



Union of Industrial and Employers' Confederations of Europe
Union des Confédérations de l'Industrie et des Employeurs d'Europe

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**PROPOSAL FOR A DIRECTIVE ESTABLISHING A GENERAL FRAMEWORK
FOR INFORMATION AND CONSULTATION
OF EMPLOYEES IN THE EUROPEAN COMMUNITY**

UNICE POSITION

15 February 1999

GENERAL COMMENTS

This proposal for a Council directive, adopted by the Commission on 11 November 1998, follows on from the two-stage consultation of the social partners as provided for in article 3 of the protocol on social policy annexed to the Treaty on European Union. UNICE responded to the Commission's first consultation on 1 October 1997, and on 16 October 1998 confirmed its intention not to open negotiations with ETUC and CEEP on this question.

In its first response, UNICE criticised the Commission's initiative, essentially believing it contrary to the principle of subsidiarity enshrined in the Treaty on European Union and strengthened in the Treaty of Amsterdam. It contests the arguments advanced by the Commission about the existence of gaps in national and Community law on employee information and consultation. The Commission justifies this initiative by the occurrence of recent events which, it claims, illustrate these gaps. The circumstances to which the Commission refers relate to a problem with application of national legislation and a Community directive, and in no way from gaps in that legislation. On the contrary, the judicial procedures which followed on from those events demonstrated the existence, and the scope for effective use, of legal appeals designed to ensure proper application of the legislation in question. The response to situations where existing legislation is violated is certainly not adoption of further legislation.

Moreover, UNICE contests the presentation, whereby the proposed directive would be limited to establishment of a "general framework" for employee information and consultation. The requirements included in the draft are sufficiently detailed to cause serious upset to national

industrial relations systems, and to hamper the capacity of company management to take essential decisions rapidly. In addition, this directive opens the door to ongoing concertation mechanisms and goes well beyond the framework of information and consultation.

Lastly, UNICE contests the direct link made between this directive and the level of employment in the European Union. The capacity of companies to meet the challenges of international competition, in a context of healthy and sustainable growth, is the only factor which can help to raise employment levels in Europe. UNICE fears that this directive, if adopted by the Council as it stands, would make an indirect contribution to a worsening in the employment situation.

UNICE set out its general comments in its first response to the Commission's consultation, and those arguments continue to be completely valid.

PRINCIPLES

First of all, UNICE recalls that it has always defended employee information and consultation as good corporate management practice and as an integral factor for staff motivation. Similarly, it has always believed that, for restructuring, timely information and consultation can enhance companies' capacity to adapt to change and to limit any downside. In this regard, UNICE recalls that a number of joint opinions adopted with ETUC and CEEP make express reference to employee information and consultation.

That said, UNICE has opposes intervention by the European legislator in information and consultation at national level, believing that the objectives in view can be achieved more effectively via other channels than binding Community instruments and, above all, at other levels.

Subsidiarity

Since this proposal for a directive targets essentially purely national situations, UNICE considers that the Community level is inappropriate for developing action and that the objectives set out would be achieved more effectively by action at other levels (national, sectoral, local or company).

All Member States of the European Union have highly developed systems for employee information and consultation, based on legislation, collective agreements at different levels or company practice.

The Community directives on transfers of undertakings¹, collective dismissals² and establishment of European works councils or of transnational information and consultation procedures in Community-scale undertakings or groups³ complement these national measures and guarantee the transnational aspects of information and consultation. To this can be added the framework directive on health and safety which comprises very highly developed mechanisms for employee information and consultation⁴.

¹ Directive 77/187/EEC

² Consolidated directive 98/59/EC

³ Directive 94/45/EC

⁴ Directive 89/391/EEC

Lastly, article 5 of the Treaty requires Member States to ensure the effectiveness of Community law. For all these reasons, UNICE believes that additional legislative action at Community level is not justified.

Proportionality

The Commission's proposal is largely procedural, and is not limited to definition of the results to be achieved as a directive should be in accordance with article 189 of the Treaty. It goes beyond establishing a general framework and imposes a series of detailed obligations on employers which are likely to hold back the development of small and medium-sized enterprises. Furthermore, the sanctions it lays down for violation or inadequate application contain no margin for evaluation and gradation to reflect the gravity of the infringement in question.

UNICE therefore believes that this proposal for a directive is not only contrary to the principle of subsidiarity but also to the other general principle of Community law: proportionality of legislative proposals to the objectives in view.

Employment

The content given to consultation targets essentially what it has been agreed to term "forward planning of employment". UNICE recalls that this term does not in any way refer to a uniform technique and that it covers realities which differ widely from one Member State to the next, and even between individual companies. The mechanisms in question are based largely on elements which are totally or partially beyond a company's control, for instance vocational training systems and regional economic infrastructures. As such, this concept moves outside the ambit of the company and involves shared responsibility between company management, the employees themselves and local and/or national public authorities. Thus, UNICE considers that statutory obligations regarding forward planning of employment cannot be the sole responsibility of employers.

Moreover, the formulation of article 4 reveals a theoretical conception of anticipation. It is not always possible for companies to anticipate change, or its consequences for employment. There are many examples of unforeseen international crises causing major difficulties for individual companies and requiring very rapid adaptation measures, and which could not have been anticipated by the employer. In such cases, the mechanisms put in place by the directive would make it impossible to take decisions as and when needed and could, in extreme cases, seriously jeopardise the very survival of a company.

On-going concertation mechanisms

Geared to the concepts of *anticipation*, *prevention* and *employability*, the draft directive introduces **on-going concertation** between management and employee representatives on virtually all questions linked to human resources management⁵ in all companies employing more than one hundred persons.

⁵ Article 4 covers almost all aspects of human resources management, notably training and employability (4.b) and work organisation and work contracts (4.c)

The definition of employees' rights to consultation⁶, notably the obligation on management to seek agreement **prior** to a decision being taken, and sanctions applicable⁷ in cases of violation by the employer, notably **reversal of the legal effects** of a decision on work contracts, give employee representative rights which go far beyond those they normally enjoy in all national consultation systems.

In addition, the fact that there is no obligation on employee representatives to submit their opinions within a reasonable time limit is likely to paralyse the decision-making process in companies, causing serious disruption to their capacity to adapt and the need to take in good time the decisions required to maintain their competitive situation.

CONCLUSIONS

For the reasons set out above, UNICE believes that this proposal for a directive is not justified, that it goes well beyond establishing a general framework, and that it poses serious risks for the capacity of European companies to adapt and, therefore, for employment without making it possible to achieve its objectives.

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⁶ Article 2.1.e

⁷ Article 7