THE POSITIONS OF THE EUROPEAN TRADE UNION CONFEDERATION (ETUC) AND OF THE EUROPEAN COMMUNITY (EC) WITH REGARD TO MULTINATIONAL GROUPS OF COMPANIES

DOCUMENTATION

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The positions of the European Trade Union Confederation (ETUC) and of the organs of the European Community (EC) with regard to multinational groups of companies

- a documentation -

FOREWORD

Since it was founded the European Trade Union Confederation has adopted and issued a large number of positions on the field of problems concerned with multinational groups of companies in Europe. These standpoints were and still are addressed in particular to the institutions and organs of the EC, which by virtue of its legislative powers can take initiatives with regard to multinational groups of companies.

This documentation is intended as an inventory which trade union officials can use as a reminder of the ETUC demands with regard to the problems connected with multinational groups of companies, and which will also give a survey of the progress made in the legislation of the European Community pertaining to multinational groups of companies.

The first section therefore contains excerpts from the ETUC's "European action programme - multinational groups of companies", which was issued in June 1977 and applies as regards the ETUC demands. (cf. 2.1) Measures which are being planned or have been taken by the institutions of the Community are described in the second section.

The documentation section contains updated ETUC standpoints and Directives which have been adopted by the Council of Ministers of the European Communities.

A survey of all of the positions issued by the ETUC on multinational groups of companies and on measures which the Community has adopted or is planning is intended to help any readers who are interested in applying to the ETUC Secretariat or to the Community institutions for any documents which are not printed in the above documentation section. (+)

We wish to express particular thanks to Marion Hellmann, who worked at the ETUI for several months as an ETUC trainee. We also feel that this documentation provides a necessary basis of information on the current political discussion on the rights of working people to be given more information and to be consulted more, particularly those who are employed in multinational groups of companies.

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1. INTRODUCTION and GENERAL SURVEY

1.1. The European Trade Union Confederation (ETUC) versus multinational groups of companies

When the European Trade Union Confederation was founded in 1973, the founding organisations decided in the Preamble to the Constitution "to jointly represent and promote the social, economic and cultural interests of workers at the European level in general and in particular in respect of all European institutions, including the European Communities and the European Free Trade Association."

The growing power of multinational groups of companies in Europe and throughout the world thus presents a challenge to the ETUC, which represents the interests of 40 million members in 18 countries in Western Europe.

The economic power of multinational groups has many effects. It creates flows of capital, investments, raw materials and semi-finished and finished products across national frontiers and continents. Both this multinational strategy and the decisions it involves often run counter to the national policies of the States in which a multinational group of companies operates. In such a strategy, which is determined by employers and geared first and foremost to achieving maximum profits, there is little room for the economic, social and cultural interests of working people.

It is the law of democratic reasoning that power of any sort must be controlled in order to prevent its abuse. The expansion of the activities of multinational undertakings has created new structures of economic power which make it easier to abuse this economic power because national laws and regulations no longer guarantee sufficient control of power.

In the past few years, international organisations such as the United Nations Organisation, the OECD, the Council of Europe and the ILO have begun to elaborate non-binding rules of procedure for multinational groups of companies. Although these first steps are commendable, they alone do not suffice for the establishment of a sound and disciplined basis for the activities of multinational undertakings.

The European Trade Union Confederation is of the opinion that on the basis of the existing legislation in individual countries additional regulations must be laid down, which are legally binding and valid transnationally, particularly in the field of company law. This can be

done both in the European Community and in EFTA and also through international agreements which would include both EEC and EFTA countries.

The European Trade Union Confederation has cooperated with the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) and, in its relations with the OECD, the Council of Europe and the ILO, has advocated the elaboration of rules of procedure and the application, extension and more effective formulation of any rules of procedure which already exist.

The European Trade Union Confederation considers it to be its specific task furthermore to put forward proposals and demands to the EEC and EFTA institutions in particular for legislative initiatives in questions which require concrete and binding rules of procedure.

The ETUC demands set out below(+) do not concern multinational groups of companies alone. They are in fact of more general significance and are based on the consequences observed in the internationalisation of economic activities, in which multinational groups of companies have inevitably come to play a major part.

I. INVESTMENTS

1. Governments must create the necessary conditions for the elaboration of guidelines for investment in the important branches of the economy. (...)

2. Each government must entrust a special office - either one which already exists or one to be created - to deal with all questions of investment activity (including investments in the public sector). This office must be notified of all investments which exceed a certain volume. (...)

3. The workers' representatives in the investing undertaking must be granted a right to information and consultation which is guaranteed by law and applies during the period in which the decision on investment is being planned and carried out. (...)

4. The governments and/or national registration offices should exchange information regularly on the investments effected by multinational groups of companies and on all important concentration operations.

(+) Excerpts from the "European action programme - Multinational groups of companies", June 1977

5. Direct financial aid or tax concessions can only be granted for investments when investigations have been carried out to determine whether all the legal requirements connected with the investment are fulfilled. Furthermore, the individual governments should lay down additional conditions for the granting of any type of aid to investments. The granting of such aid must depend primarily on whether the investment is likely to fulfil social needs (e.g. the maintaining and creation of jobs, respect of the environment, choice of site, etc.). (...)

6. An office must be set up at the level of EEC and EFTA organs which must be notified of the investments and investment plans of undertakings in all sectors - which must be defined - which are internationalised to a large extent. (...)

7. Investigations must be carried out to establish the role which the Economic and Social Councils which already exist or are to be set up can play in investment policy at EEC level and at national, regional and sectoral level. (...)

8. In the case of investments in third countries, the workers' representatives in the investing undertaking must be informed and consulted in good time by the management of the undertaking. (...)

II. LAW PERTAINING TO GROUPS OF COMPANIES

Standardised regulations governing groups of companies must be established in the following areas :

1. Precise definition of the status of group of companies (central management, dependence of companies within the group, procedure for the establishment of the status of group of companies);

2. Protective measures for shareholders and workers in dependent undertakings of the group of companies;

3. Obligation to prepare and publish consolidated group annual accounts on the basis of standardised rules;

4. Establishment of a body for informing and consulting the representatives of the workers in all the companies within the group;

5. Representation of workers at board level in the dominant company, where a system of worker representation must be established to enable workers and their trade unions to have an influence on the determination of the group's objectives and policy, especially in the case of multinational groups of companies.

III. COMPETITION POLICY - BUSINESS CONCENTRATION AND DOMINATION OF THE MARKET

1. Legislation on competition must be based on the principle that all agreements between undertakings or groups of undertakings, or mutually agreed policies which prevent, restrict or distort competition, are to be prohibited. Exceptions to this principle are only to be permitted when an agreement or an agreed policy is obviously in the interests of society at large, workers or consumers. (...)

2. Legislation on competition must guarantee that individual undertakings or groups of undertakings will be prevented from acquiring positions in which they dominate the market. (...)

3. Any type of operation which leads to the further concentration of undertakings is to be declared at a centre specially set up for the purpose. Criteria are to be laid down (e.g. turnover, number of employees, capital, balance sheet total, market share), which, when exceeded, shall require that a procedure be initiated for the approval of the planned concentration operation. (...)

4. Workers' representatives in the undertakings concerned must be given the right to advance information and prior consultation in the event of all concentration proceedings. (...)

5. An effort must be made to draw up and institute standardised rules in all EEC and EFTA Member States for business takeovers. (...)

6. A well functioning system of price information and supervision must be set up in all countries as part of their competition policy. (...)

IV. TAXATION AND TAX CONTROLS

1. Systems of corporation tax, including tax rates, should be harmonised within a general plan to harmonise all direct and indirect taxes. (...)

2. The content of existing double taxation agreements must be examined and, if necessary, adjusted to suit present-day conditions and requirements. (...)

3. In order to ensure that tax authorities can assess taxes on dividends and other capital income without loopholes in tax legislation, a withholding tax should be applied to such income, to be assessed by those liable to tax when making their income tax declaration.

4. A uniform rule for the control of transfer prices within multinational groups of companies (in payment of deliveries of materials, goods or services, patents, licences, etc.) must be established within the framework of an international system of tax supervision and control (cf. parag. 2). (...)

5. In the longer term, all governments should work together to eliminate the so-called "tax havens". (...) By way of immediate measures to be introduced, controls are necessary to guarantee that income which is received centrally is taxed at its place of origin.

6. Cross-frontier financial transactions which are not in fact based on a de facto business transaction must be liable to a tax penalty. (...)

V. CAPITAL MARKETS

1. In the interests of all States and their economies, uniform and effective control measures must be taken to prevent multinational groups of companies or other structures from effecting short-term movements of capital for speculative purposes. (...)

2. Particular attention must be paid to the role played by banks in international capital movements, and this role must be controlled more effectively by existing bank supervisory bodies or other bodies to be created. (...)

3. The communities of States of the EEC and EFTA, the Council of Europe and the OECD, should come to an agreement as soon as possible on widespread cooperation in Europe and amongst all institutions. (...)

4. Stricter publicity regulations must be laid down for undertakings, particularly multinational groups of companies. (...)

VI. THE SPREAD OF TECHNICAL KNOWLEDGE

Measures should aim at :

1. The revision of the Paris Agreement of 1883 and its replacement by a system of bilateral or multilateral negotiations on fees; in particular, the revision of the duration of patent rights in view of the speed of technical advancement.

2. The extensive interpretation of all the regulations of the Lomé Convention, which was concluded between the EEC and the ACP States, in order to guarantee those States all possible advantages as regards the utilisation of technological knowledge.

3. Decisive State influence on the application of new technologies if the State is providing financial aid for technological research.

4. Development of labour-intensive technologies which are particularly suitable for application in developing countries.

5. An appeal to multinational groups of companies to include the local population to as wide an extent as possible in the training and further training of qualified personnel and top executives.

6. The establishment of an office in an international organisation, or first of all within the Commission of the EC and the Secretariat General of EFTA, to which notification of all contracts on the exploitation of patent rights and the payment of licence fees must be given and the contracts submitted.

7. The exertion of influence on developing countries to encourage them to form groups in various regions and come to an agreement on common rules which will make it difficult for those who possess technical knowledge to dictate conditions for investment and for the payment of licence fees to individual developing countries.

VII. WORKERS' SOLIDARITY RIGHTS

1. In international organisations which deal with the elaboration of rules of procedure for multinational groups of companies, workers' rights to solidarity should be included. The ILO in particular should endeavour to propose international rules in this field.

2. Sympathetic strikes and boycott measures should be possible within each defined economic sector, whenever an international trade union organisation, having agreed with its member organisations, calls the strike or calls for certain measures.

3. Governments in EC and EFTA Member States are called upon :

   a) to bring their influence to bear on the international organisations and institutions so that the problem of workers' rights to solidarity is dealt with;

   b) to investigate how in their own countries existing legislation or other regulations could be changed in order to legalise workers' international solidarity action.

1.2. Proposals made and measures taken by the European Community with regard to multinational groups of companies

In November 1973, the Commission of the European Communities (EC) submitted a Communication to the Council of Ministers entitled "Multinational undertakings and Community regulations", in which attention was drawn to the negative effects of the "multinationalisation" of undertakings in the EC. The following statement was made in that Communication :

> "Nevertheless, the growing hold of multinational undertakings on the economic, social and even political life of the countries in which they operate gives rise to deep anxieties which are sufficiently widespread,especially in the areas of employment, competition, tax avoidance, disturbing capital movements and the economic independence of developing countries, as to demand the attention of the public authorities."

The Commission gave this fact as the reason for taking measures to create a uniform frame of reference for the activities of multinational undertakings in the EC.

On the basis of the provisions of the Treaty of Rome, the Commission can submit proposals to the Council of Ministers which are then adopted in the form of regulations and directives and are legally binding for all Member States. EC Regulations create new binding European law, whereas Directives lay down binding norms which change national law, i.e. the Member States undertake to pass legal acts at national level which incorporate the harmonised legal regulations in their national legislation.

The EC Commission has drawn up some 30 Proposals to date which concern multinational groups of companies either directly or indirectly. This figure may be impressive, but it is deceptive, since it does not by any means mean that the Council of Ministers has translated all of these Proposals into legislative acts. On the contrary, many Proposals have either been shelved or have never actually been dealt with by the Council of Ministers.

In the field of the harmonisation of company law in the EC, the Commission, which here again is only entitled to make proposals, has submitted nine so-called company-law Directives to the Council of Ministers for adoption. All of these Proposals for Directives have been submitted to the European Parliament and the Economic and Social Committee for consultation and assessment. The First, Second, Third and Fourth Directives are at present in force. (cf. 2.4)

The decision on the Fifth Directive, which deals with the coordination of regulations pertaining to worker participation and the structure of limited companies in the European Community, is still outstanding although the Commission submitted its Proposal to the Council of Ministers back in 1972. (cf. 2.2)

But there are also other Directives which have not made much headway in the Community decision-making process. The Proposal for a Seventh Directive - which is undoubtedly a progressive initiative - requires all groups of companies to draw up and publish a consolidated annual report covering all of the undertakings belonging to the group. Once the Seventh Directive came into force it would, in combination with the Fourth Directive, lay down provisions which would require undertakings including multinational groups of companies whose dominant company is located in an EC Member State to publish much more information than is at present the case. Discussions are at present in progress in the Council of Ministers on the precise definition of the term of group of companies, which is the precondition for the Seventh Directive.

There are also Regulations on the harmonisation of company law, which, once adopted by the Council of Ministers, would lay down direct European law, but these Regulations have not yet come into force.

The 1970 Proposal for a "Statute for European companies" was presented by the Commission in an amended version in 1975 after lengthy deliberations, especially in the European Parliament. It has been under examination in the Council of Ministers ever since. A Proposal for a Council Regulation on the "European Cooperation Grouping" is also under examination.

The Council of Ministers has already adopted three Directives, known as social Directives, pursuant to art. 117 of the EEC Treaty, which provides for the harmonisation of the social laws in the Member States; these Directives are of significance for the employees of multinational groups.

The Directive on the approximation of legislative regulations on collective dismissals, which was adopted in 1975, makes provision for consultations between the management and the trade unions where collective redundancies are being planned, the objective being to try to avoid these mass dismissals. (cf. 2.5) The 1977 Directive on the protection of workers' rights and advantages in the event of transfer of undertakings, plants or subsidiary plants provides that the workers retain the rights and advantages they have acquired if there is any change in company ownership. It also states that change in ownership is no reason for dismissing workers, and endeavours to ensure that the workforce representatives are consulted on all such changes. (cf. 2.6) The third Directive in the field of the harmonis-

ation of social legislation, which the Council of Ministers adopted in 1980, deals with the protection of workers in the event of insolvency of the employer. (cf. 2.7)

In October 1980, the Commission submitted a Proposal to the Council for a Directive on "Procedures for informing and consulting the employees of undertakings with complex structures, particularly transnational firms". This Directive concerns the procedures for informing and consulting persons employed in an undertaking in an EC Member State whose decision-making centre is located in another Member State or in a third country. It furthermore lays down regulations for informing and consulting the workers when an undertaking has several establishments or one or several subsidies in one and the same Member State and its decision-making centre is also located in that State. (cf. 2.8 and 2.3)

Taxation is a further field in which Community legislation is becoming more significant. After a basic agreement in 1975 on Community measures for improving cooperation between national tax authorities, the Council of Ministers agreed on a Directive through which the Member States would be required to develop the exchange of information and conclude agreements with one another on inventories in the field of direct taxation. Although the Commission considers that effective measures must be further developoped to combat tax fraud and tax evasion, it has not yet planned any measures for controlling the transfer prices applied between companies in one and the same group or for solving the problem of the abusive utilisation of tax havens. (cf. 2.9)

Nor has the Proposal which the Commission submitted to the Council in 1973 on the control of mergers as yet been adopted.

1.3. Summary

The demands of the European Trade Union Confederation which are set out in the first chapters of this document and concern investments, competition policy, business concentration and domination of the market, capital markets, the spread of technological knowledge and workers' solidarity rights have not yet been taken into consideration by the EC institutions in their measures with regard to multinational groups of companies.

The ETUC demands concerning law pertaining to groups of companies and taxation have been taken into account to some extent. But due to opposition from employers and the political forces which support their policies, too little has as yet been achieved at EC level with regard to controlling multinational groups of companies.

2. D O C U M E N T A T I O N

2.1. Survey: Decisions and demands of the European Trade Union Confederation

1. Multinational undertakings in the European Communities (Executive Committee 1974)

2. Resolution on the information and consultation rights of workers in multinational groups of companies (ExC 1975)

3. ETUC demands for company-law regulations pertaining to multinational groups of companies (ExC 1976)

4. Democratisation of the Economy - Multinational groups of companies (Resolution adopted by the ETUC London Congress in 1976)

5. Trade union requirements for accounting and publication by undertakings and groups of companies (ExC 1977)

6. European action programme - Multinational groups of companies (ExC 1977)

7. The ETUC and the EC Code of Conduct for South Africa (ExC 1977)

8. Information rights of workers and their representatives in plants and undertakings (ExC 1978)

9. The information obligations of multinational groups of companies (ExC 1978)

10. Proposals and demands of the European Trade Union Confederation for combatting international tax offences, tax fraud and tax evasion (ExC 1978)

11. The ETUC demands precise and uniform regulations for and the effective control of transfer prices (ExC 1978)

12. Business concentration and multinational groups of companies (part of the 1979-1982 action programme adopted at the Munich Congress in 1979)

13. Rules for business takeovers (ExC 1979)

14. Demand for the adoption of the Proposal for a Regulation on the control of mergers (ExC 1979)

15. Updated comments of the ETUC "Democratisation of the Economy and of Institutions" Committee on the Fifth Directive on the structure of limited companies and workforce representation bodies in the company law of the European Community (EC) (DEMO 4/1980 rev.)

16. Information on and evaluation of the Proposal of the EC Commission for a "Directive on procedures for informing and consulting the employees of undertakings with a complex structure, in particular transnational firms" (ExC 1980)

Confédération Européenne des Syndicats

European Trade Union Confederation

Den Europeiske Faglige Samorganisasjon

Europäischer Gewerkschaftsbund

2.2.

UPDATED COMMENTS

of the ETUC "Democratisation of the Economy and the Institutions" Committee on the 5th Directive on the structure of limited companies and workforce representation bodies in the company law of the European Community (EC).

I. PRELIMINARY REMARKS

1. In the autumn of 1972, the EC Commission presented a proposal for a Directive on the basis of Article 54 of the Treaty of Rome, aiming at the coordination of the legislative regulations pertaining to the structure of limited companies and workforce representation (5th Directive).

2. As a result of deliberations in the European Parliament (EP) and the Economic and Social Committee (ESC) in 1973 and 1974, the Commission published a "green paper" in 1975 setting out its further ideas on the "Harmonisation of company structure and worker participation in the EC".

3. In a working document entitled "Comments on the Green Paper of the EC Commission" of March 1977, the ETUC presented ideas which had been agreed on in its Committee on the Democratisation of the Economy; these "comments" were sent to the members of the Executive Committee, the affiliated confederations and the recognised industry committees.

4. In spring 1978 the Commission published a working document, which was presented to the European Parliament as a supplement to the 1972 Proposal for the Fifth Directive. The European Parliament intended to issue its Opinion in spring 1979 on the basis of a report by its Legal Committee, but the decision on the Opinion was never taken, since the necessary quorum of the members of the EP were not present.

5. New deliberations were commenced in three committees of the European Parliament - elected by direct suffrage since June1979 - and these committees recently submitted their reports: the current discussions are based on the draft report of the Legal Committee, which has been drawn up by GEURTSEN (a Dutch member of the EP in the Liberal Group). In addition to this report there is the Opinion of the Social Committee (Rapporteur : DIDO, Italy, Socialist Group) and that of the Economic Committee (Rapporteur : BISMARCK, Germany, Christian Democrat Group).

6. The ETUC can issue an updated position on the basis of the Resolutions passed by its Congress and the decisions of its Executive Committee and also on the basis of

the background work its committee on the Democratisation of the Economy has been carrying out for some years. The most important principles must be set out systematically in such a statement, but no detailed comments should be made on the numerous paragraphs of the Proposals for the Directive.

II. GENERAL PRINCIPLES

1. Due to the historical, economic and social differences existing between the countries of the EC, no regualtions must be imposed on workers and their trade unions which they consider to be incompatible either with circumstances in their respective countries or with their trade union convictions.

2. Plurality in socio-economic conditions and in political programmes does not of course preclude Community outline regulations, which then must be laid down in detail in legal provisions in the individual countries.

3. The proposals for coordinating company law at Community level must not remain below the level of what has already been achieved in some Member States ("Acquirements Clause").

4. The 5th Directive must strengthen the trade union right to represent workers' interests.

III. PRINCIPLES ON THE COORDINATION OF THE STRUCTURE OF LIMITED COMPANIES

1. On the basis of practical experience with the one-tier system (managing and supervisory body in one) and thew two-tier system (separate managing and supervisory bodies), the opinion has been confirmed in the ETUC that greater transparency of operations within the undertaking can be expected in countries where the two-tier system is applied.

2. In countries where the one-tier system is in effect, a transitional period must be laid down, during which the two-tier system can be introduced as an option; when this transitional period, which can comprise several stages, has expired, the two-tier system must be introduced.

3. To ensure adequate flexibility for taking account of current and possible future developments in some countries, no rigid forms must be prescribed in the definition of the two-tier structure in company law.

4. In the case of small limited companies (so-called one-man companiee), criteria can be admitted allowing exceptions in the structure of their boards.

IV. PRINCIPLES ON THE REPRESENTATION OF WORKERS' INTERESTS

1. Should it prove necessary for the Fifth Directive to include a restriction concerning the size of the limited company with regard to the representation of workers' interests, clear-cut criteria must be provided. As a result of technological advances, even relatively small companies have an important economic and social function.

2. The representation of workers' interests at company level must be guaranteed on the basis of the general principles set out under II above; this representation must be either ON (Option A) or IN ADDITION TO the company boards (Option B). The possibility of choosing between these two options must be provided permanently.

3. Option A is the representation of workers' interests ON the company boards, i.e. on the supervisory boards of limited companies with a two-tier structure or on the management boards of companies with a one-tier structure (if the trade unions in the country in question so wish). The determination of the number of workforce representatives and how they are to be appointed is left to the implementing regulations of the individual Member States.

   For the ETUC it is absolutely imperative that parity be observed in distributing seats on the supervisory board between the workforce representatives and the shareholders' representatives. This parity may also take the following form: one third of the members of the supervisory board are shareholders' representatives, one third are workforce representatives - both being designated directly -, and one third of the board members are appointed by the board members who have already been appointed.

4. Option B is the representation of workers' interests OUTSIDE the company boards, i.e. in addition to the supervisory board in limited companies with a two-tier structure, and in addition to the management board in companies with a one-tier structure.

   This special workforce representation body, which the ETUC Committee on the Democratisation of the Economy introduced in the discussion on the Fifth Directive as the "trade union control committee" in 1977, must be granted rights equal to those enjoyed by the members of the supervisory and/or management board.. This equality must be guaranteed for instance by giving "the special workforce representation body" the same information regularly as is supplied to the company boards, and by making it possible for the "special body" to hold its sessions parallel to those of the supervisory and/or management board. Furthermore, important decisions (such as those concerning the closure of plants, changes in production, cooperation with other undertakings), which directly affect the workers and their rights, must only be taken whenever the "special body" has been consulted in writing.

5. Both options concerning the representation of workers" interests in undertakings allow trade unions to conclude collective agreements in accordance with the usual practice in the indvidual Member States. This also applies to collective agreements between the social partners which supplement legislation, regulations or directives.

6. The ETUC advocates that the choice of system be restricted to the above two options concerning the representation of workers' interests; the Confederation rejects what is referred to as the "Dutch Cooptation model".

7. The ETUC calls upon the institutions of the EC which will be taking the decision on the Fifth Directive to avoid fractionising the representation of the interests of the workforce as a body, e.g. by granting special rights to "executive employees".

V. CONCLUDING REMARKS

1. The Fifth Directive must not give rise to further multiplicity of company law regulations, since this would make the representation of workers' interests in the EC even more difficult; it must be limited to the two above-mentioned options.

2. It is a well-known fact that different systems of representing workers' interests exist in the countries of Europe, some resembling more Option A, others being closer to Option B. And in some countries, "combined systems" of the representation of interests have already been set up, and this tendency will probably continue to develop .

3. The European Trade Union Movement has been expressing its fundamental interest in the coordination of company law for some time; such coordination could facilitate the movement's task of representing interests at European level if it is based on common principles and goals.

   What is important to the ETUC is that the major elements of the coordination of company law in the EC, which give workers additional rights and possibilities of representing their interests over and above existing rights, should be promoted.

   The ETUC is also aware of the fact that essential changes in company law which are in the interests of working people can be brought about after a battle which may well be long.

4. Coordination of company law in the EC must not stop at limited companies; it must be completed by regulations pertaining to other forms of company, particularly to groups of companies.

5. And last but not least, the ETUC calls upon all organs of the EC to speed up the decision-taking process regarding the Proposal for a Directive on the "Information and consultation of workers employed in multinational companies" without delay.

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Confédération Européenne des Syndicats

European Trade Union Confederation

Den Europeiske Faglige Samorganisasjon

Europäischer Gewerkschaftsbund

2.3.

Information on and evaluation of the Proposal of the EC Commission for a "Directive on Procedures for informing and consulting the employees of undertakings with a complex structure, in particular transnational firms"

Introduction

1. The ETUC has always welcomed the efforts which are being made in the EC to enforce a binding legal act (Directive) on procedures for informing and consulting employees in multinational groups of companies, primarily at headquarters level; the Proposal for such a Directive was eventually adopted on 1st October 1980 after lengthy preparations and after consultations with the social partners. This decision was taken against very strong opposition from the European employers' organisation and other representatives of capital, and can be regarded politically as the successful outcome of the trade unions' efforts to defend the interests of persons employed in large groups of companies.

2. With this Proposal, which is in principle favourable and could be improved on individual points, the EC is making a contribution in the field of the steadily growing problem of multinational business activities which is in accordance with its legal structure and is needed to complement the non-binding codes of conduct which have been adopted in the OECD and ILO and the new rules which are under preparation in the United Nationa Organisation.

1.3. This binding legal act on multinational groups of companies is the logical corollary of the effort which are being made in the EC to bring about greater transparency in business activities, for example by means of the Directives of 17.2.1975 ("collective dismissals") and 14.2.1977 ("business takeovers"). Furthermore, this "Multinational Directive" complements the Proposal for a Directive on associations of undertakings, particularly groups of companies (Ninth Directive), which is under preparation.

2. Main content

2.1. General survey

In addition to the introduction and definition of terms, the Directive on "Procedures for informing and consulting the employees of undertakings with a complex structure, in particular transnational firms" comprises two sections: the first section deals with transnational undertakings, and the other with "national"undertakings with a complex structure whose plants or subsidiaries are located in a Member State. The provisions laid down in both sections are virtually identical as regards substance. There are three crucial points in both sections: information and consultation of employees and the workforce representation body.

2.2. Information

2.2.1. The management of a dominant, and particularly of a multinational, undertaking is required to forward relevant information at least every six months to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole. This information must relate in particular to:

- structure and manning,
- the economic and financial situation,
- the situation and probable development of the business and of production and sales,
- the employment situation and probable trends,
- production and investment poogrammes,
- rationalisation plans,
- manufacturing and working methods, in particular the introducti[illegible] of new working methods,
- all procedures and plans likely to have a substantial effect on the employees' interests.

2.2.2. The management of each subsidiary employing at least 100 persons is required to forward this information without delay to the workforce representatives in that undertaking. Where the management of a subsidiary is unable to provide its workforce representatives with this information, those representatives can apply to the management of the dominant undertaking. The information must describe the activities of the parent company throughout the world and of all of its subsidiaries.

2.2.3. In the forwarding of the information communicated, the interests of the undertaking are to be taken into account and secrets regarding the undertaking or its business are not to be disclosed.

2.3. Consultation

2.3.1. Consultation relates to decisions which are planned concerning whole or a major part of the dominant undertaking or of one of its subsidiaries and which are liable to have a substantial effect on the interests of its workers.

These decisions relate to the following areas in particular:

"- the closure or transfer of an establishment or major parts thereof,
- substantial restrictions, extensions or modifications of the activities of the undertaking,
- major modifications with regard to organisation,
- the introduction of long-term cooperation with other undertakings or the termination of such cooperation."

2.3.2. The management of the dominant undertaking is required to forward precise information to the management of each of its subsidiaries in the Community employing at least 100 persons 40 days before the decision is to be implemented. The managements of these subsidiaries must communicate this information to the representatives of their workers without delay and ask for their opinion within a period of not less than 30 days.

2.3.3. Where in the opinion of the workforce representatives the proposed decision is likely to have a direct effect on the employees' ... of employment or working conditions, the management of the subsidiary is required to hold consultations with them with a view to reaching agreement on the measures planned in respect of ./. the workforce.

2.3.4. Where the management of a subsidiary does not proceed to arrange consultations; the workforce representatives concerned are authorised to open consultations through mandated delegates with the management of the dominant undertaking.

2.4. Workforce representation body

2.4.1. The procedures for informing and consulting the workforce representatives can also be organised at the level of a body representing all the employees of the dominant undertaking and of its subsidiaries in the Community which has been set up by means of agreements between the management of the dominant undertaking and the workforce representatives.

2.4.2. The choice of procedures for appointing the workforce representatives is left to the Member States, which are also authorised to determine the type of representation body to be involved (overall or group works council, works committee or works council, shop-stewards committee, etc.).

However, where in a Member State a body representing employees exists at a higher level than that of the individual subsidiary or establishment (i.e. at the level of the group or of the undertaking) the information and consultation procedures must be carried out at that level.

2.4.3. The Member States can also accept the creation of a body representing all the employees of the parent company and its subsidiaries in the Community by means of agreements between the management at the level of the decision-making centre and workforce representatives.

2.5. Scope and penalties

2.5.1. Where the decision-making centre of a transnational undertaking is located outside the Community, the subsidiary with the largest workforce in the Community is responsible for the observance of the obligations laid down in the Directive if the decision-making centre does not take steps to ensure that a responsible person in the Community can comply with the obligations to provide information and arrange for consultations.

2.5.2. The Member States must provide for "appropriate" penalties for failure to comply with the prescribed information and consultation obligations. In particular, these penalty provisions give the

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representatives of the employees affected by the decision the right to go to court or to apply to the other authorities with the appropriate powers in order to protect their interests.

3. Evaluation

3.1. General

The most important favourable aspect of this Directive is the fact that the EC as the first and as yet only international organisation has chosen to draw up a binding legal act in order to enforce and/or create employee rights. This formal Proposal has already had a favourable effect on the preparation of regulations which are being negotiated in the United Nations Organisation. Although the binding legal nature of the EC Proposal is to be appreciated, the Directive could be improved as follows :

3.2. INFORMATION

Although the proposals for the obligation to provide information are in keeping with the most progressive legal provisions in this field, the following elucidations and/or improvements would of course be desirable :

- The information relates to both the dominant undertaking and all of its individual subsidiaries.
- Qualitative criteria must be drawn up in addition to the catalogue of specific areas, such as relevance, comprehensibility and reliability of information.
- The workers must be granted a general right to ask questions which also includes direct applications of the workforce representation body at the level of the multinational decision-making centre.

3.3. CONSULTATION

The list of rights to compulsory consultation is also considerable, in that at least the criteria of "in good time" and "regularly" are mentioned; however,

- the indication of the aim of the consultation, i.e. to reach an agreement between the workforce representatives and the employer, which has been deleted in the Proposal which has now been adopted, should be reinserted in the Directive;
- the workers' right to be consulted at multinational level must be laid down in more specific terms and must include regulations for the procedure in the event of dispute.

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3.4. Body representing workforce interests

- In the course of the preparatory work on the Commission's Proposal, the creation of a "body representing the interests of all the employees of the parent company and of its subsidiaries in Community countries" has now become a "may" provision; this presents a non-binding element, which is a contradiction to the principle of binding legal nature. The imperative form of the original Commission Proposal must therefore be reinserted in the text.
- The body representing workforce interests must be set up by way of an agreement between the management of the dominant company and the trade unions concerned, if the workforce representatives of the majority of the subsidiaries request this.

3.5. Field of application and penalties

- The provisions stipulating that the obligation to provide information and hold consultations also apply to groups of companies whose decision-making centre is located outside the EC, which are to be welcomed in principle, must also always make provision for a legally responsible person in the Community.
- The latitude which the Member States are allowed for issuing their own "appropriate penalties" must not "soften" the regulations; the experience which has generally been acquired in the field of labour law also applies here: where there are no real penalties there are no real rights.

4. Practical conclusions

4.1. The Commission has submitted the Proposal for a Directive to the Council of Ministers of the Community, which has forwarded it to the European Parliament and to the Economic and Social Committee for their Opinions. The ETUC is following the proceedings which are underway in these two bodies as closely as possible; it is in our interests both to ensure a majority vote in favour of the improvements set out above, if possible in both bodies, and also to urge these bodies to issue their Opinions without delay and in fundamentally constructive terms.

4.2. The UNICE and its associates have stepped up their efforts to impede the Proposal for a Directive or at least to see that it peters out due to constant delays in the EC bodies. The political composition

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of the EC bodies, particularly of the Council of Ministers, could promote these tactics.

4.3. In view of the difficult situation at the outset, and with a view to additional efforts on the part of the ETUC trade union confederations, the ETUC Executive Committee has decided that the following measures should be carried out:

- The member confederations and the industry committees concerned, as well as the ETUC Secretariat, should step up their efforts to circulate information on the "Multinational Directive" (trade union press). This information campaign should lay special emphasis on the political significance of this Directive in the present rapport de forces.
- With the assistance of the European Trade Union Institute, the ETUC Secretariat will send a brochure to the member confederations and industry committees concerned, which they will then make available to the trade union and in-company bodies representing the interests of all of the workers in the groups of companies to which the Directive pertains, in the manner they consider most appropriate.
- The ETUC affiliates in the EC and the industry committees concerned will appoint their representatives for an ad hoc working party on the EC Directive on workers' rights, which, together with the ETUC Policy Secretary in charge of this field, will coordinate further efforts at European and national level; this work will include formulating the legal details of the proposals for improvements on the basis of the present decision of the Executive Committee, and efforts to introduce these proposals in the further deliberations of the EC organs.
- In the course of the further decision-making process in the EC bodies, the national confederations will hold meetings in collaboration with the Secretariat (such as series of discussions) with a view to launching an offensive to counter the policy of massive obstructionism pursued by the representatives of capital and to fight for the rights of workers in groups of companies, particularly in those with transnational structures.

2.4. Survey: Harmonisation of company law in the EC

2.4.1. Legal acts pertaining to company law

2.4.1.1. Directives which have been adopted

- First Council Directive of 9th March 1968 to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 of the Treaty with a view to making such safeguards equivalent throughout the Community.

- Second Council Directive of 13th December 1976 to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States within the meaning of the second paragraph of Article 58 of the Treaty for the establishment of limited companies and the preservation of their capital with a view to making such safeguards equivalent throughout the Community.

- Third Council Directive of 9th October 1978 pursuant to Article 54 parag. 3 section g) of the Treaty pertaining to mergers of limited companies.

- Fourth Council Directive of 25th July 1978 pursuant to Article 54 parag. 3 section g) of the Treaty pertaining to the annual statements of accounts of companies of specific legal forms.

2.4.1.2. Directives which are planned

- Proposal for a Fifth Directive to coordinate the safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of Article 58 of the Treaty, as regards the structure of sociétés anonymes and the powers and obligations of their organs. December 1972

- Proposal for a Sixth Directive to coordinate the requirements for the admission of securities for official listing at a stock exchange. December 1975

- Amended Proposal for a Seventh Directive pursuant to Article 54 (3) (g) of the Treaty concerning group accounts. January 1979

- Proposal for an Eighth Directive pursuant to Article 54 (3) (g) of the EEC Treaty concerning the approval of the persons authorised to carry out the compulsory audit of the annual accounts of joint-stock companies (submitted by the Commission to the Council on 24th April 1978)

- Preliminary draft Proposal for a Ninth Directive pursuant to Article 54 (3) (g) of the EEC Treaty concerning associations between undertakings, particularly groups (III/D/3, October 1980)

2.4.1.3. Proposals for EC Regulations in the field of company law

- Proposal for a Regulation on the statute for European Companies. April 1975

- Amended Proposal for a Council Regulation on the European Cooperation Grouping (ECG) (submitted by the Commission to the Council on 11th April 1978)

2.4.2. Social Directives of the EC (printed in full - cf. appendix)

2.4.2.1. Directives which have been adopted

- Council Directive of 17th February 1975 on the approximation of the laws of the Member States relating to collective redundancies

- Council Directive of 14th February 1977 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 businesses

- Council Directive of 20th October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer

2.4.2.2. Measures which are planned

- Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings (submitted by the Commission to the Council on 23rd October 1980)

COUNCIL DIRECTIVE

of 17 February 1975

on the approximation of the laws of the Member States relating to collective redundancies

(75/129/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament [1];

Having regard to the Opinion of the Economic and Social Committee [2];

Whereas it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

Whereas, despite increasing convergence, differences still remain between the provisions in force in the Member States of the Community concerning the practical arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers;

Whereas these differences can have a direct effect on the functioning of the common market;

Whereas the Council resolution of 21 January 1974 [3] concerning a social action programme makes provision for a Directive on the approximation of Member States' legislation on collective redundancies;

Whereas this approximation must therefore be promoted while the improvement is being maintained within the meaning of Article 117 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Definitions and scope

Article 1

1. For the purposes of this Directive:

(a) 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

— either, over a period of 30 days:

(1) at least 10 in establishments normally employing more than 20 and less than 100 workers;

(2) at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers;

(3) at least 30 in establishments normally employing 300 workers or more;

— or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

(b) 'workers' representatives' means the workers' representatives provided for by the laws or practices of the Member States.

2. This Directive shall not apply to:

(a) collective redundancies affected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

(b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies);

(c) the crews of sea-going vessels;

(d) workers affected by the termination of an establishment's activities where that is the result of a judicial decision.

SECTION II

Consultation procedure

Article 2

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

[1] OJ No C 19, 12. 4. 1973, p. 10.
[2] OJ No C 100, 22. 11. 1973, p. 11.
[3] OJ No C 13, 12. 2. 1974, p. 1.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and mitigating the consequences.

3. To enable the workers' representatives to make constructive proposals the employer shall supply them with all relevant information and shall in any event give in writing the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

The employer shall forward to the competent public authority a copy of all the written communications referred to in the preceding subparagraph.

SECTION III

Procedure for collective redundancies

Article 3

1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. Employers shall forward to the workers' representatives a copy of the notification provided for in paragraph 1.

The workers' representatives may send any comments they may have to the competent public authority.

Article 4

1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3 (1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

SECTION IV

Final provisions

Article 5

This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers.

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within two years following its notification and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 7

Within two years following expiry of the two-year period laid down in Article 6, Member States shall forward all relevant information to the Commission to enable it to draw up a report for submission to the Council on the application of this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 17 February 1975.

For the Council

The President

R. RYAN

No L 61/26 Official Journal of the European Communities 5. 3. 77

COUNCIL DIRECTIVE

of 14 February 1977

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 businesses

(77/187/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, through transfers of undertakings, businesses or parts of businesses to other employers as a result of legal transfers or mergers;

Whereas it is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded;

Whereas differences still remain in the Member States as regards the extent of the protection of employees in this respect and these differences should be reduced;

Whereas these differences can have a direct effect on the functioning of the common market;

Whereas it is therefore necessary to promote the approximation of laws in this field while maintaining the improvement described in Article 117 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Scope and definitions

Article 1

1. This Directive shall apply to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.

2. This Directive shall apply where and in so far as the undertaking, business or part of the business to be transferred is situated within the territorial scope of the Treaty.

3. This Directive shall not apply to sea-going vessels.

Article 2

For the purposes of this Directive:

(a) 'transferor' means any natural or legal person who, by reason of a transfer within the meaning of Article 1 (1), ceases to be the employer in respect of the undertaking, business or part of the business;

(b) 'transferee' means any natural or legal person who, by reason of a transfer within the meaning of Article 1 (1), becomes the employer in respect of the undertaking, business or part of the business;

(c) 'representatives of the employees' means the representatives of the employees provided for by the laws or practice of the Member States, with the exception of members of administrative, governing or supervisory bodies of companies who represent employees on such bodies in certain Member States.

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[1] OJ No C 95, 28. 4. 1975, p. 17.
[2] OJ No C 255, 7. 11. 1975, p. 25.

SECTION II

Safeguarding of employees' rights

Article 3

1. The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer within the meaning of Article 1 (1) shall, by reason of such transfer, be transferred to the transferee.

Member States may provide that, after the date of transfer within the meaning of Article 1 (1) and in addition to the transferee, the transferor shall continue to be liable in respect of obligations which arose from a contract of employment or an employment relationship.

2. Following the transfer within the meaning of Article 1 (1), the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.

Member States may limit the period for observing such terms and conditions, with the proviso that it shall not be less than one year.

3. Paragraphs 1 and 2 shall not cover employees' rights to old-age, invalidity or survivors' benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes in Member States.

Member States shall adopt the measures necessary to protect the interests of employees and of persons no longer employed in the transferor's business at the time of the transfer within the meaning of Article 1 (1) in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary schemes referred to in the first subparagraph.

Article 4

1. The transfer of an undertaking, business or part of a business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce.

Member States may provide that the first subparagraph shall not apply to certain specific categories of employees who are not covered by the laws or practice of the Member States in respect of protection against dismissal.

2. If the contract of employment or the employment relationship is terminated because the transfer within the meaning of Article 1 (1) involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.

Article 5

1. If the business preserves its autonomy, the status and function, as laid down by the laws, regulations or administrative provisions of the Member States, of the representatives or of the representation of the employees affected by the transfer within the meaning of Article 1 (1) shall be preserved.

The first subparagraph shall not apply if, under the laws, regulations, administrative provisions or practice of the Member States, the conditions necessary for the re-appointment of the representatives of the employees or for the reconstitution of the representation of the employees are fulfilled.

2. If the term of office of the representatives of the employees affected by a transfer within the meaning of Article 1 (1) expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.

SECTION III

Information and consultation

Article 6

1. The transferor and the transferee shall be required to inform the representatives of their respective employees affected by a transfer within the meaning of Article 1 (1) of the following:

— the reasons for the transfer,

— the legal, economic and social implications of the transfer for the employees,

— measures envisaged in relation to the employees.

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.

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

3. Member States whose laws, regulations or administrative provisions provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations laid down in paragraphs 1 and 2 to cases where the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of the employees.

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

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

4. Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegiate body representing the employees.

5. Member States may provide that where there are no representatives of the employees in an undertaking or business, the employees concerned must be informed in advance when a transfer within the meaning of Article 1 (1) is about to take place.

SECTION IV

Final provisions

Article 7

This Directive shall not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive within two years of its notification and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 9

Within two years following expiry of the two-year period laid down in Article 8, Member States shall forward all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 14 February 1977.

For the Council

The President

J. SILKIN

COUNCIL DIRECTIVE

of 20 October 1980

on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer

(80/987/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Whereas it is necessary to provide for the protection of employees in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community;

Whereas differences still remain between the Member States as regards the extent of the protection of employees in this respect; whereas efforts should be directed towards reducing these differences, which can have a direct effect on the functioning of the common market;

Whereas the approximation of laws in this field should, therefore, be promoted while the improvement within the meaning of Article 117 of the Treaty is maintained;

Whereas as a result of the geographical situation and the present job structures in that area, the labour market in Greenland is fundamentally different from that of the other areas of the Community;

Whereas to the extent that the Hellenic Republic is to become a member of the European Economic Community on 1 January 1981 in accordance with the Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties, it is appropriate to stipulate in the Annex to the Directive under the heading 'Greece', those categories of employees whose claims may be excluded in accordance with Article 1 (2) of the Directive,

([1]) OJ No C 135, 9. 6. 1978, p. 2.
([2]) OJ No C 39, 12. 2. 1979, p. 26.
([3]) OJ No C 105, 26. 4. 1979, p. 15.

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Scope and definitions

Article 1

1. This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2 (1).

2. Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the special nature of the employee's contract of employment or employment relationship or of the existence of other forms of guarantee offering the employee protection equivalent to that resulting from this Directive.

The categories of employee referred to in the first subparagraph are listed in the Annex.

3. This Directive shall not apply to Greenland. This exception shall be re-examined in the event of any development in the job structures in that region.

Article 2

1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency:

(a) where a request has been made for the opening of proceedings involving the employer's assets, as provided for under the laws, regulations and administrative provisions of the Member State concerned, to satisfy collectively the claims of creditors and which make it possible to take into consideration the claims referred to in Article 1 (1), and

(b) where the authority which is competent pursuant to the said laws, regulations and administrative provisions has:

— either decided to open the proceedings,

— or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

2. This Directive is without prejudice to national law as regards the definition of the terms 'employee', 'employer', 'pay', 'right conferring immediate entitlement' and 'right conferring prospective entitlement'.

SECTION II

Provisions concerning guarantee institutions

Article 3

1. Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a given date.

2. At the choice of the Member States, the date referred to in paragraph 1 shall be :

— either that of the onset of the employer's insolvency ;

— or that of the notice of dismissal issued to the employee concerned on account of the employer's insolvency ;

— or that of the onset of the employer's insolvency or that on which the contract of employment or the employment relationship with the employee concerned was discontinued on account of the employer's insolvency.

Article 4

1. Member States shall have the option to limit the liability of guarantee institutions, referred to in Article 3.

2. When Member States exercise the option referred to in paragraph 1, they shall :

— in the case referred to in Article 3 (2), first indent, ensure the payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship occurring within a period of six months preceding the date of the onset of the employer's insolvency ;

— in the case referred to in Article 3 (2), second indent, ensure the payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship preceding the date of the notice of dismissal issued to the employee on account of the employer's insolvency ;

— in the case referred to in Article 3 (2), third indent, ensure the payment of outstanding claims relating to pay for the last 18 months of the contract of employment or employment relationship preceding the date of the onset of the employer's insolvency or the date on which the contract of employment or the employment relationship with the employee was discontinued on account of the employer's insolvency. In this case, Member States may limit the liability to make payment to pay corresponding to a period of eight weeks or to several shorter periods totalling eight weeks.

3. However, in order to avoid the payment of sums going beyond the social objective of this Directive, Member States may set a ceiling to the liability for employees' outstanding claims.

When Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.

Article 5

Member States shall lay down detailed rules for the organization, financing and operation of the guarantee institutions, complying with the following principles in particular :

(a) the assets of the institutions shall be independent of the employers' operating capital and be inaccessible to proceedings for insolvency ;

(b) employers shall contribute to financing, unless it is fully covered by the public authorities ;

(c) the institutions' liabilities shall not depend on whether or not obligations to contribute to financing have been fulfilled.

SECTION III

Provisions concerning social security

Article 6

Member States may stipulate that Articles 3, 4 and 5 shall not apply to contributions due under national statutory social security schemes or under supplementary company or inter-company pension schemes outside the national statutory social security schemes.

Article 7

Member States shall take the measures necessary to ensure that non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to their insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement in respect of these insurance institutions inasmuch as the employees' contributions were deducted at source from the remuneration paid.

Article 8

Member States shall ensure that the necessary measures are taken to protect the interests of employees and of persons having already left the employer's undertaking or business at the date of the onset of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary company or inter-company pension schemes outside the national statutory social security schemes.

SECTION IV

General and final provisions

Article 9

This Directive shall not affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 10

This Directive shall not affect the option of Member States :

(a) to take the measures necessary to avoid abuses ;

(b) to refuse or reduce the liability referred to in Article 3 or the guarantee obligation referred to in Article 7 if it appears that fulfilment of the obligation is unjustifiable because of the existence of special links between the employee and the employer and of common interests resulting in collusion between them.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 36 months of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

Article 12

Within 18 months of the expiry of the period of 36 months laid down in Article 11 (1), Member States shall forward all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 13

This Directive is addressed to the Member States.

Done at Luxembourg, 20 October 1980.

For the Council

The President

J. SANTER

ANNEX

Categories of employee whose claims may be excluded from the scope of this Directive, in accordance with Article 1 (2)

I. Employees having a contract of employment, or an employment relationship, of a special nature

A. GREECE

The master and the members of a crew of a fishing vessel, if and to the extent that they are remunerated by a share in the profits or gross earnings of the vessel.

B. IRELAND

1. Out-workers (i.e. persons doing piece-work in their own homes), unless they have a written contract of employment.
2. Close relatives of the employer, without a written contract of employment, whose work has to do with a private dwelling or farm in, or on, which the employer and the close relatives reside.
3. Persons who normally work for less than 18 hours a week for one or more employers and who do not derive their basic means of subsistence from the pay for this work.
4. Persons engaged in share fishing on a seasonal, casual or part-time basis.
5. The spouse of the employer.

C. NETHERLANDS

Domestic servants employed by a natural person and working less than three days a week for the natural person in question.

D. UNITED KINGDOM

1. The master and the members of the crew of a fishing vessel who are remunerated by a share in the profits or gross earnings of the vessel.
2. The spouse of the employer.

II. Employees covered by other forms of guarantee

A. GREECE

The crews of sea-going vessels.

B. IRELAND

1. Permanent and pensionable employees of local or other public authorities or statutory transport undertakings.
2. Pensionable teachers employed in the following: national schools, secondary schools, comprehensive schools, teachers' training colleges.
3. Permanent and pensionable employees of one of the voluntary hospitals funded by the Exchequer.

C. ITALY

1. Employees covered by benefits laid down by law guaranteeing that their wages will continue to be paid in the event that the undertaking is hit by an economic crisis.

2. The crews of sea-going vessels.

D. UNITED KINGDOM

1. Registered dock workers other than those wholly or mainly engaged in work which is not dock work.

2. The crews of sea-going vessels.

15. 11. 80 Official Journal of the European Communities No C 297/3

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings

(Submitted by the Commission to the Council on 24 October 1980)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the European Parliament,

Whereas the Council adopted on 21 January 1974 a Resolution concerning a social action programme (¹);

Whereas in a common market where national economic are closely interlinked it is essential, if economic activities are to develop in a harmonious fashion, that undertakings should be subject to the same obligations in relation to Community employees affected by their decisions, whether they are employed in the Member State to whose legislation the undertaking is subject or in another Member State;

Whereas the procedures for informing and consulting employees as embodied in legislation or practiced in the Member States are often inconsistent with the complex structure of the entity which takes the decisions affecting them; whereas this may lead to unequal treatment of employees affected by the decisions of one and the same undertaking; whereas this may stem from the fact that the information and consultation procedures do not apply beyond national boundaries;

Whereas this situation has a direct effect on the operation of the common market and consequently needs to be remedied by approximating the relevant laws while maintaining progress as required under Article 117 of the Treaty;

Whereas this Directive forms part of a series of directives and proposals for directives in the field of company and labour law;

(¹) OJ No C 13, 12. 2. 1974, p. 1.

HAS ADOPTED THE FOLLOWING DIRECTIVE:

SECTION I

SCOPE AND DEFINITIONS

Article 1

This Directive relates to:

— procedures for informing and consulting employees employed in a Member State of the Community by an undertaking whose decision-making centre is located in another Member State or in a non-member country (Section II);

— procedures for informing and consulting employees where an undertaking has several establishments, or one or more subsidiaries, in a single Member State and where its decision-making centre is located in the same Member State (Section III).

Article 2

For the purposes of this Directive the following definitions shall apply:

(a) *Employees' representatives*

The employees' representatives refered to in Article 2 (c) of Council Directive 77/187/EEC of 14 February 1977 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 businesses (1).

(b) *Management*

The person or persons responsible for the management of an undertaking under the national legislation to which it is subject.

(c) *Decision-making centre*

The place where the management of an undertaking actually performs its functions.

Article 3

1. For the pursoses of this Directive an undertaking shall be regarded as dominant in relation to all the undertakings it controls, referred to as subsidiaries.

2. An undertaking shall be regarded as a subsidiary where the dominant undertaking, either directly or indirectly,

(a) holds the majority of votes relating to the shares it has issued,

or

(b) has the power to appoint at least half of the members of its administrative, management or supervisory bodies where these members hold the majority of the voting rights.

SECTION II

INFORMATION AND CONSULTATION PROCEDURES IN TRANSNATIONAL UNDERTAKINGS

Article 4

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in at least one other Member State shall be required to disclose, via the management of those subsidiaries, information to employees' representatives in all subsidiaries employing at least 100 employees in the Community in accordance with Article 5 and to consult them in accordance with Article 6.

Article 5

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

(a) structure and manning;

(b) the economic and financial situation;

(c) the situation and probable development of the business and of production and sales;

(d) the employment situation and probable trends;

(e) production and investment programmes;

(f) rationalization plans;

(1) OJ No L 61, 5. 3. 1977, p. 26.

(g) manufacturing and working methods, in particular the introduction of new working methods;

(h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this Article.

Article 6

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its employees, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:

— the grounds for the proposed decision;

— the legal, economic and social consequences of such decision for the employees concerned;

— the measures planned in respect of these employees.

2. The decisions referred to in paragraph (1) shall be those relating to:

(a) the closure or transfer of an establishment or major parts thereof;

(b) restrictions, extensions or substantial modifications to the activities of the undertaking;

(c) major modifications with regard to organization;

(d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in case of failure to fulfil the obligations laid down in this Article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 7

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary, the information provided for in Article 5 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 6 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 8

Where the management of the dominant undertaking whose decision-making centre is located outside the Community and which controls one or more sub-

sidiaries in the Community does not ensure the presence within the Community of a least one person able to fulfil the requirements as regards disclosure of information and consultation, laid down by this Directive, the management of the subsidiary that employs the largest number of employees within the Community shall be responsible for fulfilling the obligations imposed on the management of the dominant undertaking by this Directive.

Article 9

1. The management of an undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in at least one other Member State shall disclose, via the management of those establishments, information to the employees' representatives in all of its establishments in the Community employing at least 100 employees in accordance with Article 5 and consult them in accordance with Article 6.

2. The management of an undertaking whose decision-making centre is located in a non-member country and which has at least one establishment in one Member State shall be subject to the obligations referred to in paragraph (1).

3. For the purposes of applying this Article, the terms 'dominant undertaking' and 'subsidiary' in Articles 4 to 8 shall be replaced by the terms 'undertaking' and 'establishment' respectively.

SECTION III

PROCEDURES FOR INFORMING AND CONSULTING THE EMPLOYEES OF UNDERTAKINGS WITH COMPLEX STRUCTURES WHOSE DECISION-MAKING CENTRE IS LOCATED IN THE COUNTRY IN WHICH THE EMPLOYEES WORK

Article 10

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in the same Member State shall be required, via the management of its subsidiaries, to disclose information to employees' representatives in all subsidiaries employing at least 100 employees in that State in accordance with Article 11 and to consult them in accordance with Article 12.

Article 11

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

(a) structure and manning;

(b) the economic and financial situation;

(c) the situation and probable development of the business and of production and sales;

(d) the employment situation and probable trends;

(e) production and investment programmes;

(f) rationalization plans;

(g) manufacturing and working methods, in particular the introduction of new working methods;

(h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in such subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) above to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member State shall provide for appropriate penalties in case of failure to fulfil the obligation laid down in this Article.

Article 12

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its workers, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:

— the grounds for the proposed decision;

— the legal, economic and social consequences of such decision for the employees concerned;

— the measures planned in respect of these employees.

2. The decisions referred to in paragraph (1) shall be those relating to:

(a) the closure or transfer of an establishment or major part thereof;

(b) restrictions, extensions or substantial modifications to the activities of the undertaking;

(c) major modifications with regard to organization;

(d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in the case of failure to fulfil the obligations laid down in this Article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 13

1. Where in a Member State a body representing employees, exists at a level higher than that of the individual subsidiary, the information provided for in Article 11 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 12 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives, unless provision is made for it by national law. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 14

1. The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in the same Member State shall be required to disclose, via the management of the subsidiaries, information to the employees' representatives in all its subsidiaries employing at least 100 employees in accordance with Article 11 and to consult them in accordance with Article 12.

2. For the purposes of applying this Article, the terms 'dominant undertaking' and 'subsidiary' in Articles 10 to 13 shall be replaced by the terms 'undertaking' and 'establishment' respectively.

SECTION IV

SECRECY REQUIREMENTS

Article 15

1. Members and former members of bodies representing employees and delegates authorized by them shall be required to maintain discretion as regards information of a confidential nature. Where they communicate information to third parties they shall take account of the interests of the undertaking and shall not be such as to divulge secrets regarding the undertaking or its business.

2. The Member States shall empower a tribunal or other national body to settle disputes concerning the confidentiality of certain information.

3. The Member States shall impose appropriate penalties in cases of infringement of the secrecy requirement.

SECTION V

FINAL PROVISIONS

Article 16

This Directive shall be without prejudice to measures to be taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies ([1]) and Directive 77/187/EEC or to the freedom of the Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 17

1. The Member States shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive not later than . . . ([2]). They shall forthwith inform the Commission thereof.

2. The Member States shall communicate to the Commission the texts of laws, regulations and administrative provisions which they adopt in the area covered by this Directive.

Article 18

Within two years from the date fixed in Article 17, the Member States shall transmit to the Commission all information necessary to enable it to draw up a report to be submitted to the Council relating to the application of this Directive.

Article 19

This Directive is addressed to the Member States.

([1]) OJ No L 48, 22. 2. 1975, p. 29.

([2]) Date to be specified at the time of adoption by the Council.