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COMMISSION OF THE EUROPEAN COMMUNITIES

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accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the 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 (recasting)

SUMMARY OF THE IMPACT ASSESSMENT

{COM(2008) 419 final}
{SEC(2008) 2166}

INTRODUCTION

The impact assessment concerns the envisaged review of the European Works Councils Directive 94/45/EC and was carried out between October 2007 and June 2008. An inter-service steering group was set up to this end, with the participation of eleven services. An external study involving a survey of 10% of existing European Works Councils (EWCs) was commissioned. The second-stage consultation of the European social partners was launched in February 2008. While the Commission would have welcomed negotiations between the social partners as the solution with potentially the most positive impact, social dialogue talks were in the end not considered practical by the European Trade Union Confederation. The impact assessment has used external data and taken into account the results of academic research as well as the views expressed by social partners and other stakeholders in response to the consultation. It has been revised twice to take into account the opinions of the Impact Assessment Board.

PROBLEM DEFINITION

The Directive establishes a right to transnational information and consultation of the workforce on the progress of business and any significant changes envisaged in large-scale (1 000+ employees) transnational companies. In 2007, 2257 companies employing 24 million workers fell within the scope of the Directive. EWCs, whether established before the Directive came into force, and hence excluded from compliance with the Directive, or set up through an agreement between a body representing the employees and the central management, were operating in 816 companies with some 14.5 million employees.

Fourteen years after the adoption of the Directive, there are three problems that may require action:

- The effectiveness of transnational information and consultation rights is not ensured, particularly as existing EWCs are not properly informed and consulted in over half of restructuring cases and, moreover, the take-up rate of EWCs is still relatively low and has not increased in recent years;
- There are legal uncertainties giving rise to shortcomings in the application of the Directive and entailing costs and delays, particularly in cases of mergers and acquisitions and as regards the interplay between the national and European levels of information and consultation,
- The concepts of information and consultation in the 1994 EWC Directive differ from those contained in the most recent Directives in the field of workers' information and consultation, and there are no clear rules for the interplay between these directives.

These problems affect workers, companies and territories to a significant extent, and the potential role of EWCs in anticipating and managing change in a sustainable way remains largely unexploited. The problems would worsen without new EU action in a context of increased internationalisation. Action is also necessary in order to support the completion of the internal market, sustainable competitiveness and social cohesion. Given the transnational nature of EWCs, effective remedies cannot be taken by the Member States. The legal basis for EU action is Article 137(1)(e) of the EC Treaty.

OBJECTIVES

The main goal of this initiative is to put EWCs in a position where they can fully play their role with regard to developments in undertakings, the anticipation and socially responsible management of change, and the fostering of genuine transnational social dialogue. The specific objectives are as follows:

- To ensure the effectiveness of employees' transnational information and consultation rights in existing EWCs;
- To increase the take-up rate (the proportion of established EWCs compared to the number of companies falling within the scope of the Directive);
- To ensure legal certainty in the setting up and operation of EWCs ;
- To ensure better coherence and interplay between Community legislative instruments on information and consultation of employees.

POLICY OPTIONS AND ASSESSMENT

In order to achieve these objectives, three main options have been identified and, for each of them, the main potential impacts have been assessed:

- The first option *No new EU action* does not present any ability to meet the specific objectives.
- The second option *Non-regulatory approach — additional promotion of best practice* would include an increase in communication actions, possibly followed by a proposal for an increase in existing financial support for promotion actions and a recommendation on the setting up and functioning of EWCs. It has the potential to improve the dissemination of best practice and encourage a more efficient functioning of EWCs, without entailing additional direct costs for companies. However, by nature, it can address only to a limited extent the objective of ensuring legal certainty and coherence in Community legislation and therefore needs to be associated with legislative action (third option). Also, one needs to take into account that non-regulatory measures are already in place and, therefore, any new measure could only have an additional impact.
- The third option *Review of existing legislation* would include amendments to the 94/45/EC Directive, mainly aimed at further specifying the concepts of information and consultation, defining what is meant by transnational competence, linking the national and European levels of information and consultation, adapting the subsidiary requirements, which are used as benchmarks for negotiation, establishing a right to training, introducing an adaptation clause in the event of significant change in the structure of companies, and recognising the role of trade unions. For each sub-option, the costs and benefits are discussed and a balance is established between the interests expressed by the different stakeholders. Two sub-options — lowering thresholds for the establishment of EWCs and registering agreements — are discarded as they are less cost-effective. The other sub-options have the best prospects of achieving the specific objectives and show greater cost-effectiveness. These sub-options should be implemented together as none would be sufficient by itself to achieve the desired result. The content of the third option has been

adapted in some areas to take into account the results of the consultation and assessment exercise, as well as the interest of the various stakeholders particularly regarding the content of the subsidiary requirements. However, as the capacity of such option to improve awareness-raising and disseminate best practices is limited, it should therefore be combined with awareness-raising actions from the second option.

CONCLUSION

Taking into account its impact on established objectives and cost-effectiveness, the preferred option is the third option *Review of existing legislation*, combined with awareness-raising actions from the second option *Non-regulatory approach — additional promotion of best practice*, starting with communication actions. The likely overall impact of this option would be to improve the quality of dialogue within companies and enable all parties to better anticipate and manage change, while imposing some additional direct costs. However, it is difficult to see this entailing significant additional costs for companies already complying with the requirements and aims of the existing Directive. It would also contribute to making the existing Community instruments on information and consultation more coherent (same definitions, interplay between national and transnational rules).