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PROPOSAL FOR A DIRECTIVE OF THE COUNCIL

ON HARMONISATION OF THE LEGISLATION OF MEMBER STATES ON THE RETENTION OF THE RIGHTS AND ADVANTAGES OF EMPLOYEES IN THE CASE OF MERGERS, TAKEOVERS AND AMALGAMATIONS

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(submitted to the Council by the Commission)

V/631/74-E

# EXPLANATORY MEMORANDUM

## A. INTRODUCTION

1. Industrial development, both within individual Member States and at Community level, has resulted in a rapid increase in concentrations of undertakings. The extent of this development is borne out by the following statistics : during the period between 1962 and 1970, the annual total of amalgamations between undertakings in the six original Member States rose from 173 to 612. This means that within nine years the annual number of amalgamations increased by three and a half times. For the period between 1966 and 1970, the rate of increase doubled compared with the period between 1962 to 1966. In some of the Member States the growing trend towards link-ups has led to a situation where the share of industrial turnover of the hundred largest industrial undertakings has risen to 50 % of the total.

2. This process of concentration has been reflected in the merger of companies, the transfer of industrial undertakings, or the takeover of a particular undertaking by another.

3. In view of this develoment the need has arisen for the provision, at Community level, of an adequate legal framework. The legal instruments prepared with this end in view include, the proposal for a third directive on mergers between companies, the preliminary draft of a convention on international mergers between companies, the proposal for a Council regulation on the control of amalgamations of companies, and the proposed Statute of the European Company.

The purpose of these instruments is to regulate the problems which arise from the concentration of undertakings in the field of company law and competition.

4. Experience has shown that changes brought about in the structure of industrial undertakings as a result of concentrations have often had far-reaching consequences on the social situation of the workers employed by the undertakings concerned and that the legislation of the Member States applicable to such operations did not always take sufficient account of the interests of the workers. This has been particularly evident in cases where structural changes have come about in accordance with the rules laid down by civil or commercial law while employees had no legal right to demand that the previous employment relationship be maintained by their new employer.

5. These problems and the need to solve them at Community level have now been acknowledged. The Community instruments mentioned above contain certain provisions which should provide better safeguards for the interests of employees in the event of a change in the structure of their undertakings. When, however the scope of these instruments and the specific nature of the social provisions in them are taken into account, the latter provide only a partial solution of the problems confronting employees in cases where a change has come about in the structure of their undertakings.

6. On the other hand, in its Resolution of 21 January 1974 concerning the implementation of a Social Action programme, the Council expressed its political will to initiate the measures necessary to bring about an improvement in the standard of living and in working conditions and their harmonisation while the improvement was being maintained : these measures include the protection of employees' interests, particularly as regards the retention of their rights and advantages in the event of amalgamations, concentrations or rationalization.

In this connection, it is worth recalling that the Government experts of the six original Member States who were instructed to draw up a preliminary draft of a convention on international

mergers between companies drew attention, on behalf of their Governments, in a joint statement published in 1972, to the need to provide an instrument of general application for the specific purpose of regulating from the legal point of view, the protection of employees against the consequences of any type of concentration.

7. This is also the purpose of the proposal for a Directive which the Commission has undertaken to submit to the Council.

Primarily the aim of this proposal for a Council directive is to ensure, by introducing provisions covering such matters as protection and safeguards, that employees do not forfeit essential rights and advantages acquired prior to a change of employer.

This aim will be achieved by means of :

- automatic transfer of the employment relationship from the transferor to the transferee, i.e. from the old to the new employer;
- protection of employees against dismissal due exclusively to a change in the structure of undertakings;
- information, consultation and negotiations with the representatives of employees concerning the interests of employees.

8. The proposal seeks, in accordance with Article 117 of the EEC. Treaty, to improve living and working conditions for workers, and by the approximation of laws, regulation and administrative provisions to make their harmonisation possible.

B. Commentary on the individual provisions

Article 1

This Article lays down the scope of the proposed Directive.

Included in its scope as structural changes in undertakings are mergers and takeovers, for which the common criterion is a change of employer which could have repercussions on existing employment relationships. The proposed Directive defines the concept of mergers not by laying down a definition of its own but by reference to the laws, regulations and administrative provisions of the Member States and to Community law. By the latter is meant the proposal for a third directive on mergers between companies and the preliminary draft convention on international mergers between companies.

The definition of a takeover covers all kinds of legal disposals, i.e. not only transfers of property but also letting, leasing and the granting of usufruct. Furthermore, this definition is intended to include not only all those cases in which entire undertakings are transferred but also those in which individual establishments are transferred from one undertaking to another.

On the concept of a company, the proposed Directive refers to the second paragraph of Article 58 of the EEC Treaty and thereby goes beyond the scope of the proposal for a third directive on mergers between companies and of the draft convention on international mergers between companies. While both these proposals restrict themselves to the legal form of the limited company, the draft Directive under consideration covers all firms or companies constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

From the point of view of territorial application, it appears necessary to protect the rights of workers whether the changes under consideration take place within the territory of one Member State or the territories of several Member States.

For the same reasons it appears necessary to extend Community protection for workers to include changes which occur in undertakings situated within the territory of one or more Member States or of one or more non-member States. For legal reasons, however, it is not possible to impose the planned Community rules on non-member countries. In such cases, therefore, Article 1 provides for the application of this proposed Directive only in so far as undertakings situated within the territory of the Common Market are involved. This can be of practical importance first and foremost when undertakings or establishments in non-member states are incorporated in undertakings situated in the Community.

But the proposed Directive is also legally applicable when undertakings or companies situated in the Community are incorporated in undertakings in non-member states. This is the case when the change affects the rights of workers in establishments which, irrespective of such incorporation, are situated in the territory of a Member States and to which the laws of that Member State are applicable in accordance with the rules of international private law.

Article 2

The terms "transferor" and "transferee" in Article 2 are used in a technical legal sense and are intended to simplify the language used in the proposed Directive.

Article 3

This provision, which requires the automatic transfer of employment relationships to the transferee, is the core of the proposed Directive. It is designed to prevent the transferee from refusing, on the basis of

civil law provisions governing transfers to retain the workers in employment or from concluding an agreement with the transferor to exclude employment relationships from the transfer. In the latter case, the transferor would have no alternative but to give notice to workers affected by such exclusion. Such an outcome would be in conflict with the aims of protection for workers.

The majority of lawyers in all national legal systems consider that an established industrial practice becomes part of the rights and obligations of the employment relationship. It is made clear in paragraph 1 that the transfer of rights and obligations also applies to such industrial practice.

The transfer to the transferee of rights and obligations based on collective bargaining agreements calls for different arrangements to meet the varying cases.

Where the transferor was himself party to a collective agreement, as in the case with an agreement at the level of the undertaking or individual establishment, it seems logical that the transferee should automatically take over the rights and obligations under such agreement. In this way the terms of employment based on the collective agreement continue to be applicable until the agreement concerned lapses in the normal manner.

The legal situation is different with collective agreements (wage agreements) concluded between associations, which are not binding on the transferee and have not been declared to be generally binding. In this case, it would be a breach of the right of free association to impose on the transferee against his will a collective agreement to which he is not already party. However, in order to prevent the workers losing their terms of employment reached through collective agreements, paragraph 3 attempts to provide a compromise: although the status of a party to any collective agreement is not imposed on the transferee, he shall respect existing terms of employment reached through collective agreements and shall, in the case of collective bargaining agreements of limited duration, respect the terms of employment laid down in the collective agreement up to the end of its period of validity and, in the case of collective bargaining agreements of unlimited duration, for a period of one year.

It is to be noted that the solution provided for in paragraph 3 is modelled on Article 31 (C)(7) of the French Code du Travail, Book 1, as laid down in Law no 71-569 of 13 July 1971.

Article 4

The aim of this proposed Directive which is the maintenance of the employment relationship could be frustrated if the transferor or the transferee made such a transaction the occasion for the dismissal of workers. Under the laws in force in certain member States, this is already forbidden. In some Member States, however, the right of dismissal exists. In order that the maintenance of the employment relationship may not be jeopardized through dismissals on the part of the transferor or the transferee, Article 4 must also stipulate that mergers and takeovers as such do not constitute grounds for dismissal by the employer. It is only reasonable from our economic point of view, however, that the entrepreneur should be left free, following a merger or takeover, to carry out changes in organization and production, rationalization measures and the like in the undertakings or establishment acquired. This can be particularly important where the aim of the merger or takeover is to reorganize economically weak undertakings. Under such circumstances quantitative and qualitative changes may affect the workers in the firms concerned and dismissals of workers may prove to be unavoidable.

The second sentence of paragraph 1 states that the ban of dismissals does not apply to notice of dismissal which has to be given for pressing business reasons. The proposed Directive purposely avoids listing such business reasons. These reasons can vary so widely, depending on the circumstances surrounding each case, that to list them would only cause confusion. It is essentially a task for the legislator and the courts in the individual Member States to define the concept of a pressing business reason. It is, however, in line with the aims of this proposed Directive that the invoking of pressing business reasons as grounds for making dismissals should only be permissible when all the possibilities of finding a solution within the undertaking, such as posting to another

place of work or readaptation or retraining measures, have been exhausted. In this context, it can certainly be assumed that the procedure for information and consultation with the workers' representatives, which is provided for in Article 8 of the proposed Directive, offers a suitable framework for corresponding agreements between those concerned to solve the problems arising in this connection.

As regards mass dismissals, the Commission forwarded to the Council as long ago as November 1972 a proposed Directive on the amendment of existing laws, regulations and administrative provisions in Member States which provides for a consultation of workers' representatives, for the obligation to give notice in the event of mass dismissals and for intervention by public authorities.

The proposed Directive, in line with its limited objective, does not provide for any Community sanctions against unlawful dismissal but refers in paragraph 2 to the sanctions provided therefore in the laws, regulations and administrative provisions of the Member States. Such sanctions may include : invalidation of the notice of dismissal, cancellation of the notice of dismissal by a court or official body, a severance payment, claims for damages, etc. In some Member States, there is provision for compensation even where the dismissal is lawful. Paragraph 2 also stipulates that such compensation should not be excluded even in the event of notice of dismissal which has to be given for business reasons and which is thus admissible within the meaning of paragraph 1.

If the worker does not wish to continue the employment relationship with the transferee because a merger or takeover has led to some essential change in his terms of employment, it seems only fair, as provided for in Article 3, that the worker should be treated as if his dismissal was due to the action of his employer. The legal consequences involved, such as severance payment, compensation, etc., should again be prescribed by the laws, regulations and administrative provisions of the Member States. This arrangement corresponds in its essential to Article 30 of the draft Convention on international mergers of companies.

Article 5

This provision governs cases where a worker's place of work is changed because of a merger or takeover, by stating that Article 4 is applicable mutatis mutandis. This means that a change in the place of work is only permissible for pressing business reasons and that the worker can renounce the employment relationship in accordance with the third paragraph of Article 4 if this change in the place of work represents for him a fundamental change in his terms of employment.

This provision cannot, of course, apply if the worker is obliged under the terms of his contract of employment to comply with a request to change his place of work.

Article 6

This Article prescribes that the worker's length of service in the establishment or undertaking of the transferor shall be covered by the long-term protection of terms of employment. The legal implications of length of service are determined in accordance with the provisions of law and of the collective bargaining agreement applicable to the employment relationship and with the contract of employment.

These legal implications cannot therefore be enumerated in Article 6 itself. Length of service with the establishment or undertaking may determine, for example : the length of convalescent leave, special social benefits, longer period of notice, seniority bonuses, acquisition of pension rights under supplamentary social security schemes.

Article 7

This Article guarantees that the legal status and functions of workers' representatives are not affected by mergers or takeovers. The provisions covers any person, group of persons, or organization which, under the laws, regulations and administrative provisions of Member States or under to Community law, under collective bargaining agreements or in any other way, is required to protect the interests of workers vis-à-vis

the employer in the undertaking. Thus the proposed directive does not interfere here with existing national arrangements and structures of workers' representative bodies. However, the laws, regulations and administrative provisions of several Member States prescribe that in cases of changes in the composition of the body of workers new elections for the workers' representatives are to take place. Such a situation can arise, for example, where on the amalgamation of companies each of which had previously had a general works council, a combined general works council is to be formed for the new company. Paragraph 2 takes account of this special constitutional situation.

Article 8

The substantive provisions for the protection of workers' acquired rights need to be supplemented by procedural provisions guaranteeing that workers' representatives should be informed and consulted about the consequences of any merger, takeover or concentration. As regards mergers of companies within one and the same Member State, such provisions are already contained in the proposal for a third Directive on mergers of companies. The provisions in that proposed Directive could, to a great extent, serve as a model for this present legislation inasmuch as they disregard detailed aspects of companies.

The first aim is to oblige the transferor and the transferee to inform their respective workers'representatives fully and in good time about any changes envisaged. Particular care should be taken to explain the effects on the workers and the measures planned on their behalf.

There should also be provisions governing cases where the workers'representatives become convinced that the changes envisaged will be detrimental to the interests of the workers. In such cases the workers' representatives should have the opportunity of enteringinto negotiations with their employer in order to reach an agreement on the measures to be taken on the workers' behalf.

Lastly, it must be laid down what is to happen if the negotiations entered into at the request of the workers'representatives do not lead to any agreement. Then each party should have the right to ask for arbitration. The arbitration tribunal's decision on the measures to be taken on behalf of the workers shall be binding.

The setting up of the arbitration tribunal cannot be left entirely to be governed by national law. There must at least be a guarantee that the arbitration tribunal consists of persons genuinely conversant with the problems to be solved. Accordingly half the members must be from the employer's side and half from the representatives of the workers. The chairman will then be nominated jointly by the two parties. Only if they do not agree on this is the competent court of law to intervene.

The third paragraph lays down that the obligation to make an immediate pronouncement and the negotiation and arbitration procedures can neither prevent nor defer the implementation of the planned changes. However, the informing of workers' representatives provided for in the first paragraph must in every case precede the implementation of the changes.

Article 9

The supplementary social insurance schemes in individual Member States have not yet been made the subject of regulation by Community law. The problems such regulation raises go far beyond those arising from changes in company structure. Intthis context therefore Article 9 restricts itself to general principles.

Paragraph 1 deals with claims on supplementary social insurance schemes by workers whose employment relationship had already ended at the point of time in question. Such claims are most likely to be made under company pension schemes.

Where the assets from which current social benefits of former workers are to be paid, are transferred to the transferee justice requires that current social benefits continue to be paid by the transferer from the assets he has taken over.

This will in particular be so where a special social fund, whether with legal personality or not, is in existence and is itself made an object of the merger or takeover.

Conversely, the transferee cannot be expected to continue paying social benefits if the assets to cover them are not transferred to him. This may be the case with direct benefits.

At the same time it must be stressed that the arrangements in the proposed Directive are intended to have no more than subordinate force, and to apply only where the laws, regulations and administrative provisions of Member States do not provide for different arrangements. Where claims against the transferee in respect of current social benefits cannot be enforced, there is of course a danger that because of a lack of assets a worker who leaves will no longer be able to draw benefits. The authorities of the Member States are therefore required by paragraph 2 to adopt measures which they consider will ensure that such claims are met. One possibility, for example, might be a legal obligation to constitute a reserve to meet current social benefits in the case of a merger or takeover.

The situation is different with regard to the social benefits which workers who have not yet left expect to obtain from the supplementary social insurance schemes. Such expectations are part of the terms of employment and thus according to the general provisions of the proposed Directive become the responsability of the transferee. Article 6 emphasises that the length of a worker's employment for the purposes of supplementary social security benefits is to be recognized by the transferee.

Article 10

Paragraph 1 proceeds from the principle that the worker's place of work does not change as a result of the merger or takeover. In fact, after such changes in company structure, most establishments carry on as before. It is only logical, therefore, to provide that international mergers and takeovers should not in themselves constitute a reason for altering the applicable employment laws. Paragraph 1 makes this legal principle binding.

A different situation arises however, where the workers'terms of employment have changed in a manner permissible under the provisions of this draft Directive (Article 5). Consequently, international mergers and takeovers can be accompanied by a change in the applicable regulations on employment.

The following three practical cases should be mentioned here :

- the employee is legitimately posted to an establishment in another country.
- the whole of the undertaking which has been acquired or the production centres which have been acquired are moved to another Member State and the worker with them.
- the transferee wishes, where this is permissible, to conclude an agreement with the senior staff of the undertaking which he has taken over on the arrangements concerning the labour legislation which will apply to the undertaking's head office abroad.

In such cases a change in the arrangements that will apply is permissible in order to avoid excessive fragmentation of the rules covering conflict of laws, however, the proposed Directive dispenses with a detailed enumeration of the legal consequences, so that the general rules covering conflict of laws which at present are still those contained in national laws continue to be applicable. In this connection, however, attention is drawn to the proposal for a Council regulation on the conflict of laws to be applied in the Community in respect of employment relationships.

A change in the legislation during the period of employment relationship does not necessarily imply that the worker is willing to give up the rights which apply to him individually, whether on the basis of an explicit contractual agreement with the transferor or by tacit agreement or by virtue of established industrial practice. Paragraph 2, therefore, maintains these individual rights.

Article 11

Not every amalgamations has the legal effect of a merger or a takeover, where the distinctive feature is that a change of employer takes place. Amalgamations can, on the contrary, take place in such a way that the undertakings remain legally separate and the identity of the employer is unchanged. One undertaking simply acquires control over other undertakings by contract. From a legal point of view it would therefore be wrong to speak in such cases of a legal succession. In order to avoid such amalgamations taking effect outside the scope of the draft Directive by reason of their legal nature, they are dealt with in a separate Article.

Although in the case of such amalgamations the identity of the owner or employer is unchanged, the controlling undertaking can through its rights of control exercice considerable influence upon the form of the employment relationship in the controlled undertaking, possibly with adverse effects on the workers' terms of employment.

Thus, as in cases mergers and takeovers, the worker is in need of protection. However, since the legal identity of the employer remains unchanged the legal consequences connected with a change of employer cannot arise. Article 11 states that only those provisions of the proposed Directive shall apply which have as their object the protection of employees from unlawful dismissal or an important change in their terms of employment and that the procedure laid down in Article 8 for informing, consulting and negotiating with the workers shall be applicable. The proposed Directive does not attempt to provide its own definition of the concept of control, and refers to Article 2 of proposal for a Council Regulation on control of concentrations.

Article 12

The proposed Directive is intended to provide only minimum protection for workers in the case of mergers, takeovers or concentrations. For this reason Article 12 makes it clear that any laws, regulations and administrative provisions in the Member States which are more favourable shall continue to be applicable.

Articles 13 and 14

These Articles contain the necessary implementing provisions.

II

*(Preparatory Acts)*

# COMMISSION

## Proposal for a Council Directive on the harmonization of the legislation of Member States on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations

*(Submitted to the Council by the Commission on 31 May 1974)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the establishment of a single market for all products and the free movement of persons and means of production within the Community has not resulted merely in an enlarged market for European undertakings and keener competition in the markets of the Member States, but the economic union thus established has compelled undertakings to alter their structures, methods and size in order to adjust to the new demands of the common market, more particularly by way of merger, concentration or rationalization;

Whereas while the Community is required by Article 2 of the Treaty 'by establishing a common market and progressively approximating the economic policies of Member States to promote throughout the Community a harmonious development of economic activities', it is also thereby required to promote 'an accelerated raising of the standard of living', and whereas moreover the Member States in Article 117 of the Treaty 'agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'. This harmonization being made possible by 'an approximation of provisions laid down by law, regulation or administrative action';

Whereas the Council has not only reaffirmed this purpose in its Resolution of 21 January 1974 [1] on a Social Action Programme, but voiced the political will to adopt the measures needed to achieve it;

Whereas changes in undertakings' structure are not in line with this purpose, but on the contrary adversely affect conditions for workers on and off the job, more especially as regards preservation of the workers entitlements and benefits, and whereas the same problems arise irrespective of the precise form of the takeover;

Whereas it is accordingly necessary that action be taken at Community level to safeguard workers in the event of changes in undertakings' structure so as to afford them as far as possible stability and security of employment and preservation of working conditions and entitlements previously enjoyed whether on the basis of individual contract or

[1] OJ No C 13, 12. 2. 1974.

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collective-bargaining agreements, practices commonly admitted, and specific arrangements in force in undertakings;

Whereas workers must likewise be safeguarded where the merger or transfer is effected in the territory of the Community and the acquirer is a person or undertaking situate in the territory of a third State;

Whereas it is essential that the employees of the undertakings in question be notified of and consulted on the consequences of the operation in so far as they are concerned; whereas it is also necessary to provide an adequate negotiating procedure;

Whereas such action to promote improvements for workers can come only through a harmonization of provisions laid down by laws, regulations and administrative action in Member States on the protection of workers in the event of changes in the structure of the undertaking,

HAS ISSUED THIS DIRECTIVE:

CHAPTER 1

**General provisions**

*Article 1*

This Directive shall apply to any

— merger between companies or firms, as these are defined by the second paragraph of Article 58 of the Treaty, which is authorized by the laws, regulations and administrative positions of Member States or by Community law and which has the result that another company replaces a hitherto existing company in its capacity as employer.

— takeover where individual businesses, places of production, subsidiary businesses or other organized work units or parts of the same are transferred from a person, a group of persons or an undertaking to another person, group of persons or undertaking in such a way that the latter replace the previous employer in his capacity as employer,

irrespective of whether such merger or takeover is effected between undertakings in the territory of one or more Member States or it is effected between undertakings in the territory of Member States and undertakings in third countries.

*Article 2*

For the purpose of this Directive, a transferor is any natural or legal person or group of persons that ceases to be an employer under one of the procedures referred to in Article 1. A transferee is any natural or legal person or group of persons that replaces the transferor.

CHAPTER 2

**Automatic transfer of employment relationship**

*Article 3*

1. The employment relationship entered into by the transferor shall be automatically transferred to the transferee with all rights and obligations. This also applies to rights and obligations arising from customary industrial practice. Any declaration on the part of the transferor or the transferee intended to exclude or limit the transfer of the employment relationships shall not be legally valid.

2. Where the rights and obligations arising from the employment relationship are based on plant or company agreements concluded by the transferor, these rights and obligations shall be automatically transferred to the transferee.

3. Where the transferee is not bound by the same trade association's collective bargaining agreement as the transferor, the transferee shall nevertheless, in the case of collective bargaining agreements of limited duration, respect the terms of employment laid down in the collective agreement concluded by the transferor up to the end of its period of validity, and in the case of collective bargaining agreements of unlimited duration, for a period of one year from the date of his entry into the employment relationship. The preceding sentence shall not be applicable when the transferee is bound by another collective bargaining agreement which also covers the undertakings that have been transferred.

*Article 4*

1. Mergers and takeovers shall not constitute in themselves a reason for termination of the

employment relationship on the part of the transferor or the transferee. This shall not apply to dismissals made in connection with mergers and takeovers necessitated by pressing business reasons.

2. The legal consequences of a dismissal prohibited by paragraph 1 of this Article shall be decided according to the laws, regulations and administrative provisions of the Member States. This shall not affect compensation and other legal requirements which the laws, regulations and administrative provisions of the Member States prescribe for dismissals.

3. Where a labour contract has been terminated by the worker because a merger of companies or a transfer of undertakings has brought about a substantial change in his working conditions, such a termination shall be deemed to be due to the action of the employer.

*Article 5*

Article 4 shall apply analogously to transfers of workers from one undertaking to another which are the consequences of mergers and takeovers. It shall not apply, however, where the worker, as a result of his employment contract, is bound to accept transfer to another undertaking.

*Article 6*

The worker's length of service with an undertaking or company due to his employment relationship with the transferer shall be taken fully into account in his relationship with the transferee.

CHAPTER 3

**Workers' representation and consultation**

*Article 7*

1. The function and legal status of bodies representing workers which at the time of the merger or takeover were responsible for defending workers' interests shall not be affected by the merger or takeover.

2. Paragraph 1 of this Article shall not apply where changes in the composition of the body of workers resulting from the laws, regulations and administrative provisions in the Member States or Community law necessitate the holding of new elections for the workers' representatives.

*Article 8*

Save for the operations mentioned in Council Directive No ..... of .....[1], the following procedure shall be applicable to the other operations provided for under Articles 1 and 11 of this Directive:

1. The transferor and the transferee shall be required, before carrying out the projected operation, to inform the representatives of their respective workers, within the meaning of Article 7, of the reasons that led them to consider such an operation and also of the legal, economic and social consequences it entails for the workers; they shall, moreover, indicate what measures are to be taken in relation to the workers. If the workers' representatives so request, a discussion shall take place immediately on the content of this information.

2. At the request of the workers' representatives who consider that the operation is likely to be prejudicial to the interests of the workers, the transferor and the transferee shall be required to enter into negotiations with the representatives of their workers with a view to reaching agreement on such measures as should be taken in relation to the workers.

   If negotiations fail to secure agreement between the parties within two months, each of them may refer the matter to an arbitration board which shall give a binding decision as to what measures shall be taken for the benefit of the workers. This arbitration board shall consist of a number of assessors of whom half shall be nominated by the employer concerned and the other half by the representatives of the workers and a president nominated by common consent by the two parties in question, or failing that by the competent court.

3. The obligation to hold immediate discussions in paragraph 1 and the negotiation and arbitration procedures contained in paragraph 2 are not to prejudice the operation.

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[1] OJ No C 89, 14. 7. 1970.

CHAPTER 4

**Claims under supplemental occupational pensions and related benefit schemes**

*Article 9*

1. Claims under supplemental occupational pensions and related benefit schemes by workers who, at the time of the merger or takeover, had already withdrawn from the employment relationship, may, in so far as the laws, regulations and administrative provisions in the Member States do not lay down at least equivalent rules, be made against the transferee, where the body of assets out of which such claims are to be met is also transferred to the transferee.

2. Where the body of assets out of which claims under supplemental occupational pensions and related benefit schemes are to be met is not transferred to the transferee, the Member States shall take appropriate legislative measures to ensure that the claims of former workers are met.

3. Entitlement to benefits from the supplemental occupational pensions and related benefit schemes for workers whose employment relationship had not yet ended at the time of the merger or takeover shall be determined by Article 6.

CHAPTER 5

**Special rules governing conflicts of law**

*Article 10*

1. The labour laws of a Member State which are applicable to employment relationships prior to the merger or takeover shall also apply after the merger or takeover has taken place.

2. Paragraph 1 of this Article shall not apply where the place of work of the employee is transferred in a valid manner to another Member State or where the application of another body of labour law is concluded with the employee in a valid manner. Rights which were explicitly or implicitly included in the employment contract or which result from customary industrial practice shall, however, remain unaffected.

CHAPTER 6

**Concentrations between undertakings**

*Article 11*

Articles 4, 5 and 8 of this Directive shall also apply in cases of concentration between undertakings as laid down in Article 2 of Council Regulation No ..... of ..... [1] on the control of concentrations, irrespective of whether the concentration involves undertakings in the territory of one or more Member States, or undertakings in the territory of Member States and undertakings in third countries.

CHAPTER 7

**Final provisions**

*Article 12*

Laws, regulations and administrative provisions of Member States which are more favourable to employees or their representatives than provided for in this Directive shall be neither repealed nor restricted by the provisions of this Directive.

*Article 13*

1. Member States shall adopt the measures necessary to comply with this Directive within 12 months of its notifications and shall forthwith inform the Commission thereof.

2. The Governments of the Member States shall communicate to the Commission the contents of, and the grounds for, any projected legislation in the field covered by the present Directive. This information shall be provided at least six months before the projected legislation in question is due to take effect.

*Article 14*

This Directive is addressed to the Member States.

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[1] OJ No C 92, 31. 10. 1973, p. 1.