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to:

COUNCIL FOR INTERNATIONAL BUSINESS

WORKING

~~Draft~~

The European Community as an Investment Area

I. The Economic Situation

On ^{previous} occasions like this excellent lunch, I have been frequently asked to explain what the European Community is. Let me state from the very beginning that it is very difficult to give a short definition. ~~By the way, this I~~ is just like an elephant; everybody knows what it is but it is difficult to ^{describe} define it.

I may therefore limit myself to indicating that it is a Community of - at this time - ten Nation States, with nearly 270 millions inhabitants, ^{well} ~~which are~~ on their long way towards becoming an European Federation.

From its very ^{intention} beginning in 1958, the European Community ^{aimed at} ~~aimed at~~ providing industries and agriculture with an internal market nearly as large as the European continent, ^{itself}. Its tools are essentially the legislation on equal rules of access to markets, on competition, a common agricultural policy and a common and liberal foreign trade policy based on a common external tariff vis-à-vis third countries. One ^{of its} major ^{objectives} ~~target~~ is ~~that of~~ creating an optimal investment area.

In what follows I want to highlight, first, the general economic situation of the European Community. Second, I would like to develop some considerations specifically about investment and, third, I would like to deal with our attempt to create a single legal environment for business favorable to the enterprise and therefore to the investor.

^{Regarding}
~~As to~~ the macroeconomic situation, the European Community has been drawn into the world wide economic slump which began for different occasions about 1980 - mostly national.

Economic growth, measured by the increase in real GDP per capita¹, is stagnating and will probably not ~~be~~ ^{probably} exceed ~~significantly~~ ^{more than} 1% in 1983. Unemployment is high, ~~with~~ ^{at} more than 11 million people, i.e. about 10% of ^{the} civiliaⁿ labour force. The only positive indicators are ~~those of a~~ decrease in inflation rates to less than 10% on the average and ~~the~~ ^{is} balance-of-payments, which ~~is~~ rapidly coming into equilibrium in the current accounts.

Among the negative factors ^{have} the deterioration of public budgets and the intolerable growth of the public sector, ^{which} have to be mentioned, ~~beside~~ ^{in addition to} the burden of extremely high interest rates.

^{A particular}
~~One of the special~~ points of concern in this European market is that the share of gross fixed capital formation in GDP is declining. ~~Since 1970~~ ^{since 1970} this share has decreased from 23% ^{to} 20% in 1981. The perspective is for a decrease to about 19% in the medium term future.

This ^{drop} ~~decay~~ in investment is not unique to the European Community. The situation in Japan, for instance, is rather ~~impressive~~ ^{sharp} too, ^{since} where there is a decrease from more than 35% to about 30%.

Compared to this rather clear decline, the situation in this country, the USA, is a bit more ^{comfortable} because here the share has been stable for more than a decade. ^{the US} Of course, because of the high degree of development of ~~this~~ economy the share of 18% is somewhat lower than in the European Community.

^{Therefore,}
However, the message I want to leave with you is that there is a remarkable change in the political climate in Europe which will make the European Community more attractive for investment in the future.

Heads of states and governments of the European Community, assembled in the European Council in March of this year, recognized e.g. the close links ^{among} between investment, competitiveness and employment. Since ~~that time at least~~ ^{from} all the Member-States have ^{increasingly} ~~come more and more~~ ^{clearly} to the opinion that economic policies have to focus essentially on the promotion of productive private investment. ^{The common denominator} in all Member States on which political approaches to this problem are based is identical, its name is uncertainty and our common goal is to restore business confidence.

There is however, common objective in member states' policies in this area, namely, need priority.

This ^{consequence} implies many national and Community actions to improve the international economic environment. ^{For} ~~we~~ ^{example} we need more reliable prospects for an open international trade and more confidence in international financial investments.

Uncertainty is also a major characteristic of the economic situation within the Community, for instance with respect to the central bank policies and ~~of~~ ^{ing} public finance. Uncertainty has been ^{caused} ~~provoked~~ by numerous factors. Four Member-States of the European Community have ^{are faced with} ~~at least~~ annual public deficits of more ^{amounting to} than 10% of the GDP. Another important ~~reason~~ cause for uncertainty has been erratic developments in business legislation. Sudden ^{are} increases of ~~taxation~~ ^{and} utopian ^{an} ideas in the areas of social policy and ~~as~~ to the "improvement" of the welfare state. New technical ^{requirements} norms and standards ^{and} ~~as well as~~ restrictive regulations which ^{have} ~~have~~ also increasingly fostered uncertainty. Recession has ^{increased} prompted the ~~temptation~~ ^{temptation} of protectionism ^{within} ~~inside~~ the EC.

The need for new policies has clearly emerged ^{As can be seen in} during recent elections in European countries. ^{TA} During the last three months, governments in some Member-States have been ^{formed} ~~replaced~~ by more conservative and/or christian/democratic governments ^{parties}

The socialist French government have recently re-oriented ^{its} ~~their~~ policy towards a consolidation of the budget.

^(policy goals)
The main ~~target~~ ^{free} of the policies of these political forces is to ~~release~~ resources for investment purposes by decrease ^{ing} of public deficits and by shifting ~~consumptive~~ ^{consumption} expenditure towards public investment. The contribution of the European Community consists essentially of providing the necessary general (European) environment ^{within} in which higher production can result from higher investment. Only in this way can we subsequently promote real growth and reduce unemployment over a longer period.

II. The internal market

From the Community's point of view, the first and fundamental condition for stimulating investment is, of course, the ^{preservation} ~~defence~~ and development of the Community's internal market for goods and services. Much has been achieved, ⁱⁿ to create ^{is} a common set of rules in many areas of legislation ^{as well as} and ~~also~~ in the field of technical standards. But, as you know, problems remain ~~to be solved~~. Moreover, the existing ^{at the moment} ~~construction~~ has to be continuously ^{all} defended against the temptations of protectionism. The Commission is determined to fulfill its responsibility in this respect. The European Court of Justice and the European Parliament are our best allies.

Indeed, one of the major ^{aspects} ~~issues~~ of the ^{current} ~~present~~ economic policy of the European Commission ^{consists} of exploiting systematically the advantages ^{resulting} ~~stemming~~ from a single market, ^{support} large enough to ~~underpin~~ the expansion of industrial ^(which is) activities that are internationally competitive.

^(How) ^{are} ^{ed} ^{by}
We take ~~as our inspiration~~ our Dutch friends, who, ^{clearing water}
for many years were filling dykes and bailing out before ^{(even the sea) / to ensure that they would be able to}
~~they could be sure of walking on dry ground, for most of the~~
day. More seriously, ladies and gentlemen, we are convinced
that a large, integrated internal market offers the best
guarantee of economic health in the long ^{run} term.

III. A single environment for business

But an internal market for goods and services is
not enough. ~~Also necessary is~~ the replacement of national
rules and procedures ^{for} applying to business enterprises by
a Community-wide framework that will permit enterprises,
investors and other economic actors to treat the Community
as a single environment for business, ^{is also necessary.} If each State continues
to feel free to ³⁰ its own way and adopt whatever regulations
it ^{wishes to} ~~pleases~~, enterprises will continue to find it
difficult to adapt themselves to the new dimension of the
Community market and we will not reap ^{its} ~~the~~ full benefit
of ~~it~~. We need a legal framework that ^{correctly} ~~matches~~ our economic
objectives.

A start has been made. The Community Treaty itself
gave us some powerful tools in the competition field, ~~based~~
very much ^{on} ~~on~~ US experience, that have proved their worth.

^(here)
^{In the field of}
As ~~regards~~ ^{taxation}, a significant beginning has been made ^{regarding}
~~in relation to~~ ^{the} value-added tax. But much remains to be
done, ~~first,~~ ^{initially with} ~~as regards~~ other forms of indirect taxation,
such as excise duties, and subsequently, ^{regarding} concerning certain
fundamental principles of direct taxation. In the context
of a new initiative ^{designed to} ~~aimed at~~ promoting the idea of a
continental-wide internal market, the Commission intends
to ^{urge} ~~press~~ the Council of Ministers to accelerate work
on ~~the~~ proposals already made concerning the overall
harmonization of tax rates. We nevertheless have to admit
that economic conditions will probably have to improve
considerably before ~~the~~ political conditions ~~will arrive~~ ^{exist}
that will permit significant breakthroughs to be made.

Finance Ministers just do not have ^{substantial} ~~the~~ room to ^{manoeuvre} ~~manoeuvre~~ ^{at present} ~~at present~~.

~~///~~ In the company law field, for which I am directly responsible, more progress is being made. The first four company law directives have been adopted and are being implemented in the Member States. Now, after a long period of deliberation, a clear majority view has emerged in the Council of Ministers in favour of a uniform approach to the problems of insolvency, though technical problems remain to be resolved. In addition, the seventh directive on consolidated accounts for groups of companies is already well into its final negotiating stage, and ~~its~~ adoption is ~~now~~ likely next year.

The seventh directive is a good example of how we are seeking to construct a framework that will produce convergent developments and ^{which will} ~~thereby~~ enable enterprises to benefit increasingly from the ^{possibilities} ~~simplification~~ that ^{results} ~~flows~~ from the progressive harmonization of national laws. Can anyone doubt that ^{without} ~~in the absence~~ of our proposal, we would have witnessed the development of new national requirements for group accounts of a more divergent and therefore much more troublesome character? Similarly, if we were to ignore completely the more controversial ^{aspects} ~~issues~~ of group law and the parent/^{company} subsidiary relationship, dealt with in our forthcoming "ninth directive" sooner rather than later, national initiatives ^{with} ~~having~~ different characteristics would inevitably be taken.

In ^{2 very} ~~this~~ real sense, harmonization is de-regulation. It eliminates, or at least reduces, multiple and divergent national rules. Even when, normally for political reasons, Community standards are expressed as minimum rules, in practice the minimum often tends to be also a maximum and greater convergence results. This fundamental effect of our programmes ~~is of direct benefit to~~ enterprises and investors alike. ^{It} should also be of interest to investors from abroad who otherwise would continue to be faced with an increasing divergence in the legislation of the ten Member States.

IV. Problems posed by legislative programmes^S and some solutions

But, of course, our legislative proposals do pose some problems both within the Community itself and from a ~~one~~ specifically American point of view.

Sometimes, their importance for the creation of a single environment for business, through a coherent set of harmonized, calculable and transparent rules, tends to be overshadowed by the discussion of some of their aspects ² ~~stemming from~~ the specific political climate in Europe.

Typical concerns voiced in the ^{United States} USA are:

- that Community rules on product liability would increase the burden placed on manufacturing industry^(ie) at a time, when governments should do everything to alleviate this burden;
- that a sinister effect would result from legislation tending to the parent/subsidiary relationship by abolishing the liability of subsidiaries;
- that the introduction of the idea of workers participation into company law would seriously ^{dis-}temper the decision-making capability of management to the effect of ^{dis-}encouraging investment;

Depends on the establishment of the liability of subsidiaries in the parent/subsidiary relationship

- that more particularly the so-called Vredeling^s proposal would tend to subject the decisions of MNC^s to the consultation of their workers all over the world;
 - that the rules on consolidated group accounts would amount to introducing obligations having an extra-territorial effect outside the scope of the Community;
- or, to sum it up, that Community legislation is biased against the operation of US based MNC^s.

What is our response? I obviously cannot deal with everything today. Nevertheless, the following points seem to me to be of particular importance.

(a) Not attacking multinational business

First, it follows from what I have said concerning our objective of creating a single, more calculable, and transparent environment for business throughout the Community that our proposals are not designed as an attack on multinational enterprises in general, much less American ones ~~it particular~~. We have consistently rejected calls for legislation directed specifically at ~~the multinational~~. All our proposals apply in an even-handed way to national and multinational enterprises alike. Moreover, our objective is always to ~~arrive at~~ achieve equal treatment of enterprises regardless of their national character or origin [even when the objectively different situation of multinational enterprises may ^{compel} oblige us to rely on a specific legislative technique].

measure

(b) Resistance to change requires a step-by-step approach

Second, the Community has learned that since harmonization and legislative convergence do require changes ~~to be made~~ in the ways in which people do business and live their lives, we cannot be over-ambitious. Because of the different traditions and cultures of the Member States, we ~~need to~~ ^{must} rely on a step-by-step approach.

For this reason, we are concentrating on company law harmonization for the time being rather than on the adoption of a complete federal-type ^{of} European company law of which you may have read a few years ago. This proposal is, as you say, "on the back burner". In any case, it is not for immediate consumption, though it has been ^{not} ~~consigned~~ ^{put in} ~~to~~ the ^{trash can} ~~garbage can~~ either.

In my opinion, the kind of balanced compromise that will emerge from the legislative process should in no way be viewed as a negative factor from the point of view of the enterprise ^{of} ~~of the~~ investor. While extension of liability may result in some jurisdictions, the risk will be insurable, and the laws of the Member States will stabilize in a convergent manner, with a considerable gain in their clarity and predictability of operation.

Let me now come to the important field of labour relations in the enterprise.

The economic pressures of the recent past have sharply underlined the need for our economies, and our enterprises, to adjust to change. ^(these pressures) They have at the same time given fresh impetus to political demands for new information, consultation and participation procedures for employees.

We ~~have been interested to note~~ ^{with interest/ such} that ~~these~~ pressures have not been completely absent in the US and that, in some sectors, such as automobiles, they have already ~~produced~~ ^{brought about} new approaches to labour-management relations ~~on this side of the Atlantic~~ ^{have}. While on this side of the Atlantic, such innovations may still appear to be limited in scope, they are much more widely discussed and even practiced on the Continent. Clearly, this must be seen against the background of the specific political climate prevailing in Europe, where efforts aimed at fully integrating the workers movement into society are an element of long-term stability. Recent Belgian polls tend to show that demands for more participation are high on the list of expectations of the working population, whereas ^(which) the present economic difficulties have put a lid on the pressures for wage increases.

The challenge, as we see it, is to meet these demands for change while firmly resisting proposals that would interfere with ~~enterprises'~~ ^{the} ability ^{of enterprises} to manage effectively the process of continuous adjustment that they are called upon to achieve. Far from being obstacles to this process, the proposed measures are ~~an~~ ^{the} important tools ^{which will} to enable us to carry ~~it~~ ^{it} through by ensuring an adequate degree of social consensus ^{concerning} changes that are sometimes painful for those affected.

(c) Need for careful adaptation

However, if we must accept certain limitations on the Member States' capacity for change, we must also insist on the necessity of certain ^{circumstances} adaptations.

In these circumstances, laws affecting business can hardly be expected to escape periodic re-evaluation and amendment. Indeed, too great a resistance to change ^{would most} likely ~~to~~ re-bound on those resisting it. At some point, changes would almost certainly be made, but more explosively, subject to less careful control and management. ~~And~~ in the meantime, the stresses created by the unsatisfied pressure for change would not disappear, ~~but~~ ^{and} would continue to cause problems of their own for enterprises and ~~for~~ investors.

Of course, I am not preaching change at any price. Our reforms must be carefully considered and balance carefully all the interests involved. We have, in addition, no intention of abandoning the fundamental principles of an open economy, which have served us so well in the past.

What does this mean in more concrete terms? Let me give 2) or 3) examples.

^(far) ^(three) ^{I will begin with}
~~To take~~ product liability ~~to begin with.~~ Throughout the industrialized world, deep-rooted forces - economic, social and political - have ^{evited} ~~been apparent~~ for many years which ^{have led} leading States to move away from liability based only on proof of fault or negligence to solutions that do not ^{require} ~~necessitate~~ such proof. ^{Soil} Developments have occurred on both sides of the Atlantic, ~~and some of them~~ on this side, incidentally, have gone much further than we are likely to go. They have also ^{take place} ~~occurred~~ in countries as ^{different from one another} ~~far apart~~ as Japan, Israel and New Zealand.

For the Community, a common approach is clearly desirable. The Commission would have been failing in its most fundamental duty if it had simply ^{been observed} ~~looked on~~ while the Member States responded in their various ways to the evident pressures for change. By proposing a strict liability solution ~~to be realized~~ within the context of our traditional legal systems, the Commission appears to have succeeded in ^{avoiding} ~~excluding~~ the adaptation of collectivist solutions à la New Zealand based on "no fault" compensation through a publicly-administered fund. Discussion now centres ^{is} ~~is~~ on certain difficult questions concerning the scope of the liability, ~~as to~~ ^{to} which we are trying to find reasonable compromises. Liability for development risk, for example, will clearly not now be included as a Community requirement, ²⁴ though individual Member States will probably have to be free to include it if they wish, provided ~~that~~ they do so in a legislative text and not simply by case law.

The dynamic objective pursued by our proposals is underlined by a number of important safeguards that we are being careful to include. We have the impression, that sometimes these ^(safeguards) are not sufficiently understood by critics who, of necessity, are relatively unfamiliar with the ^(practice) operation in practice of European industrial relations systems.

In
~~To take~~ the fifth directive on company structure and employee participation, ^{as an} example, the Commission has, from the ~~start~~ ^(beginning), been careful to ensure that whatever employee participation systems are ^(included) included, they should not permit the decision-making of the company to be blocked. For this reason, we have always opposed (simple fifty-fifty) schemes for equal representation of labour and ~~capital~~ ^(owners) on company boards. We have also resisted demands for employee rights of veto ^{over} as to management's economic decision-making for the same reason.

instituted / ?

I am pleased to say that the European Parliament, by a large majority, has recently endorsed this approach in a most explicit manner, by suggesting that a provision be included in the fifth directive limiting the maximum proportion of employee representatives on company boards to one-half, and ^{by} further specifying that in such cases, the shareholder representatives shall have the ultimate power to decide disputed questions. The Commission has already decided to include such a safeguard in its amended proposal. Its enactment at Community level would, in my view, constitute a guarantee for investors that ~~is hard to under value.~~

should not be underestimated.

Similarly, the relatively uniform solution of the original proposal has been abandoned in favour of a more flexible approach. Following the European Parliament's recent opinion, the amended proposal will consist of a framework permitting the Member-States to take ^(into) account ~~of~~ their differing ^{set} social traditions, while at the same time promoting ^(the) convergent development ~~as regards~~ of the structure of public companies and ^{giving} the institutional recognition ~~given~~ to labour, management and capital.

~~Let me say,~~ the Community's approach to the "Vredeling" directive will be fundamentally the same. While many of us, ^{ed} including myself, have reservations about the language of the original proposal, we are convinced that the underlying objective of the proposal is sound. Employee information and consultation systems presently ^{ence} existing in most of the member-countries, should be adapted to take into account the increasingly multinational dimension of enterprises in the Community. Employees should be adequately informed both about the general development of the firm of which their ^{are} company forms part and, on a "need-to-know" basis, ^{about} of important decisions likely to affect them, even if those decisions are being made in another country. At the same time, it is not our intention to strangle enterprises with cumbersome, impractical procedures. Nor should the absence of an agreement between both sides be allowed to interfere with the decision-making process. Amendments are now under consideration in the European Parliament which should prove helpful in this respect.

? Hopefully

Obviously, you will not expect me to commit the Commission ~~at this stage~~ before the Parliamentary stage is concluded.

But I can say that certain of the ideas that have been suggested, for example, to protect sensitive information and to ensure that local management is not undermined or bypassed, seem to me to be well-founded and are likely to find a place in the Commission's amended proposal. Similarly, I would favour special provisions

?? } [to the effect of excluding such obligations, which could be seen as having an element of extraterritoriality]

[which would exclude obligations seen to have an element of extraterritoriality]

As to parent-subsidiary relationships and the so-called "ninth" directive. We shall be seeking the same kind of

balance. It is not our intention to force all enterprises into a contract-based group by imposing radical new liabilities if no contract is agreed. Nor do we intend to abandon the fundamental principle of a company's limited liability.

On the contrary, we seek only to re-affirm the equally fundamental principle that companies whose share capital may be held by the public should be managed in their own interest and not someone else's. We shall be seeking to develop as clear a text as possible to embody that principle and nothing more. In my opinion, such a principle is a necessary safeguard for the investor in public companies and not disruptive of the legitimate interests of parent undertakings.

(d) The give-and-take of an open legislative system

I would like to conclude by stressing an aspect of the Community's regulatory system that has been implicit in much ^{of what} ~~that~~ I have said ^{so} ~~so~~ far. Our legislative system is democratic in character. It is open to criticism, to influence, to change. It seeks consensus. Indeed, there are those who say that its concern with consensus is so pronounced that its effectiveness is insufficient. It all takes too long.

Be that as it may, from the point of view of the investor, including the foreign investor, the system has the advantage that ^{the investor's} ~~his~~ concerns can be adequately taken into account. I would refer you to the seventh directive on group accounts. One of the original proposal's provisions of greatest concern to US business was the requirement for so-called horizontal sub-consolidation of European subsidiaries of companies outside the Community. Following ^{lengthy} ~~lengthy~~ discussion of the problem, in which American Chambers of Commerce ^{amongst others} ~~amongst others~~ played an important part, a consensus has emerged that this requirement should be dropped. The alternative possibility is now being considered of requiring certain additional disclosures in the annual accounts of the individual Community subsidiaries concerning their relations with the group. This seems to be a much more workable approach, which is likely to find general agreement. It should also ^{help} ~~do much~~ to resolve the problem of our treatment of groups controlled by US private companies that are not presently required to consolidate under US law and practice.

While ^{share companies} they may continue to object to world-wide consolidation, it is hard to see how they can ^{oppose} ~~contest~~ reasonable disclosure by their European affiliates of their role within the group.

V. Conclusion

Ladies and gentlemen, I would like to suggest that if we take this example as our guide, and take the trouble to listen carefully to each other's concerns, there is no reason why the Community's developing regulatory framework, far from being a source of problems, should not make a major contribution to the attractiveness of Europe as an investment area. We will indeed ^{ful} achieve the right balance between reform and adaptation on the one hand, and maintenance of the fundamental principles of an open, competitive economy on the other. Willingness to understand ^{the} ~~the~~ other point of view, and to find compromises on that basis, is of course essential. We for our part are determined to make the effort.

I.

Annex: Defensive point
Extra-territorial jurisdiction

I am glad to be able to comment briefly at this point on an important issue associated with some of our directives, even if it is ^{somewhat} something of a digression from today's central topic of investment ^{that is the issue of} extra-territorial exercise of jurisdiction. I expected that you might feel cheated if I said nothing about it.

First, all of our measures apply above all to companies that are established and active within the Community's borders. Further more, they apply to actions having their effects (sometimes serious) inside a Community Member-State. By internationally accepted standards, this so-called "effects-doctrine" is in no sense an illegal extra-territorial exercise of jurisdiction. Therefore, the Community can stand easily international comparison. Conversely, measures have been taken recently and, not for the first time, by the US, which apply to Community firms that are not established nor active on US territory, and as regards matters having no effects there. These measures have serious consequences not only for the firms concerned, but ^{also} for the economic policies of their countries of origin. We view this interference in our internal affairs with a mixture of irritation and sorrow, and hope that wiser counsels will still prevail. But, in any case, we reject firmly any suggestion that our measures are in any way comparable.

[Handwritten signature]

regarding matters which have no effect there

II.

I would like to add a political comment. The argument that large multinational enterprises, long-established and active within the Community and, often household names, are sort of exempt from its collective jurisdiction, ~~and~~ could backfire on those who make it. Coupled with the recent attempts by the US government to extend the long arm of US law to Community firms for activities wholly outside the US, and not having effects inside its borders, the argument begins to look like a claim for a special "off-shore" status, if you like, for these companies.

Such a concept strikes at the heart of the equal treatment and non-discrimination principles that have been the foundation for the remarkable development of international activities by enterprises since at least the end of the ^{Second World} (last) war. It also plays into the hands of those who are no friends of the multinational enterprises or ^{of} an open economy. They have always argued that multinational enterprises are a breed ²part, to be treated with suspicion and regulated separately. In my opinion, our critics would be better advised to concentrate on the merits of the rules that should apply equally to all enterprises doing business in the Community rather than seeking to use strained jurisdictional arguments to exempt one group of enterprises from the regime that will apply to every one else.