

ECONOMIC AND SOCIAL COMMITTEE

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R E P O R T
of the
Sub-committee on the Green Paper
on
"Employee Participation and Company
Structures in the European Community"

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In submitting its Green Paper on Employee Participation (*) and Company structure in the European Community, the Commission hopes to bring about a "constructive debate which will enable the Community Institutions to find solutions which can be accepted by a broad majority of those concerned".

In the Commission's opinion the debate on the Proposal for a European Company Statute and the Proposal for a Fifth Directive on the structure of public limited companies showed that the Commission's original plans, particularly as regards corporate structure and employee participation, could not be put into effect immediately because they did not make sufficient allowance for the different traditions, social trends and systems of industrial relations in the Member States. The Commission had become increasingly aware of the difficulties which would be occasioned by a sudden change-over from existing systems to a more uniform system. It had come to the conclusion that the law and practice now existing in the Member States would have to be taken more into consideration and a more thorough examination made of the solutions which might be feasible at various levels. It had also become clear to the Commission that appropriate transitional arrangements would have to be devised and that the system as originally planned would have to be made more flexible.

(*) The Green Paper on Employee Participation and Company Structure in the European Community was drafted in English. The original English text uses the term "participation" as the general term for all types of participation by employees and trade unions. "Participation" was rendered correctly in all the Community languages except for German. The German version incorrectly rendered "participation" by "Mitbestimmung", a term which, at least in trade union usage, has a narrowly defined meaning. This caused a certain amount of confusion in the discussion. In the German version of this Report, the English term "participation" will be translated by the general term "Mitwirkung". This term embraces all forms of employee involvement in economic and social decision-making, and includes the specific form of participation designated in German by "Mitbestimmung" (in English "co-determination"), under which employees have an equal say in economic and social decision-making.

The Sub-Committee welcomes the Commission's publication of a Green Paper in order to stimulate a broad discussion, and considers this to be a good way of looking for more flexible solutions.

It considers that employee participation in the broadest sense of the term is a desirable development in a democratic society.

But opinions are divided as to the objects of the discussion. Some members maintain that the object should be the introduction of a Community system of company law, others that it should be the creation of a Community legal framework for companies leaving the Member States completely free to fill it out as they wish.

The Sub-Committee endorses the following statement made by the Commission : "In this field as in others ... the goal is not instant uniformity for uniformity's sake, nor is it desired to place a restraint on positive developments which are in progress in certain countries. The objective is the gradual removal of unacceptable degrees of divergence between the structures and policies of the Member States."

A. COMPANY STRUCTURE

The Commission's basic argument in support of its proposals has not changed : "At the present time ... companies are incorporated under the separate laws of the nine Member States. There are

substantial differences between these national laws, relating in particular, to the internal structure of companies, the powers of directors, the rights of shareholders and of the employees. This situation constitutes a real barrier to cross-frontier activities, both for those who might deal with a company and for the companies themselves."

In its proposal for a Regulation embodying a Statute for the European Company and its Proposal for a Fifth Directive on the structure of public limited companies, the Commission proposed a two-tier board structure for public companies. In addition to the shareholders' meeting, there would be a Management Board, responsible for the day-to-day running of the company, and a Supervisory Board, which would appoint the Management Board and supervise its activities. This system, which is already working successfully in some of the Member States, was to take the place, in the remaining Member States, of the unitary or classic system, under which there is only one governing body in addition to the shareholders' meeting.

In its Green Paper the Commission reiterates its belief that the two-tier system such as already exists in some Member States is the best system from the point of view of both satisfying the requirements of the large, modern company or group of companies and answering the need for public accountability. The Commission considers that its view is borne out by the emergence even within the classic system of a division of roles corresponding to the division formalized in the two-tier system. In the Commission's view, however, in today's large companies and groups of companies, whose capital is often widely dispersed and which frequently employ a large workforce spread over numerous establishments, formal separation of roles between a management and a supervisory body is a surer way of achieving effective supervision of management in the interests of both shareholders and workers.

The Commission admits, however, that "one has to recognize the difficulty that there would be for those States, with strong industrial and commercial traditions, all of whose companies have one-board systems, to introduce with immediate application, a reform of such importance. The fact that the reluctance of those concerned may be attributable more to fears deriving from their present lack of knowledge of the system proposed than to any actual disadvantages of the system, does not substantially alter the difficulty confronting governments."

B. EMPLOYEE PARTICIPATION

In its Green Paper the Commission attempts to analyze the complex systems of relations in the Member States between employers and workers or their respective associations and trade unions, which bear the stamp of different historical backgrounds and social conditions. The Commission comes to the conclusion that these systems of relations, whose various elements are interdependent and complement one another, may produce the same effect, viz. "... what is achieved by one approach in one country or enterprise may on occasion be achieved by another approach elsewhere."

The immediate motive behind the Commission's proposals to strengthen the position of employees in companies' decision-making machinery must be seen in the desire to align the different systems of industrial relations in the Member States so as to remove the barriers to intra-Community movements of companies, capital and labour. Therefore, the Sub-Committee would like to emphasize the more general argument supporting the Commission's proposals, namely

"the increasing recognition being given to the democratic imperative that those who will be substantially affected by decisions made by social and political institutions must be involved in the making of those decisions".

Later on, the Commission states that "the enterprise, being an institution in which fundamental decisions are taken, cannot escape this reorganization of the relationships between those who have the power to make decisions and those who must carry them out".

Finally, the Commission observes that employee participation in company decision-making will not be without an impact on other decision-making processes : "... an important part of the attractiveness of employee participation in company boards is that such participation appears to have a generally positive effect on the other forms of employee participation existing in relation to the companies in question".

"For the Commission, the overall objective, if not the specific approaches of the proposal for a Fifth Directive, remain valid and reasonably realistic, namely, employee representation, not merely presence in a consultative capacity, on the supervisory bodies of public companies. The task is to bring about a situation which will permit the introduction, in all the Member States, of such employee representation, while making proper allowance for their divergent social traditions".

Against the background of these arguments - about which there are of course different points of view in the Sub-Committee we must now begin by examining the aims, elements and levels of participation as well as its legal framework in order to obtain a clear idea of the issues involved.

1. Aims of Participation

The Sub-Committee is in agreement on a number of objectives which employee participation should help to achieve:

- safeguarding the dignity and sense of responsibility of people at work;
- lessening the strain of work and improvement of working conditions;
- prevention of industrial accidents and diseases;
- improvement of the social, personnel and training policies of companies;
- improvement of working conditions and reduction of conflict within companies;
- increasing company efficiency and competitiveness;
- protection of the environment and improvement of living conditions.

Opinions are divided, however, about those participation aims which involve giving employees an equal say in economic and social decision-making.

Some members stress the purpose participation can serve in keeping a check on economic power. The growing concentration of capital and industry is putting more and more economic, social, and political power into the hands of large firms and groups of companies. The persons running these firms not only take the decisions on investment, production and sales, they also determine, through these decisions, the regional and sector-by-sector distribution of production and jobs and lay down working conditions and

productivity levels in plants. In these members' view, this situation calls for comprehensive democratization of the economy (*).

Other members reject this view, stressing that the decisions of large undertakings are subject to a lot of constraints arising, for example, from the general economic climate and from competition policy, which affect decisions on investment, plant location and marketing. These plus other factors already constitute an effective check on economic power. These members consider that employee participation should not detract from the responsibility and willingness to take risks which are part and parcel of the use of capital for productive purposes. Companies must continue to have effective decision-making machinery leaving the ultimate responsibility for the company's efficiency and competitiveness with management.

However, some members consider that worker participation and effective decision-making structures are by no means mutually exclusive. The survival and economic success of a firm are as important to the workers, whose chief interest is the maintenance and security of their jobs, as they are to the shareholders, who are primarily interested in the return of their capital.

These members consider that the clash of interests between a firm's shareholders on the one hand and its employees on the other, which stems from the employees' wish to raise their living standards and to humanize their working conditions and the shareholders' interest in profitability and competitiveness, must be solved some way or other, at greater or lesser expense, in all systems.

(*) We are using the term "democratization of the economy" in a wide sense, not in the specific sense this term has acquired in Denmark, where it refers to a national fund for enabling employees to acquire holdings in firms.

Therefore employee participation, irrespective of the form it assumes (provided that it takes account of the wishes of all the parties concerned), can go a long way towards settling such conflicts and reconciling in an optimum manner the interests of employees, shareholders and the community at large.

2. Elements of participation

The participation of workers and their representatives comprises several different elements, namely rights of information, consultation, representation and codetermination.

Rights of information about the company's position and progress and about the management's plans exist to a greater or lesser extent in fact or in law, in all the Member States. They form the basis for an effective consultation or codetermination of the workers and their representatives.

Rights of consultation have been granted to workers and their representatives in the Member States through machinery of various types and at various levels. These rights may increase the workers' say in social and economic decisions and bring conflicts of interest between workers and employers more into the open. But they do not create equality between employers and workers.

Therefore, some members believe that they are not sufficient to ensure that, in the settlement of conflicts, the same consideration is given to workers' and shareholders' interests.

Rights of representation are exercised in the Member States through machinery of various types and at various levels either by statutory worker representatives elected by all the employees or by trade union representatives elected only by members of the union. It is only possible to exercise these rights effectively, however, insofar as the statutory or trade union worker representatives enjoy, in fact or in law, rights of information and consultation. Rights of information and consultation are automatic where the employee representatives sit on the decision-making bodies of plants and companies and of State bodies.

Rights of codetermination - at plant and company level - mean that economic and social decisions which have a bearing on the interests of the workers cannot be forced through against the will of the workers and their representatives. Such rights are based either on arrangements whereby the employees' representative machinery must approve decisions before they can become effective or arrangements whereby employee representatives sit on the decision-making bodies where they have voting parity with shareholders' representatives. Some members believe that such rights of codetermination are the only guarantee of a balance between the interests of employers and workers.

3. Levels of participation

Although the Commission's Green Paper discusses various means of participation - through collective bargaining, representation on bodies at plant and company level and participation in the firm's capital - the suggestions it makes are confined to board structure and employee participation within that structure.

Some members consider this approach to be expedient in that it is making a start on a major area of employer-employee relations.

However, other members would point to the fact that, with this approach, one is apt to forget that the individual elements of Member States' systems of worker participation at different levels, which vary in their prominence in the system as a whole, are interdependent and complement one another. Whereas the workers in some Member States are more interested in greater institutional participation in plants and companies, workers in other Member States have made it their main aim to secure greater bargaining power for the trade unions.

These members further point out that the regional, structural, national and international problems of economic and social policy have become central interests of workers and their trade unions in all Member States. An effective system of worker participation must take in these issues too (for instance in Economic and Social Councils).

4. The machinery of participation

This machinery has evolved differently in the Member States according to historical background and social conditions. In some Member States, works-level trade union bodies carry out the functions which works councils and enterprise councils perform in other countries. The structure and terms of reference of works and enterprise councils differ from one Member State to the next. In some Member States, employee representatives on supervisory boards and boards of directors and "labour" (i.e. personnel/ industrial relations) directors hold a prominent position; in others, such arrangements are non-existent. In some Member States the unions and also the employers' associations, try to exert influence on legislation and administration through informal channels. In others, this influence tends to be exercised through formal arrangements, for example, economic and social councils. In some Member States collective bargaining is mainly at company level; in others it is predominantly conducted on a sectoral, regional or national basis with the employers' associations.

In these circumstances, it seems advisable that Community provisions on company structure and employee participation at board level should be made flexible enough to allow the Member States to cater for their specific historical traditions and social conditions.

5. Legal Framework for Participation

The legal framework for employee participation can be municipal and Community law, possibly also international treaties, and collective agreements at plant, regional, national and, possibly, also Community and multinational levels.

The Community is called upon to provide in EEC legislation a framework for participation which is to be filled out by national legislation. At the same time it must take care that this framework is not undermined by international treaties entered into by Member State governments -- as in the case of the agreement on cross-frontier mergers.

Some members consider that worker participation should be also extended on the basis of plant-level, regional and national collective agreements. In some Member States, however, this would require amendment of the law governing collective agreements.

In some of these Members' view, the increase in the number of multinationals also calls for more extensive, uniform participation rights to be established by means of EEC and multinational collective agreements.

Other members are opposed to employees' rights of participation being negotiated in collective bargaining. They consider that collective bargaining should be reserved for negotiation of wages and salaries, working conditions and social benefits. In their opinion collective agreements do not have the attributes of usual sources of company law, if only because of the conditions under which they are negotiated and implemented in some Member States, which sometimes involve a relationship based on force.

Although recently collective agreements in some Member States have, for reasons connected with the economic and employment situations, embraced company investment, this is not to be equated

with employee participation in company decision-making. Such cases are, moreover, restricted to Member States where unions refuse to share in responsibility for the running of companies.

C. Approximation of Company Law

A convergence of employees' means of exerting influence is already observable in the Member States even without action by the Community. This convergence is explained by the similarity of their economic, social and labour relations problems, which tend to prompt roughly similar solutions.

With the growing interpenetration of the Member States' economies, some members see convergence of company law as one of the key conditions for the creation of a genuine Common Market, a process which requires the active support of the Community. These members are in favour of a Directive on the approximation of company law laying down the structure of companies and prescribing employee representation at board level. In this way the Community could help to bring about a convergence between the different systems.

Other members, who are also in favour of employees being given more extensive rights of participation, consider the question of the type of legal instrument by which company law is to be approximated in the EEC to be of subordinate importance.

They take the view, that while company law approximation is necessary and is indeed one of the key conditions for the creation of the common market, the issue of employee participation should not be strictly tied or subordinated to it. Participation should be treated

as a separate issue, although any moves in the area of participation should, of course, take place in parallel with the company law approximation. The main thing is that the participation issue should be handled in a down-to-earth and practical fashion.

Another group of members are opposed to a Directive laying down a uniform structure for companies in all Member States and setting minimum standards for employee representation on boards. They cannot see any need to impose a uniform structure; the different structures now in use have proved themselves. As for introduction of minimum standards for employee representation on boards, they would oppose this at the present juncture since in some Member States employee representation at this level is not a practical proposition in present circumstances.

If the Community should nevertheless decide to prescribe employee representation at board level by means of a Directive, the legal framework therefor should be the outcome of an objective choice from among the provisions of national and Community law and collective agreements now in force.

Hence, the Sub-Committee agrees with the Commission when it says that the future Community law must be founded on convergence. It must, however, make appropriate allowance for the differences in corporate structure and employee participation arising from different economic and social backgrounds in the Member States.

Some members consider that a Community instrument requiring introduction of a two-tier board structure and employee representation at board level must allow a transitional period of up to ten years.

Other members cannot go along with this view insofar as it involves deciding now on arrangements that would enter into force after a long transitional period. It appears to them a rather unrealistic way of going about things, in that a participation of employee representatives on company boards can only be contemplated once certain conditions are fulfilled, and it is impossible to foresee at the time of the decision on the instrument whether those conditions will be fulfilled by the end of a transitional period.

Other members, who are eager to align the content of employee participation, but do not wish to commit themselves now to a two-tier board structure, think that the Community provisions should be designed for a limited period (say, four years) and later reviewed in the light of the progress made in the individual Member States towards alignment of the different systems.

1. Company Structure

Some members take the view that link-ups between companies in different Member States, particularly with a view to mergers, are impossible unless all the Member States have the same system of company law. Without this, companies are forced to resort to forms of holding company or other structures of varying suitability. Approximation of company law is necessary also to bring about free movement of capital and to stimulate investment.

Some of these members would see the main argument for approximation of company law not in economic or fiscal policy considerations, but in the possibility it would open up for workers

to supervise the decisions of groups of companies located in a number of different Member States.

Another group of members ask whether approximation of company law is necessary to foster inter-company cooperation in the Community. They maintain that experience shows cross-frontier cooperation to be possible despite the existence of differing bodies of company law in the Community. They consider that inter-company cooperation in the Community is impeded not by the differences in company law, but by other factors, principally divergences in the taxation field. As the failure to harmonize company law is not the main obstacle preventing the creation of a genuine Common Market, the most that can be said, they argue, is that cooperation between companies in the Community could be facilitated if the companies desirous of such cooperation had the same structure. They further contend that supervision of company decision-making can be arranged just as well in the unitary system as in the two-tier system. However, where board-level employee representation is anyhow required or planned, they feel that, generally speaking, the two-tier system is preferable since employee representatives can be integrated better in a supervisory board than on a traditional Board of Directors.

Some members refer in this connection to the Committee's Opinion of 25 October 1972 on the European Company Statute, in which the Committee endorsed the proposed separation of the function of supervision, exercised by the supervisory board, and the responsibility for management exercised by the management board : "A sharp separation of the management and supervision functions will make the responsibilities of each body crystal-clear, and will be beneficial to the company both internally and externally. The Committee hopes that this arrangement will provide a further stimulus for harmonization of national company law on the same lines".

Other members, though not disagreeing, consider that a number of practical and psychological difficulties would arise in the event of the two-tier system being imposed immediately on all public limited companies in the Member States. They would refer to the Economic and Social Committee's Opinion of 29 May 1974 on the proposal for a Fifth Directive on the structure of public limited companies, in which the Committee came to the conclusion, after considering all aspects, that it was premature to impose a uniform structure on all public companies in the Community : "The two systems for managing such companies at present employed in the Community have proved themselves in practice and in the Committee's view they also afford the possibility of equivalent protection to shareholders and others".

Still other members are fundamentally opposed to a Community-wide approximation of company law. They consider that Member States which have the classic system and find it works satisfactorily should be allowed to keep it.

These views may have prompted the Commission to suggest in the Green Paper a number of possible flexible solutions though without changing the aim of general introduction of the two-tier system.

Some members support the Commission's proposal to prescribe the two-tier board structure for all public companies of a certain size in the Community, after a transitional period. Though they can accept this requirement initially being restricted to public companies, these members consider that it should be extended as soon as possible to cover other companies over a certain size.

Other members, however, consider that both the two-tier system and the unitary system have proved effective, but they would have no objection to the two-tier system being made an option for companies in countries where the present law provides for a unitary system.

They would again refer to the Economic and Social Committee's Opinion on the proposal for a Fifth Directive on the structure of public limited companies : "In the interests of harmonization ... the Committee feels that a compromise would be the best answer. It suggests that the two-tier system be made available to companies in Member States which at present only have the classic system, in other words that the two-tier system be provided for in the company law of all Member States, but that Member States at present employing the classic system be allowed to keep it alongside the two-tier system. In this way companies in these countries would have a choice between the two systems."

2. Employee Participation

In all the Member States there is a large body of laws and collective agreements which assigns to employees and their representatives certain rights of participation enabling them in varying degrees to influence corporate decisions.

Some members would agree to the scope of the rights and obligations of employees and employers within a company being aligned - insofar as such alignment is necessary for the proper operation of the Common Market - by creating a common basis for the exercise of influence by employees on decisions affecting their jobs, their safety and their working and living conditions in general.

Other members, however, consider that workers' participation rights, which bring about a better balance between the influence of management and employees, should be extended on a Community-wide basis to enable the employees to exert a stronger influence on management decision-making over a wider field.

This can be done by extending the powers of the employees' representative into the sphere of management decisions of an economic nature and encouraging the development of those powers into rights of approval or veto, and by giving the employees a say in determining the composition of the management or supervisory body of the company.

Here the Sub-Committee would quote from the Economic and Social Committee's Opinion of 24 October 1972 on the proposed European Company Statute, where the Committee said that : "workers must be given a possibility of collective representation of their interests in the firm and must be afforded a say in certain of the firm's decisions, but without detriment to the responsibility and effectiveness of the firm's management". This statement, reiterated in the Committee's Opinion of 29 May 1974 on the proposal for a Fifth Directive on the structure of public limited companies is still valid today in this general form.

However, the Economic and Social Committee did not feel able in those Opinions to come down one way or the other on the question of employee representation at board level. Although the general discussion on industrial democracy has come a long way since then in all Member States, nevertheless differences of opinion between Member States and between the different social groupings about the form and extent of employee participation still remain.

Nevertheless, general agreement has been reached in the Sub-Committee that the future Community Directive might make provision for two practical measures to sustain the movement towards convergence. The first would be the introduction of the two-tier board system as an option in Member States where it is not available at present. The second would be the setting up in large companies which do not have board-level employee representation of a special body on which the employees are represented and have minimum rights of information and consultation. The right of employees ought to be more or less comparable under both systems.

Some members want employee representatives to have the same number of seats and votes on company boards (either on the

the supervisory board in a two-tier structure or on the unitary board) as shareholders' representatives. This could also be obtained by giving employees' and shareholders' representatives each a third of the seats, with the remaining third composed of representatives of the general interest co-opted by the first two groups - one of the formulae proposed for discussion in the draft European Company Statute and the draft Fifth Directive on the structure of public limited companies.

Other members can accept a form of employee representation at board level which does not detract from the authority of shareholders' representatives, such as the one-third representation put forward by the Commission as one alternative in its draft Fifth Directive. Other members again favour the system employed in the Netherlands, which was proposed as a further alternative by the Commission in the Fifth Directive. Under this system the members of the supervisory board are appointed by the supervisory board itself. The shareholders' meeting and the employee representatives merely have the right under certain conditions to object to a nominee.

Yet another group of members takes the view that employee representation at board level is not a solution that can be applied everywhere in the Community. The system of worker participation adopted will have to take account of the particular system of labour relations and should therefore be left to the discretion of the Member States. Where, however, employers and employees are seeking employee representation at board level, or where this is already practised, it must on no account jeopardize the authority of the shareholders' representatives. Any other course would entail profound dangers for workers, companies, and indeed for the whole

national economies of Member States, based as they are on the principles of the free market and free movement of capital, companies and labour, freedom of establishment and free enterprise.

If the Community does decide to follow the Commission's proposal and lay down Community-wide provisions for worker participation, these provisions must, in view of the differences of opinion there are between the social groupings, be sufficiently flexible. Indeed, because of the big differences between the Member States' systems of participation, the Community provisions can be no more than a framework, laying down (a) the goals to be aimed at and (b) minimum rules which leave scope for due account to be taken of the different traditions, social trends and industrial relations systems in the Member States. The important thing is to prevent any further divergence between the participation rights of employees and their representatives in the different countries and to open up possibilities which lead to a convergence between the different systems.

Community provisions for workers' participation must take account of the following :

a) Employees' Right to Choose

Some members take the view that employees in Member States that do not have employee representation on the board, or do not want it, must have the right to refuse such representation indefinitely. The rule to this effect could be modelled on that in the amended proposal for a European Company Statute.

Other members are afraid that if Member States had divergent rules, this would lead to discrimination between companies and to a danger of companies moving to another country where the rules were less stringent. They are therefore opposed to employees having unlimited freedom of choice. In their opinion it would be enough to say that the purpose of the Community provisions was to open up the possibility - where the general circumstances so permitted - for firms in Member States which did not have statutory employee representation on company boards to seek new forms of participation on the lines of the proposals put forward in the Green Paper.

b) More Far-Reaching Provisions

Some members consider that employees who, either through national legislation or through collective agreements, secure more far-reaching participation rights than the minimum prescribed in the Community provisions - either in the form of equal representation on company boards or participation in the company's capital - must not be prevented from exercising such rights by the Community's provisions.

Some of these members are not interested in employee representation on any governing body whatsoever of the company if it is a minority representation. Instead of a minority representation they would much rather see the facilities, information rights and powers of the employees' representative machinery (the Works Council) expanded.

Other members, who want the shareholders to retain their authority, oppose the above approach if only because it involves the danger of discrimination and individual companies relocating.

c) Sphere of Application of the Community Provisions

Since the worker participation question arises in a different way for smaller companies, some members believe that the Community must lay down criteria as to the size of companies to which the Community provisions are to apply.

Some members consider that these criteria should relate to number of employees, turnover and balance sheet total. Other members consider, however, that the number of employees alone should be the deciding factor, since turnover and balance sheet total are not suitable criteria.

Some members also agree with the Commission that the same structures must be required for companies forming part of a group as for independent companies. But this principle raises a number of problems, they feel, which, to ensure the effectiveness of the Community worker participation provisions, necessitate rapid adoption of the Commission's proposed Directive on coordination of the Member States' law relating to groups of companies. That Directive must include provisions to the effect that :

- employees are to be represented on the boards of all companies which make binding decisions for associated companies. A parent company may give mandatory instructions to a subsidiary which has employee representation on the board, in matters which require

board approval, only if the employees are represented on the board of the parent company in the same way as in the subsidiary company;

- employees are also to be represented on the boards of parent companies whose registered office is in the Community but which have a number of subsidiaries outside the Community. However, there are legal, political and practical arguments against having the employees of subsidiaries outside the Community participate in the nomination of the employee representatives on the parent company's board;
- finally, that employees are to be represented on the boards of subsidiaries which have their registered office in the Community but which are controlled by parent companies from outside the Community. The freedom of decision of such subsidiaries in matters requiring board approval must be safeguarded.

Other members consider that groups of companies raise a number of problems which the Committee can only go into when it knows what the Commission's intentions are for the Directive to co-ordinate Member States' laws relating to groups of companies.

d) Powers of the Board

Adoption of a two-tier board structure consisting of a management body and a supervisory body on which employees are represented raises the problem of defining more closely the powers of the two bodies in the Community provisions.

Members are divided in their views about this. Some consider that the Supervisory Board, in addition to its powers to appoint and dismiss the Management Board, should be able to take important decisions concerning the company and its employees. Others, however, hold that the Supervisory Board ought to have a purely monitoring function that does not detract from the Management Board's responsibility for the running of the company.

There is general agreement, however, that the powers of the boards should be laid down in national provisions, which should be progressively aligned afterwards at Community level.

e) Procedure for Appointing Employee Representatives

The procedure for appointing the employee representatives on company boards must be left open by the Community provisions so that allowance can be made for the particular conditions in the Member States. The Member States must be left to decide the exact procedure under which the employees or their representatives on the works council or alternatively the trade unions representatives on the board. Matters such as how to ensure proper representativeness of the employee representatives, how to ensure that the procedure is democratic, and how to protect minorities, can only be settled in the light of each Member State's provisions and experience.

Some members urge that the appointment procedure should not interfere with trade union freedom as recognized by the ILO. A requirement that all employees should take part in the appointment

of employee representatives on company boards would be only superficially democratic if this eliminated the responsibility of representative trade unions.

Other members, however, point to the difficulty of deciding which unions are representative when, as is frequently the case in some Member States, there are a variety of unions - industry-wide, craft-based or representing a specific ideological approach - in one and the same company. Therefore, they insist that the electorate must comprise all employees of the company.

Some members consider that employee representatives on company boards should include persons who do not work for the company. The extensive relations of major companies and groups impinge on the national economy as a whole, and this makes it necessary for the employee interest in general to be represented alongside employees of the actual company concerned.

Other members would like there to be a fundamental ban on employee representatives from outside the company.

f) Rights and Duties of the Employees' Representatives

Employee representatives on company boards, where provided for, must have the same rights and duties as the shareholders' representatives. As the Commission emphasizes, the basic philosophy behind employee representation at board level is to widen the aims of the company to embrace the interests of the employees as well as those of the shareholder. Employee representatives, like all board

members, are bound by the office they hold to act in the interests of the company as a whole, and not just in the interests of those they represent. Ultimately, it is in the employees' interest that they should do so.

3. Transitional Provisions or Alternative Formulae for Employee Representation

Some of the members in favour of employee representation on company boards throughout the Community after a transitional period are opposed to transitional substitutes intended to perform some of the functions that would normally be exercised by employee representatives at board level. In their view, the Commission is right in saying that any transitional arrangement is less satisfactory than the desired end result. Such transitional arrangements cannot be fully effective substitutes, for it is not so easy to make them provide the worker with the same comprehensive rights to information and consultation that he would enjoy by having representatives on the company board, let alone to harmonize such rights at Community level. On top of this, substitute arrangements, intended to be temporary, would tend to become permanent fixtures, which would perpetuate the differences between employee participation systems in the Community.

However, these members are still anxious to reinforce employees' rights of participation, and emphasize that their rejection of transitional arrangements does not signify that the information, consultation and participation rights of employees'

representative institutions (enterprise councils, work councils or plant-level trade union bodies) should not be enlarged.

Other members who support employee representation at board level are in favour of transitional provisions as suggested in the Commission's Green Paper. They think the most important thing is to extend worker participation rights in all the Member States and gradually work towards the final objective. They do not regard the risk of substitute arrangements becoming entrenched as very great and think a later transition to employee representation at board level will be quite possible.

The views of the members who are in favour of transitional arrangements may be summarized as follows :

The Community provisions must require those Member States which do not feel able to introduce employee representation at board level immediately to establish transitional substitutes which perform some of the functions exercised in the other Member States by employee representation on boards.

A Member State's transitional arrangements for employee representation must, however, build on existing, and tried machinery for this purpose. As the Commission rightly points out, the various systems for the representation of workers' interests are an important and potentially fruitful element of industrial relations. It is neither necessary nor wise to alter these systems in an arbitrary manner, for they are the result of decades of evolution and enjoy the confidence of workers, and, to a degree, of employers and the general public.

However, employees' representative institutions as substitutes for employee representation at board level do need to be established at company and group level, including that of the multinational company or group. The employees' representative institutions at company and group level must, as is already the practice in some Member States, be constituted from the representative institutions of the dependent companies and plants, whether these be enterprise councils, works councils or plant-level trade union bodies.

The procedure for constituting these representative institutions for employees, like the procedure for appointing employee representatives to the board, must be left open by the Community provisions so that due allowance can be made for the particular conditions in the Member States.

Institutions representative of all the employees concerned are also possible and necessary in those companies and groups which have dependent companies and plants in other Member States where a different procedure for the formation of employees' representative institutions applies. The Community provisions merely need to lay down a uniform ratio of representatives to employees for all Member States. Furthermore, the Community provisions must require Member States which have already introduced employee representation at board level to set up a procedure for appointing representatives to employees' representative institutions in companies and groups in other Member States.

Conversely, the Community provisions must also make it compulsory in Member States which initially do not introduce employee representation at board level to institute a procedure

for appointing employee representatives to the boards of companies and groups in other Member States.

Finally, the Community provisions must lay down minimum rules on the rights of access to information, rights of consultation and rights of participation in decision-making to be assigned to the employees' representative institutions. These minimum rules should, as the Commission suggests, be based on common principles to be derived from the law and practice of the Member States.

The Community provisions should impose fairly stringent requirements as to information, specifying a minimum which must be given and requiring it to be given in sufficient time for a proper discussion of the issue to be held before any decision is taken. The minimum would have to include information about the company's medium-term development and investment plans and their implications for jobs, training qualifications, pay and conditions.

Consultation of employees should be required to take place sufficiently in advance of projected decisions and on certain matters should be compulsory to make sure that the employees could exercise sufficient influence on the decisions.

Finally, provision should be made for checking on how decisions were being implemented so that employees could tackle management on the implementation of decisions and their consequences.

The provisions of the amended proposal for a European Company Statute might, in fact, serve as a starting point for discussing this issue.

The employees' representative institutions must be assigned the same rights to information as employee representatives have at board level. They must also be granted comprehensive rights of consultation and, in matters directly affecting employees, participation in decision-making. Here it must be understood that the rights of access to information and the rights of consultation and participation in decision-making which are assigned to employees' representative institutions under transitional arrangements are to continue to apply when, after the transitional period, employee representation at board level is introduced for all companies of a certain form and size.

Another group of members welcome the Commission's suggestion that substitute arrangements be introduced in those Member States which do not feel in a position to prescribe employee representation on company boards. In their view, the Commission's suggestion is an attempt to open the way for other employee participation systems to evolve in the Community. This new approach should be encouraged and developed with a view to finding solutions suited to the traditions, social conditions and industrial relations systems in the Member States of the Community. For the foreseeable future it must be accepted that introduction of employee participation at board level is not the only way of solving satisfactorily the manifold problems of employee participation in the Member States of the Community; there can be other ways.

These members feel, however, that it is unrealistic to plan such substitute arrangements to operate only for a predetermined transitional period, after which employee representation on supervisory boards would automatically have to be introduced. The

participation of employees should in their view be introduced in stages. But a programme for stage two cannot be decided until the aims of stage one have been accomplished. It is impossible to fix in advance when this will be.

These members are in favour of a comprehensive investigation into employee participation to study the issues of common importance to employees and companies, irrespective of the particular system obtaining. This could lead to a conception of participation that would form the basis for minimum rules for fixing employees' and employers' rights in companies.

The Chairman
of the
Sub-Committee on the
Green Paper on Employee
Participation

The Rapporteur
of the
Sub-Committee on the
Green Paper on Employee
Participation

Sir John PEEL

J. F. CARROLL

The Secretary-General
of the
Economic and Social Committee

Delfo DELFINI
