

NATIONAL INFORMATION AND CONSULTATION DIRECTIVE

DIRECTIVE 2002/14/EC

CONSULTATION PAPER

ON

TRANSPOSITION INTO IRISH LAW

INDUSTRIAL RELATIONS UNIT
DEPARTMENT OF ENTERPRISE, TRADE AND EMPLOYMENT

JULY 2003

INTRODUCTION

Directive 2002/14/ EC establishing a general framework for informing and consulting employees in the European Community was adopted in February 2002 (the text of the Directive is at Appendix 1). The date for transposition into Irish national law is the 23rd of March 2005, with certain transitional arrangements allowing for staged implementation up to March 2008.

The Directive gives employees in either undertakings with at least 50 staff, or in establishments with at least 20 staff, the right to information and consultation about the business in which they work, its prospects and the circumstances affecting their employment. The practical arrangements are to be defined in accordance with national law and industrial relations practices in the individual Member States.

The aim of the Directive is to strengthen dialogue and promote mutual trust within undertakings. Accordingly, it permits a good deal of flexibility for employers and employees to devise their own arrangements for information and consultation.

The right set out in the Directive is in addition to those existing rights to information and consultation in Irish law (see Appendix 2).

As the Directive leaves a number of matters to be determined by the Member States, this consultation paper sets out those matters in some detail and calls for submissions on how they should be implemented.

POLICY GUIDELINES

Option to make local arrangements –

The Directive permits management and labour, at the appropriate level including at enterprise level, to determine their own arrangements for information and consultation. As these local level arrangements can be tailored to meet the needs of both the enterprise and the employees, it is expected that most people will avail of this option. Accordingly, the Government's aim, which will be reflected in the draft legislation, is to encourage and facilitate these agreements, in line with the terms of the Directive. If agreement is not possible, the legislation will provide for a fall back position.

Other guidelines –

In addition, the draft legislation will be prepared in line with the following main policy guidelines:

- Government encouragement for improvement in information and consultation of employees in enterprises as a means of improving competitiveness and the development of a greater sense of partnership at the level of the enterprise.
- Employees have a right to information and consultation without prejudice to the responsibility of management to make decisions

- Facilitating workplace adaptation
- The tradition of voluntarism in Irish industrial relations
- Providing the maximum flexibility to employers and employees to devise arrangements which best suit their own particular circumstances

TRANSPOSITION INTO IRISH LAW

Transposition of the Directive into Irish law will be by way of primary legislation. It is, therefore, intended to publish an Information and Consultation of Employees Bill in the summer of 2004, with a view to its enactment by March 2005.

The responses to this consultation paper, together with the views elicited from earlier consultations, will inform the formulation of that draft legislation.

CONSULTATION PROCESS

The Department of Enterprise, Trade and Employment (hereinafter 'the Department') commenced initial consultations with employers and employee bodies in late 2002. This consultation paper is issued to further that process and to initiate discussions on the provisions of the Directive and the forthcoming legislation with a wider range of interested parties.

Following the circulation of this paper, and the receipt of observations from interested parties, the Department will prepare a General Scheme of Heads of a Bill to transpose the Directive into Irish law. The General Scheme will then be sent to Government for consideration. If approved, the General Scheme will be forwarded to the Office of the Parliamentary Counsel for drafting into a Bill.

Accordingly, any indication given here of the text of an Information and Consultation of Employees Bill or likely policy choices is subject to change following the consideration of the Government; completion of the drafting work; legal scrutiny by the Attorney General; and consultations between the Tánaiste, Minister for Labour Affairs and their ministerial colleagues.

Once drafted, the Bill will then be submitted to Government for approval and authorisation to publish, with the intention of circulating it in the Houses of the Oireachtas in summer 2004.

Some of the matters set out in this paper have already been the subject of submissions. Where a person or organisation is making a supplemental submission on foot of this paper, it will not be necessary to repeat their views on those subjects unless clarification is being supplied or those views have altered.

This paper poses a number of questions, which are listed in full at Appendix 3 for ease of reference. People making submissions are asked to consider these questions, other subjects raised in this paper and any other matters which they consider relevant.

Further copies of this paper are available on the Department's website at www.entemp.ie/whats.htm

SUBMISSIONS

All submissions should be sent to –

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The deadline for receipt of submissions is **Wednesday the 24th of September 2003**.

FREEDOM OF INFORMATION

The Department is subject to the Freedom of Information Acts 1997 and 2003. Accordingly, any submissions received may be the subject of requests under those Acts.

If you believe that any of the information supplied by you should not be disclosed because of its commercial sensitivity, you should identify this information and state the reasons for its sensitivity. The Department will consult with you about this sensitive information in advance of a decision on any Freedom of Information request received.

Decisions of the Department in relation to Freedom of Information requests are subject to appeal to the Information Commissioner and the Courts by the person who made the request.

TERMINOLOGY

The Directive applies to either undertakings or establishments over a certain size, depending on the choice of the Member State. Where the distinction is not material for the purposes of this consultation paper, the word “enterprise” will be used to cover both undertaking and establishment.

1. RIGHT OF EMPLOYEES TO INFORMATION AND CONSULTATION

The information and consultation Directive is the latest legal expression on the right of employees to information and consultation from their employers.

The Government is committed to raising awareness of and giving effect to this right. In the most recent social partnership agreement, “Sustaining Progress”, the Government, employers and unions have committed to support and work with the National Centre for Partnership and Performance (NCPP) on a number of ventures with the intention of fostering partnership and performance in the workplace. In particular, Part 2 of the agreement states that the NCPP will develop a project aimed at improving practices and procedures in relation to information, consultation and participation rights, in the context of the information and consultation Directive.

The introduction of legislation will give statutory effect to the right in those enterprises within the scope of the Directive, while work will continue to encourage the development of information and consultation procedures in smaller businesses.

2. AGREEMENTS ON INFORMATION AND CONSULTATION

Article 5 of the Directive allows employers and employees to negotiate and devise their own arrangements for information and consultation which may differ from the terms of Article 4. While both parties are given a wide degree of autonomy in these negotiations, any agreement reached must take into account the following principles-

- The arrangements must be effective
- They must take due account of the interests of both the enterprise and the employees
- They must have due regard to the rights and obligations of both parties
- They must be negotiated and operated in a spirit of cooperation
- Where the agreement is for an arrangement of direct involvement (i.e. where there is direct interaction between the employer and the employees), employees must be free at any later stage to exercise their right through representatives of their choosing

As well as these principles, the Directive states that any agreement will be subject to conditions and limitations set down in national law. As stated earlier, it is the Irish Government’s policy to encourage such agreements, so the conditions and limitations are likely to be few. It is possible at this stage to indicate the rules on agreements which the legislation is liable to impose, as follows –

- Agreements must apply to the entire workforce and must be negotiated, not imposed by an employer
- Negotiations must be concluded within a deadline, probably 6 months, with a possibility of an extension by way of agreement
- Agreements must be in writing, dated and available for inspection by either a person covered by it or an independent arbitrator in the event of dispute

- Agreements must be signed by the employer and either by all the employee representatives who negotiated it, or supported by the employees
- There must be a clear statement of the subjects and conditions and methods for information and consultation
- There must be provision for renegotiation of some or all of the terms of the agreement in the event of any substantial changes in the workplace.

Apart from these principles and rules, the parties will be free to negotiate any style of arrangement. The legislation will allow as much flexibility as possible to the parties to develop systems that best suit their own environment.

In this regard, the Department is seeking views on the following-

- Q. 1 If not all of the employees' representatives who negotiate an agreement sign off on that agreement, what should be the minimal level of employee support needed to approve the terms of the agreement?
- Q. 2 Apart from the lists above, should there be other requirements on agreements? If so, what are they?

3. AGREEMENTS IN EXISTENCE BEFORE THE INTRODUCTION OF INFORMATION AND CONSULTATION LEGISLATION

Many enterprises already have agreements in place which provide for information and consultation, either specifically or as part of a wider collective agreement on terms and conditions. Parties to these agreements may be satisfied that they have a workable and suitable system and may not consider that there is any need for change. However, in order to fulfil their obligations, and in the interests of clarity, the parties will want to bring those agreements within the ambit of the legislation. Accordingly, the legislation will need to address the position of such arrangements.

It is likely that the legislation will require that certain formalities be complied with in order to ensure that the agreement conforms to the law and that both employers and employees are agreed to carry forward the arrangements as they are.

The types of formalities being considered are as follows –

- The procedure for information and consultation can be shown to be effective
- The agreement applies to the entire workforce
- The agreement is in writing and available for inspection as appropriate
- The employees have agreed to continue the arrangements without change

Submissions on this point could usefully address the following questions –

- Q.3 How should the legislation seek to ensure that pre-existing agreements enjoy employee support as information and consultation arrangements?

- Q.4 Are there formalities, other than those listed above, which might be necessary to include in the legislation?
- Q.5 What impact, if any, might the new legislation have on existing collective agreements and how should the legislation address this?

4. NATIONAL AGREEMENT ON INFORMATION AND CONSULTATION

The Directive contemplates, in Articles 5 and 11, that agreements on information and consultation can be negotiated at a national level by bodies representing employers and employees.

- Q.6 What are your views on the usefulness of a nationally agreed framework?
- Q.7 What format or shape might such a framework take?
- Q.8 Who should be the parties to it?

5. STANDARD RULES ON INFORMATION AND CONSULTATION

The parties to negotiations may find that they cannot reach an agreement or that they prefer to implement a predetermined mechanism. In these cases, the legislation will set out a fall back position, known as the standard rules for information and consultation. Once the standard rules apply, it is likely also that the legislation will still allow the parties to reopen negotiations for an agreement on information and consultation in the future, subject to the same formalities as listed above.

Article 4 of the Directive provides the basis for these rules, as it prescribes the subjects and mechanics of information and consultation. As well as transposing this Article, it is proposed that these standard rules will provide for the creation of an 'Employees' Forum', and set out the competence, composition, procedure and functions of that forum.

It is also likely that the legislation will provide that, once established, the Employees' Forum could negotiate to change any of the rules or procedures for that Forum.

Questions for consideration here are:

- Q.9 How long after negotiations for an agreement break down should the employer have in order to establish the Employees' Forum? Is six months considered reasonable?
- Q.10 Is it necessary for the legislation to define information and consultation any further than is already provided for in Articles 2 and 4 of the

Directive? Is it more appropriate for a code of practice to be devised on these matters?

- Q.11 If information and consultation should be defined further, what subjects should the legislation include in an indicative list?
- Q.12 Should the rules be prescriptive, for example stating the number of meetings per year?
- Q.13 The Second Schedule of the Transnational Information and Consultation of Employees Act 1996 (see Appendix 4) could serve as a template for the structures of an Employees' Forum. What other matters should be taken into consideration in designing standard rules on information and consultation?

6. APPLICATION OF THE DIRECTIVE

The Directive applies to either undertakings with 50 or more employees or establishments with 20 or more employees. Article 3 provides that the choice between the two is left to the Member States.

An **undertaking** is defined as a “public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States”. This can be understood as a legal entity such as a company, partnership or co-operative.

An **establishment** is defined as a “unit of business defined in accordance with national law and practice, located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources”. In other words, it is a distinct physical entity such as a factory, branch office or retail outlet, which is part of a larger legal entity. Thus an undertaking may operate a number of establishments.

The Department has received submissions in favour of both undertakings and establishments, and no decision has been taken yet. While the Irish law will apply to one or the other, it is likely that it will not stipulate at what level the information and consultation procedure must operate. For example, if the legislation applies to undertakings, it may still be possible for employers and employees to agree that information and consultation will take place at the level of each establishment within that undertaking.

- Q. 14 Please indicate which of the two options, namely undertaking or establishment, you favour and why.
- Q. 15 How, if at all, should the legislation deal with groups of associated undertakings or establishments?

7. PHASING IN OF APPLICATION OF THE DIRECTIVE

Article 10 of the Directive permits Ireland to phase in its application, starting with larger enterprises, in line with the following timetable –

- Undertakings with at least 150 employees or establishments with at least 100 employees from the 23rd of March 2005
- Undertakings with at least 100 employees or establishments with at least 50 employees from the 23rd of March 2007
- Undertakings with at least 50 employees or establishments with at least 20 employees from the 23rd of March 2008

Given that a statutory general right to information and consultation is new in this country, it is proposed to phase in the scope of the law in line with these transitional provisions.

8. THE OBLIGATION TO INTRODUCE INFORMATION AND CONSULTATION PROCEDURES

Once an enterprise employs the stated number, or more, of employees, then the legislation will apply to that enterprise. The legislation must then determine the point where the obligation to negotiate with employees on the possible introduction of a procedure for information and consultation occurs.

Accordingly, it is at this stage that the question arises as to whether or not the legislation should provide for a ‘trigger mechanism’ to ascertain the level of interest in commencing negotiations. As the Directive is virtually silent on this point, Member States are faced with choices here.

Firstly, the legislation may provide for an ‘opt in’ method, whereby a stated number of all employees in the enterprise must make a formal request in order to open negotiations for an information and consultation procedure.

Alternatively, it is open to Member States to provide for an ‘opt out’ method, whereby any enterprise which meets or exceeds the employee numbers threshold must enter into negotiations unless a stated number of their employees decline. In both this case and the previous one, it would also be open to the employer to initiate discussions and thereby dispense with the need for any poll of employees.

If a trigger is used, then it will be necessary to prescribe the minimum number of employees, most likely by reference to a percentage, required to either opt in or out.

If no trigger is provided for, then the law will simply oblige the enterprise to commence negotiations with its employees without reference to any request on the part of the employees to opt in or opt out.

The Department welcomes opinion on the use or otherwise of a trigger and if so, the type of mechanism to be used.

Accordingly, the following questions could be addressed in submissions –

- Q. 16 Which method should the legislation use, the opt in, opt out or no trigger at all? Please give reasons for your choice.
- Q. 17 If a trigger is used, should it be defined by reference to a percentage or an absolute number of employees?
- Q. 18 If a percentage, then what percentage should be set as a minimum?
- Q. 19 What is an appropriate reference period for calculating the number of employees?
- Q. 20 Should there be a maximum limit so that in very large businesses the numbers of employees required is not a barrier to the exercise of their right?
- Q. 21. Should there be a minimum limit so that employees in smaller businesses will need to demonstrate the support of more than 1 or 2 people for an information and consultation procedure?
- Q. 22. Is it useful to provide for anonymity for employees when making their request? Please give reasons for your answer.
- Q. 23 Where a request is not validly made, say for example the minimum employee support is not met, how long should the legislation stipulate before another request can be made?
- Q. 24 Where an agreement or the standard rules on information and consultation are in place, what period of time should elapse before a request for a renegotiation of the arrangements can be made?

9. DEFINITION AND ROLE OF EMPLOYEES' REPRESENTATIVES

The Directive specifies two distinct roles for employees' representatives as follows:

- Acting on behalf of the employees in the course of negotiations for an agreement on information and consultation – Article 1.3 of the Directive
- Acting on behalf of employees if the standard rules are applied – Articles 2(f), 2(g) and 4 of the Directive

It is also possible that where a negotiated arrangement is in place, there will be a role for representatives.

The Directive further provides that employees' representatives are to be defined in accordance with national laws and/or practices (Article 2(e)). In Ireland, references to employees' representatives occur in a few statutes. Examples include the following –

1. European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. S.I. 131 of 2003

“Employees' representatives',, means:

- (a) a trade union, staff association or excepted body with which it has been the practice of the employees' employer to conduct collective bargaining negotiations, or
- (b) in the absence of such a trade union, staff association or excepted body, a person or persons chosen by such employees (under an arrangement put in place by the employer under Regulation 7(2) or 8(5)) from among their number to represent them in negotiations with the employer,

and cognate expressions shall be construed accordingly;”

2. Transnational Information and Consultation of Employees Act 1996

“Employees' representatives means-

- (a) in the case of the Special Negotiating Body, persons elected or appointed to that Body, who may include-
 - (i) employees, and
 - (ii) trade union officials and officials of an excepted body, whether or not they are employees,

and

- (b) in the case of a European Works Council or European Employees' Forum, or in relation to any other arrangement for the information and consultation of employees to which this Act applies, employees elected or appointed to those bodies or for the purposes of those arrangements.”

Appended to the Directive is a Joint Declaration of the European Parliament, the Council and the Commission on employee representation. It says –

“With regard to employee representation, the European Parliament, the Council and the Commission recall the judgements of the European Court of Justice of 8 June 1994 in cases C-382/92 (Safeguarding of employees' rights

in the event of transfers of undertakings) and C-383/92 (Collective redundancies).”

Therefore, Member states will have to be mindful of these judgements (see Appendix 5).

The Department is posing the following questions here:

- Q.25 How should employees’ representatives be defined?
- Q.26 How are employees’ representatives to be selected for the purposes of negotiating with employers on a possible agreement? Could they be volunteers appointed by the employees or is a ballot essential? How can independence and fairness of the procedure be ensured?
- Q. 27 How are employees’ representatives to be selected for the purposes of implementing the standard rules?
- Q.28 How many representatives should be appointed? What ratio of representatives to employees is appropriate?
- Q.29 Should employees be able to appoint representatives from outside their own workforce? Please give reasons for your answer.
- Q.30 The Transnational Information and Consultation of Employees Act 1996 provides that employees’ representatives must be afforded such reasonable facilities, including time off, as will enable them to carry out their functions as employees’ representatives promptly and efficiently. Are there other similar provisions that should be made? Provision for matters such as time off and facilities will be given consideration.
- Q.31 What is the situation where only part of the workforce are members of a trade union?

10. ROLE OF EXPERTS

Article 6 of the Directive is the only place where there is a specific mention of a role for outside expertise. However, it is arguable from this reference that it is implicit in the text that both employers and employees may call on expert assistance. Where there is a negotiated agreement in place, the role of experts, if any, will be defined in that agreement. Where the standard rules apply, there may be a need to make express provision for them.

Answers to the following are sought:

- Q.32 Apart from referring to them in connection with the handling of confidential information, how should the legislation provide for the use of experts?

Q.33 How should the cost of expert advice be dealt with?

11. HANDLING OF CONFIDENTIAL INFORMATION

The Directive obliges Member States to put certain protections for confidential information in place.

The following general principles, taken from the Directive, will determine the rules on confidential information:

- Anyone who receives confidential information while participating in an information and consultation procedure will be bound by a duty of confidentiality not to reveal that information. An exception to this rule could be that they may pass on such information to their colleagues, who would then be bound not to reveal it any further.
- Any information divulged by an employer must be clearly identified as confidential at the time of release in order to benefit from the protections.
- Moreover, the information supplied must in fact be confidential by an objective standard in order to benefit from the protections.
- An employer may refuse to pass on confidential information to its employees provided it can show objectively that the information would either seriously harm the functioning of the enterprise or be prejudicial to the enterprise.
- Where there is a dispute as to the handling of confidential information, either party will have access to an independent review procedure.

The Department welcomes comment on the following questions:

Q.34 What penalties should be imposed for a breach of confidentiality?

Q.35 What penalties should be imposed for a failure to divulge information which cannot be shown by an objective standard to be confidential?

Q.36 How should disputes relating to confidential information be resolved?

12. COMPLIANCE AND ENFORCEMENT

Where an agreement is in place or the standard rules apply, a complaint may be brought that a term of that agreement or of the standard rules has not been complied with. Similarly, in the course of negotiations for an agreement, an occasion for complaint might arise.

The Department is seeking views on the following questions in this regard:

- Q.37 Which body is the appropriate one to handle complaints under this legislation? Possibilities include the Labour Relations Commission, the Labour Court, the courts, a newly created body or a combination of some of these bodies.
- Q.38 What sanctions are appropriate where a complaint is upheld? The Directive requires that sanctions be effective, proportionate and dissuasive. Possibilities include fines, prison terms, and specific performance orders. Parties making submissions should note that in the course of negotiations on the Directive the possibility of annulling a corporate decision made in breach of the information and consultation requirements was discussed and the legislators decided against making such a provision in the Directive.
- Q.39 What defences should be available? For example, should an employer be able to rely on the fact that they were not in possession of the information as it had not been passed to them from the head office of the company?
- Q.40 Should there be a role for a body, such as the Labour Relations Commission, to facilitate negotiations for information and consultation procedures?

13. DEFINITION OF EMPLOYEE

The definition of employee is key in that it will determine whether or not an enterprise is covered by the new legislation. There are a number of definitions of employee already existing in Irish legislation, and it is most likely that the new law on information and consultation will use one of these. Before determining the exact wording of any definition here, however, the Department is seeking observations on the following points:

- Q.41 Part time, fixed term workers and apprentices will be counted for the purposes of assessing whether or not the threshold is met. Where temporary agency workers are engaged by an end user, the question arises as to whether or not those temporary agency workers should be counted by that end user as well as by the agency which acts as their placement agency.

- Q.42 If the number of employees falls below the thresholds for information and consultation, how should this situation be dealt with? Should the legislation stipulate that a certain period of time elapse before the employer may seek to dissolve the information and consultation procedure? If so, then what length of time is appropriate?

14. OBLIGATIONS TO INFORM AND CONSULT UNDER OTHER LEGISLATION

Irish law already obliges employers to inform and consult their employees in certain defined circumstances (listed at Appendix 2 below). The Directive, in Article 9.4, specifically states that implementation of it shall not be sufficient grounds for any regression in relation to the general level of protection of workers in this area. Accordingly, any obligations to inform and consult under this Directive are in addition to existing obligations.

It may be possible for any information and consultation procedure to incorporate the existing obligations. In other situations, for example where a European Works Council is in operation, it may be necessary to have the two procedures sit side by side.

The Department would welcome opinions as to how this might work in practice.

15. PROTECTIONS AND FACILITIES FOR EMPLOYEES

The legislation will include certain protections for those employees and employee representatives exercising their rights and performing their duties under the law. These will include protections against discrimination and dismissal and will prohibit employers requiring employees to waive or not exercise their rights to information and consultation.

- Q.43 Are there any other protections which the legislation might include?

16. ELEMENTS OF THE DIRECTIVE WHICH MAY NOT BE REQUIRED TO BE TRANSPOSED INTO IRISH LAW

The Directive allows Member States to make special provisions for particular types of enterprise (Article 3.2), provided that provisions of that nature already exist in national legislation at the date the Directive came into force (i.e. 23 March 2002). As such provisions did not exist in Irish law at that time, it is not proposed to make any particular provisions under this Article.

Article 3.3 provides for a derogation for crews of vessels plying the high seas (Article 3.3). Views are sought on the merits or otherwise of derogating in this regard.

APPENDIX 1

DIRECTIVE 2002/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Of 11 March 2002

Establishing a general framework for informing and consulting employees in the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure referred to in Article 251⁴, and in light of the joint text approved by the Conciliation Committee on 23 January 2002,

Whereas:

- (1) Pursuant to Article 136 of the Treaty, a particular objective of the Community and the Member States is to promote social dialogue between management and labour.
- (2) Point 17 of the Community Charter of Fundamental Social Rights of Workers provides, *inter alia*, that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States.
- (3) The Commission consulted management and labour at Community level on the possible direction of Community action on the information and consultation of employees in undertakings within the Community.

¹ OJ C 2, 5.1.1999, p.3.

² OJ C 258, 10.9.1999, p.24

³ OJ C 144, 16.5.2001, p.58

⁴ Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p.223), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p.55), Council Common Position of 27 July 2001 (OJ C 307, 31.10.2001, p.16) and Decision of the European Parliament of 23 October 2001 (not yet published in the Official Journal). Decision of the European Parliament of 5 February 2002 and Decision of the Council of 18 February 2002.

- (4) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour on the contents of the planned proposal; management and labour have presented their opinions to the Commission.
- (5) Having completed this second stage of consultation, management and labour have not informed the Commission of their wish to initiate the process potentially leading to the conclusion of an agreement.
- (6) The existence of legal frameworks at national and Community level intended to ensure that employees are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting employees from being taken and made public without adequate procedures having been implemented beforehand to inform and consult them.
- (7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.
- (8) There is a need, in particular, to promote and enhance information and consultation on the situation and likely development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the possible anticipatory measures envisaged, in particular in terms of employee training and skill development, with a view to offsetting the negative developments or their consequences and increasing the employability and adaptability of the employees likely to be affected.
- (9) Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work.
- (10) The Community has drawn up and implemented an employment strategy based on the concepts of 'anticipation', 'prevention' and 'employability', which are to be incorporated as key elements into all public policies likely to benefit employment, including the policies of individual undertakings, by strengthening the social dialogue with a view to promoting change compatible with preserving the priority objective of employment.
- (11) Further development of the internal market must be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.

- (12) Entry into the third stage of economic and monetary union has extended and accelerated the competitive pressures at European level. This means that more supportive measures are needed at national level.
- (13) The existing legal frameworks for employee information and consultation at Community and national level tend to adopt an excessively a posteriori approach to the process of change, neglect the economic aspects of decisions taken and do not contribute either to genuine anticipation of employment developments within the undertaking or to risk prevention.
- (14) All of these political, economic, social and legal developments call for changes to the existing legal framework providing for the legal and practical instruments enabling the right to be informed and consulted to be exercised.
- (15) This Directive is without prejudice to national systems regarding the exercise of this right in practice where those entitled to exercise it are required to indicate their wishes collectively.
- (16) This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to informed and consulted through their representatives.
- (17) Since the objectives of the proposed action, as outlined above, cannot be adequately achieved by the Member States, in that the object is to establish a framework for employee information and consultation appropriate for the new European context described above, and can therefore, in view of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (18) The purpose of this general framework is to establish minimum requirements applicable throughout the Community while not preventing Member States from laying down provisions more favourable to employees.
- (19) The purpose of this general framework is also to avoid any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings. To this end, the scope of this Directive should be restricted, according to the choice made by Member States, to undertakings with at least 50 employees or establishments employing at least 20 employees.
- (20) This takes into account and is without prejudice to other national measures and practices aimed at fostering social dialogue within companies not covered by this Directive and within public administrations.
- (21) However, on a transitional basis, Member States in which there is no established statutory system of information and consultation of employees or employee

representation should have the possibility of further restricting the scope of the Directive as regards the numbers of employees.

- (22) A Community framework for informing and consulting employees should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.
- (23) The objective of this Directive is to be achieved through the establishment of a general framework comprising the principles, definitions and arrangements for information and consultation, which it will be for the Member States to comply with and adapt to their own national situation, ensuring, where appropriate, that management and labour have a leading role by allowing them to define freely, by agreement, the arrangements for informing and consulting employees which they consider to be best suited to their needs and wishes.
- (24) Care should be taken to avoid affecting some specific rules in the field of employee information and consultation existing in some national laws, addressed to undertakings or establishments which pursue political, professional, organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and expression of opinions.
- (25) Undertakings and establishments should be protected against disclosure of certain particularly sensitive information.
- (26) The employer should be allowed not to inform and consult where this would seriously damage the undertaking or the establishment or where he has to comply immediately with an order issued to him by a regulatory or supervisory body.
- (27) Information and consultation imply both rights and obligations for management and labour at undertaking or establishment level.
- (28) Administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on this Directive.
- (29) This Directive should not affect the provisions, where these are more specific, of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies¹ and of Council Directive 2001/23/EC of 12 March 2001 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 undertakings or businesses².
- (30) Other rights of information and consultation, including those arising from Council Directive 94/45/EEC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and

¹ OJ L 225, 12.8.1998, p.16.

² OJ L 82, 22.3.2001, p.16

Community-scale groups of undertakings for the purposes of informing and consulting employees³, should not be affected by this Directive.

- (31) Implementation of this Directive should not be sufficient grounds for a reduction in the general level of protection of workers in the areas to which it applies,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object and principles

1. The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.
2. The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness.
3. When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'undertaking' means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States;
- (b) 'establishment' means a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources;
- (c) 'employer' means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice;

³ OJ L 254, 30.9.1994, p.64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p.22)

(d) ‘employee’ means any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice;

(e) ‘employees’ representatives’ means the employees’ representatives provided for by national laws and/or practices;

(f) ‘information’ means transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it;

(g) ‘consultation’ means the exchange of views and establishment of dialogue between the employees’ representatives and the employer.

Article 3

Scope

1. This Directive shall apply, according to the choice made by Member States, to:

(a) undertakings employing at least 50 employees in any one Member State, or

(b) establishments employing at least 20 employees in any one Member State.

Member States shall determine the method for calculating the thresholds of employees employed.

2. In conformity with the principles and objectives of this Directive, Member States may lay down particular provisions applicable to undertakings or establishments which pursue directly and essentially political, professional organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, on condition that, at the date of entry into force of this Directive, provisions of that nature already exist in national legislation.

3. Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas.

Article 4

Practical arrangements for information and consultation

1. In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.
2. Information and consultation shall cover:
 - (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
 - (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
 - (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).
3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.
4. Consultation shall take place:
 - (a) while ensuring that the timing, method and content thereof are appropriate;
 - (b) at the relevant level of management and representation, depending on the subject under discussion;
 - (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;
 - (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
 - (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2©.

Article 5

Information and consultation deriving from an agreement

Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the date laid down in Article 11, as well as any subsequent renewals of such agreements, may establish, while respecting the principles set out in Article 1 and subject to conditions and limitations laid down by the Member States, provisions which are different from those referred to in Article 4.

Article 6

Confidential information

1. Member States shall provide that, within the conditions and limits laid down by national legislation, the employees' representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality.

2. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it.

3. Without prejudice to existing national procedures, Member States shall provide for administrative or judicial review procedures for the case where the employer requires confidentiality or does not provide the information in accordance with paragraphs 1 and 2. They may also provide for procedures intended to safeguard the confidentiality of the information in question.

Article 7

Protection of employees' representatives

Member States shall ensure that employees' representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

Article 8

Protection of rights

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees' representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.
2. Member States shall provide for adequate sanctions to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These sanctions must be effective, proportionate and dissuasive.

Article 9

Link between this Directive and other Community and national provisions

1. This Directive shall be without prejudice to the specific information and consultation procedures set out in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.
2. This Directive shall be without prejudice to provisions adopted in accordance with Directives 94/45/EC and 97/74/EC.
3. This Directive shall be without prejudice to other rights to information, consultation and participation under national law.
4. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

Article 10

Transitional provisions

Notwithstanding Article 3, a Member State in which there is, at the date of entry into force of this Directive, no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of employee representation at the workplace allowing employees to be represented for that purpose, may limit the application of the national provisions implementing this Directive to:

- (a) undertakings employing at least 150 employees or establishments employing at least 100 employees until 23 March 2007, and

- (b) undertakings employing at least 100 employees or establishments employing at least 50 employees during the year following the date in point (a).

Article 11

Transposition

1. Member States shall adopt the laws, regulations and administrative procedures necessary to comply with this Directive not later than 23 March 2005 or shall ensure that management and labour introduce by that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them to guarantee the results imposed by this Directive at all times. They shall forthwith inform the Commission thereof.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 12

Review by the Commission

Not later than 23 March 2007, the Commission shall, in consultation with the Member States and the social partners at Community level, review the application of this Directive with a view to proposing any necessary amendments.

Article 13

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 14

Addresses

This Directive is addressed to the Member States.

APPENDIX 2

EXISTING LEGAL REQUIREMENTS TO INFORM AND CONSULT IN IRISH LAW

1. Collective redundancies:

The Protection of Employment Act 1977, as amended, provides that employers planning collective redundancies must consult employees' representatives and notify the Minister for Enterprise, Trade and Employment at least 30 days before the redundancies commence.

2. Transfer of undertakings:

In the event of a transfer of ownership of an undertaking, an employer has certain obligations to inform and consult employees at least 30 days in advance of the transfer.

3. Transnational Information and Consultation of Employees Act 1996:

This Act applies to Community-scale undertakings and Community-scale groups of undertakings and provides for information and consultation of employees on transnational matters affecting those employees.

APPENDIX 3

FULL LIST OF QUESTIONS TO BE CONSIDERED FOR SUBMISSION

Agreements on information and consultation – Pages 5 and 6

- Q.1 If not all of the employees' representatives who negotiate an agreement sign off on that agreement, what should be the minimal level of employee support needed to approve the terms of the agreement?
- Q.2 Apart from the lists above (see page 6), should there be any other requirements on agreements? If so, what are they?

Agreements in existence before the introduction of information and consultation legislation – Pages 6 and 7

- Q.3 How should the legislation seek to ensure that pre-existing agreements enjoy employee support as information and consultation arrangements?
- Q.4 Are there formalities, other than those listed at page 6, which might be necessary to include in the legislation?
- Q.5 What impact, if any, might the new legislation have on existing collective agreements and how should the legislation address this?

National agreement on information and consultation – Page 7

- Q. 6 What are your views on the usefulness of a nationally agreed framework?
- Q.7 What format or shape might such a framework take?
- Q.8 Who should be the parties to it?

Standard rules on information and consultation – Pages 7 and 8

- Q.9 How long after negotiations for an agreement break down should the employer have in order to establish the Employees' Forum? Is six months considered reasonable?
- Q. 10 Is it necessary for the legislation to define information and consultation any further than is already provided for in Articles 2 and 4 of the Directive? Is it more appropriate for a code of practice to be devised on these matters?
- Q.11 If information and consultation should be defined further, what subjects should the legislation include in an indicative list?
- Q.12 Should the rules be prescriptive, for example stating the number of meetings per year?

- Q.13 The Second Schedule of the Transnational Information and Consultation of Employees Act 1996 (see Appendix 4) could serve as a template for the structures of an Employees' Forum. What matters should be taken into consideration in designing standard rules on information and consultation?

Application of the Directive – Page 8

- Q.14 Please indicate which of the two options, namely undertaking or establishment, you favour and why.
- Q. 15 How, if at all, should the legislation deal with groups of associated undertakings or establishments?

The obligation to introduce information and consultation procedures – Pages 9 and 10

- Q.16 Which method should the legislation use, the opt in, opt out or no trigger at all? Please give reasons for your choice.
- Q. 17 If a trigger is used, should it be defined by reference to a percentage or an absolute number of employees?
- Q. 18 If a percentage, then what percentage should be set as a minimum?
- Q. 19 What is an appropriate reference period for calculating the number of employees?
- Q. 20 Should there be a maximum limit so that in very large businesses the numbers of employees required is not a barrier to enforcement of their right?
- Q. 21 Should there be a minimum limit so that employees in smaller businesses will need to demonstrate the support of more than 1 or 2 people for an information and consultation procedure?
- Q. 22 Is it useful to provide for anonymity for employees when making their request? Please give reasons for your answer.
- Q. 23 Where a request is not validly made, say for example the minimum employee support is not met, how long should the legislation stipulate before another request can be made?
- Q. 24 Where an agreement or the standard rules on information and consultation are in place, what period of time should elapse before a request for a renegotiation of the arrangements can be made?

Definition and role of employees' representatives – Pages 10, 11 and 12

- Q.25 How should employees' representatives be defined?
- Q.26 How are employees' representatives to be selected for the purposes of negotiating with employers on a possible agreement? Could they be volunteers appointed by the employees or is a ballot essential? How can independence and fairness of the procedure be ensured?
- Q.27 How are employees' representatives to be selected for the purposes of implementing the standard rules?
- Q.28 How many representatives should be appointed? What ratio of representatives to employees is appropriate?
- Q.29 Should employees be able to appoint representatives from outside their own workforce? Please give reasons for your answer.
- Q.30 The Transnational Information and Consultation of Employees Act 1996 provides that employees' representatives must be afforded such reasonable facilities, including time off, as will enable them to carry out their functions as employees' representatives promptly and efficiently. Are there other similar provisions that should be made?
- Q.31 What is the situation where only part of the workforce are members of a trade union?

Role of experts – Pages 12 and 13

- Q.32 Apart from referring to them in connection with the handling of confidential information, how should the legislation provide for the use of experts?
- Q.33 How should the cost of expert advice be dealt with?

Handling of confidential information – Page 13

- Q.34 What penalties should be imposed for a breach of confidentiality?
- Q.35 What penalties should be imposed for a failure to divulge information which cannot be shown by an objective standard to be confidential?
- Q.36 How should disputes relating to confidential information be resolved?

Compliance and enforcement – Page 14

- Q.37 Which body is the appropriate one to handle complaints under this legislation? Possibilities include the Labour Relations Commission, the

Labour Court, the courts, a newly created body or a combination of some of these bodies.

- Q.38 What sanctions are appropriate where a complaint is upheld? The Directive requires that sanctions be effective, proportionate and dissuasive. Possibilities include fines, prison terms, and specific performance orders. Parties making submissions should note that in the course of negotiations on the Directive the possibility of annulling a corporate decision made in breach of the information and consultation requirements was discussed and the Member States decided against making such a provision in the Directive.
- Q.39 What defences should be available? For example, should an employer be able to rely on the fact that they were not in possession of the information as it had not been passed to them from the head office of the company?
- Q.40 Should there be a role for a body, such as the Labour Relations Commission, to facilitate negotiations for information and consultation procedures?

Definition of employee – Pages 14 and 15

- Q.41 Part time, fixed term workers and apprentices will be counted for the purposes of assessing whether or not the threshold is met. Where temporary agency workers are engaged by an end user, the question arises as to whether or not those temporary agency workers should be counted by that end user as well as by the agency which acts as their placement agency.
- Q.42 If the number of employees falls below the thresholds for information and consultation, how should this situation be dealt with? Should the legislation stipulate that a certain period of time elapse before the employer may seek to dissolve the information and consultation procedure? If so, then what length of time is appropriate?

Protections and facilities for employees – Page 15

- Q.43 Are there any other protections which the legislation might include?

APPENDIX 4

SECOND SCHEDULE OF THE TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES ACT 1996

SUBSIDIARY REQUIREMENTS: EUROPEAN WORKS COUNCIL

- Competence. 1.(1) The competence of the European Works Council (in this Schedule referred to as “the Council”) shall be limited to information and consultation on matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States. This provision shall apply whether the central management is located within the Community or elsewhere.
- (2) In the case of undertakings or groups of undertakings referred to in *section 9(2)*, the competence of the Council shall be limited to those matters concerning all their establishments or group undertakings located within the Member States or concerning at least two of their establishments or group undertakings located in different Member States.
- Composition 2.(1) The Council shall be composed of employees’ representatives who shall be employees of the Community-scale undertaking or Community-scale group of undertakings.
- (2) The representatives of employees based in the State shall be elected in accordance with the *First Schedule*.
- (3) In the absence of elections, the representatives shall be appointed.
- (4) The Council shall have at least three but not more than 30 members but, where it considers that its size so warrants, it shall elect a select committee from among its members comprising not more than three members.
- Procedure 3. The Council shall adopt its own rules of procedure subject to the following:
- (a) the arrangements for the meetings of the Council shall be agreed by the central management in consultation with employees or their representatives but the management may not unreasonably withhold consent to proposals made by employees or their representatives;
- (b) the minutes of the Council meetings shall be approved by both management and employees’ representatives to the Council;

(c) before any meeting with the central management, the Council or a select committee, where necessary enlarged in accordance with *paragraph 5(5)*, shall be entitled to meet without the management concerned being present;

(d) without prejudice to *section 15*, the members of the Council shall inform the representatives of the employees employed in the establishments of, or employees of the undertakings of, a Community-scale group of undertakings, or in the absence of such representatives, the workforce as a whole, of the content and outcome of the information and consultation procedures carried out in accordance with this Schedule;

(e) the Council or the select committee may be assisted by such experts of its choice as are necessary for it to carry out its task.

Election or appointment of members.

4.(1) In the election or appointment of members of the Council, the central management shall, as far as it is able to, ensure-

(a) that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings, is represented by one member, and

(b) that there are additional or supplementary members in proportion to the number of employees employed in the establishments, or by the controlling undertaking or the controlled undertakings, in accordance with the following;

(i) one additional member from a Member State where between 25 per cent. and 50 per cent. of the employees of the undertaking or group of undertakings are employed;

(ii) two additional members from a Member State where more than 50 per cent. but not more than 75 per cent. of the employees of the undertaking or group of undertakings are employed;

(iii) three additional members from a Member State where more than 75 per cent of the employees of the undertaking or group of undertakings are employed.

(2) The central management, or such other level of management as the central management thinks more appropriate, shall be informed of the composition of the Council as soon as practicable, and local management shall be informed accordingly.

Functions

5.(1) The Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of

a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects, and local management shall be informed accordingly.

(2) The meeting shall relate in particular to the structure, economic and financial situation and probable trends in employment, investments, and substantial changes concerning the organisation, introduction of new working methods or production processes, transfer of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(3) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocation, the closure of establishments or undertakings or collective redundancies, a select committee or, where no such committee exists, the Council, shall have the right to be informed and the right to meet, at its request, the central management or such other level of management as the central management thinks more appropriate and advises the Council, so as to be informed and consulted on measures significantly affecting employees' interests.

(4) For the purposes of *subparagraph (3)*, collective redundancies are those which concern a significant number of employees in relation to the size of the Community-scale undertaking, the establishment, the Community-scale group of undertakings or the undertaking which is a member or part of the Community-scale group of undertakings, in which the collective redundancy is taking place.

(5) Those members of the Council who have been elected or appointed from the establishments or undertakings which are directly concerned with the measures referred to in *subparagraph (3)* shall also have the right to participate in the meeting organised with the select committee.

(6) The information and consultation meeting referred to in *subparagraph (3)* shall take place as soon as possible after any request to meet the central management, on the basis of a report prepared by the central management, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

(7) The meeting shall not affect the prerogatives of the central management.

Expenses

6.(1) The operating expenses of the Council, including a select committee where one is established, shall be borne by the central management.

(2) The central management concerned shall provide the members of the Council with such financial and other resources as are necessary to enable them to perform their duties in an appropriate manner.

(3) In particular, the cost of ongoing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the Council and its select committee shall be met by the central management unless otherwise agreed.

(4) The funding of experts by the central management shall be limited to funding the equivalent of one expert per meeting.

Miscellaneous 7.(1) Four years after the establishment of the Council it shall examine whether to open negotiations for the conclusion of an agreement referred to in *section 11(1)* or to continue to apply the requirements adopted in accordance with this Schedule.

(2) *Sections 11 and 12*, with any necessary modifications, shall apply if a decision has been taken to negotiate an agreement referred to in *section 11(1)*, in which case “Special Negotiating Body” in those sections shall be read as “European Works Council”.

APPENDIX 5

JUDGEMENTS OF THE EUROPEAN COURT OF JUSTICE

1. Case C-382/92: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Safeguarding of employees' rights in the event of transfers of undertakings. Judgement of the Court of 8 June 1994.

2. Case C-383/92: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Collective redundancies. Judgement of the Court of 8 June 1994.

Copies of these judgements may be obtained from the website of the European Court of Justice – [http:// curia.eu.int/en/index.htm](http://curia.eu.int/en/index.htm)

APPENDIX 6

OTHER EU LAW REQUIREMENTS TO INFORMATION AND CONSULTATION DUE FOR TRANSPOSITION INTO IRISH LAW

The European Company Statute:

Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees is due to be transposed into Irish law by the 8th of October 2004. This Directive prescribes the rules for information, consultation and participation of employees in those companies which elect to become an European company (Societas Europaea or “SE”).

The rules on becoming an SE are set out in Council Regulation (EC) 2157/2001.

APPENDIX 7

POSSIBLE FORTHCOMING EU LAWS ON INFORMATION AND CONSULTATION

The European Co-operative Statute:

If adopted, this proposed Directive will prescribe the rules for information, consultation and participation of employees in those bodies which elect to become an European Co-operative.

The European Mutual Society:

If adopted, this proposed Directive will prescribe the rules for information, consultation and participation of employees in those bodies which elect to become an European Mutual Society.

The European Association:

If adopted, this proposed Directive will prescribe the rules for information, consultation and participation of employees in those bodies which elect to become an European Association.

Takeovers and mergers:

If adopted, this proposed Directive will set out rules for the informing and consulting of employees in the event of certain cross border mergers and takeovers.