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Working Documents

1982-1983

14 June 1982

DOCUMENT 1-324/82 / A

REPORT

drawn up on behalf of the Committee on Social Affairs and
Employment

on the proposal from the Commission of the European
Communities to the Council (Doc. 1-561/80 - COM(80) 423 final)
for a directive on procedures for informing and consulting
the employees of undertakings with complex structures,
in particular transnational undertakings

Rapporteur: Mr SPENCER

OR. EN.

PE 76.054/fin. / A

By letter of 4 November 1980 the President of the Council of the European Communities requested the European Parliament pursuant to Article 100 of the EEC Treaty to deliver an opinion on the proposal for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings.

On 17 November 1980, the President of the European Parliament referred the proposal to the Committee on Social Affairs and Employment and to the Legal Affairs Committee and to the Committee on Economic and Monetary Affairs for their opinions.

At its meeting of 27 January 1981 the Committee on Social Affairs and Employment appointed Mr Spencer rapporteur.

The Committee on Social Affairs and Employment considered the proposal at its meeting on 25 February 1981 and agreed on a timetable proposed by the rapporteur at its meeting on 14 April 1981. At its meeting on 25 June 1981 the Committee on Social Affairs and Employment gave the rapporteur permission to visit the OECD in Paris and the ILO in Geneva to discuss the Commission's proposal.

At its meeting on 21-22 September 1981 the Committee discussed a working document prepared by the rapporteur and decided to hold a hearing which took place on 21 October 1981 with representatives of the UNICE and the ETUC on the basis of a questionnaire and an 'information note No. 1' by the rapporteur. In the light of these discussions a revised timetable was agreed on at the meeting on 10 November 1981.

The committee examined the Commission's proposal and the draft report at its meetings of 4 December 1981, 27 January 1982, 25 February 1982 and 17 March 1982. At these meetings the rapporteur tabled information notes Nos. 2, 3 and 4.

At its meeting of 1 April 1982 the Committee on Social Affairs and Employment decided by 18 votes to 6 to recommend Parliament to approve the Commission's proposals with the following amendments.

The following took part in the vote: Mr Papafstratiou, chairman; Mr Peters, Mr Frischmann, vice-chairmen; Mr Spencer, rapporteur; Mr Boyes, Mrs Cassanmagnago Cerretti, Mr Ceravolo, Mr Chanterie, Mrs Clwyd, Mr Dalsass (deputizing for Mr Barbagli), Mr Damette, Miss De Valera, Mrs Dupont, Mr Eisma, Mr Forth (deputizing for Mr Simpson), Mr Ghergo, Mr McCartin, Mrs Maij-Weggen, Mr Van Minnen, Mrs Tove Nielsen, Mr Patterson, Mrs Salisch, Mr Tuckman and Mr Wawrzik (deputizing for Mr Brok).

At its meeting of 27 May 1982 the committee adopted the motion for a resolution with 18 votes in favour, 5 against and 1 abstention.

The following took part in the vote: Mr Papaefstratiou, chairman; Mr Hurgan, Mr Frischmann, vice-chairmen; Mr Spencer, rapporteur; Mr Abens (deputizing for Mr Peters), Mr Barbagli, Mr Boyes, Mrs Cassanmagnago Cerretti, Mr Ceravolo, Mr Chanterie, Mr Damette, Mr Dido, Mrs Duport, Mrs Dury (deputizing for Mrs Charzat), Mr Eisma, Mr Griffith (deputizing for Mrs Clwyd), Mrs Elaine Kellett-Bowman (deputizing for Sir Derek Nicholson), Mrs Krouwel-Vlam (deputizing for Mr Van Minnen), Mrs Maij-Weggen, Mr Michel (deputizing for Mr Estgen), Mrs Tove Nielsen, Mr Patterson, Mrs Salisch and Mr Tuckman.

The opinions of the Committee on Economic and Monetary Affairs and the Legal Affairs Committee are attached.

The explanatory statement will be published separately.

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments and motion for a resolution together with explanatory statement:

Amendments proposed by the Committee
on Social Affairs and Employment

Text proposed by the Commission
of the European Communities

Proposal for a directive on
procedures for informing and
consulting the employees of
undertakings with complex
structures, in particular
transnational undertakings
(COM(80) 423 final) (Doc. 1-561/80)

Preamble

No. Am./Preamble

Having regard to the Treaty establish-
ing the European Economic Community
and in particular Article 100 and
Article 117 thereof,

Preamble

The Council of the European Communities,

Having regard to the Treaty establish-
ing 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,

SECTION I - SCOPE AND DEFINITIONS

Article 1

This directive relates to:

- procedures for informing and con-
sulting 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);

Article 2

No. Am./Art. 2/5

(a) Employees' representatives

The employees' representatives shall be elected directly from the work force by a secret ballot of at least two-thirds of the work force in each subsidiary undertaking or establishment.

- 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 referred 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 businesses¹.

(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 purpose 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.

¹OJ No. L 61, 5.3.1977, p. 26

SECTION II - INFORMATION AND CONSULTATION PROCEDURES IN
TRANSNATIONAL UNDERTAKINGS

Article 4

Am./Art. 4/4

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 50 employees in the Community in accordance with Article 5 and to consult them in accordance with Article 6.

Article 5

Am./Art. 5/6

1. At least once a year, by a date to be determined, the management of a dominant undertaking shall forward intelligible general information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries as a whole, and intelligible specific information on prospects which might have serious consequences for employees' interests in a specific production group or geographic unit.

Am./Art. 5/17

(e) production and investment prospects

Am./Art. 5/15

(f) rationalization plans and the introduction of new technologies and new organizational systems
(g) manufacturing and working methods and measures to protect the health and security of workers at the workplace

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
- (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.

Am./Art_5/19

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary. Such information shall be given in writing supported by documents and explained at a meeting with the subsidiary's employees' representatives. The employees' representatives shall at all times be entitled to ask questions and receive answers.

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

Am./Art_5/25

4. (a) Where the management of a subsidiary is unable and/or unwilling to communicate the information referred to in paragraphs (1), (2) and (3) within the time limits laid down, the employees' representatives may submit a written request to the management of the subsidiary; the management of the undertaking in question has then a maximum of four weeks (28 days) to comply with its obligations.

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.

(b) Where the management of the subsidiary in question has not fulfilled its obligations under paragraphs (1), (2) and (3) on the expiry of this period of four weeks (28 days), the employees' representatives have the right to nominate representatives to approach the management of the dominant undertaking directly. The management of the dominant undertaking shall be obliged to provide the information requested.

Am./Art_5/27

5. (a) Where the foregoing obligations are not met, the Member States shall provide for the employees' representatives to have the right to apply for a court ruling requiring

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

the management of the dominant undertaking and/or subsidiary to fulfil the obligations to provide information set out in paragraphs (1), (2) and (3).

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

Article 6

Am./Art 6/8

The employees' representatives of any other subsidiary in the Community who deem themselves to be substantially affected by such a decision, may request and receive through the management of their own subsidiary the information referred to 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.

Am./Art 6/18

3. The management of the subsidiary concerned 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 from the day on which the information is communicated to the employees' representatives.

Am./Art 6/23 + Am./Art 6/22

4.(a) 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 the employees.

(b) No decision within the meaning of paragraphs (1) and (2) may be taken or implemented before the opinion of the employees' representatives is received or before the 30-day period referred to in paragraph (3) has elapsed and , if the opinion is received in good time, before the consultation contemplated in paragraph (4a) has begun.

Am./Art 6/29

5. (a) Where the management of the subsidiary is unable and/or unwilling to communicate to the employees' representatives the information required under paragraph (3) or to enter into consultations as required under paragraph (4), the employees' representatives shall be entitled to make a written request to the management of the subsidiary, after which the management shall be given a maximum of ten days to meet its obligations.

(b) Where after the expiry of that ten-day period the obligations under paragraphs (3) and (4)a have not

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.

been met the employees' representatives may through authorized delegates approach directly the management of the dominant undertaking; the management of the dominant undertaking shall be required to communicate the relevant information and to enter into discussions with the employees' representatives and in an appropriate case to seek agreement on the measures planned for the employees concerned.

Am./Art 6/34

6. (a) The Member States shall create the possibility in case of failure to meet the above mentioned obligations for the employees' representatives to bring proceedings before a court to compel the management of the dominant or subsidiary undertaking to comply forthwith with the duty of information and consultation contained in paragraphs 1, 2 and 3.

(b) 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.

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), if the employees' representatives of those employees upon whose employment or working conditions the decision is likely to have a direct effect agree to transfer their right of consultation to the higher level.

Am./Rapp. + Am./Art 8/4

Article 8

Where the management of the dominant undertaking whose decision-making centre is located outside the Community and which controls one or more subsidiaries in the Community does not ensure the presence within the Community of one authorized agent responsible for fulfilling the requirements regarding disclosure of information and consultation laid down by this Directive, the management of each subsidiary concerned shall be responsible for fulfilling the obligations resulting from this Directive.

Am./Rapp.

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 in accordance with Article 5 to the employees' representatives in all of its establishments in the Community employing at least the number of employees defined in Article 4 and consult them in accordance with Article 6.

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 agreement 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 subsidiaries in the Community does not ensure the presence within the Community of at 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

Am./Art. 4/4 (also applies to Art. 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 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 50 employees in the Community in accordance with Article 11 and to consult them in accordance with Article 12.

Article 11

Am./Art. 5/6 (also applies to Art. 11)

1. At least once a year, by a date to be determined, the management of a dominant undertaking shall forward intelligible general information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries as a whole, and intelligible specific information on prospects which might have serious consequences for employees' interests in a specific production group or geographic unit.

Article 10

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Communities 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

Am./Art 5/17 (also applies to Art. 11)

(e) production and investment prospects

Am./Art 5/15 (also applies to Art. 11)

(f) rationalization plans and the introduction of new technologies and new organization systems

(g) manufacturing and working methods and measures to protect the health and security of workers at the workplace

Am./Art 5/19 (also applies for Art. 11)

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary. Such information shall be given in writing supported by documents and explained at a meeting with the subsidiary's employees' representatives. The employees' representatives shall at all times be entitled to ask questions and receive answers.

Am./Art 5/25 (also applies for Art. 11)

4. (a) Where the management of a subsidiary is unable and/or unwilling to communicate the information referred to in paragraphs (1), (2) and (3) within the time limits laid down, the employees' representatives may submit a written request to the management of the subsidiary; the management of the undertaking in question has then a maximum of four weeks (28 days) to comply with its obligations.

(b) Where the management of the subsidiary in question has not fulfilled its obligations under paragraphs (1), (2) and (3) on the expiry of this period of four weeks (28 days), the employees' representatives have the right to nominate representatives to approach the management of the dominant undertaking directly. The management of the dominant undertaking shall be obliged to provide the information requested.

(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 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.

Am./Art 5/27 (also applies to Art. 11)

5. (a) Where the foregoing obligations are not met, the Member States shall provide for the employees' representatives to have the right to apply for a court ruling requiring the management of the dominant undertaking and/or subsidiary to fulfil the obligations to provide information set out in paragraphs (1), (2) and (3).

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

Article 12

Am./Art 6/8 (also applies to Art. 12)

The employees' representatives of any other subsidiary in the Community who deem themselves to be substantially affected by such a decision, may request and receive through the management of their own subsidiary the information referred to in this Article.

5. The Member States shall provide for appropriate penalties for failure to comply with the obligations 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 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.

Am./Art 6/18 (also applies to Art. 12)

3. The management of the subsidiary concerned 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 from the day on which the information is communicated to the employees' representatives.

Am./Art 6/23 + 6/22 (also applies to Art.12)

4.(a) 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 the employees.

(b) No decision within the meaning of paragraphs (1) and (2) may be taken or implemented before the opinion of the employees' representatives is received or before the 30-day period referred to in paragraph (3) has elapsed. and, if the opinion is received in good time, before the consultation contemplated in paragraph (4a) has begun.

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.

Am./Art 6/29 (also applies to Art. 12)

5. (a) Where the management of the subsidiary is unable and/or unwilling to communicate to the employees' representatives the information required under paragraph (3) or to enter into consultations as required under paragraph (4), the employees' representatives shall be entitled to make a written request to the management of the subsidiary, after which the management shall be given a maximum of ten days to meet its obligations.

(b) Where after the expiry of that ten-day period the obligations under paragraphs (3) and (4) have not been met the employees' representatives may through authorized delegates approach directly the management of the dominant undertaking; the management of the dominant undertaking shall be required to communicate the relevant information and to enter into discussions with the employees' representatives and in an appropriate case to seek agreement on the measures planned for the employees concerned.

Am./Art 6/34 (also applies to Art. 12)

6. (a) The Member States shall create the possibility in case of failure to meet the above mentioned obligations for the employees' representatives to bring proceedings before a court to compel the management of the dominant or subsidiary undertaking to comply forthwith with the duty of information and consultation contained in paragraphs 1, 2 and 3.

(b) 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.

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 interest

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), if the employees' representatives of those employees upon whose employment or working conditions the decision is likely to have a direct effect agree to transfer their right of consultation to the higher level.

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

Am./Rapp Art. 9 (also applies to Art. 14)

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 in accordance with Article 11 to the employees' representatives in all of its establishments in the Community employing at least the number of employees defined in Article 10 and consult them in accordance with Article 12.

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.

SECTION IV - SECRECY REQUIREMENTS

Article 15

Am./Art 15/5

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.

For the purposes of this provision, third parties shall NOT include other employees' representatives of the same group or undertaking or designated consultants or experts advising the employees' representatives.

Am./Art 15/7

2. The Member States shall impose appropriate penalties in cases of infringement of the obligations laid down in this article.

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 redundancies¹ 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 State shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive not later than* They shall forthwith inform the Commission thereof.

Article 17

¹OJ No L 48, 22.2.1975, p. 29

* Date to be specified at the time of adoption by the Council.

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.

Am./Art 17/1

3. Three years after the entry into force of this Directive, the Member States shall submit a report to the Commission on the practical effects of this Directive on the position of the employees, on the position of the undertakings concerned and on the relationship between employers and employees.

Article 18

Article 18 subsequently falls.

Article 19

Article 19 becomes Article 18

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.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings.

The European Parliament,

- having regard to the proposal from the Commission (COM(80) 423 final)¹,
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty on this proposal for a directive for which the legal basis is to be found in Article 100 of the EEC Treaty taken in conjunction with Article 117 of the EEC Treaty (Doc. 1-561/80);
 - having regard to the report of the Committee on Social Affairs and Employment and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (Doc. 1-324/82);
 - having regard to the result of the vote on the proposal from the Commission;
- A. whereas it is vitally important for the socio-economic climate in the European Community that the interests of employees and employers in small and medium-sized undertakings and in multi-national undertakings should be harmonized as far as possible,
1. Emphasizes that this proposal for a directive is the latest in the series of existing or proposed Community legislation in this field, in particular the 1975 Directive on collective redundancies, the 1977 Directive on the safeguarding of employees' rights in the event of transfers or mergers of undertakings and the 1980 Directive on the protection of employees in the event of the insolvency of their employer;
 2. Asks the Commission to harmonize its proposal as far as possible with the other social policy and Company Law Directives in every case where this is legally admissible and of practical value;
 3. Urges the Commission and Council to accelerate their work in this field.
 4. Is convinced that the future success of European industry, for which the creation of a large number of secure jobs as well as the introduction of new technologies are essential, can only be achieved with the full involvement of employees;

¹

OJ No C 297, 15.11.80 p. 3.

5. Recognises the valuable contribution of voluntary codes and guidelines in this field; encouraged by the widespread acceptance of such measures; concerned that there have been breaches of such voluntary arrangements; noting that such arrangements cover a wider range of policy matters than does the draft Directive; believes that Community legislation in the limited area proposed is compatible with the continued development of voluntary codes and guidelines.
6. Reaffirms its belief, as expressed in the CABORN report¹, that the Commission should study all aspects of the relationship between transnational businesses and the European Community.
7. Instructs its President to forward to the Commission and the Council the proposal from the Commission as voted by Parliament and the corresponding resolution as Parliament's opinion.

¹

See OJ No C 287, 9.11.1981

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

DRAFTSMAN: Mr P. von BISMARCK

At its meeting of 24-25 November 1980 the Committee on Economic and Monetary Affairs appointed Mr von Bismarck draftsman of the opinion for the Committee on Social Affairs and Employment.

It considered the draft opinion at its meetings of 10-11 November 1981 and 26-27 January 1982 and adopted it at the latter meeting by a vote of 15 in favour to 9 against.

The following took part in the vote: Mr Moreau, Chairman; Mr Deleau, Vice-Chairman; Mr Antoniozzi (deputizing for Mr Giavazzi), Mr Beazley, Mr von Bismarck, Mr Bonaccini, Mrs Desouches, Mr Fernandez, Mr de Goede, Mr Hopper, Mr Kazazis (deputizing for Mr I. Friedrich), Mr Mihr, Mrs Nikolaou (deputizing for Mr Ruffolo), Mr Nyborg, Mr Papantoniou, Mr Poniridis (deputizing for Mr Schwartzberg), Mr Rogalla (deputizing for Mr Walter), Mr Rogers, Mr Sassano (deputizing for Mr Herman), Mr Seal (deputizing for Mr Caborn), Mr Turner (deputizing for Mrs Forster), Mr Veronesi (deputizing for Mr Leonardi), Mr Wagner and Mr von Wogau:

The Committee decided to request the following changes to the text of the draft Directive:

(i) In the fifth line of Article 4:

Replace '100' with '50'.

(ii) Article 5(2): Amend as follows:

(f) ... and the introduction of new technologies and new organisational systems in the undertaking

(iii) Article 5(3): Add the following:

Such information shall be given in writing supported by documents and explained at a meeting with the subsidiary's employee representatives. The employee representatives shall at all times be entitled to ask questions.

(iv) Article 6

6(2): Add the following:

(e) the introduction of new technologies and new methods of remuneration .

6(5): Replace 'authorised delegates' with:

employee representatives or trade union representatives designated for that purpose by the bodies representing the various interests within the subsidiary .

(v) Article 15(1): Add the following:

For the purposes of this provision, third parties shall not include other employee representatives of the same group or undertaking or designated consultants or experts advising the employee representatives .

CONCLUSIONS

The Committee is in favour of the Commission's proposal for a directive. The Committee recommends that, in the light of the willingness expressed in Section I.A.5. to give consideration to possible objections, the Commission should revise its proposal to take account of the Committee's views.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

DRAFTSMAN: Mr H. VETTER

At the plenary sitting of 17 November 1980 the Commission proposal for a Council directive (Doc. 1-561/80) was referred to the Committee on Social Affairs and Employment as the committee responsible and to the Legal Affairs Committee and the Committee on Economic and Monetary Affairs for their opinions.

At its meeting of 28/29 January 1981, the Legal Affairs Committee appointed Mr Heinz O. Vetter draftsman.

It considered the proposal for a directive at its meeting of 25/26 February 1981 on the basis of an introductory statement by the draftsman.

At its meeting of 16 March 1981 the Legal Affairs Committee considered the draft opinion (PE 72.165).

At its meeting of 24/25 November 1981 the Legal Affairs Committee voted on the amendments to the Commission's proposal for a directive.

The following took part in the vote: Mr Ferri, chairman; Mr Turner and Mr Luster, vice-chairmen; Mr Alfonsi, Mr Chambeiron, Mrs Cinciari Rodano, Mr Croux, Mr Dalziel, Mr D'Angelosante, Mr De Gucht, Mr Donnez, Mrs Ewing, Mr Fischbach, Mr Geurtsen, Mr Janssen van Raay, Mrs Macciocchi, Mr Malangre, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Van den Heuvel, Mrs Vayssade, Mr Vetter and Mr Vié.

Following this vote the draftsman withdrew his draft opinion with the intention of submitting a second opinion to the Legal Affairs Committee at its meeting on 27/28 January 1982.

The Legal Affairs Committee subsequently adopted the opinion by 13 votes to 5.

The following took part in the vote: Mr Luster (acting chairman); Mr Turner, Mr Vetter (draftsman of the opinion); Mrs Baduel Glorioso (deputizing for Mr Chambeiron), Mrs Cinciari Rodano, Mr Dalziel, Mr D'Angelosante, Mr Fischbach, Mr Goppel, Mr Kaloyannis, Mr Malangré, Mr Megahy, Mrs Tove Nielsen, Mr Poniridis, Mr Prout, Mr Schwencke (deputizing for Mr Ferri), Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade and Mr Vié.

I. INTRODUCTION

1. The proposal for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings, submitted by the Commission of the European Communities on 24 October 1980, concerns the rights of employees in undertakings with complex structures regardless of the legal form of these undertakings.

2. The proposal submitted by the Commission stems from the social action programme adopted by the Council on 21 January 1974.

3. The proposed directive follows on from the existing social directives: i.e. the Directive of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies¹ and that of 14 February 1977 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses². These two directives also contain provisions concerning the rights of employees to information and consultation on matters specifically affecting them.

4. In the summer of 1980 both sides of industry in the Community were consulted on the proposal for a directive; in the course of the consultations an agreement of principle was reached with the European Trade Union Confederation (ETUC) but not with the Union of Industries of the European Community (UNICE).

5. The proposal for a directive uses as its legal basis Article 100 taken in conjunction with Article 117 of the EEC Treaty.

6. Article 100, paragraph 1, of the EEC Treaty reads as follows:

'The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.'

7. The first and second paragraphs of Article 117 of the EEC Treaty read as follows:

'Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained.

They (the Member States) believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.'

¹OJ No. L 48 of 22.2.1975, p.29

²OJ No. L 61 of 5.3.1977, p.26

8. Thus, with a view to achieving the objectives specified, Article 117 of the EEC Treaty refers to the approximation, as required by Article 100 of the EEC Treaty, of provisions laid down by law, regulation or administrative action in Member States.

II. CONCLUSIONS

9. The Legal Affairs Committee has examined carefully whether Article 54 paragraph 3(g) of the EEC Treaty could be used as a legal basis. It inclines to the Commission's view that the legal basis is provided by Article 100 in conjunction with Article 117 of the EEC Treaty. In order to clarify this question it calls on the Commission to make it quite clear once again that the current differences between national provisions - both those laid down by law and those laid down in other ways - directly affect the functioning of the common market.

10. The Legal Affairs Committee requests the committee responsible to urge the Commission to ensure that its proposal conforms as closely as possible to the other directives on social policy and company law where this is legally admissible and feasible.

In particular the Legal Affairs Committee considers that the employee representatives for the purposes of the draft directive should be elected according to democratic principles.

11. The Legal Affairs Committee stresses the need to ensure, through the provisions of this directive, that those groups of undertakings whose parent company is based in a Member State of the Community and those whose parent company is based outside the Community are treated in the same way.

12. The Legal Affairs Committee recommends that the Committee on Social Affairs and Employment, taking into account the opinion of the Legal Affairs Committee, should examine the provisions of the proposed directive with regard to their suitability and practicability.

13. Bearing this in mind, the Legal Affairs Committee in principle welcomes the aim of the Commission's proposal for a directive, which is to lay down provisions with regard to the rights of employees to information and consultation in undertakings with complex structures, in particular transnational undertakings, in the Community.

14. In line with these conclusions the Legal Affairs Committee recommends the Committee on Social Affairs and Employment to accept the following amendments adopted in the Legal Affairs Committee to the text of the proposal for a directive:

AMENDMENT No. 1

Title to Section II:

- after 'Transnational' insert 'Groups of'.

AMENDMENT No. 2

Article 5, Para 1

- delete 'every six months' and insert 'annually'
- delete 'relevant'
- after 'information' insert 'for disclosure in accordance with paragraph 3'
- after 'giving a clear' insert 'overall'.

AMENDMENT No. 3

Article 5, para 2

- in first line delete 'in particular'
and insert 'to the following without disclosing company and business secrets or information which is share-price sensitive.'
- in sub-para (a) add at end 'of the Group as a whole'
- in sub-para (b) add at end 'of the Group as a whole'
- in sub-para (c) add at end 'of the Group as a whole'
- in sub-para (d) add at end 'of the Group as a whole'
- in sub-para (e) add at end 'of the Group as a whole'
- delete sub-paras (f) and (g).

AMENDMENT No. 4

Article 5, para 4

- delete 'the subsidiaries' and insert 'a subsidiary'
- after 'paragraphs (1) and (2) to' insert 'its'
- delete last 10 words and insert 'the management of the subsidiary for disclosure by them to the employees' representatives if they request it to do so.'

AMENDMENT No. 5

Article 6, para 1

- after 'or of one of its subsidiaries' insert 'within the Community'
- after 'substantial effect on the interests of' delete 'its employees' and insert 'the employees of that subsidiary'
- after 'to the management of' delete 'each of its subsidiaries within the Community' and insert 'that subsidiary'
- delete 'not later than 40 days before adopting the decision'.

AMENDMENT No. 6

Article 6, para 3

- after 'The management of each subsidiary' insert 'so notified'.

AMENDMENT No. 7

Article 6, para 4

- delete last word and insert 'the employees'.

AMENDMENT No. 8

Article 6, para 5

- delete first six words and insert 'Where the management of the subsidiary or subsidiaries so notified'

- delete 'shall be authorised' to the end of paragraph and insert 'may request the management of the dominant undertaking to communicate the information to the management of the subsidiary for disclosure by them to the employees' representatives and to arrange consultations with the management of the subsidiary in accordance with paragraph (4)'.

AMENDMENT No. 9

Article 7, para 2

- add at end 'if the employees' representatives of those employees upon whose employment or working conditions the decision is likely to have a direct effect agree to transfer their right of consultation to the higher level'.

AMENDMENT No. 10

Article 8 - delete

AMENDMENT No. 11

Article 9 - delete

AMENDMENT No. 12

Section III = Title

- after 'consulting the Employees' insert 'Groups of'.

AMENDMENT No. 13

Article 11, para 1

- delete 'every six months' and insert 'annually'
- delete 'relevant'
- after 'information' insert 'for disclosure in accordance with paragraph 3'
- after 'giving a clear' insert 'overall'.

AMENDMENT No. 14

Article 11, para 2

- in first line delete 'in particular' and insert 'to the following without disclosing company and business secrets or information which is share-price sensitive.'
- in sub-para (a) add at end 'of the Group as a whole'
- in sub-para (b) add at end 'of the Group as a whole'
- in sub-para (c) add at end 'of the Group as a whole'
- in sub-para (d) add at end 'of the Group as a whole'
- in sub-para (e) add at end 'of the Group as a whole'
- Delete sub-paras (f) and (g).

AMENDMENT No. 15

Article 11, para 4

- delete 'the subsidiaries' and insert 'a subsidiary'
- after 'paragraphs (1) and (2) to' insert 'its'
- delete last 10 words and insert 'the management of the subsidiary for disclosure by them to the employees' representatives if they request it to do so.'

AMENDMENT No. 16

Article 12, para 1

- after 'or of one of its subsidiaries' insert 'within the Community'
- after 'substantial effect on the interests of' delete 'its employees' and insert 'the employees of that subsidiary'
- after 'to the management of' delete 'each of its subsidiaries within the Community' and insert 'that subsidiary'
- delete 'not later than 40 days before adopting the decision'

AMENDMENT No. 17

Article 12, para 3

- after 'The management of each subsidiary' insert 'so notified'

AMENDMENT No. 18

Article 12, para 4

- delete last word and insert 'the employees'.

AMENDMENT No. 19

Article 12, para 5

- delete first six words and insert 'Where the management of the subsidiary or subsidiaries so notified'
- delete 'shall be authorised' to end of paragraph and insert 'may request the management of the dominant undertaking to communicate the information to the management of the subsidiary for disclosure by them to the employees' representatives and to arrange consultations with the management of the subsidiary in accordance with paragraph (4)'.

AMENDMENT No. 20

Article 13, para 2

- insert at end 'if the employees' representatives of those employees upon whose employment or working conditions the decision is likely to have a direct effect agree to transfer their right of consultation to the higher level'.

AMENDMENT No. 21

Article 13, para 3 - delete

AMENDMENT No. 22

Article 14, - delete