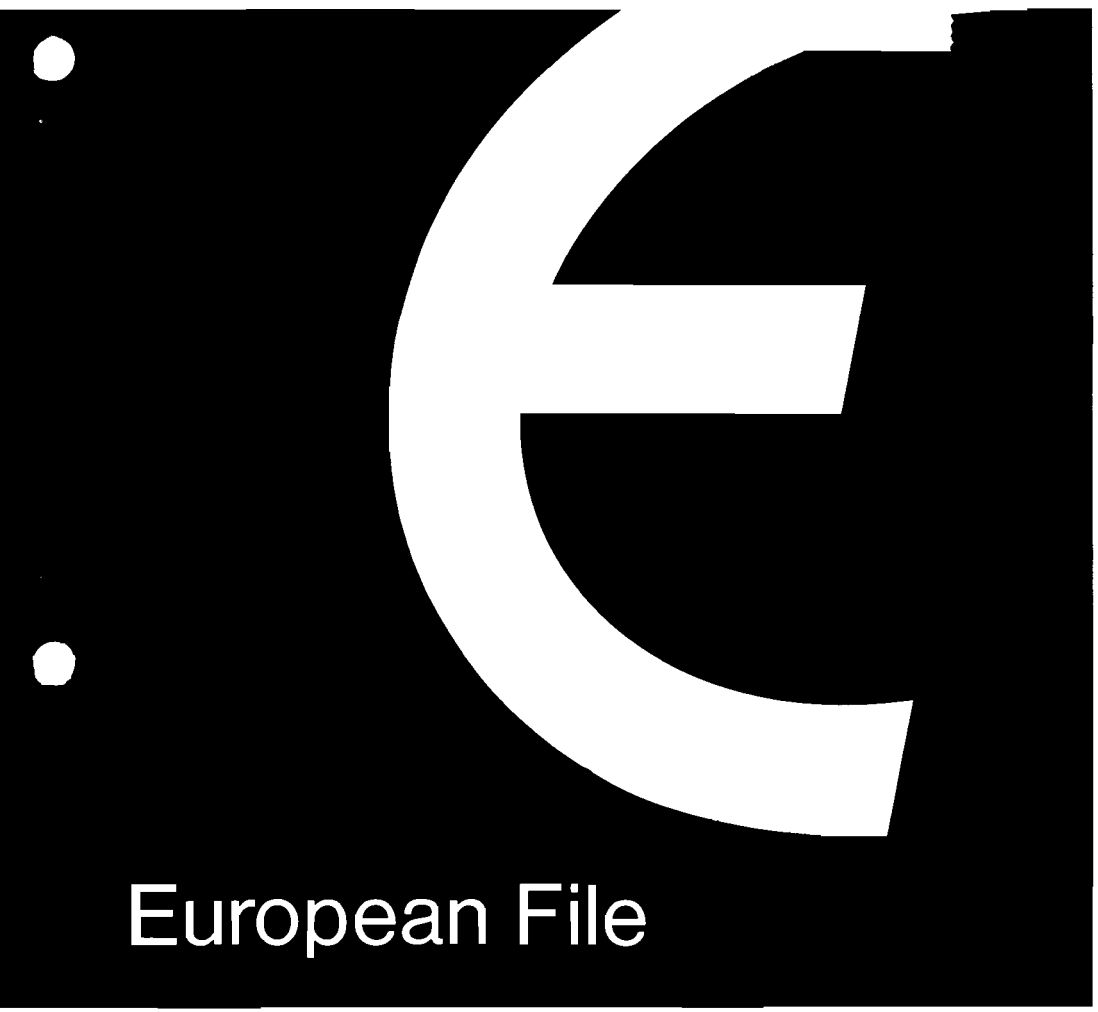
Workers' rights in industry



European File

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In mid-1983 the European Commission proposed revised versions of two draft directives covering the consultation and information of workers and their participation in the running of industry. These are questions which have become more important, rather than less important, in the light of the world recession.[1] Do workers have sufficient protection against the everyday risks of economic life: redundancy and loss of rights through merger, takeover or bankruptcy? Are they informed and consulted enough? Should they have the right to monitor their companies' activities and take part in management?

A number of factors have combined to throw into sharper focus the problem of workers' rights in industry:

- ☐ In a democratic society, people naturally want to monitor, give an opinion on and if possible take part in the decisions which affect their lives. This is clearly the case for workers, who not only depend on an industry for their livelihoods but spend a large part of their lives in their workplace.

- ☐ Europe, in common with the rest of the world, is undergoing profound economic changes: higher energy costs, the development of new technologies. The repercussions on industry and its methods have been enormous: the recession has brought widespread closures of factories and reductions in their level of activity. To survive or expand companies have been forced to restructure and to conclude agreements or take part in mergers across international frontiers. As a result, 'multinationals' account for an increasing proportion of manufacturing industry.

- ☐ Finally, the existence of the European Community has itself produced structural changes, resulting from the creation of a single market stretching from Dublin to Athens, and Copenhagen to Palermo. In the development of the Community, the rights of workers cannot be ignored.

Such problems call for a Community response.

- ☐ Firstly, for social reasons. In its Social Action Programme (1974), the Community agreed to the strengthening of protection of workers' interests in order to foster – in accordance with Article 117 of the Treaty of Rome – improved quality and equality of living and working conditions. Differing economic and social histories and the various trade union and legal traditions in Member States have meant that the scope of the workers' rights recognized in Community countries varies considerably. Community action is needed to fill gaps in national legislation which often fails to deal with the problems caused by companies based in several countries. Such action must also aim at increasing the rights of Community citizens by harmonizing national provisions towards their highest common denominator.

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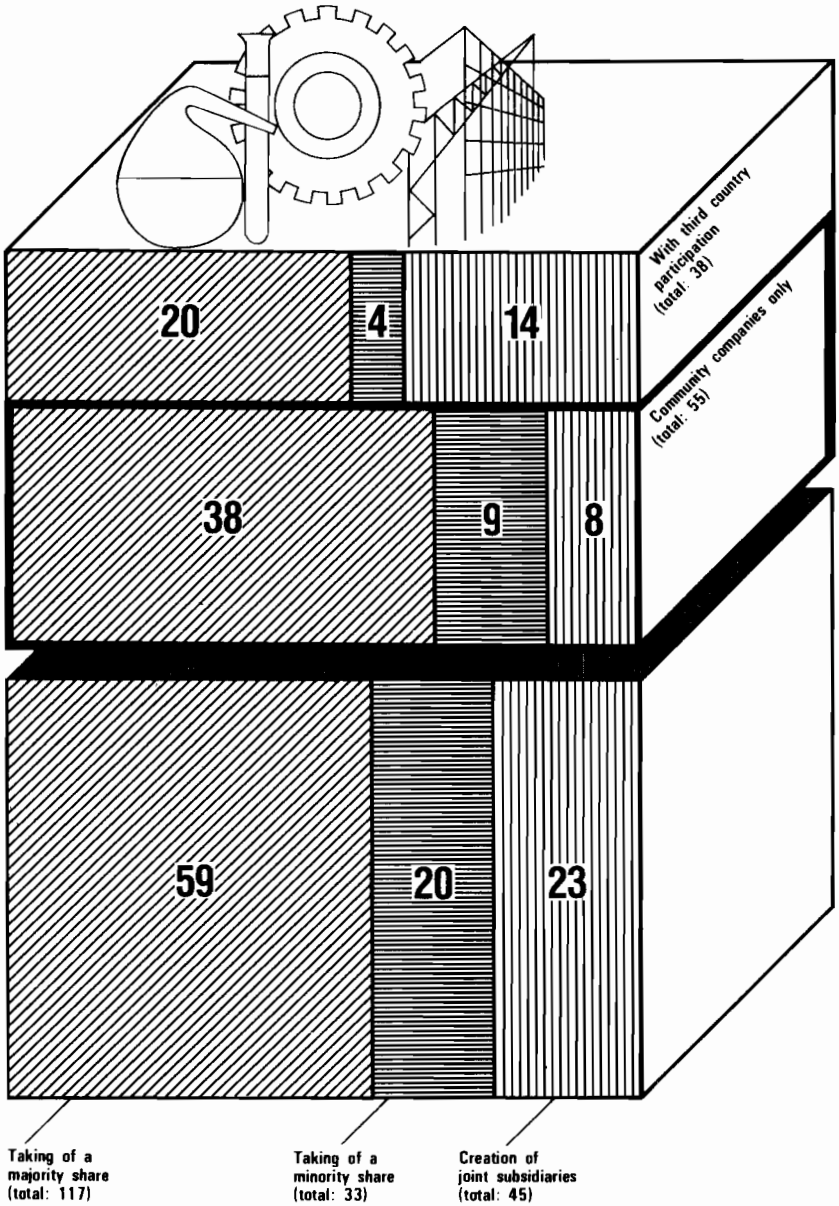
[1] This file updates and replaces our No 15/81.

Number of transactions involving the taking of a share in an undertaking or the creation of a joint subsidiary, involving the 1 000 biggest companies in the European Community in 1983 [1]



[1] January to October, manufacturing industries only. Source: European Commission, Thirteenth Report on Competition Policy, Part Four.

- Secondly, for economic reasons: Article 100 of the Treaty of Rome, which set up the European Community, calls for the harmonization of national legislation which could directly influence the operation of the internal free trade market of the Community. An excessive divergence between the social commitments of industries in different countries could impede trade and economic development. It could also distort the flow of investment if conditions in one country were more attractive to industry than in another. The preservation of healthy competitive conditions – one of the fundamental principles of the European Treaties – means that the legislative burden should not be heavier for companies in one country than in others. Beyond this, the completion of a single Community trading market, which will give a new impetus to the economy and employment, demands a legal environment which will encourage Europe-wide business activity. At present, such activity is too often discouraged by the existence of wide divergences between national regulations.

The strength of the arguments for action at Community level does not make it easier or quicker to implement concrete decisions. The problems involved are complex and the answers to them must resolve conflicting interests. At European level, just as at national level, employers are anxious to maintain their freedom of decision-making and the workers want to extend their rights. The solutions adopted in Member States over many years are many and varied. It should therefore be no surprise that the proposals made by the Commission in this area, after lengthy discussions with national experts and representatives of all interested parties, are often complex and take a long time to put into effect. These proposals are usually framed in the form of draft directives which lay down general principles but leave it to Member States to incorporate these principles into national legislation within two or three years. The proposals usually steer a middle course and allow Member States to adopt measures more favourable to the workers if they wish.

Three directives have already been adopted by the Community's Council of Ministers, following consultation with the European Parliament and the Economic and Social Committee (composed of representatives of employers, workers and other interested parties).

These agreements aim essentially at protecting workers against certain economic risks. Three other much more ambitious proposals, dealing with the information, consultation and participation of workers are still under discussion.

Worker protection

- Collective redundancies: a Community directive, proposed in November 1973, adopted in February 1975 and in force since February 1977, harmonizes national legislation on collective redundancies and lays down an information and consultation procedure. Some categories of workers are not covered: public servants, seamen or employees whose contracts were due to expire in

any case, or whose company has ceased trading as a result of a legal decision. In all other cases, a collective redundancy is defined in a number of ways, according to the choice of individual Member States: either 20 jobs lost in 90 days, or over 30 days, 10 jobs in a firm employing between 21 and 99 people, 10% of the workforce in a firm employing between 100 and 299 people and 30 jobs in a firm employing 300 or more. If an employer plans to make redundancies on this scale, he must:

- Send a written explanatory statement to the representatives of the workers concerned and hold discussions with them to try to reach agreement on ways of avoiding or limiting the redundancies and their consequences;

- Inform the relevant public authority which can delay the redundancies for a period (in principle at least one month) and try to find a solution. The redundancies can only become effective when this period expires and the period may be prolonged.

□ Transfers of undertakings, businesses or parts of businesses: a Community directive, proposed in May 1974, adopted in February 1977, and enforced since March 1979, guarantees workers' rights when, as a result of a closure or merger they find themselves working for a new owner. In such cases:

- The rights and obligations contained in a contract of employment or a collective agreement are automatically transferred to the new employer. If the latter makes redundancies for economic or other reasons, he cannot use the transfer or merger as his justification. The protection of in-company social provisions (for instance, company pension schemes) outside the normal social security system are left to national legislation. Other conditions of collective agreements are to remain in force until the agreement expires, or for at least one year. The rights of workers' representatives are also guaranteed;

- A procedure for information and consultation of the workforce must be established. Workers' representatives must be told the reason for the transfer, its legal, economic and social consequences, and informed of any proposals which could affect their future. Consultations must be arranged in order to reach agreement on any such measures. This procedure must, at the very least, apply to companies where a system of worker representation exists. It covers, as a minimum, any proposals which affect the situation of the workers, or, where arbitration machinery has been set up, proposals which could involve significant disadvantages for a large part of the workforce.

□ The bankruptcy of the employer: a Community directive, proposed in April 1978, adopted in October 1980 and enforced since October 1983, guarantees the payment of wages and other outstanding claims from employees when a firm is insolvent, bankrupt or ceases payments. The rights of workers can be

threatened if there are numerous creditors, when legal proceedings are long drawn out or a company's assets are insufficient to meet its debts. The directive therefore provides for:

- The creation of guarantee institutions, usually financed by the employer and the government, with assets independent of those of the company to ensure that they cannot be seized during bankruptcy proceedings;

- The payment by these institutions of certain outstanding claims from workers. Member governments can, however, decide to place a ceiling on payments or limit them to remuneration for a fixed period from 8 weeks to 18 months. Governments can also decide, if they wish, to exclude the employer's social security contributions. But all necessary measures must be taken to ensure that employees continue to benefit from statutory social security schemes and that they hold on to any additional rights they have under company social protection schemes.

Worker information and consultation

Two of the above directives already lay down consultation and information procedures in the event of serious problems affecting the company and its workers. However, the European Commission believes that information and consultation should be a permanent feature of industrial life. The competitiveness of companies need not be affected: on the contrary, improved labour relations can bring increased productivity and a sharper competitive edge. A proposal made in 1980 and modified in July 1983, following the opinion of the European Parliament and the Economic and Social Committee, calls for the information and consultation of workers in companies where decisions are taken at a higher level than that to which workers' representatives have access. The companies involved are those with a number of subsidiaries or factories, whether in the same country as the parent firm or in a number of countries. The directive would therefore apply to multinational companies, even if their head office is not in the Community. The draft proposal calls for:

☐ The presentation to workers' representatives of a general but detailed rundown of the structure of the company, its economic and financial situation, its employment and investment prospects, at least once a year, and on each occasion that this information goes to creditors and shareholders. The workers can approach the head office directly if management of a subsidiary fails to give this information;

☐ Workers' representatives at all relevant subsidiaries must be given prior information on the motives and impact of any proposal which could have serious implications for the workforce (a closure, a move, a reduction or significant alteration in activities, cooperation agreements with other firms, a major change in organization, working methods, or manufacturing techniques, as a

result, perhaps, of the introduction of new technology, as well as any proposals which might affect health or safety). Before a final decision can be made (or implemented, if secrecy is needed to prevent the plan from being compromised or ruined) the workers must be given 30 days in which to give their opinion and hold consultations on steps to be taken to protect the workforce.

The draft directive is aimed at firms employing at least 1 000 people within the Community. Member States could limit its application to subsidiaries with a recognized structure of worker representation. Information for the workers would, in principle, be passed on from the head office through local management. But there are a number of clauses which allow subsidiaries whose head offices are outside the Community to retain direct responsibility for informing and consulting with the workforce (provided that their right to be fully informed and consulted is respected, in conformity with the rest of the directive). These clauses also allow for the information and consultation procedure to take place at group level, if an organization for representing workers at this level exists. Information given at group level could be of a general nature or, if requested by the workers of the subsidiaries concerned, of a particularly serious nature. Safeguards are included for confidential or secret information and the protection of the freedom of action necessary to undertakings concerned with politics, religion, charity, culture and information. The draft directive also allows for the right of appeal to a tribunal or equivalent body.

Towards participation

Do we need to go further than information and consultation? Two important Commission proposals suggest that the supervision of limited companies (which shareholders are often unable to achieve effectively at annual general meetings) should be improved, opened up to the workforce and clearly separated from the role of management. The objectives are threefold: to abolish the legal divergences which discourage companies from operating on a European scale; to achieve a better separation of responsibilities which will improve business decision-making and encourage investment; and to provide democratic recognition, at European level, of the rights of workers in order to promote good industrial relations. This will improve the efficiency of industry by allowing it to adapt to economic changes by pursuing new approaches which will be understood and accepted by those concerned.

- A draft regulation, first tabled in 1970 but amended in 1975, puts forward a legal basis for the establishment of European limited companies, operating in more than one Community country, with head offices in the Community and operating capital of more than 100 000 or 250 000 ECU,[1] according to whether the undertaking is a single subsidiary or the merger of more than one

[1] 1 ECU (European currency unit) = about £0.60, Ir. £0.73 or US $0.85 (at exchange rates current on 5 April 1984).

enterprise. Such companies must have a two-tier structure, comprising a management board responsible for day-to-day management and a supervisory board responsible for choosing, supervising and, if necessary, replacing the management. Unless a majority of workers decides not to take part, the supervisory board will consist of one-third members nominated by the shareholders, one-third by the workers, and the remainder coopted by these two groups as independent members to safeguard the general interests of the company. A European business committee would also be set up by each firm, representing all its workers. This would have the right to information and consultation and a share in decision-making on social questions, notably redundancy procedures. Where appropriate, a European group committee would also be created.

- A draft directive, tabled in 1972 and revised in April 1983, in the light of the opinions of the European Parliament and the Economic and Social Committee, suggests that all limited companies in the Community should have some form of supervisory organization or that executive managers should be in the minority on a board containing supervisory members. Firms employing directly or indirectly at least 1 000 people in the Community would have to adopt one of four different methods of worker-participation in this supervisory process, at the discretion of Member States: equal rights of workers and shareholders to nominate between one-third and one-half of the supervisory board members, with the final say for shareholders' representatives in the case of a tied vote; equal rights with shareholders to object to nominees on a coopted supervisory board, with the final decision left to an independent tribunal or equivalent body; the creation of a separate body composed solely of workers' representatives, with rights of consultation and information identical to those of a supervisory board, but no right of veto; finally, any other system agreed by collective bargaining, corresponding to the principles of one of the previous models. If no agreement is concluded within a fixed time limit, one of the other options will automatically apply. In all cases, the choice of employees' representatives must accord with democratic principles: the right of all workers to vote, freedom of expression, proportional representation and a secret ballot.

Participation in the introduction of new technologies

The introduction of new technologies is crucial to the competitiveness of European industry but raises problems for employment and working conditions. Since good industrial relations are also a contributing factor to productivity and competitiveness, these problems must not be allowed to upset these relations or slow the introduction of innovative working methods. As mentioned above, the draft directive on worker consultation and information specifically refers to major changes resulting from the introduction of new technologies. The draft directive on limited companies also calls for decisions by the supervisory board or the information and consultation of the workers' representative body on 'important

changes in the organization of a company'. These proposals only apply, however, to groups or companies employing at least 1 000 people. The problem could arise in businesses, large or small. Following a request from the Standing Committee on Employment, which is composed of representatives of Community governments, employers and unions, the European Commission is examining with both sides of industry the best way and at what level to introduce basic principles on the information and consultation of workers affected by the introduction of new technologies, while taking account of practices and procedures already applied in the Member States. This is one of the principle themes of a communication on technological change and its social consequences presented by the Commission to the Council of Ministers in January 1984.

And company assets?

Finally, a further logical step in the development of workers' rights is their participation in the capital formation of their companies. In August 1979, the European Commission presented a working and discussion document on this theme to interested parties and the different Community institutions. It also suggested a strengthening of the role of private savings in industrial capital. The Commission believes that worker participation is justified, whether or not the workers own shares. But a stake in the profits and assets of industry could be an essential element in worker participation and could help to reduce social inequalities. Moreover, if workers are to be asked to moderate wage demands to allow productive investment, it is only fair to allow them the right to share in capital assets. Finally, an imaginative capital formation policy can boost productive investment and provide a new means of regulating the economy and controlling inflation.

How can this be achieved? After an examination of existing or proposed systems in the Member States, the Commission memorandum outlined the following alternatives:

- ☐ Employers would give their workers a flat-rate allowance in addition to their wages but 'freeze' it for a certain period in long-term savings or building society-style accounts. Management and unions could reach agreements on how to operate such schemes, within a legal framework which could also provide for public support.

- ☐ Wage earners would be given a stake, once again 'frozen', in the profits, capital-growth or capital of companies. In other words, ownership of shares could be transferred directly to the workers in a particular company or through a common fund, to the workers in a particular industry or workers in general. Alternatively, sums allocated for asset formation could be divided between the different formulae. If a collective fund was created should there be one or more than one per country? A number of solutions are possible but the essential element should be a narrowing of the gap between the sums available to

workers in different firms and branches of industry, whose profitability varies considerably. Management of the fund could be undertaken by workers' representatives, public authorities, or even by the companies themselves. The 'frozen' capital would, above all, be made available to companies to create new jobs but it could also help to improve pensions, finance early retirement schemes and so on.

As a follow-up to its memorandum, the Commission intends to table a draft recommendation on the formation of capital for wage earners and the low-paid ■

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