

Implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community

2008/2246(INI) - 17/03/2008 - Non-legislative basic document

PURPOSE: to review the application by Member States of Directive 2002/14/EC on information and consultation of employees in the EU.

CONTENT: Directive 2002/14/EC(see [COD/1998/0315](#)) establishes a general framework for informing and consulting employees in the European Community. It provides for minimum requirements regarding the principles, definitions and arrangements for information and consultation of employees at undertaking level. Given the variety of national situations and practices in the field of industrial relations within the Union, Member States enjoy a large measure of flexibility as regards implementation of the Directive's key concepts (such as "employees' representatives", "employer", "employees", etc.) and the arrangements for information and consultation. The important role of management and labour in this regard is fully recognised by the Directive.

The provisions of the Directive apply only to undertakings employing at least 50 employees, or to establishments employing at least 20 employees, according to the choice made by the Member State.

As required by Article 12 of the Directive, the Commission, in the present communication, is reviewing the application of the Directive, in consultation with the Member States and the social partners at Community level, with a view to proposing any necessary amendments.

Transposition of the Directive: the Commission finds that only a few Member States adopted measures to transpose the Directive within the required deadline (FR, HU, NL, PT, SK, FI, UK). Two Member States (DE, AT) notified the Commission that their existing legislation already conforms to the Directive's requirements. BG and RO transposed the Directive, as required, before the date of their accession to the EU.

Thus, **the majority of the Member States failed to transpose the Directive on time.** Following infringement proceedings launched by the Commission, the European Court of Justice issued judgments against IT, BE, LU, ES and EL. IT, ES and EL have meanwhile adopted implementing legislation. BE and LU have transposed the Directive only partially.

Conclusions drawn from the Commission's analysis: the longer than anticipated time taken in some Member States for transposing the Directive may be related to difficulties in generating the necessary consensus on key issues for the reform of national industrial relations. The large majority of Member States adopted transposing measures that cover the main elements of Directive 2002/14/EC. However, analysis of these measures has enabled the Commission to identify a number of issues where correct and full transposition of the Directive's requirements by Member States may be at stake, necessitating further clarification or verification. The Communication examines certain articles of the Directive which were inadequately transposed in the Member States' legislation.

As regards the question on the **practical application of the Directive**, including attainment of its objectives, several Member States highlighted the fact that their legislation has long provided for

information and consultation of employees in undertakings/establishments. Several other Member States responded that it is too early to provide a definite answer, given the early stage of implementation of the Directive.

The majority of Member States do not see a need to revise the Directive. As regards the question on the need to clarify any provision of the Directive, most Member States replied in the negative. Some pointed out that it is too early to assess such need.

All the social partners consulted point out that, in general, the Directive's impact on each Member State depends on the extent to which a developed national system of information and consultation is already in place. As regards the questions on the need to review and to clarify the Directive, *BusinessEurope*, UEAPME and CEEP replied in the negative. On the contrary, ETUC noted that the Directive could be improved and clarified regarding a number of issues.

Assessment: the implementation of the Directive represents an important step forward in the consolidation of the right to information and consultation enshrined in the EU Charter of Fundamental Rights. The Directive is expected to contribute to the approximation of the national systems across the EU through the establishment, by way of minimum requirements, of a general and flexible framework for information and consultation of employees in all Member States. A particularly significant impact is expected in the Member States which did not previously have a general, permanent and statutory system of information and consultation of employees' representatives.

It is generally accepted that the Directive is sufficiently flexible to be adapted to the national situation of each Member State. However, whilst the Directive refers to the national definitions of key concepts, including that of "employees' representatives", its implementation has given rise in certain countries to lively and sometimes lengthy debates on how to organise the system of workers' representation, whether by single or double channel (i.e. by works councils and trade unions), or admitting mixed solutions.

While a majority of opinions suggest broadly positive prospects as to the overall impact of the Directive, clearly more time is needed to make a definite assessment, as the Directive has not yet generated its full impact. Just over two years have passed since the transposition deadline. Also, there has been a considerable delay in transposing the Directive in several Member States, and in a few it has not yet been transposed entirely. It is **too early for comprehensive evidence-based research into the application of the Directive in all EU Member States**. Furthermore, the Directive's requirements do not yet apply to all the undertakings covered by it, given that some Member States took advantage of the transitional period and currently restrict its application to undertakings employing more than 100 employees.

Therefore, **the Commission does not currently envisage proposing amendments to Directive 2002/14/EC**. Whilst its provisions could be improved and rendered more precise regarding certain specific points, the Commission considers that the national implementing measures should be given some time to bed down in the industrial relations systems of the Member States.

The main challenge now is to ensure the full and effective transposition and enforcement of the Directive. This requires the active involvement not only of the Commission, in its role as guardian of the Treaty, but also of the Member States, who play a crucial role in this respect, as it is their obligation to ensure the correct implementation and application of Community law in practice.

In addition, the Commission intends to take further action aimed at facilitating correct enforcement of the Directive. It intends to undertake action geared to **awareness-raising, as well as to promote exchange of best practices** and to enhance capacity-building of all stakeholders, by way of seminars, training courses, studies and financial support for projects submitted by representatives of employers and employees.