

INFORMATION AND CONSULTATION PROCEDURES IN EUROPE

The impact of the European Union and future trends

ABA International Labor Law Committee Meeting

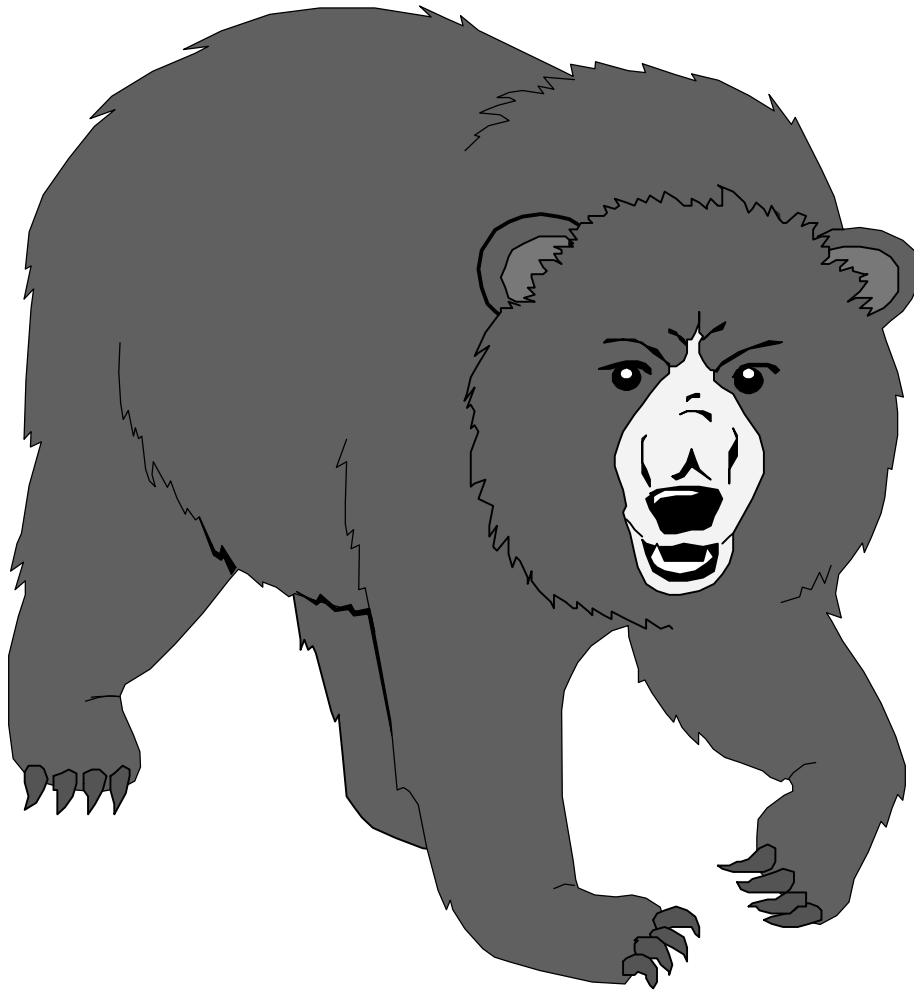
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THE EUROPEAN LABOR RELATIONS BEAST



INFORMATION, CONSULTATION AND PARTICIPATION PROCEDURES AND STRUCTURES IN EUROPE

■ **AT COMPANY LEVEL:**

THE WORKS COUNCIL

■ **AT THE EUROPEAN POLITICAL LEVEL:**

THE SOCIAL DIALOGUE

THE SOCIAL DIALOGUE

Article 118b

The Commission shall endeavor to develop the dialogue between management and labor at European level which could, if the two sides consider it desirable, lead to relations based on agreement.

THE SOCIAL DIALOGUE

Consultation procedures of management (UNICE) and labor organizations (ETUC) initiated by DELORS

UNICE and the representation of US corporations in Europe.

THE SOCIAL DIALOGUE

MAASTRICHT: February 7, 1992

- **Continental Europe vs. UK**
- **The protocol on Social policy**
- **The agreement on Social policy**

THE SOCIAL DIALOGUE

Article 1

The Community and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combatting of exclusion.

THE SOCIAL DIALOGUE

Article 2

Particular attention to

- **improvement of working environment to protect workers health and safety**
- **working conditions**
- **the information and consultation of workers**
- **equality between men and women**
- **the integration of persons excluded from the labor market**

THE SOCIAL DIALOGUE

Article 3

- 1 The Commission shall have the task to promoting the consultation of management and labor at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.**
- 2 To this end, before submitting proposals in the social policy field, the Commission shall consult management and labor on the possible direction of Community action.**

THE SOCIAL DIALOGUE

Article 3 (cont'd)

- 3 If, after such consultation, the Commission considers Community action advisable, it shall consult management and labor on the content of the envisaged proposal. Management and labor shall forward to the Commission an opinion or, where appropriate, a recommendation.**

THE SOCIAL DIALOGUE

AMSTERDAM: October 2, 1997

The agreement on Social policy integrated in the Treaty

(art. 138)

The new SCE

UNICE

CEEP

UEAPME

COPA

Eurocommerec

ETUC

CEC

Eurocadres

THE SOCIAL DIALOGUE

COLLECTIVE BARGAINING

The Social Charter

Article 12

Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

The dialogue between the two sides of industry at European level which must be developed, may, if the parties deem it desirable, result in contractual relations in particular at inter-occupational and sectorial level.

THE SOCIAL DIALOGUE

COLLECTIVE BARGAINING

Maastricht: The agreement on Social policy

Article 4

- 1 Should management and labor so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.**

- 2 Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labor and the Member States or, in matters covered by Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.**

THE SOCIAL DIALOGUE

COLLECTIVE BARGAINING

Maastricht: The agreement on Social policy

Article 4 (cont'd)

The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 2(3), in which case it shall act unanimously.

THE SOCIAL DIALOGUE

COLLECTIVE BARGAINING

AMSTERDAM:

**Article 4 of the Agreement integrated in the
Treaty as Article 139.**

THE SOCIAL DIALOGUE

COLLECTIVE BARGAINING

Results so far:

- **parental leave**
- **part-time work**
- **fixed term contracts**

The next step:

A legal basis for a ...

European Collective Bargaining Agreement

INFORMATION, CONSULTATION AT COMPANY LEVEL

- **An old European Song**
 - **Information - Consultation - Participation**
 - **Financial - Economic - Social**
 - **Works Council**
- Supervisory board**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The Paris Summit of October 1972

- **confirmation of the Member States to engage in major social actions**
- **invitation extended to the European Institutions to establish a social program establishing a coordinated policy with respect to various labor and employment issues including the involvement of the workers in the company.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The response of the European Commission:

A general approach:

The Vredeling proposal

a declaration of war

INFORMATION, CONSULTATION AT COMPANY LEVEL

**The response of the European Commission
(cont'd):**

The Case by Case approach:

■ **Collective redundancies;**

Directive 75/29 dated February 17, 1975

Directive 92/56 dated June 24, 1992

Directive 98/59 dated June 20, 1998

■ **Transfer of business:**

Directive 77/187 dated February 14, 1977

Directive 98/50 dated June 29, 1998

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2

- 1 Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2 (cont'd)

- 2 The consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, *inter alia*, at aid for redeploying or retraining workers made redundant.**

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2 (cont'd)

3 To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

**(a) supply them with all relevant information and
(b) in any event notify them in writing of:**

(i) the reasons for the projected redundancies; (ii) the number of categories of workers to be made redundant; (iii) the number of categories of workers to be made redundant;

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2 (cont'd)

(iv) the period over which the projected redundancies are to be effected; (v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer; (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2 (cont'd)

- 4 The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

Collective redundancies: Directive 98/59

Article 2 (cont'd)

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Transfer of business: Directive 98/50

Article 6

1 The transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of the following:

- the date or proposed date of the transfer,**
- the reasons for the transfer,**
- the legal, economic and social implications of the transfer for the employees,**
- any measures envisaged in relation to the employees.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

Transfer of business: Directive 98/50

Article 6 (cont'd)

The transferor must give such information to the representatives of his employees in good time before the transfer is carried out.

The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Transfer of business: Directive 98/50

Article 6

2 Where the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of his employees in good time on such measures with a view to reaching an agreement.

The information and consultations shall cover at least the measures envisaged in relation to the employees.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Transfer of business: Directive 98/50

Article 6 (cont'd)

The information must be provided and consultations taken place in good time before the change in the business as referred to in the first subparagraph is effected.

INFORMATION, CONSULTATION AT COMPANY LEVEL

Transfer of business: Directive 98/50

Article 6 (cont'd)

- 3 The obligations laid down in this Article shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer.**

In considering alleged breaches of the information and consultation requirements laid down by this Directive, the argument that such a breach occurred because the information was not provided by an undertaking controlling the employer shall not be accepted as an excuse.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The Social Charter of 1989:

Section 17

Information, consultation and participation of workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

This shall apply especially in companies or groups of companies having establishments or companies in two or more Member States of the European Community.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The Social Charter of 1989:

Section 18

Such information, consultation and participation must be implemented in due time, particularly in the following cases:

- (i) when technological changes which, from the point of view of working conditions and work organization, have major implications for the work force, are introduced into undertakings;**
- (ii) in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The Social Charter of 1989:

Section 18 (cont'd)

- (iii) in cases of collective redundancy procedures;**
- (iv) when transfrontier workers in particular are affected by employment policies pursued by the undertaking where they are employed.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

Maastricht: The agreement on Social policy

Implementation of the Social Charter:

- **Promotion of dialogue between management and labor.**
- **Support and complement the activities of the Member States in the field of information and consultation of workers.**
- **Unanimity required for measures relating to representation and collective defence of interests of workers and employers.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

Directive 94/95 dated September 22, 1994

Directive 97/74 dated December 15, 1997

- **the UK**
- **scope:**
 - **1000 employees**
 - **operating at least in 2 Member States**
 - **at least 150 employees in two Member States**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council: (cont'd)

Directive 94/95 dated September 22, 1994

Directive 97/74 dated December 15, 1997

■ **consultation defined:**

the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

Establishment:

- **voluntary establishment by agreement**
September 22, 1996 / December 15, 1999
- **establishment in accordance with the directive**
September 22, 1999 / December 15, 1999
- **the mandatory establishment**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

It's role:

- 1 The right to meet with the central management at least once a year, to be informed and consulted, on the basis of a report drawn up by the central management, of the progress of business of the Community-scale undertaking or Community-scale group of undertakings and of its prospects. The local managements shall be informed accordingly.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

It's role: (cont'd)

Such information shall relate in particular to its structure, economic and financial situation, the probable development of the business and of production and sales, the employment situation and probable trend, investment projects, and substantial changes concerning the organization, the introduction of new working methods or production processes, transfers of production, cut-backs or closures of undertakings, establishments or important parts thereof, or collective redundancies.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

It's role: (cont'd)

- 2 Where there are exceptional circumstances affecting employment, more particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the executive committee of the European committee - or, where there is no such executive committee, the committee itself - shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale group of undertakings, with a view of being informed and consulted on any measure liable to have a considerable effect on the employees' interests.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The European Works Council:

It's role: (cont'd)

- 3 This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of the management of the Community-scale group of undertakings, on which the European committee may put forward an opinion within the reasonable time.**

This meeting shall not affect the prerogatives of the central management.

INFORMATION, CONSULTATION AT COMPANY LEVEL

RENAULT ...

AND THEREAFTER:

**Proposal for a Council Directive establishing a
general framework for informing and consulting
employees in the European Community.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Justification

- **information and consultation is an essential tool for workers' adaptability: allow the workers to face the need for continued adaptation and allow the workers to anticipate;**
- **weakness of the national systems: ritual in nature and often a posteriori;**
- **information and consultation is a condition for successfully restructuring businesses.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Object and principles.

Article 1

- 1 The purpose of this Directive is to establish a general framework for informing and consulting employees in undertakings within the European Community.**
- 2 When defining or implementing information and consultation procedures, the employer and the employees' representatives shall work in a spirit of co-operation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking and of the employees.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

“Information” defined

Transmission by the employer to the employees’ representatives of information containing all relevant facts on the subjects set down in Article 4 (1), ensuring that the timing, means of communication and content of the information are such as to ensure its effectiveness, particularly in enabling the employees’ representatives to examine the information thoroughly and, where appropriate, prepare consultations.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

“Consultation” defined

the organization of a dialogue and exchange of views between the employer and the employees’ representatives on the subjects set out in Article 4 (1) (b) and (c),

- ensuring that the timing, method and content are such that this step is effective;**
- at the appropriate level of management and representation, depending on the subject under discussion;**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

“Consultation” defined (cont’d)

- **on the basis of the relevant information to be supplied by the employer and the employees’ representatives are entitled to formulate;**
- **including the employees’ representatives’ right to meet with the employer and obtain a response, and the reasons for that response, to any opinion they may formulate;**
- **including, in the case of decisions within the scope of the employer’s management powers, an attempt to seek prior agreement on the decisions referred to in Article 4 (1) c.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Contents of information and consultation

Without prejudice to any provisions and/or practices more favorable to employees in force in the Member States, employee information and consultation shall, if there is no agreement between the social partners as envisaged in Article 3, cover:

- (a) information on the recent as well as the reasonably foreseeable development of the undertaking's activities and its economic and financial situation;**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Contents of information and consultation contents (cont'd)

- (b) information and consultation on the situation, structure and reasonably foreseeable developments of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the anticipatory measures envisaged, in particular for employee training and skill development, with a view to offsetting the potential negative developments or their consequences and increasing the employability of the employees likely to be affected;**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

**Contents of information and consultation
contents (cont'd)**

- (c) information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.**

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Enforcement

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, including procedures which may be instituted by the employer or the employees' representatives where either party considers that the other party is in breach of the obligations provided for in Article 5.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Enforcement (cont'd)

Member States shall provide for adequate penalties to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These penalties must be effective, proportionate and dissuasive.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive:

Enforcement (cont'd)

Member States shall provide that in case of serious breach by the employer of the information and consultation obligations in respect of the decisions referred to in Article 4 (1) (c) of this Directive, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected.

INFORMATION, CONSULTATION AT COMPANY LEVEL

The new draft directive: Enforcement (cont'd)

The non production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established, in accordance with the arrangements and procedures to be determined by the Member States.