

**COMMISSION OF THE EUROPEAN COMMUNITIES**

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**Employee information and consultation procedures. Mr.**

**Richard's statement to the European Parliament.**

MR RICHARD'S STATEMENT TO THE EUROPEAN PARLIAMENT, 17 NOVEMBER 1982  
EMPLOYEE INFORMATION AND CONSULTATION PROCEDURES

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The Commission has now had an opportunity to consider in detail the recommendations of the Parliament contained in the amendments voted on 12 October. This has not been an easy task, since you chose to amend all but two of the original 18 articles. We have been forced to go back once again to the fundamentals of the issue, and we emerge from our labours by no means discouraged.

The Commission welcomes the enormous effort the Parliament has made to research, debate and finalise its position on the Directive. It also congratulates the Parliament on the essential orientation of its position, in particular its acceptance of the principle of a legally binding instrument and its agreement on the basic structure of a Directive dealing both with a regular supply of information, and with ad hoc consultations as decisions of major importance to the workforce come into sight.

The response I will give today on the Commission's behalf deals with the substance and not with the wording. By this I mean that I will concentrate on the issues raised by your vote, rather than the detailed texts, and in the order in which I think it is convenient to consider the Directive - i.e. information aspects first, then consultation, and then the other points such as direct elections.

The Commission will turn its attention next to the drafting of the revised text itself, assisted I hope by your resolution as well as your amendments. Our amended text will then be submitted, with the usual explanatory memorandum, to both Council and Parliament in the first quarter of 1983.

Article 5 is intended to set out the basis of the regular transfer of information from the main or dominant business to its subsidiaries and thence to the workers' representatives. It is this article which should contribute most, through the establishment of a regular and beneficial information routine, to an improvement in relations between employers and the workforce in large-scale companies within the Community. The scope of the information to be provided; its frequency, the conditions of confidentiality to be imposed or observed, and the means of redress when the system breaks down are all highly important elements.

On the scope of the information the Commission agrees with the main body of the suggestions made by the Parliament. Thus certain types of information are better suited to Article 6, such as rationalisation plans and the introduction of new working methods. And the Commission accepts that the catch-all clause at 5 (2)(h) ("all procedures and plans liable to have a substantial effect on employees interests") might have proved too general to be effective. On the other hand, the Parliamentary debate on this question exposed very usefully the difference between general information relating to the group as a whole, and specific information on prospects

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"which might have serious consequences on employees interests in a specific production or geographic unit".

(I quote here from numerous amendments, tabled by Mrs Maij-Weggen, Mr Eisma, Mr Spencer, Mme Pruvot and Mr Calvez, MM Frischmann and Damette - in other words from a very wide range of the political spectrum.) The Commission is persuaded that this is a useful distinction, particularly in relation to the very large multinational which may also be a conglomerate, with a wide range of activities in markets which are unrelated either economically or geographically.

Indeed the insertion of the phrase "intelligible general information" in Article 5(1) by the Parliament seems to presuppose a complement in the form of "intelligible specific information", and the Commission will turn its attention to the need to complete the phrase when it looks in detail at a revised text.

On the other hand, the Parliament's proposal in 5(2)(i) to limit information to that required under the 7th Directive is unfortunate for a variety of reasons: the financial nature of information in the consolidated account is not parallel or relevant to social and employment information; it is historic rather than "prospective"; and it would already be publicly available under the terms of the Directive. The reference to 7th Directive would thus remove virtually all meaning from the text on information; I am sure in the circumstances the Parliament will understand the Commission's reluctance to accept it.

On frequency, the Parliament's suggestion that the passage of information should be annual rather than six-monthly has caused the Commission some difficulty. We are conscious, for instance, that the Directive on Periodic Information to shareholders calls for six-monthly reports, and the information would pass to the workers' representatives quarterly under the 5th Directive. More generally, frequency is an essential element in an information system of any type, and we must take great care to ensure that the directive is not weakened on this score. However, after due deliberation, we feel that the way ahead is the one the Parliament has pointed, that is, information passing twelve-monthly, but with the added proviso that it must be brought up to date when relevant information is passed to other bodies or interests under the terms of other directives or legislation.

I say "relevant" here advisedly, since the most difficult of all the issues we have to consider is what is relevant information, and what should be confidential or secret. The Commission accepts the Parliament's main point on secrecy: that there must be a category of information in the working of major corporations which is too sensitive to be placed on the transmission belt established by Article 5. The Commission accepts, in other words, that the obligations which it imposed on workers' representatives on the handling of such information in its original Article 15, will not be sufficient in themselves to deal with the issue.

I must also say that the Commission has some difficulty with the text which emerged from the voting procedure on 12 October. There is a practical problem, that it is difficult to see why any procedure relating to business secrets and company secrets is required in an amended Article 15 when Article 5(1) would prevent their entry into the system: but, more fundamentally, there are surely problems of definition and procedure before we can say that the issue has been settled.

On definition, the problem is that the Parliament's text does not give any criterion for judging whether or not a certain piece of information is either a business or company secret, or indeed an "industrial or trade secret" (Article 5(3)). This difficulty is, of course, that the Directive could be fatally weakened if the decision was left entirely to management with no means of establishing a consensus on what the phrases mean.

For this reason, the Commission proposes that the revised Directive should specifically permit management to omit from its coverage, in terms of both Articles 5 and 6,

"any information whose disclosure would substantially harm the company's prospects or substantially damage its interests".

This would best be done in Article 15 with cross references to Articles 5 and 6. It gives a working definition which is absent from the Parliament's proposal, and incidentally is very similar to the provision in the Directive on periodic information to be published by quoted companies, which was itself inserted by the Parliament. It is important that we should repeat here the caveat that the non-provision of information must not be likely to mislead the workforce with regard to facts and circumstances essential for assessing the company's situation.

Secondly on procedure, the Commission remains of the view it took when it drafted the original Article 15: management cannot be the sole judge of the confidentiality of information, and the tribunal procedure which it provided for in Article 15(2) should be retained. The tribunal would review, ex post facto, disputed cases and establish over time a body of case law which would do more than either of our two institutions can do at this stage to establish exactly where the dividing line between disclosure and confidentiality should rest.

On means of redress, an important element of this in the original proposal was the "by-pass" provision (Article 5.4) which allowed workers' representatives to turn to the management of the dominant undertaking for information which the subsidiary was "unable to communicate". The Parliament has proposed a weaker but clearer version which provides access to the management of the dominant undertaking for workers' representatives, but only in writing and after a period of 30 days; but it has added the right for workers' representatives to apply for a court ruling if management does not fulfil its obligations.

The Commission accepts the Parliament's judgement on this point.

Turning to the consultation provisions of the Directive, Article 6 deals with specific events in the life of an undertaking when a decision is in prospect which will have a substantial effect on the interests of the workforce in either the whole or part of it. During the discussions with the Parliament issues have arisen on the scope of the obligation to consult, the nature of the proposed decisions which will require a consultation, the system of redress, and, most importantly, the stage at which consultation takes place. On most of these points the discussion has been productive, and the Commission can be guided by the Parliament's vote.

Thus on the scope of the consultation, it is clear that the Directive should only deal with decisions affecting the workforce in the Community (Parliament's proposal); it is also right to limit the obligation to provide information and consultation to each subsidiary concerned instead of to all subsidiaries as proposed originally. The Court procedures introduced by the Parliament to Article 6(4), with the power to compel compliance forthwith, should adequately protect the interests of workers who deem themselves to be concerned, but who have not been consulted.

On the types of proposed decision which would trigger consultation, the presentations preferred by the Parliament are logical and consistent with the Commission's intentions. As a minor point we believe that the introduction of new technology should be mentioned specifically as an occasion for a consultation. More important, changes in long-term cooperation agreements should also be reinserted since many of these are highly significant events in the life of a subsidiary, and by no means all to its disadvantage. Moreover, truly sensitive information will be protected by the new Article 15.

However, there is a case for looking again at the stage at which consultation takes place. One interpretation of Parliament's text is that Article 6(1) limits consultation to decisions which have already been taken, hence the reference to a 40-day period before implementation. However, the amended text also talks of proposing to take a decision (Article 6.1, 2nd line). The text needs to be clear and faced with the two conflicting possibilities the Commission has had to make a choice. In terms of industrial relations, it believes that it is desirable that consultation of employees should take place before the final decision is taken: by taking into account employee concerns, and for example, their willingness to adopt new practices, management's decisions will be better informed and it will find it easier to secure cooperation in execution of its decisions. However there is some risk that the original text will be seen as an attempt to impose a formal right of co-determination with the workforce on the decision: this is not the intention, and the final text which is submitted to Council will need to be amended to make this clear.

Finally, the Parliament's proposal removes the right to "by-pass" the management of the subsidiary in cases where consultation has not taken place. This is clearly a major change, but also one which the Commission can accept. The combined effects of the new formulation of Article 6(3) and 6(4) is to impose an obligation on management which they would ignore only at the risk of having court proceedings opened against them, with the attendant uncertainty as to the outcome. I believe it was the Parliament's intention to create a procedure for information and consultation in this area which management would feel obliged to pursue, without giving the workforce a right of veto over decisions: the Commission is in full agreement.

I turn now to a number of related issues ; first, the selection of employee representatives.

The Commission agrees with the Parliament that in each Member State it should be possible to designate workers' representatives by direct election and secret ballot. Indeed, the Commission prescribed this system for worker-participation in the fifth Directive. But Community Law in this area progresses step by step, and we have to recall that the objective of the present Directive is limited to informing the workforce. It does not attempt to modify the system of industrial relations within the Community which it will operate. Furthermore, the evidence is that the Council shares this view of the situation, and it would be <sup>only</sup> with great difficulty that systems of industrial relations which have been established over a number of years could be changed. Therefore the Commission feels that their own formulation, which gives complete freedom to the Member States, preserves all their options in this respect, and prevents no-one from adopting direct elections and the secret ballot if they wish, is in the end the best.

The Commission does not accept, either, the exclusion from workers' representatives of anyone engaged in management, at whatever level, since large white-collar staffs exist in many multinationals, who need to be kept as fully informed as other workers. Our proposal borrows from the approved text of the 'Acquired Rights' Directive, which excludes 'members of administrative, governing or supervising bodies of companies who represent employees on such bodies'. This is a more appropriate provision.

On Article 4 the Commission has no difficulty in accepting the principle of a threshold for the size of group which falls within the terms of the Directive, and the threshold of 1000 employees seems acceptable, since this definition excludes small and medium-sized enterprises.

On freedom of the press and charitable bodies, the amendment on Article 1 of the Commission's proposal is inspired by the German legislation which exempts press undertakings, charitable bodies and the other bodies mentioned in the amendment from employee participation in board rooms and from those employee participation rights granted under the German Works Councils Act which might affect the freedom of the body concerned to carry out its specific purposes.

It is however understood under the relevant provisions of the Works Councils Act that the basic social protection of the workers shall not be affected by that exception.

It appears therefore that the drafting of the amendment is wider than it is necessary for granting the freedom to carry out charitable or political or public information purposes. There seems indeed no good reason why workers in pension funds or scientific or educational enterprises or the press should not benefit from those provisions of the Directive which only grant social protection to the workers. The Commission will therefore examine the draft directive point by point in order to find out more exactly where conflict might arise with national legislation on this matter, such as that in Germany and produce accordingly a text which avoids such conflicts without imposing the same practices Community-wide. (The same exercise must be done as regards the amended draft of the 5th Directive on companies' structures.)

On Article 8, the problem is to legislate effectively where the management of the dominant undertaking is located outside the Community. The Parliament's alternative, which avoids the pitfalls of 'extra-territoriality' and provides that, where the dominant undertaking appoints no agent, each subsidiary is responsible, is preferable in practical terms to the original proposal and the Commission can accept it.

In conclusion, it is the Commission's hope that a long and fruitful consultation with the Parliament will be brought to an end with this statement and the Parliament's subsequent vote. The Commission stresses that, although it must maintain a differentiated position on the Parliament's proposals, it will be guided by them in relation to the essentials of the Directive as an information directive: thus on the scope of the Directive, frequency, the threshold, secrecy, the by-pass and extra-territoriality, it will be able to follow the sense of the Parliament's proposals, in most cases very closely. On scope we prefer a clearer text in relation to specific information - one which has wide support in the Parliament. We are not persuaded of the utility of the reference to the 7th Directive. And on secrecy we suggest a different method for exempting the most sensitive information. But these preferences do not spring from a fundamentally different approach, and I hope I have given you good reasons for them.

On the more constitutional issues, direct elections and freedom of the press, I accept that there is some distance between us. But here I must appeal to the Parliament to think very carefully about its position. In both cases there seems to be a danger that the experience of one national bloc is being allowed to predominate, yet we are talking about a Directive, which is essentially a flexible instrument, and applicable to ten Member States, each with an enormous variety of traditions and practices. I can give you the Commission's firm assurance, that in neither case is there any intention to prevent the practices referred to in relation to this Directive - direct elections, or freedom from certain legislation for the press and confessional bodies. We need to do some detailed work to establish the position in the second case, but in both I hope the principle is perfectly clear.