economic and social consequences of such decision for the employees concerned;
- the measures planned in respect of such employees.

2. Decisions liable to have serious consequences may in particular relate to:

- (a) the closure or transfer of an establishment or major parts thereof;
- (b) substantial restrictions or modifications of the activities of the undertaking;
- (c) major modifications with regard to organization, working practices or production methods, including modifications resulting from the introduction of new technologies;
- (d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation;
- (e) measures relating to workers' health and to industrial safety.

3. Without prejudice to Article 7(1) the management of each subsidiary concerned shall be required to communicate in writing without delay the information referred to in paragraph 1, with the exception of secret information as defined in Article 7(1), to the employees' representatives, to ask for their opinion, granting them a period of at least 30 days from the day on which the information is communicated, and to hold consultations with them with a view to attempting to reach agreement on the measures planned in respect of the employees. The provisions of the second subparagraph of Article 3(4) shall apply *mutatis mutandis*.

4. Where the obligations laid down in paragraph 3 are not fulfilled, Member States shall

Original text

have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph 3 or does not arrange consultations as required under paragraph 4, such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in case of failure to fulfil the obligations laid down in this article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 7

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary, the information provided for in Article 5 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 6 shall take place under the same conditions with

Amended text

ensure that employees' representatives have the right to appeal to a tribunal or other competent national authority for measures to be taken within a maximum period of 30 days to compel the management of the subsidiary to fulfil its obligations.

5. The proposed decision referred to in paragraph 1 shall not be implemented before the opinion of the employees' representatives is received or failing that before the end of the period granted according to paragraph 3.

6. Where information concerning a decision within the meaning of paragraph 1 is withheld because it is secret within the meaning of Article 7(1), the management of the subsidiary is nonetheless required, at least 30 days before putting into effect any decision directly affecting conditions of work or employment, to hold consultations with the employees' representatives with a view to attempting to reach agreement on the measures planned in respect of the employees.

7. The terms of this article shall apply equally where the parent undertaking is at the same time the subsidiary of another parent undertaking, unless that undertaking itself meets the obligations resulting from this article.

8. Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this article.

Article 5

1. Where, in a Member State a body representing employees exists at a level higher than that of the subsidiary, the information referred to in Article 3 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 4 shall take place under the same conditions with

Original text

the representative body referred to in paragraph 1.

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 8 is reproduced on p. 12.

Article 9

1. The management of an undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in at least one other Member State shall disclose, via the management of those establishments, information to the employees' representatives in all of its establishments in the Community employing at least 100 employees in accordance with Article 5 and consult them in accordance with Article 6.

2. The management of an undertaking whose decision-making centre is located in a non-member country and which has at least one establishment in one Member State shall be subject to the obligations referred to in paragraph 1.

3. For the purposes of applying this article, the terms 'dominant undertaking' and 'subsidiary' in

Amended text

the representative body referred to in paragraph 1 if the representatives of the employees whose terms of employment or working conditions are directly affected by the decision agree to transfer their right to be consulted to the higher level.

3. A body representing all the employees of the parent undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the undertaking concerned and the employees' representatives. If such a body is created, paragraphs 1 and 2 shall be applicable.

4. Member States may limit the obligations laid down in Articles 3 and 4 to subsidiaries which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegiate body representing the employees.

5. Member States may provide that the information and consultation procedures referred to in Article 3(4) and (5) and Article 4(3) to (6) may take place directly with the employees, without prejudice to the application of the other provisions of this directive.

Article 6

1. The provisions of Articles 3, 4 and 5 shall apply *mutatis mutandis* to the procedures for informing and consulting the employees' representatives in the undertakings referred to in the second indent of Article 2(1).

2. For the purposes of this article, the terms 'parent undertaking' and 'subsidiary' shall be replaced by the terms 'undertaking' and 'establishment' respectively.

Original text

Amended text

Articles 4 to 8 shall be replaced by the terms 'undertaking' and 'establishment' respectively.

Section III

Procedures for informing and consulting the employees of undertakings with complex structures whose decision-making centre is located in the country in which the employees work

Article 10

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in the same Member State shall be required, via the management of its subsidiaries, to disclose information to employees' representatives in all subsidiaries employing at least 100 employees in that State in accordance with Article 11 and to consult them in accordance with Article 12.

Article 11

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

- (a) structure and manning;
- (b) the economic and financial situation;
- (c) the situation and probable development of the business and of production and sales;
- (d) the employment situation and probable trends;
- (e) production and investment programmes;
- (f) rationalization plans;
- (g) manufacturing and working methods, in particular the introduction of new working methods;
- (h) all procedures and plans liable to have a substantial effect on employees' interests.

Articles 10 to 14

Deleted and combined with Articles 2(1) and 3 to 6.

Original text

Amended text

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs 1 and 2 above to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member State shall provide for appropriate penalties in case of failure to fulfil the obligation laid down in this article.

Article 12

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its workers, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:

- the grounds for the proposed decision;
- the legal, economic and social consequences of such decision for the employees concerned;
- the measures planned in respect of these employees.

2. The decisions referred to in paragraph 1 shall be those relating to:

- (a) the closure or transfer of an establishment or major part thereof;
- (b) restrictions, extensions or substantial modifications to the activities of the undertaking;
- (c) major modifications with regard to organization;
- (d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information

Articles 10 to 14

Deleted and combined with Articles 2(1) and 3 to 6.

Original text

without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph 3 or does not arrange consultations as required under paragraph 4, such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate to reaching agreement on the measures planned with regard to the employees.

6. The Member States shall provide for appropriate penalties in the case of failure to fulfil the obligations laid down in this article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 13

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary the information provided for in Article 11 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 12 shall take place under the same conditions with the representative body referred to in paragraph 1.

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the manage-

Amended text

Articles 10 to 14

Deleted and combined with Articles 2(1) and 3 to 6.

Original text

ment of the dominant undertaking and the employees' representatives, unless provision is made for it by national law. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 14

1. The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in the same Member State shall be required to disclose via the management of the subsidiaries, information to the employees' representatives in all its subsidiaries employing at least 100 employees in accordance with Article 11 and to consult them in accordance with Article 12.

2. For the purposes of applying this article, the terms 'dominant undertaking' and 'subsidiary' in Articles 10 to 13 shall be replaced by the terms 'undertaking' and 'establishment'.

Section IV

Secrecy requirements

Article 15

1. Members and former members of bodies representing employees and delegates authorized by them shall be required to maintain discretion as regards information of a confidential nature. Where they communicate information to third parties they shall take account of the interests of the undertaking and shall not be such as to divulge secrets regarding the undertaking or its business.

2. The Member States shall empower a tribunal or other national body to settle disputes concerning the confidentiality of certain information.

Amended text

Articles 10 to 14

Deleted and combined with Articles 2(1) and 3 to 6.

Section III

Secrecy and confidentiality

Article 7

1. The management of an undertaking shall be authorized not to communicate secret information. Information may only be treated as secret which, if disclosed, could substantially damage the undertaking's interests or lead to the failure of its plans.

2. Employees, their representatives and the experts to whom they refer shall not reveal to third parties any information which has been given to them in confidence.

3. Member States shall ensure that a tribunal or other competent national authority can settle disputes concerning the secret character of any information withheld in application of paragraph 1, or the confidential character of the information referred to in paragraph 2.

Original text

3. The Member States shall impose appropriate penalties in cases of infringements of the secrecy requirement.

Section V

Final provisions

Article 16

This directive shall be without prejudice to measures to be 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 redundancies¹ and Directive 77/187/EEC² or to the freedom of the Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 17

¹ OJ L 48, 22.2.1975.

² OJ L 61, 5.3.1977.

Amended text

4. Member States shall provide appropriate penalties for failure to comply with the obligations laid down in this article.

Section IV

Final provisions

Article 8

1. This directive shall be without prejudice to measures taken pursuant to Directive 75/129/EEC and Directive 77/187/EEC or to the freedom of the Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

2. In implementing this directive, Member States may lay down special provisions for undertakings and establishments whose direct and main objectives are:

- (a) political, religious, humanitarian, charitable, educational, scientific or artistic, or
- (b) related to public information or expression of opinion.

Such special provision must be limited to that which is necessary to ensure that such undertakings enjoy the freedom to which they are entitled under the national laws to which they are subject.

3. This directive shall be without prejudice to the application of national laws concerning bankruptcy, winding-up proceedings, arrangements, compositions or other similar proceedings insofar as these proceedings result from judicial decisions.

Article 9

1. The Member States shall introduce the laws, regulations and administrative provisions necessary to comply with this directive not later than 1 July 1987. They shall forthwith inform the Commission thereof.

Original text

2. The Member States shall communicate to the Commission the texts of laws, regulations, and administrative provisions which they adopt in the area covered by this directive.

Article 18

Within two years from the date fixed in Article 17, the Member States shall transmit to the Commission all information necessary to enable it to draw up a report to be submitted to the Council relating to the application of this directive.

Article 19

This directive is addressed to the Member States.

Amended text

2. No change.

Article 10

Within two years from the date referred to in Article 9, Member States shall forward to the Commission all necessary information to enable it to draw up a report on the application of this directive for submission to the Council.

Article 11

No change.

European Communities – Commission

Employee information and consultation procedures

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In the light of the opinions of Parliament and the Economic and Social Committee and consultations with the interested parties, the Commission has amended its proposal of 1980 for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings.