

# Procedure file

Basic information		
INI - Own-initiative procedure	<a href="#">2008/2246(INI)</a>	Procedure completed
Implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community		
See also Directive 2002/14/EC <a href="#">1998/0315(COD)</a>		
Subject 4.15.10 Worker information, participation, trade unions, works councils		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>EMPL</b> Employment and Social Affairs		28/05/2008
		PSE <a href="#">COTTIGNY Jean Louis</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> Economic and Monetary Affairs		24/09/2008
		PSE <a href="#">ETTL Harald</a>	
	<b>JURI</b> Legal Affairs		03/11/2008
		PPE-DE <a href="#">STAUNER Gabriele</a>	
European Commission	Commission DG <a href="#">Employment, Social Affairs and Inclusion</a>	Commissioner ŠPIDLA Vladimír	

Key events			
17/03/2008	Non-legislative basic document published	<a href="#">COM(2008)0146</a>	Summary
23/09/2008	Committee referral announced in Parliament		
21/01/2009	Vote in committee		Summary
27/01/2009	Committee report tabled for plenary	<a href="#">A6-0023/2009</a>	
18/02/2009	Debate in Parliament		
19/02/2009	Results of vote in Parliament		
19/02/2009	Decision by Parliament	<a href="#">T6-0061/2009</a>	Summary
19/02/2009	End of procedure in Parliament		

Technical information	

Procedure reference	2008/2246(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
	See also Directive 2002/14/EC <a href="#">1998/0315(COD)</a>
Legal basis	Rules of Procedure EP 54; Rules of Procedure EP 54-p4
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/6/66823

### Documentation gateway

Non-legislative basic document		<a href="#">COM(2008)0146</a>	17/03/2008	EC	Summary
Document attached to the procedure		<a href="#">SEC(2008)0334</a>	17/03/2008	EC	
Committee draft report		<a href="#">PE415.166</a>	10/11/2008	EP	
Committee opinion	ECON	<a href="#">PE414.938</a>	04/12/2008	EP	
Amendments tabled in committee		<a href="#">PE416.521</a>	09/12/2008	EP	
Committee opinion	JURI	<a href="#">PE416.401</a>	20/01/2009	EP	
Committee report tabled for plenary, single reading		<a href="#">A6-0023/2009</a>	27/01/2009	EP	
Text adopted by Parliament, single reading		<a href="#">T6-0061/2009</a>	19/02/2009	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2009)2154</a>	26/06/2009	EC	

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

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

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

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

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

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

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

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

As regards the question on the practical application of the Directive, including attainment of its objectives, several Member States highlighted the fact that their legislation has long provided for information and consultation of employees in undertakings/establishments. Several other Member States responded that it is too early to provide a definite answer, given the early stage of implementation of the Directive.

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

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

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

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

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

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

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

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

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

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The Committee on Employment and Social Affairs adopted the own-initiative report drafted by Jean Louis COTTIGNY (PES, FR) on the implementation of [Directive 2002/14/EC](#) Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. The committee recalls that there are 23 million undertakings with fewer than 250 employees (accounting for 99% of undertakings and employing over 100 million people) in the European Union. According to MEPs, the EU institutions have a duty to guarantee and enhance the right of employees to be informed and consulted.

Gradual strengthening of the process of informing and consulting employees within the EU: MEPs acknowledge that the transposition of Directive 2002/14/EC has been significantly delayed in some Member States and that more time will therefore be needed for its evaluation. They stress however that in Member States where no general system for informing and consulting employees existed before the directive will have an obvious impact. They urge those Member States which have not yet correctly transposed Directive 2002/14/EC to do so as soon as possible.

Noting that some Member States, in their measures transposing Directive 2002/14/EC, have failed to take account of some young workers, women working part-time or workers employed for short periods on fixed-term contracts, MEPs urge the Member States to bring their provisions governing the calculation of workforce numbers into line with the spirit and the letter of the directive, i.e. to ensure that the calculation of thresholds is always based on the actual number of workers, to the exclusion of all other conditions.

Member States are called upon to pay attention to a certain number of main elements of the Directive such as the conditions and restrictions concerning confidential information (Article 6 of the Directive).

They urge those Member States which do not have effective, proportional and dissuasive sanctions, which they can impose in the event of non-compliance with the rules governing the exercise of workers' information and consultation rights to introduce such sanctions. They call on all Member States which do not possess a system for the protection of employees' representatives to establish such a system.

Implementing and improving the measures transposing Directive 2002/14/EC: MEPs consider that a range of possible sanctions that Member States could take against employers who fail to comply with the right of employees to be informed and consulted as set out in Directive 2002/14/EC need to be identified and made available to Member States. They stress that the Member States cannot invoke subsidiarity to justify not meeting their obligation to enact sufficiently severe sanctions to dissuade employers from breaching Directive 2002/14/EC.

MEPs consider that the transposition measures adopted by the Member States must:

- ensure that the right of employees' representatives to be informed and consulted remains an automatic right;
- lay down arrangements governing performance of the duties of employees' representative in such a way that those duties can be carried out during working hours and remunerated accordingly;
- guarantee that representatives of public administration employees and employees in the public and financial sector enjoy the same rights to information and consultation as are granted to other employees;
- review the scope for employing direct consultation in cases where an elected or trade union representation structure exists, thereby

ensuring that employers do not use direct consultation to intervene in matters covered by the right of trade unions to conduct collective bargaining, such as pay.

MEPs call for consideration to be given to the need to revise the workforce thresholds triggering the application of Directive 2002/14/EC so that only micro-undertakings are excluded from its scope.

According to MEPs, other issues should be given special consideration at the time of transposition, such as the provisions and national practices concerning the calculation of workforce numbers and the safeguards to be applied in connection with the confidentiality clause.

MEPs call on the Commission to:

- submit an evaluation report on the results achieved through the application of Directive 2002/14/EC as regards strengthening the social dialogue;
- ensure that the rules laid down in national and Community law concerning the information and consultation of workers are complied with when decisions on mergers and takeovers are taken;
- advocate improvements to the right of employees to be informed and consulted and to place this issue on agendas for the European Social Dialogue;
- consider the need to coordinate Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC and 2003/72/EC and Regulation (EC) No 2157/2001 with a view to determining what changes may be required in order to eliminate duplications and contradictions in these texts.

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

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The European Parliament adopted, by 598 votes to 21 with 32 abstentions, a resolution on the implementation of [Directive 2002/14/EC](#) Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

The resolution recalls that there are 23 million undertakings with fewer than 250 employees (accounting for 99% of undertakings and employing over 100 million people) in the European Union. According to the Parliament, the EU institutions have a duty to guarantee and enhance the right of employees to be informed and consulted.

Gradual strengthening of the process of informing and consulting employees within the EU: acknowledging that the transposition of Directive 2002/14/EC has been significantly delayed in some Member States and that more time will therefore be needed for its evaluation, Parliament those Member States which have not yet correctly transposed Directive 2002/14/EC to do so as soon as possible.

Noting that some Member States, in their measures transposing Directive 2002/14/EC, have failed to take account of some young workers, women working part-time or workers employed for short periods on fixed-term contracts, Parliament urges the Member States to bring their provisions governing the calculation of workforce numbers into line with the spirit and the letter of the directive.

Member States are called upon to pay attention to a certain number of main elements of the Directive such as the conditions and restrictions concerning confidential information (Article 6 of the Directive). Parliament urges those Member States which do not have effective, proportional and dissuasive sanctions, which they can impose in the event of non-compliance with the rules governing the exercise of workers' information and consultation rights to introduce such sanctions. It calls on all Member States which do not possess a system for the protection of employees' representatives to establish such a system.

Implementing and improving the measures transposing Directive 2002/14/EC: Parliament considers that a range of possible sanctions that Member States could take against employers who fail to comply with the right of employees to be informed and consulted.

Parliament considers that the transposition measures adopted by the Member States must:

- define precisely the term 'information', leaving no scope for alternative interpretations, at the same time and complying with the spirit of Directive 2002/14/EC by enabling workers' representatives to scrutinise the information provided, without waiting for the end of the information procedure, if decisions by undertakings have direct implications for workers;
- ensure that the right of employees' representatives to be informed and consulted remains an automatic right;
- lay down arrangements governing performance of the duties of employees' representative in such a way that those duties can be carried out during working hours and remunerated accordingly;
- guarantee that representatives of public administration employees and employees in the public and financial sector enjoy the same rights to information and consultation as are granted to other employees;
- review the scope for employing direct consultation in cases where an elected or trade union representation structure exists, thereby ensuring that employers do not use direct consultation to intervene in matters covered by the right of trade unions to conduct collective bargaining, such as pay.

Parliament calls for consideration to be given to the need to revise the workforce thresholds triggering the application of Directive 2002/14/EC so that only micro-undertakings are excluded from its scope.

According to the Parliament, other issues should be given special consideration at the time of transposition, such as the provisions and national practices concerning the calculation of workforce numbers and the safeguards to be applied in connection with the confidentiality clause.

The Parliament also invites the Commission to:

- submit an evaluation report on the results achieved through the application of Directive 2002/14/EC as regards strengthening the social dialogue;
- ensure that the rules laid down in national and Community law concerning the information and consultation of workers are complied with when decisions on mergers and takeovers are taken;
- advocate improvements to the right of employees to be informed and consulted and to place this issue on agendas for the European Social Dialogue;

- consider the need to coordinate Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC and 2003/72/EC and Regulation (EC) No 2157/2001 with a view to determining what changes may be required in order to eliminate duplications and contradictions in these texts.