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Employee Participation in the European Company

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submitted by

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I. The proposed Statute for European Companies

On 13 May 1975, the Commission of the European Communities presented to the Council an amended Proposal for a Council Regulation on the Statute for European Companies⁽¹⁾.

If enacted by the Council, the Regulation will provide companies in Europe wishing to combine across national frontiers with the possibility to be registered under the law of the European Communities and no longer under the national law of the Member States.

The need for such a new legal form has been underlined by the Heads of State or of Government at the Summit Conference of Paris 1972⁽²⁾, by the Council in its resolution on the industrial policy of the Community of 17-12-1973⁽³⁾ and by the European Parliament and the Economic and Social Committee in their opinions delivered on the initial proposal of the Commission of June 1970⁽⁴⁾.

The European and national organisations of business and industry in the EC as well as the European trade union organisations and most of their affiliates have welcomed the initiative of the Commission to create a new European Company Statute.

The purpose of the Statute is to free enterprises established in the European Communities from legal, practical and psychological constraints deriving from the existence of nine separate and quite divergent legal systems in the E.C. These constraints at present inhibit enterprises from arranging their affairs and relationships with other enterprises in the manner which would otherwise be the most efficient and profitable, just as national companies can do in relation to their respective domestic market.

(1) The amended proposal and its explanatory notes are published as supplement 4/75 to the Bulletin of the European Communities (EC). It is based on article 235 of the Treaty establishing the European Economic Communities (EEC).

(2) Final Declaration, EC-Bulletin 10/72 p. 15-24

(3) Official Journal of the EC (O.J.) no. C 117, 31-12-1973, pp. 2 etc.

(4) Opinion of European Parliament given on 11-7-1974 (O.J. No. C 18, 7-7-1974, pp. 17-22,

Opinion of the Economic and Social Committee given on 25-11-1973

O.J. No. C 131 13-12-1972, pp. 32-42

Initial proposal of the Commission submitted on 30-6-1970

O.J. No. C 124, 10.10.1970. It was published, with notes, as a supplement to Bulletin 8-1970 of the E.C.

To these ends, the Statute will enable companies incorporated in different Member States

- to merge into a European Company
- to form a holding Company under European law
- to form a joint subsidiary under European law⁽⁵⁾.

The European Company - Societas Europaea (S.E.) will be formed under the legal control of the European Court of Justice in Luxembourg and be registered in the European Commercial Register to be established at that Court⁽⁶⁾.

It will then be governed in all matters dealt with by the proposed Statute exclusively by community law and only be subject to the national laws of the Member States in those matters which are not governed by that Statute⁽⁷⁾.

It will have in each Member State in all respects the same rights as its domestic companies limited by shares, for example as regards access to the capital markets⁽⁸⁾.

In tax matters, the European Company is to be made subject to the law of the State in which its business is actually conducted and in the same way as then companies registered under national law. Preferential treatment for tax purposes for European Companies cannot be entertained, since distortions in competition might arise if European Companies were not given the same treatment as national companies.

If a broad consensus exists throughout the Community on the utility of a European Company Statute to be created along these lines, the content of the provisions laid down in that Statute and to which European Companies will have to conform are subject to a profound debate.

⁽⁵⁾ cf. Article 2 of the amended proposal (footnote 1) and its explanatory notes.

⁽⁶⁾ Art. 17 and 8 of the S.E. proposal

⁽⁷⁾ Art. 7 of the S.E. proposal

⁽⁸⁾ Art. 1 per. 4 of the S.E. proposal

The proposed Statute contains a complete set of rules which are intended to provide for a transparent structure of European Companies and for clear obligations in relation to shareholders, employees, creditors and society as a whole.

According to the intentions of the Commission of the European Communities, such a Statute will facilitate the formation and operation of multinational companies in the E.C., but of multinationals of a different type, namely of multinationals with structures ensuring that their decisions are in line with the economic and social aims of the European Community.

The elaboration of instruments ensuring that the activities of multinational enterprises in the Community are in line with these aims was indeed one of the preoccupations of the Paris Summit Conference of October 1972⁽¹⁰⁾.

The rules providing for an employee participation system adapted to the decision making of transnational companies which are proposed in the European Company are of great importance in that respect.

They have been in the center of the discussion since the Commission submitted its initial proposal of June 1970 to the Council⁽¹¹⁾.

Although the views in the Member States on the methods whereby employees influence the decision making of their enterprises are still very divergent, substantial progress on the way of a consensus have been reached since then.

The European Parliament has thus elaborated in its opinion of 11-7-1974⁽¹²⁾ with a broad majority substantial amendments to the employee participation system initially proposed.

The Commission has taken over virtually all these amendments in its modified proposal of 1975.

The Council is at present discussing, at the level of the Committee

(10) Footnote 2. See also the communication of the Commission "the multinational undertaking and community regulations" of 8.11.73 (Suppl. EC Bulletin 15/73)

(11) Footnote 4

(12) Footnote 4

of Permanent Representatives, the main political issues of the European Company Statute, and namely employee participation.

The proposed employee participation system consists of three parts which are not separate but which must be regarded as being linked.

- the formation of European Works Councils representing all the employees of a European Company with establishments in different Member States
- the capacity given to a European Company to conclude with the trade unions represented in its plants uniform collective agreements throughout the EEC

and, the most controversial part,

- the representation of employees on the Supervisory Board of the S.E. which appoints, supervises and eventually dismisses the Management Board.

This system must be considered in close connection with current developments in the law and practices of the Member States and with the Commission's attempt to bring about a Community frame enabling convergencies in that field and of which the European Company Statute is intended to form a part.

The European Company Statute does not affect national company law. It must however integrate the basic principles of the enterprise law of each Member State, since a Member State could otherwise fear that the Statute will be used by its enterprises in order to escape to rules felt essential in that Member State. Without such integration of basic principles, the requested unanimity of all Member States for the adoption of the Statute cannot be reached.

The next part of that paper will therefore deal with recent developments in the field of employee participation in the decision making of companies and with the Commission's general response to those developments.

The third part will then deal with the details of the employee participation scheme proposed for the European Company.

II. Employee participation in the EEC and the decision making process of companies

The methods whereby employees influence the decision making of companies are ^{the} subject of profound discussion in almost all the Member States of the European Community.

In recent years, there has been an increasing recognition, that in order to ensure that companies operate for the benefit of the society as a whole other interests than those of the investors of capital should be represented within the decision making process of companies. Those interests are mainly the interest of the employees, the other production factor of an undertaking.

All Member States have to some extent drawn concrete consequences from the specific relationship between the employees and their undertakings.

In some Member States, employees already have a representation within the governing bodies of companies ⁽¹³⁾.

But in other Member States, relevant trade unions are of the opinion, that a real participation of employees in the decision making of enterprises can only be reached through a radical change of Society. According to those unions, the share of responsibility for companies within the present system of private economy would affect the positions of the employees in their struggle for such a radical change of Society. Other unions with less ideological emphasis in their program fear that a representation of employees in the governing bodies of companies could affect their bargaining position as regards optimal wages and working conditions for their members.

(13) see the annexe to that paper

Employers organisations often reject any limitation of the management's freedom which results from employee representation on company boards and they do so specifically in France where unions with strong ideological programmes are predominant.

The crisis of the recent years which has affected the economic and social evolution of all the Member States has however induced the relevant socio-economic groups in almost all the Member States to search for new instruments in order to reduce social conflicts. The limits of a system of industrial relations ultimately based on the threat of strike are recognised more and more. Such a system reveals to be too inflexible and to reduced in its functional and territorial application, namely vis-à-vis the increasing mobility of the business policy of transnational enterprises.

In 1970, Germany was the only country, in which employee representative had a seat on company boards. To-day the company law of Denmark, Luxemburg and - in a specific way - of the Netherlands - provide for such representation. This applies as well to Norway, Sweden and Austria.

The British Government has announced legislation for 1976/1977 in order to provide for employee directors on the boards of large British companies.

In France, the "co-surveillance" has been suggested by the Sadreau Commission as the final goal of enterprise reform. Italian unions share responsibility for the investment policy of certain big enterprises (FIAT, Montedison, Olivetti) within the framework of specific collective agreements (14).

The Commission of the European Communities wants to give a European dimension to that discussion. In its "greenpaper" on employee participation and company structures of November 1975 it has underlined the importance of employee participation in the decision making of enterprises as regards the objectives of the EEC-Treaty to promote throughout the European Community a harmonious development

(14) all these developments are specified in the "greenpaper" of the Commission of November 1975 on employee participation and company structure (suppl. Bull. 8/75).

of economic activities, an increase in stability and an improvement of working conditions and of the standard of living for workers.

This "greenpaper" has two functions

- give a picture of the law and practices and recent trends in the Member States as regards the methods whereby employees influence important entrepreneurial decisions
- promote a discussion on these issues at the European level in order to enable the European institutions to create a Community framework for convergent developments in that field.

The "greenpaper" intends thereby to give concrete form to the social action program of the Community adopted by the Council in January 1974⁽¹⁵⁾.

The Council declares therein the increasing participation of employees in the life of their undertaking to be a preeminent goal of the Community's policy.

In his report on the European Union, Tindemans, the Belgian Prime Minister, has considered the participation of employees in the life of their undertaking to be among those measures which have to build the structural foundations of the European Union.

The "greenpaper" itself states: "...only by developing a common structural foundation can the Member States hope to adopt more united policies as to the world outside. If the underlying structure is made up of elements which are disparate and even inconsistent, then so will be the policies pursued by the Member States. Failure to make

(15) O.J. no. C 13 of 12.2.1974 p.1 supplement 2/74 to EC Bulletin

progress in constructing a common economic and social foundation will not only make it impossible to contemplate economic and monetary union, but will constitute a continuing threat to what has already been achieved. The Community's foundation must be completed or otherwise it may well collapse." (16)

As regards the direction of the required convergency in the field of industrial relation, the Commission thinks that the goals laid down in its proposal for a fifth directive to coordinate the law of the Member States as regards the structure of public companies limited by shares⁽¹⁷⁾, namely the dualist Board system and employee participation in the supervisory board, are valuable and realistic objectives⁽¹⁸⁾.

The Commission's proposal requires that all national companies within the scope of its provisions would have to have, in addition to the shareholders' general meeting, a two tier system with a supervisory and management body.

Furthermore, for all such companies with five hundred or more employees the Member States would have to require that the employees should be able to participate in the appointment of the members of the supervisory body. The Member States are given the choice of providing either at least one third of the members are to be appointed by the employees or their representatives, or that the members of the supervisory body must be acceptable to the employees. Under the latter system, the members of the supervisory body are to be co-opted, but either the general meeting or the employees' representatives can object to the appointment of a proposed member on the ground that the proposed candidate lacks the ability to carry out his duties or that his appointment would cause an imbalance in the supervisory body's composition with regards to the interests of

(16) op.cit note 14

(17) submitted to the Council in October 1972 O.J. C 131 of 13.12.72 p. 49 suppl. 10/72 to EC Bulletin - It is based on article 54-55 of the EEC Treaty

(18) "greenpaper" p. 46 (note 14)

the company, the shareholders and the employees. The proposal would also permit Member States which choose a system of direct appointment by the employees or their representatives to further provide that some of those members of the supervisory body who are not appointed by the employees should be appointed other than by general meeting (art. 4)."

The Board-System of British companies and the French system of "conseils d'administration" will thus have to give way to the dualistic two-tier structure which exists in Germany since 1870. The functions of management ^{and supervision} which are at present separated de facto and distributed in most large companies among the different members of a single board will then be legally separated, in order to clearly show the responsibility for the functions which are exercised.

Such^a system enables the employees to be integrated in the decision making process without affecting the homogeneity of management and its ability to react quickly on changing market situations. The employees' representatives will on the ~~sixth~~ other hand not be put in a permanent loyalty conflict in regard of the employees which would otherwise be imminent if they were integrated in a board dealing with day-to-day management.

Employee participation in the Supervisory Board which appoints and controls the Management Board gives to the employees an opportunity to participate in the strategic decision making as regards programs of expansion and contraction (for which the Management Board will have to be authorized by the Supervisory Board, according to the proposal for a fifth directive). This participation is organized at the highest level of the decisional hierarchy. ^{appears to be} It is the only form among existing forms of employee participation in the decision making of companies which can grant such involvement on a relatively continuous basis and at an early stage of the decision making where all native solutions have bigger chances to be explored than at a stage where a decision is already carried out.

The Commission feels however "that the Member States must be free to adopt these principles with the maximum degree of flexibility possible, and that certain Member States must be permitted to allow their public companies to approach the objectives in stages.

The main task therefore is to construct a framework which provides for the objectives to be reached in a way which leaves discretion to the Member States as to the precise models which they may adopt, and which further defines certain transitional arrangements which can be adopted in the near future by the public companies of those Member States which cannot realize the two objectives immediately. For the dualist system, a transitional period is probably required during which the companies concerned can choose between the dualist and one-board systems. As far as employee participation is concerned, the Commission considers that a company level representative institution with appropriate rights and obligations may well provide companies with the best possibility for a successful transitional solution. Such institutions would enable the employees' representatives to be informed about and influence the conduct of the company's affairs, including major decisions of economic policy, without being directly involved in the supervisory board itself." (19)

The solutions in the European Company Statute are thus not to be proposed by the Commission for overall application. National legislations are taking and will continue to take different approaches to employee participation which best corresponds to their respective traditions within a flexible frame of community law. The European Company on the other hand is not directed to national legislators, but to transnational enterprises wishing to engage in a new type of industrial relations which is not yet determined by long standing traditions and ways of thinking.

(19) Greenpaer loc. cit.

III. The employee participation system proposed for the European Company

At the difference from this flexible approach to reach convergence in the field of the harmonization of national company law, the proposed European Company Statute - which is to apply only to those companies wishing to use the new legal form - provides for a genuine and uniform solution for dealing with the employee participation in the decision making of companies. The European Parliament, the Economic and Social Committee, UNICE and other European Business associations and the Trade Unions supported such uniform solutions, fearing that alternative solutions would affect the viability of the new legal form.

These bodies did however disagree as to the content of the requested uniform solution.

The solutions now proposed by the Commission⁽²⁰⁾ will be described subsequently. A specific sub-chapter will deal with the proposals made for groups of companies of which a European Company is a part.

1. The European Works Council

An European Works Council must be set up in all European Companies with establishments in different Member States (Article 100). It is only competent in matters affecting the whole company or several establishments, and which cannot be dealt with by bodies representing employees in establishments at national level within the framework of their competences. Matters governed by collective agreements are outside the competence^{of} the European Works Council (Article 119).

The competence of the European Works Council extends to the right to be informed on matters relating to the running of the undertaking.^(Art. 120)

(20) See footnote 1

The articles mentioned subsequently are those of the amended proposal for a Council Regulation on the Statute for European Companies submitted by the Commission on 13 Jul 1976.

Its members are under an obligation to maintain secrecy on confidential matters (Art. 114^(20a)). The European Works Council must be consulted prior to important economic decisions and must give its approval to decisions by the Board of Management which directly affect employees (Art. 123^(20 b)). If the European Works Council withholds its approval, it may be given by an arbitration board (Art. 128).

As a result of the opinion of the European Parliament, the European Works Council must now approve in particular a Social Plan which the Board of Management must in future draw up to deal with the social problems following, for example, the closure of an establishment (Art. 126-a). The closure decision itself is however taken by the Management Board with the consent of the Supervisory Board (Art. 66), having consulted the European Works Council (Art. 125).

On the recommendation of the European Parliament, the Members of the European Works Council are elected in the establishments of the SE by all the employees in accordance with uniform European electoral provisions (Art. 104). Elections are conducted on the principle of proportional representation; candidates may be nominated by trade unions and groups of employees (10 % or 100 employees). The original electoral system proposed in 1970, based on the provisions governing national elections to Works Councils, is no longer feasible, since no such provisions exist in the United Kingdom or Ireland.

2. Regulation of conditions of employment by European Collective Agreements

The possibility that the conditions of employment of employees of the European Company may be governed by a European Collective Agreement between the S.E. and the trade unions represented in its establishments (Art. 146, 147, 102 a) has been retained with the approval of the European Parliament in cases where the parties concerned wish it to apply. Conditions of employment governed by a

(20a) The European Works Council may however refer the question of whether the Management Board has correctly designated information as secret to a Court.

(20b) As, for example, rules relating to recruitment, promotion and dismissal of employees or the introduction and management of social facilities.

European Collective Agreement apply directly in respect of all employees who are members of a trade union which is a party to the collective agreement. The parties concerned are obviously free, however, to govern conditions of employment by collective agreements in national contexts.

In order to prevent from the outset conflicts between the powers of the European Works' Council and the trade unions' areas of operation, it is now expressly laid down that the competence of the European Works' Council does not extend to those matters governed by ^{the} collective agreement. It is also clearly laid down that the European Works' Council may neither conclude agreements on employees' conditions of employment nor conduct negotiations in this area unless empowered to do so by a European Collective Agreement (Art. 119).

3. Composition of the Supervisory Board of a European Company

According to the Commission's proposal, the European Company will have a Management Board in charge of running the enterprise and a Supervisory Board in charge of appointing, supervising and eventually dismissing the latter (Art. 62).

The Management Board shall keep informed the Supervisory Board on the conduct of the business (Art. 73-a) and shall submit important acts of business policy to its prior authorization (closures of plants for example -Art. 66).

Such two tier structure with its clear cut division of management and supervisory functions and corresponding responsibility is felt to correspond best to the needs of a company operating at a transnational level.

Some hesitations are however felt mainly in Britain with its long standing single Board practice.

For the rest see part II of that paper, as regards the Commission's policy vis-à-vis two-tier companies structure.

All members of the Supervisory Board shall have the same rights and duties, namely as regards access to information (Art. 73 a) and discretion in regard of confidential matters (Art. 80).

The composition of the Supervisory Board was in the center of the discussion on the European Company since that new legal form was first suggested by Professor Sanders in 1959.

According to the initial proposal of the Commission of June 1970, the Supervisory Board was to consist of two thirds of representatives of shareholders and one third of representatives of employees.

The Economic and Social Committee did not express an uniform view on this issue and limited itself to describing the different attitudes of its members⁽²¹⁾.

The European Parliament however elaborated, after four years of intensive discussions in its Committees and a long Plenary discussion on 11.7.1974 a tripartite composition of the Supervisory Board which goes much further than the Commission's initial proposal⁽²¹⁾.

According to the opinion of the European Parliament the Supervisory Board of a European Company shall consist

- as to one third of representatives of the shareholders
- as to one third of representatives of the employees
- as to one third of members coopted by these two groups who are to be independent of both shareholders and employees and to represent "general interests".

The number of members of the Supervisory Board shall be uneven and divisible by three. Such system corresponds in its broad lines to the employee participation-system as provided for the ESTNL-Holding Company within the Dutch-German Hoechst-Hoogovens-group.

(21) see footnote 4

The discussion of employee participation in the Boards of European Companies within the European Parliament may well reflect new trends and developments within the Member States of the EEC.

Indeed, when European Parliament had first to consider the European Company proposal in 1972, many amendments were tabled by political groups and individual members in order to reduce or to abolish employee participation.

In 1974, no such amendment was tabled at all. The European Parliament adopted, with a broad political majority, including namely the Christian Democratic and the Socialist group, its opinion as to the composition of the Supervisory Board.

The Commission's revised proposal of May 1975 is based on that opinion and contains the rules in the composition of the Supervisory Board as elaborated by the European Parliament (art.74a). According to these rules, the representatives of the shareholders are normally to be elected by the general meeting (art.75).

As regards the representatives of the employees the European Parliament recommended specific electoral provisions for employee representatives on the Supervisory Board, which the Commission has followed in principle unaltered (Art. 137). Employees in all the establishments of the SE and of the undertakings within the Community which are uniformly managed by it as part of a group of companies now elect an electoral college in accordance with the principles applicable to elections to the European Works' Council and simultaneously with those elections. The electoral college then elects employee representatives on the Supervisory Board in accordance with the principles of proportional representation. A majority of the employee representatives must be employed in establishments of the SE or of its group undertakings. A minority of the worker representatives need not, however, be employed in such establishments if those employees entitled to vote consider such partial representation by persons not employed in the undertaking to be appropriate.

Employees are not represented at all if a majority of the employees entitled to vote expressively vote against such representation (Art. 13). In this circumstance, the Supervisory Board carries out its duties for the current term of office normally and consists only of members chosen by the shareholders.

The members of the final third will be coopted by the members representing the shareholders and the employees with a two third majority of votes (Art. 75 a and 75 b).

Eligible candidates must represent "general interests", possess the necessary knowledge and experience and not directly depend on the shareholders, the employees or their respective organisations (art. 75-a- § 3). They are to be proposed by the General Meeting, the Employee representation (normally the European Works Council) and the Management Board.

If the required majority is not reached in the election of members of the third group after the procedure has been repeated, the appointments are made by an arbitration board. This consists of assessors, one each of which is chosen by the representatives of the shareholders and of the employees on the Supervisory Board, and a Chairman appointed by the two assessors by mutual agreement. In the absence of mutual agreement as to the choice of chairman of the arbitration board, he is appointed by the President of the court in whose jurisdiction the SE is situated.

UNICE, the Union of Industries within the European Communities, and the Permanent Conference of Chambers of Commerce and Industry strongly oppose the proposal of European Parliament and the Commission because shareholders' interests would be "insufficiently" represented. Both organisations have however rejected as well the initial proposal of the Commission because it did not correspond to the social relations in all the Member States .

On the other hand, the European Trade Union Confederation (ETUC) and its predecessors ^{have} asked since 1970 for a similar system of employee representation on the Supervisory Board as the one proposed by the European Parliament.

This position reflects a compromise between the views of the affiliated member organisations. The opposition of these unions which reject the principle of employee representation on the governing bodies of companies is however less acute towards the European Company than towards any envisaged national arrangement, since the European Company is to operate on a transnational level where existing arrangements are, as these unions recognize, not in all respects sufficient to protect the interests of employees.

As to the European Commission, it feels that equal weighting of shareholder and employee representation on the Supervisory Board cannot but contribute towards the creation within the SE of a new relationship between the SE and its employees. Employees are given the opportunity of active participation in an undertaking of a type new in Europe not only in that they may safeguard their rights and status but also in that they contribute towards shaping a corporate policy duly evaluated to take the interests of all parties concerned into account.

The provisions requested by the European Parliament ensure that a deadlock in the decision-making process within the SE is avoided. The Commission further regards the fact that interests wider than those of the shareholders and employees directly affected are represented on the Supervisory Board of a European undertaking under these provisions as a positive element. (23)

The proposed system combines in a genuine way elements of the German legislation on employee participation in the coal and steel industry of 1951 and of the Dutch system in force since 1973.

An original and interesting feature is the "general interest" that the members of the final third must represent.

(23) Explanatory introduction to Titel IV of the amended proposal
Suppl. Bulletin 8/75 p. 163.

This concept is intended to cover all interests affected by the activities of a European Company other than those of the shareholders and employees directly involved. The concept must be seen as one element together with two other requirements, that is that these representatives be "not directly dependent on the shareholders, the employees or their respective organisations" and have "the necessary knowledge and experience". The underlying idea is that the representatives constituting the final third will enable the Supervisory Board to take decisions which take into consideration all interests affected by the activities of the European Company, in other words to recognize the special responsibility of the enterprise toward those interests.

Since the "general interests" are not defined in a concrete way, the proposed system has some similarity with the system of the "eleventh man" prevailing in the German coal and steel industry since 1951 who is to be coopted by the representatives of the shareholders and of the employees on the Supervisory Board. Nevertheless there are substantial differences. Since the final third of members on the Supervisory Board of an S.E. will normally consist of at least three members, there will be not just a single member, but a plurality of independent members who are all equally entrusted with preventing a deadlock in the Supervisory Board of the S.E.

Even if the shareholders' and employee representatives agree to divide the members of the final third among candidates of their respective choice (they must then still jointly coopt the last member with the casting vote), the members appointed by such a procedure may be induced by their legal position to emancipate from their constituency, perhaps in a kind of "Thomas-Becket effect".

4. Groups of companies

a) Generalities

The grouping of legally independent undertakings under unified management (groups of companies) has everywhere acquired such great economic importance, namely for transnational enterprises (which are normally groups of legally independent companies), that it is essential that the proposed Statute deals with this type of grouping of undertaking.

Where an SE is a controlling or a dependent undertaking within a group, the Statute protects what are known as the "outside shareholders" (Art. 228), i.e. shareholders outside the group of companies, and the creditors of dependent group undertakings (Art.239). Where the controlling undertaking provides the necessary protection, it can issue instructions to the management of this dependent undertaking in order to implement a unified business policy (Art.240). These instructions must be complied with even if they adversely affect the interests of the dependent undertaking. The European Parliament has approved these provisions, which were proposed in 1970. It "notes" that they "broadly meet the economic and functional requirements of the grouping of undertakings". It was, however, in favour of a greater degree of flexibility with regard to the protection to be granted to the "outside shareholders".

The amended Proposal provides that this protection takes the form of annual compensation as a divided guarantee, together with which the controlling undertaking must either offer the outside shareholders payment in cash or offer to exchange their shares for shares in the controlling undertaking (Art. 228).

Special provisions are laid down for groups of companies already in existence when the SE is formed (Art. 240 -d).

b) employee representation at group level

The Statute also protects employees in group undertaking. This is because employees in a dependent group undertaking are in some circumstances affected in the same way by decisions of the group's overall management as those in the controlling group undertaking.

Where an SE is a controlling group company, a Group Works Council is to be formed (Art. 130) in which the employees of all the group undertakings are represented (Art. 131) and which has similar powers to those of the European Works' Council in matters affecting the group (Art. 134- 136).

On the recommendation of the European Parliament, employees in all group undertakings whose registered offices are situated within the Community and which are dependent on the SE take part in elections to the Supervisory Board (Art. 137).

Where an SE is a dependent group company, instructions to take measures, with which the Supervisory Board of the SE must comply may only be carried out in the absence of the Supervisory Board's consent if the employees in the organs of the controlling undertaking are represented in a manner equivalent to that laid down by the provisions applicable to the SE (Art. 240 § 3).

This provision is an innovation and supplements the provision on employee participation desired by the European Parliament in group contexts.

IV. Conclusions.

A European Company Statute enacted by the Council along the lines proposed by the Commission will certainly face initial opposition from European industry which expressed the view that probably no law would be made of such a Statute.

But such attitude could easily be subject to change in the future. A Company Statute based exclusively on Community law and covering all aspects of a modern companies Act including legislation on groups of companies would give to those companies which choose such a European form the possibility of running their undertaking under rules which are uniform throughout the Community.

Such companies can then have a uniform business policy which is not affected by the divergencies of national company law.

This would constitute a more and more relevant advantage in a world in which profound divergencies on socio-economic problems continue to occur within all the Member States, including the question of reform of the structure of enterprises. It may therefore well be expected that enterprises may begin to move and here

responsive towards a system of cooperation between the production factors of capital and labour which ensures that a balance of all interests involved, may be found at an early stage of the decision making process of the enterprise so that unnecessary conflicts are avoided. The alternative solution, a system of permanent conflict between capital and labour, may reveal more and more harmful for all parties concerned mainly in a period where economic growth will tend to diminish, due to shortage of energy and raw materials and where profound structural changes will affect certain branches of industry.

As to the trade unions, their fear that their role as the defender of the interests of employees may be questioned in a system like that proposed for employee participation in the European Company, appears to be not justified.

On the contrary, the European Company Statute makes available to the trade unions new possibilities for action which they do not have at present.

The statute opens the way to them to work for their members in the classical way through collective bargaining on a European wide level where such an action has at present to overcome serious obstacles. Furthermore, they are invited to take an active part in the election of employee representatives on the Supervisory Board and of the members of the European Works Council. They have however not the exclusive right to nominate candidates for such elections which they asked for. They must share this right with groups of employees desirous of putting forward their own candidates. This however conform to the general principles of democracy and of an open and pluralistic society.

Dr. C. G. F. F. F.

STRUCTURES OF COMPANIES LIMITED BY SHARES

STRUCTURES OF COMPANIES LIMITED BY SHARES

Member State	Supervisory Board and Management Board	Unitary Board
Belgium (Legislation of 1873, 1913, 1919, 1953)	(Introduction proposed in 1968 by Commission of Experts for Ministry of Justice)	Unitary Board (Conseil d'Administration). Separate organ of financial and legal control (Commissaires) exists. Wide delegation of day-to-day management to an executive committee of the Board or to executives.
Denmark (Legislation of 1973)	Mandatory for companies having a share capital of more than 400,000 Kr. However, no clear-cut division between the two Boards (Board of Directors, Management Board) as to functions and composition.	Optional for companies having a share capital of less than 400,000 Kr.
Germany (Legislation of 1965)	Mandatory (since 1870). Clear-cut division of composition and functions of both Boards since 1937.	--
France (Legislation of 1966)	Optional; adopted by small proportion of companies.	Optional; adopted by great majority namely of family owned companies. "Commissaires aux comptes" for separate financial and legal control. Day-to-day management delegated either to the chairman of the Board C ("Président - Directeur général) and frequently to executives (Directeurs généraux).
Ireland (Legislation of 1963)	Optional; unknown in practice; criticized by present Minister of Labour.	Universal in practice. In majority of cases division between executives and non executives on the Board.

Member State	Supervisory Board and Management Board	Unitary Board
Italy (Legislation of 1942)	--	Mandatory, but separate organ of legal and financial control (collegio dei sindaci). Delegation of day-to-day management to executive members of the Board is frequent.
Luxembourg (Legislation of 1915 largely based on the Belgian Law of 1873)	Likely to be made available by legislation in near future.	Law and Practice correspond so far to Belgian Law and Practice.
Netherlands (Legislation of 1971)	Mandatory for "big" companies having a capital and reserves of at least 10 million florins and employing more than 100 employees.	Optional for small companies, but not frequent in practice.
United Kingdom (Legislation of 1948)	Optional, but unknown in practice. Mandatory introduction envisaged by TUC and Labour Party Committees.	Universal in practice. In majority of companies (80 %) division between executive and non executive members in the Board. Strong preferences expressed by CBI and City of London.

Dr. Jörn Pipkorn:

SUMMARY OF EMPLOYEE PARTICIPATION IN THE GOVERNING BODIES
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Member State	Field of Application	Company Body	Methods of Participation
Denmark (Legislation of 1973)	Companies with 50 or more employees	"Board of Directors" (that is <u>Supervising Board</u> in Companies with a share capital of more than 400,000 Kr.; may be Unitary Board in smaller Companies)	The employees may elect <u>2 representatives</u> if they wish so. The statutes may provide for a higher number of representatives
Germany (Legislation of 1951)	Companies in the sector of Coal and Steel with 1000 employees or more	Supervisory Board ("Montanmitbestimmung")	<ul style="list-style-type: none"> - <u>5 members</u> representing the <u>shareholders</u> - <u>5 members</u> representing the <u>employees</u> (each group including 1 member being neither shareholder nor employee) - <u>1 neutral member</u>
		Management Board	1 member responsible for personnel affairs; needs the consent of the employee representatives to be appointed by the Supervisory Board
Germany (cont.) (Legislation of 1952)	Companies outside the Coal and Steel sector; (family owned AG's (Public Companies) and all GmbH's (Private Companies) however only if employing 500 employees or more)	Supervisory Board	The <u>employees</u> elect <u>one third</u> of the members of the supervisory board. Direct elections. Elections through delegates may be organised in groups of companies.

Member State	Field of Application	Company Body	Methods of Participation
<p>Bill of 1976 (Mitbestimmungsgesetz 1976) to be applicable 1977.</p> <p>(Amended proposal of the Federal Government of 1974)</p>	<p>All companies or groups with more than 2000 employ- ees outside the Coal and Steel sector</p>	<p>Supervisory Board</p>	<p>The employees elect either directly or through dele- gates <u>half</u> the members of the Supervisory Board. Em- ployee representation will include 1 member represen- ting supervisory staff (Leitende Angestellte). The president of the Su- pervisory Board cannot be elected against the will of the mgr. of the stnch. in the Supervisory Board. He has a decisive vote in case of a deadlock within the Supervisory Board's deci- sion making</p>
<p>France (Ordinance of 1945)</p>	<p>Companies with 50 or more employees</p>	<p>Unitary Board; Supervisory Board in companies having opted, under the 1965 le- gislation for the dualistic system</p>	<p>1 representative of the workers and clerical staff; 1 representative of super- visory staff (cadres), both elected by the Works Council. <u>Consultative vote only.</u></p>

Member State	Field of Application	Company Body	Methods of Participation
Luxembourg (Legislation of May 1974)	Companies with more than 1000 employees or substantial state interests	Unitary Board; Supervisory Board if dualistic structure becomes available	Up to <u>one third</u> of the members to be elected by delegates of the <u>employees</u> ; trade union nominations in coal and steel
Netherlands (Legislation of 1971, applicable since 1.1.1973)	Companies with a capital and reserves of ten million florins or more and employing 100 employees or more	Supervisory Board	<u>New members</u> of the Supervisory Board to be <u>appointed</u> . General Meeting and Works Council may object to the appointment on specified grounds. Objection may be overruled by the social and Economic Council of the Netherlands.

Special arrangements exist in Belgium, France, Ireland, Italy and the United Kingdom as to the representation of employees in the governing bodies of companies in the public sector.

In France, the Commission presided by Pierre Sadreau recommends in its Report : "La réforme de l'entreprise" (Union générale d'éditions, Paris 1975, 10/18) employee participation in the governing bodies of companies to become the final goal of enterprise reforms.

In Britain, the Government has set up a Committee presided by Alan Bullock in order to prepare legislation in employee directors in the boards of large British companies to be enacted during the 1976/77 legislation of the Parliament.

	Field of Application	Methods of Participation
<p>Proposal for a regulation embodying a Statute for European Companies, submitted to the Council on 30.6.1970 (Suppl. Bulletin 8/1970)</p>	<p>European Companies formed by companies of different Member States</p>	<p>The Supervisory Board shall consist of one third of representatives of the employees, jointly elected by local Works Councils. The Statutes may provide for a <u>limited</u> number. Representation may be rejected by a two third majority of the employees</p>
<p>Amended proposal submitted by the Commission on 13.5.1975 (Suppl. Bulletin 4/75) European Companies</p>		<p><u>Strasbourg Model</u> worked out by the European Parliament on 11th July 1974. The Supervisory Board shall consist as to one third representatives of the shareholders, one third representatives of the employees and the remaining third consisting of independent members representing general interests, to be coopted by the first mentioned two groups of members. Election of the employee representatives through special delegates</p>
<p>Proposal of a 5th directive on the structures of national companies limited by shares, submitted to the Council on 9th October 1972 (Suppl. EEC Bull. 10/72)</p>	<p>National companies limited by shares employing 500 workers or more</p>	<p>The <u>form</u> of the Member States has to organise the composition of the Supervisory Board according to <u>one</u> of the three basic models. 1. The Supervisory Board shall consist at least to one third of members representing the employees, the other members being elected by the General Meeting of shareholders. No election procedure for the Employee representatives organized by Community Law.</p>

	Field of Application	Methods of Participation
<p>The "Green Paper" on employee participation and company structures published by the Commission on 11.11.1975 (Suppl. 8/75) is intended to promote discussion on the proposal issues and suggests consideration of transitional periods prior to making the proposed arrangements universally mandatory.</p>		<p>2. The Supervisory Board shall consist at least of <u>one third</u> of members representing the <u>employees</u>, of one or more <u>further members</u> not representing the employees and not to be elected by the General Meeting and of the <u>remaining members</u> elected by the General Meeting of <u>shareholders</u>.</p> <p>3. <u>All members</u> are to be <u>accepted</u> by the Supervisory Board itself. General Meeting and the representatives may object the appointment of prospective candidates on legally specified grounds. Objection to be overruled by independent body.</p>