

BASIC TEXT FOR COMMISSIONER RICHARD'S
CONFERENCE SPEECHES ON THE "VREDELING"
DIRECTIVE IN NEW YORK AND WASHINGTON,
FEBRUARY 1983

When I was last in the United States to talk about the Vredeling directive, I was somewhat constrained by the timing of my visit in relation to what was happening in the European Parliament. It is now frankly a relief - and I say this with no disrespect to my predecessor, Henk Vredeling - that we have moved into a distinctly new phase in which we can take a fresh look at the old and by now rather tattered text, particularly in the light of the work done on it by the Parliament, and of the broader process of consultation, and really get down to making this a workable and valuable piece of legislation.

Among today's audience, the idea that this directive can be valuable will probably raise a sceptical eyebrow or two. It is sometimes easy to forget when listening to some of the proposal's critics that there is more to this exercise than damage limitation. I would recall that a fundamental aim in the minds of those who originated the proposal was that of improving industrial

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relations during the period when they were likely to come under particular strain in the face of the imperative need for restructuring and accelerated introduction of new technologies. That aim is still perfectly valid. I cannot accept the idea that we are playing a zero sum game - that the directive simply redistributes in favour of the workforce a fixed amount of power within an enterprise. That is not what this is about. The aim is to produce a qualitative improvement in ways which - and I have always been the first to admit this - a large number of well-run companies have already adopted, generally to their own satisfaction and advantage.

It would be wrong, however, for me to give the impression that all we are seeking is to make a good situation better. There is a problem which needs putting right - a problem in the European

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Community about the way information and consultation takes place in multinational companies between the management and the workforce. I need not, I think, enumerate the examples we have seen in the Community in the last few years - some of them real horror stories - of the failure of certain multinational companies, among them some very prominent ones, to provide information to their workforce on decisions of vital interest to them. It is widely accepted that there is a problem and this view was firmly endorsed by the European Parliament in giving its overwhelming agreement to the proposal for a legally binding directive in this area. It is significant, I think, that there was no attempt in the Parliament to make it a voluntary or advisory instrument. // I have frequently said in the past that I regard this proposed piece of legislation as being essentially a modest proposal. I acknowledge, of course, that this is not a universally held view, as the enormous amount of lobbying that has taken place during the past two years and up to the

/final debate in

final debate in Parliament has demonstrated. But I think everybody would agree that accepted all the proposals of the Parliament it would be a great deal more modest - which I think says something about the efficacy of the lobbying efforts of multinational companies.

As you know, however, the European Parliament debate was not the word on this issue as I am now required following further consultations with the Social Partners, to produce a revised draft directive which will then go to the Council of Ministers. I made it clear in speaking to the Parliament on 17 November - before they took their final decision - that I do not intend to adopt all the suggestions.

While I am still continuing consultations until the end of this month and shall not, of course, reach any final decisions about the revised draft directive until consultations are completed, I am now fairly clear in my mind about what it should contain. I speak personally in what follows, but with some insight into the minds of my

colleagues in the Commission. Taking the main points of interest in the revised directive, I would like to talk first about what I understand to be the gravest preoccupation of the multinationals and what lies behind their opposition in this directive. This is I think the fear that the ostensible purpose of this directive - to develop a better flow of information and to improve the process of consultation between management and representatives of the workers - is in fact only the thin end of the wedge and what its actual effect will be is to provide the trade unions either with the power of veto over management decisions or alternatively give them the means to obstruct the proper function of management. I have said and must go on saying quite clearly that this is not the intention of the directive and I think many people have now accepted that. It remains for me to convince you that this will not be the effect of the directive either.

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In the last analysis, it will of course be national implementing legislation which enterprises will need to conform with and courts and tribunals in the Member States whom they will have to convince in cases of dispute and I would be quite unjustified in saying that I can predict all that with perfect certainty. But I must say - not just as a politician, but (perhaps more important in this context) as a lawyer, that I fail to see in the directive provisions on which employees' representatives would be able to construct a case for participation in management or anything which would approach being a veto on management decisions. I firmly believe that it is management's responsibility to manage and that the directive will leave that responsibility with them. So, by the way, will the 5th Directive

The strength of feeling I have found among multinationals about this would be easier to understand if there was any hint of a veto in the text, but I do not believe there ever has been. Nevertheless

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I have taken a very careful look at the wording of Article 6 and in particular at the phrase "consultation with a view to reaching agreement". I reject completely the highly critical comment made by one member of the U.S.

Administration when I was last here that whoever dreamed up this phrase was either stupid or ill-intentioned. But I was prepared to see whether it could be improved. I think that the wording suggested by the Parliament - "attempting to reach agreement" - conveys the same idea as the original and indicates more clearly that there is no power to block or veto.

To stay for a moment with Article 6, there has, as you know, been some controversy concerning the stage at which consultation should take place. The Parliament proposed that consultation of employees should take place during the last 30 days before implementation of the decision. I am not happy with this not only since it smacks of a take it or leave it

attitude but also because

attitude, but also because it effectively prevents the unions coming forward with constructive alternative ideas. The Commission's view is that consultation should take place before the final decision is taken by management. This is the same approach as the one taken in the OECD Guidelines on Multinationals which the U.S.A. has approved. Moreover, I hope that once the nature of the consultations has been made quite clear and the anxiety about a possible veto has been dispelled, this point of timing will become one of secondary importance.

Still on Article 6, I have found the Parliament persuasive on the so-called "by-pass" clause which I have agreed to remove. I accept the view that it would have presented great temptation to workers' representatives to try to climb the management ladder - going beyond the management of the subsidiary to that of the parent company - until they obtained information or decisions of which they approved. It should, of course, be remembered in all this that the refusal or failure of a company to comply with

the information or consultation requirements will prevent them from adopting or implementing their proposed decision or - if they decide to go ahead - will make them liable to be taken to court under procedures to be laid down by national legislation.

One of the objections raised to the "by-pass" was that it implied the assumption of extra-territorial powers by the Community. I have been concerned to remove from the text any requirements which would in practice be unenforceable because of the limits of the Community's jurisdiction. Another change proposed by the Parliament which I have accepted, partly for this reason, is that the decisions covered by Article 6 - that is those triggering the consultation procedure - should only be those which affect the workforce within the Community.

Having started with Article 6, I must now go back to the beginning. A controversial point which is perhaps of only indirect interest to American companies is the method of selection of employees' representatives. As you know,

Parliament favoured the selection of these representatives by direct election of the workforce on the basis of secret ballots. It seems to me that it would be unwise to ignore existing practices, which vary widely and to require Member States to institute a separate and uniform system of representation simply to meet the terms of this directive. The Commission therefore proposes to leave the method of selection to the Member States - which does not, of course, exclude the option of election by secret ballot if a Member State chooses.

Regarding the minimum size of the companies, which will have to comply with the directive, I intend to propose that the directive should apply only to those which employ a total of 1,000 or more employees in their undertakings. I shall also retain the original provision which draws in only subsidiaries employing at least 100 workers, as I believe it is important to avoid placing an unnecessarily heavy burden on small companies.

I would turn now to Article 5 which provides for a regular flow of information from the parent business to its subsidiaries and then to the workers' representatives. As far as the scope of this information is concerned the Commission has indicated its readiness to accept the Parliament's proposal to define more precisely the general information which is to be given, and also to provide for the communication of more specific information which might be of particular interest to employees in a specific production group or geographical area. I have already indicated to Parliament that I am pleased to accept the suggestion that we should differentiate between "general information" and "specific information". I believe that this will reduce significantly the administrative burden placed on companies.

On frequency, I can accept the view of the Parliament that the passing of information should be annual rather than six-monthly. This change too will relieve the administrative burden on companies. I am a little concerned that, with a time lapse of a year, the information given may become

more historic than useful. I shall therefore propose that information must be brought up to date when similar information is passed to other bodies or interests under the terms of other directives or legislation.

I come lastly to the problem of protecting business secrets and other confidential information. As you know, I have shared the concern of business to improve on the original draft directive's treatment of this point. And yet I clearly could not go along with the Parliament's view which basically said that any piece of information which the company said was secret was ipso facto a secret and could therefore be withheld. That in my view would have risked rendering the directive completely ineffective. My idea is that the revised directive should specifically allow managements to omit any information whose disclosure would substantially harm the company's prospects or substantially damage its interests. At the same time it will be necessary to make clear that the withholding of information on these grounds must not be

likely to mislead the workforce with regard to facts and circumstances essential for assessing the company's situation. The directive will also make provision for a tribunal procedure. The tribunal will review ex post facto disputed cases and will doubtless establish gradually a body of case law which should help to define those matters which can properly be regarded as confidential or secret. // These then are the major issues of controversy in the directive. I hope you agree with me that the revised text will be an improvement upon the original draft and that your main concerns have been understood and taken into account, if not always fully met. Perhaps I can also add that we agree with criticisms that the original text was over long, repetitive and hard to follow. One of my objectives is that you should be pleasantly surprised by the crispness of the next text and the ease with which you can find your way around it. // I am tempted to say that, because the trade unions in Europe do not consider that my proposals go far enough and

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employers' organisations and multinational companies consider that they go too far, I must have got it just about right. I do in fact believe that the revised draft will get it just about right. But this has been on the basis of a genuine and sincere attempt to produce a balanced set of proposals and to try to meet a serious problem in a serious manner. At the end of the day the value of this directive can only be decided through time and by experience. When I say that I consider it modest, I do not of course mean that it is insignificant. Information, after all, is widely regarded as one of the essentials of power and information is what this directive is all about. I consider that it can make a valuable contribution to improving industrial relations in Europe and I believe that, given the very difficult economic situation we all find ourselves in, anything that can do that is well worth while.