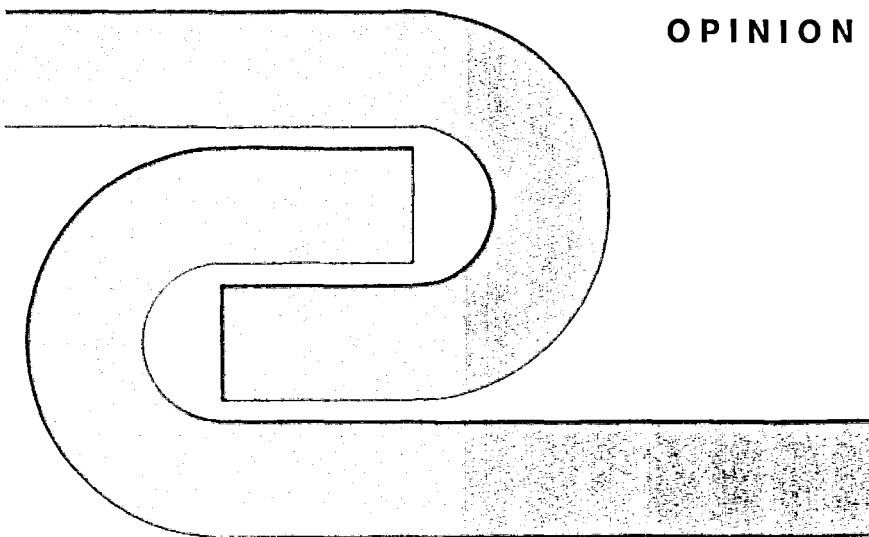


ECONOMIC AND SOCIAL COMMITTEE  
OF THE EUROPEAN COMMUNITIES

# EMPLOYEE PARTICIPATION AND COMPANY STRUCTURE

OPINION



Brussels 1978

The European Communities' Economic and Social Committee, chaired by Mr Basil de FERRANTI, approved this opinion at its 155th Plenary Session, which was held on 1 and 2 February 1978.

The preliminary work was done by the Sub-Committee on the Green Paper and the Rapporteur was Mr John CARROLL.

ECONOMIC AND SOCIAL COMMITTEE  
OF THE EUROPEAN COMMUNITIES

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AND COMPANY STRUCTURE

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## INTRODUCTION

As part of the work on the establishment of a Community-wide company law, the Economic and Social Committee delivered an Opinion some years ago on the proposed statute for the European company and the proposed alignment of company structures, with special reference to the company bodies on which workers' representatives sit in some countries.

These proposals triggered off lengthy discussions and revealed deep differences of opinion on the approach planned by the Commission in its proposals.

This was why the Commission thought it would be useful to draft a Green Paper on worker participation and company structure in the Community, with a view to arriving at a solution which made greater allowance for the historical traditions of the social situations in Member States and the trends discernible in company structure.

The Committee discussed this Green Paper within the confines of a specially appointed Sub-Committee in 1976 and 1977 and finally adopted an Opinion at its Plenary Session on 2 February 1978. This Opinion is reprinted in this brochure.

In view of the importance of worker participation, it was felt necessary to publish not only the Committee's Opinion but also the Sub-Committee's Report, which sets out in greater detail the differences of opinion and the points on which views coincided.

It was also felt, by way of exception, that the particularly controversial nature of the topic made it necessary to include in the dossier the main views emerging during the Plenary Session debate preceding the vote and the statements made at the Plenary Session by Viscount DAVIGNON, the Commissioner responsible for the Green Paper.

A. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE ON EMPLOYEE PARTICIPATION AND COMPANY STRUCTURE

The Committee is pleased that the Commission intends in its approach to company law harmonization to take more account of the existing law and current practices in the Member States, so that it can make the future Directive on the structure of companies in the European Community more flexible.

General agreement has been reached within the Committee that employee participation in the broadest sense of the term is a desirable development in a democratic society.

Accordingly, the Committee would repeat the view expressed in its Opinion of 25 October 1972 on the proposed European Company Statute and endorsed in its Opinion of 29 May 1974, that: "Workers must be given a possibility of collective representation of their interests in the firm and must be afforded a say in certain of the firm's decisions but without detriment to the responsibility and effectiveness of the firm's management".

However, owing to different political, historical and ideological backgrounds, participation has not followed exactly the same pattern or reached the same stage of development in all Member States.



Hence, although in all Member States there has been a general movement towards the development of participation, genuine differences of experience and opinion exist within the Committee.

The Committee therefore considers that this is an issue, like many others, on which one must not seek instant uniformity. On the other hand, one must take care not to obstruct developments which tend towards harmonization. The priority in fact should be to remove obstacles to a harmonization between the systems and policies in the area. Above all, the issue of participation should be treated in a down-to-earth and practical fashion.

Whatever Community rules are decided upon, they must safeguard the rights which employees have already acquired and must seek to remove any obstacles to employee participation. Furthermore, they must avoid rigidity, which would only hinder positive trends.

In conclusion, the Committee would say that the only conceivable Community provisions on participation are flexible ones. The Directive thus might make provision for two practical measures to sustain the movement towards convergence. The first would be the introduction of the two-tier board system as an option in Member States where it is not available at present. The second would be the setting up in large companies which do not have employee representation of the board of a special body on which the employees

are represented and have minimum rights of information and consultation. The rights of employees ought to be more or less comparable under both systems.

Besides the agreement on the above points, there remain also differences of opinion within the Committee about certain precise objectives and the means of achieving them. The Committee would, therefore, refer the reader to the Report of its Sub-Committee on the Green Paper, where both the areas of agreement and the differences of opinion are set out.

B. REPORT OF THE SUB-COMMITTEE ON THE GREEN PAPER

In submitting its Green Paper on Employee Participation (\*) and Company Structure in the European Community, the Commission hopes to bring about a "constructive debate which will enable the Community Institutions to find solutions which can be accepted by a broad majority of those concerned".

In the Commission's Opinion, the debate on the draft Statute of a European Company and the draft Fifth Directive on the structure of public limited companies showed that the

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(\*) The Green Paper on Employee Participation and Company Structure in the European Community was drafted in English. The original English text uses the term "participation" as the general term for all types of participation by employees and trade unions. "Participation" was rendered correctly in all the Community languages except for German. The German version incorrectly rendered "participation" by "Mitbestimmung", a term which, at least in trade union usage, has a narrowly defined meaning. This caused a certain amount of confusion in the discussion. In the German version of this Report, the English term "participation" will be translated by the general term "Mitwirkung". This term embraces all forms of employee involvement in economic and social decision-making, and includes the specific form of participation designated in German by "Mitbestimmung" (in English "co-determination"), under which employees have an equal say in economic and social decision-making.

Commission's original plans, particularly as regards the internal structure of companies and employee participation, could not be put into effect immediately because they did not make sufficient allowance for the different traditions, social trends and systems of industrial relations in the Member States. The Commission had become increasingly aware of the difficulties which would be occasioned by a sudden change-over from existing systems to a more uniform system. It had come to the conclusion that the law and practice now existing in the Member States would have to be taken more into consideration and a more thorough examination made of the solutions which might be feasible at various levels. It had also become clear to the Commission that appropriate transitional arrangements would have to be devised and that the system as originally planned would have to be made more flexible.

The Sub-Committee welcomes the Commission's publication of a Green Paper in order to stimulate a broad discussion, and considers this to be a good way of looking for more flexible solutions.

It considers that employee participation in the broadest sense of the term is a desirable development in a democratic society.

But opinions are divided as to the objects of the discussion. Some members maintain that the object should

be the introduction of a Community system of company law, others that it should be the creation of a Community legal framework for companies leaving the Member States completely free to fill it out as they wish.

The Sub-Committee endorses the following statement made by the Commission : "In this field as in others... the goal is not instant uniformity for uniformity's sake, nor is it desired to place a restraint on positive developments which are in progress in certain countries. The objective is the gradual removal of unacceptable degrees of divergence between the structures and policies of the Member States".

#### 1. Company Structure

The Commission's basic argument in support of its proposals has not changed : "At the present time... companies are incorporated under the separate laws of the nine Member States. There are substantial differences between these national laws, relating in particular, to the internal structure of companies, the powers of directors, the rights of shareholders and of the employees. This situation constitutes a real barrier to cross-frontier activities, both for those who might deal with a company and for the companies themselves".

In its draft Statute of a European Company and its draft Fifth Directive on the structure of public limited companies, the Commission proposed a two-tier board structure for public companies. In addition to the shareholders' meeting, there would be a Management Board, responsible for the day-to-day running of the company, and a Supervisory Board, which would appoint the Management Board and supervise its activities. This system, which is already working successfully in some of the Member States, was to take the place, in the remaining Member States, of the unitary or classic system, under which there is only one governing body in addition to the shareholders' meeting.

In its Green Paper, the Commission reiterates its belief that the two-tier system such as already exists in some Member States is the best system from the point of view of both satisfying the requirements of the large, modern company or group of companies and answering the need for public accountability. The Commission considers that its view is borne out by the emergence, even within the unitary system, of a division of roles corresponding to the division formalized in the two-tier system. In the Commission's view, however, in today's large companies and groups of companies whose capital is often widely dispersed and which frequently employ a large workforce spread over numerous establishments, formal separation of roles between a management and a supervisory body is a surer way of achieving effective supervision of management in the interests of both shareholders and workers.

The Commission admits, however, that "one has to recognize the difficulty that there would be for those States, with strong industrial and commercial traditions, all of whose companies have one-board systems, to introduce with immediate application, a reform of such importance. The fact that the reluctance of those concerned may be attributable more to fears deriving from their present lack of knowledge of the system proposed than to any actual disadvantages of the system, does not substantially alter the difficulty confronting governments".

## 2. Employee Participation

In its Green Paper, the Commission attempts to analyze the complex systems of relations in the Member States between employers and workers or their respective associations and trade unions, which bear the stamp of different historical backgrounds and social conditions. the Commission comes to the conclusion that these systems of relations, whose various elements are interdependent and complement one another, may produce the same effect, viz. "...what is achieved by one approach in one country or enterprise may on occasion be achieved by another approach elsewhere".

The immediate motive behind the Commission's proposals to strengthen the position of employees in companies' decision-making machinery must be seen in the desire to align

the different systems of industrial relations in the Member States so as to remove the barriers to intra-Community movements of companies, capital and labour. Therefore, the Subcommittee would like to emphasize the more general argument supporting the Commission's proposals, namely "the increasing recognition being given to the democratic imperative that those who will be substantially affected by decisions made by social and political institutions must be involved in the making of those decisions".

Later on, the Commission states that "the enterprise, being an institution in which fundamental decisions are taken, cannot escape this reorganization of the relationships between those who have the power to make decisions and those who must carry them out".

Finally, the Commission observes that employee participation in company decision-making will not be without an impact on other decision-making processes : "... an important part of the attractiveness of employee participation in company boards is that such participation appears to have a generally positive effect on the other forms of employee participation existing in relation to the companies in question".

"For the Commission, the overall objective, if not the specific approaches of the proposal for a Fifth Directive, remain valid and reasonably realistic, namely, employee



representation, not merely presence in a consultative capacity, on the supervisory bodies of public companies. The task is to bring about a situation which will permit the introduction, in all the Member States, of such employee representation, while making proper allowance for their divergent social traditions".

Against the background of these arguments - about which there are of course different points of view in the Sub-Committee we must now begin by examining the aims, elements and levels of participation as well as its legal framework in order to obtain a clear idea of the issues involved.

#### Aims of Participation

The Sub-Committee is in agreement on a number of objectives which employee participation should help to achieve :

- safeguarding the dignity and sense of responsibility of people at work;
- lessening the strain of work and improvement of working conditions;
- prevention of industrial accidents and diseases;
- improvement of the social, personnel and training policies of companies;

- reduction of conflict within companies;
- increasing company efficiency and competitiveness;
- protection of the environment and improvement of living conditions.

Opinions are divided, however, about those participation aims which involve giving employees an equal say in economic and social decision-making.

Some members stress the purpose participation can serve in keeping a check on economic power. The growing concentration of capital and industry is putting more and more economic, social, and political power into the hands of large firms and groups of companies. The persons running these firms not only take the decisions on investment, production and sales, they also determine, through these decisions, the regional and sector-by-sector distribution of production and jobs and lay down working conditions and productivity levels in plants. In these members' view, this situation calls for comprehensive democratization of the economy (\*).

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(\*) We are using the term "democratization of the economy" in a wide sense, not in the specific sense this term has acquired in Denmark, where it refers to a national fund for enabling employees to acquire holdings in forms.

Other members reject this view, stressing that the decisions of large undertakings are subject to a lot of constraints, arising, for example, from the general economic climate and from competition policy, which affect decisions on investment, plant location and marketing. These plus other factors already constitute an effective check on economic power. These members consider that employee participation should not detract from the responsibility and willingness to take risks which are part and parcel of the use of capital for productive purposes. Companies must continue to have effective decision-making machinery leaving the ultimate responsibility for the company's efficiency and competitiveness with management.

However, some members consider that worker participation and effective decision-making structures are by no means mutually exclusive. The survival and economic success of a firm are as important to the workers, whose chief interest is the maintenance and security of their jobs, as they are to the shareholders, who are primarily interested in the return of their capital.

These members consider that the clash of interests between a firm's shareholders on the one hand and its employees on the other, which stems from the employees' wish

to raise their living standards and to humanize their working conditions and the shareholders' interest in profitability and competitiveness, must be solved some way or other, at greater or lesser expense, in all systems. Therefore employee participation, irrespective of the form it assumes (provided that it takes account of the wishes of all the parties concerned), can go a long way towards settling such conflicts and reconciling in an optimum manner the interests of employees, shareholders and the community at large.

#### Elements of Participation

The participation of workers and their representatives comprises several different elements, namely rights of information, consultation, representation and codetermination.

Rights of information about the company's position and progress and about the management's plans exist to a greater or lesser extent in fact or in law, in all the Member States. They form the basis for an effective consultation or codetermination of the workers and their representatives.

Rights of consultation have been granted to workers and their representatives in the Member States through machinery of various types and at various levels. These rights may increase the workers' say in social and economic decisions and bring conflicts of interest between workers and employers more into the open. But they do not create equality between employers and workers. Therefore, some members believe that they are not sufficient to ensure that, in the settlement of conflicts, the same consideration is given to workers' and shareholders' interests.

Rights of representation are exercised in the Member States through machinery of various types and at various levels either by statutory worker representatives elected by all the employees or by trade union representatives elected only by members of the union. It is only possible to exercise these rights effectively, however, insofar as the statutory or trade union worker representatives enjoy, in fact or in law, rights of information and consultation. Rights of information and consultation are automatic where the employee representatives sit on the decision-making bodies of plants and companies and of State bodies.

Rights of codetermination - at plant and company level - mean that economic and social decisions which have a bearing on the interests of the workers cannot be forced through against the will of the workers and their representatives. Such rights are based either on arrangements whereby the employees' representative machinery must approve decisions before they can become effective or on arrangements whereby employee representatives sit on the decision-making bodies where they have voting parity with shareholders' representatives. Some members believe that such rights of codetermination are the only guarantee of a balance between the interests of employers and those of workers.

#### Levels of Participation

Although the Commission's Green Paper discusses various means of participation - through collective bargaining, representation on bodies at plant and company level and participation in the firm's capital - the suggestions it makes are confined to board structure and employee participation within that structure.

Some members consider this approach to be expedient in that it is making a start on a major area of employer-employee relations.

However, other members would point to the fact that, with this approach, one is apt to forget that the individual elements of Members States' systems of worker participation at different levels, which vary in their prominence in the system as a whole, are interdependent and complement one another. Whereas the workers in some Member States are more interested in greater institutional participation in plants and companies, workers in other Member States have made it their main aim to secure greater bargaining power for the trade unions.

These members further point out that the regional, structural, national and international problems of economic and social policy have become central interests of workers and their trade unions in all Member States. An effective system of worker participation must take in these issues too (for instance in Economic and Social Councils).

#### The Machinery of Participation

This machinery has evolved differently in the Member States according to historical background and social conditions. In some Member States, works-level trade union machinery carries out the functions which works councils and enterprise councils perform in other countries. The structure and

terms of reference of works and enterprise councils differ from one Member State to the next. In some Member States, employee representatives on supervisory boards and boards of directors and "labour" (i.e. personnel/industrial relations) directors hold a prominent position; in others, such arrangements are non-existent. In some Member States the unions and also the employers' associations, try to exert influence on legislation and administration through informal channels. In others, this influence tends to be exercised through formal arrangements, for example, economic and social councils. In some Member States collective bargaining is mainly at company level; in others it is predominantly conducted on a sectoral, regional or national basis with the employers' associations.

In these circumstances, it seems advisable that Community provisions on company structure and employee participation at board level should be made flexible enough to allow the Member States to cater for their specific historical traditions and social conditions.

#### Legal Framework for Participation

The legal framework for employee participation can be municipal and Community law, possibly also international



treaties, and collective agreements at plant, regional, national and possibly also Community and multinational levels.

The Community is called upon to provide in EEC legislation a framework for participation which is to be filled out by national legislation. At the same time it must take care that this framework is not undermined by international treaties entered into by Member State governments - as in the case of the agreement on cross-frontier mergers.

Some members consider that worker participation should also be extended on the basis of plant-level, regional and national collective agreements. In some Member States, however, this would require amendment of the law governing collective agreements.

In some of these members' view, the increase in the number of multinationals also calls for more extensive, uniform participation rights to be established by means of EEC and multinational collective agreements.

Other members are opposed to employees' rights of participation being negotiated in collective bargaining. They consider that collective bargaining should be reserved

for negotiation of wages and salaries, working conditions and social benefits. In their opinion, collective agreements do not have the attributes of usual sources of company law, if only because of the conditions under which they are negotiated and implemented in some Member States, which sometimes involve a relationship based on force.

Although, recently, collective agreements in some Member States have, for reasons connected with the economic and employment situations, embraced company investment, this is not to be equated with employee participation in company decision-making. Such cases are, moreover, restricted to Member States where unions refuse to share in responsibility for the running of companies.

### 3. Approximation of Company Law

A convergence of employees' means of exerting influence is already observable in the Member States even without action by the Community. This convergence is explained by the similarity of their economic, social and labour relations problems, which tend to prompt roughly similar solutions.

With the growing interpenetration of the Member States' economies, some members see convergence of company law as one of the key conditions for the creation of a genuine Common Market, a process which requires the active support of the Community. These members are in favour of a Directive on the approximation of company law laying down the structure of companies and prescribing employee representation at board level. In this way the Community could help bring about a convergence between the different systems.

Other members, who are also in favour of employees being given more extensive rights of participation, consider the question of the type of legal instrument by which company law is to be approximated in the EEC to be of subordinate importance.

They take the view that while company law approximation is necessary and is indeed one of the key conditions for the creation of the Common Market, the issue of employee participation should not be strictly tied or subordinated to it. Participation should be treated as a separate issue, although any moves in the area of participation should, of course, take place in parallel with the company law approximation. The main thing is that the participation issue should be handled in a down-to-earth and practical fashion.

Another group of members are opposed to a Directive laying down a uniform structure for companies in all Member States and setting minimum standards for employee representation on boards. They cannot see any need to impose a uniform structure; the different structures now in use have proved themselves. As for introduction of minimum standards for employee representation on boards, they would oppose this at the present juncture since, in some Member States, employee representation at this level is not a practical proposition in present circumstances.

If the Community should nevertheless decide to prescribe employee representation at board level by means of a Directive, the legal framework therefor should in some members' view, be the outcome of an objective choice from among the provisions of national and Community law and collective agreements now in force.

Hence, the Sub-Committee agrees with the Commission when it says that the future Community law must be founded on convergence. It must, however, make appropriate allowance for the differences in corporate structure and employee participation arising from different economic and social backgrounds in the Member States.

Some members consider that a Community instrument requiring introduction of a two-tier board structure and employee representation at board level must allow a transitional period of up to ten years.

Other members cannot go along with this view insofar as it involves deciding now on arrangements that would enter into force after a long transitional period. It appears to them a rather unrealistic way of going about things, in that a participation of employee representatives on company boards can only be contemplated once certain conditions are fulfilled, and it is impossible to foresee at the time of the decision on the instrument whether those conditions will be fulfilled by the end of a transitional period.

Other members, who are eager to align the content of employee participation, but do not wish to commit themselves now to a two-tier board structure, think that the Community provisions should be designed for a limited period (say, four years) and later reviewed in the light of the progress made in the individual Member States towards alignment of the different systems.

#### Company Structure

Some members take the view that link-ups between companies in different Member States, particularly with a

view to mergers, are impossible unless all the Member States have the same system of company law. Without this, companies are forced to resort to forms of holding company or other structures of varying suitability. Approximation of company law is necessary also to bring about free movement of capital and to stimulate investment.

Some of these members would see the main argument for approximation of company law not in economic or fiscal policy considerations, but in the possibility it would open up for workers to supervise the decisions of groups of companies located in a number of different Member States.

Another group of members wonders whether approximation of company law is necessary to foster inter-company cooperation in the Community. They maintain that experience shows cross-frontier cooperation to be possible despite the existence of differing bodies of company law in the Community. They consider that intercompany cooperation in the Community is impeded not by the differences in company law, but by other factors, principally divergences in the taxation field. As

the failure to approximate company law is not the main obstacle preventing the creation of a genuine Common Market, the most that can be said, they argue, is that cooperation between companies in the Community could be facilitated if the companies desirous of such cooperation had the same structure. They further contend that supervision of company decision-making can be arranged just as well in the unitary system as in the two-tier system. However, where board-level employee representation is anyhow required or planned, they feel that, generally speaking, the two-tier system is preferable since employee representatives can be integrated better in a supervisory board than on a traditional Board of directors.

Some members refer in this connection to the Committee's Opinion of 25 October 1972 on the draft Statute of a European Company, in which the Committee endorsed the proposed separation of the function of supervision, exercised by the supervisory board, and the responsibility for management exercised by the management board : "A sharp separation of the management and supervision functions will make the responsibilities of each body crystal-clear, and will be beneficial to the company both internally and externally. The Committee hopes that this arrangement will provide a further stimulus for harmonization of national company law on the same lines".

Other members, though not disagreeing, consider that a number of practical and psychological difficulties would arise in the event of the two-tier system being imposed immediately on all public limited companies in the Member States. They would refer to the Economic and Social Committee's Opinion of 29 May 1974 on the draft Fifth Directive on the structure of public limited companies, in which the Committee came to the conclusion, after considering all aspects, that it was premature to impose a uniform structure on all public companies in the Community : "The two systems for managing such companies at present employed in the Community have proved themselves in practice and in the Committee's view they also afford the possibility of equivalent protection to shareholders and others".

Still other members are fundamentally opposed to a Community-wide approximation of company law. They consider that Member States which have a unitary system and find it works satisfactorily should be allowed to keep it.

These views may have prompted the Commission to suggest in the Green Paper a number of possible flexible solutions though without changing the aim of general introduction of the two-tier system.

Some members support the Commission's proposal to prescribe the two-tier board structure for all public companies of a certain size in the Community, after a transitional



period. Though they can accept this requirement initially being restricted to public companies, these members consider that it should be extended as soon as possible to cover other companies over a certain size.

Other members, however, consider that both the two-tier system and the unitary system have proved effective, but they would have no objection to the two-tier system being made an option for companies in countries where the present law provides for a unitary system.

They would again refer to the Economic and Social Committee's Opinion on the draft Fifth Directive on the structure of public limited companies : "In the interests of harmonization... the Committee feels that a compromise would be the best answer. It suggests that the two-tier system be made available to companies in Member States which at present only have the classic system, in other words that the two-tier system be provided for in the company law of all Member States, but that Member States at present employing the classic system be allowed to keep it alongside the two-tier system. In this way companies in these countries would have a choice between the two systems".

#### Employee Participation

In all the Member States there is a large body of laws and collective agreements which assigns to employees and

their representatives certain rights of participation enabling them in varying degrees to influence corporate decisions.

Some members would agree to the scope of the rights and obligations of employees and employers within a company being aligned - insofar as such alignment is necessary for the proper operation of the Common Market - by creating a common basis for the exercise of influence by employees on decisions affecting their jobs, their safety and their working and living conditions in general.

Other members, however, consider that workers' participation rights, which bring about a better balance between the influence of management and employees, should be extended on a Community-wide basis to enable the employees to exert a stronger influence on management decision-making over a wider field.

This can be done by extending the powers of the employees' representatives into the sphere of management decisions of an economic nature and encouraging the development of those powers into rights of approval or veto, and by giving the employees a say in determining the composition of the management or supervisory body of the company.

Here the Sub-Committee would quote from the Economic and Social Committee's Opinion of 24 October 1972 on the draft Statute of a European Company, where the Committee said that : "workers must be given a possibility of collective representation of their interests in the firm and must be afforded a say in certain of the firm's decisions, but without detriment to the responsibility and effectiveness of the firm's management". This statement, reiterated in the Committee's Opinion of 29 May 1974 on the draft Fifth Directive on the structure of public limited companies is still valid today in this general form.

However, the Economic and Social Committee did not feel able in those Opinions to come down one way or the other on the question of employee representation at board level. And even now, although the general discussion on industrial democracy has come a long way since then in all Member States, differences of opinion between Member States and between the different social groupings about the form and extent of employee participation still remain.

Some members want employee representatives to have the same number of seats and votes on company boards (either on the supervisory board in a two-tier structure or on the unitary board) as shareholders' representatives. By the end of the transitional period, this employee-shareholder

parity on the one or other type of board must have been introduced in companies in all Member States. Besides the equal numbers of representatives of employees and shareholders, one or more independent members could be appointed to the board, up to a maximum of 1/3 of the total membership. This can be represented by the formula  $2x + y$ , where  $y$  is never bigger than  $x$ .

Other members can accept a form of employee representation at board level which does not detract from the authority of shareholders' representatives, such as the one-third representation put forward by the Commission as one alternative in its draft Fifth Directive. Other members again favour the system employed in the Netherlands, which was proposed as a further alternative by the Commission in the draft Fifth Directive. Under this system, the members of the supervisory board are appointed by the supervisory board itself. The shareholders' meeting and the employee representatives merely have the right under certain conditions to object to a nominee.

Yet another group of members takes the view that employee representation at board level is not a solution that can be applied everywhere in the Community. The system of worker participation adopted will have to take

account of the particular system of labour relations and should therefore be left to the discretion of the Member States. Where, however, employers and employees are seeking employee representation at board level, or where this is already practised, it must on no account jeopardize the authority of the shareholders' representatives. Any other course would entail profound dangers for workers, companies, and indeed for the whole national economies of Member States, based as they are on the principles of the free market and free movement of capital, companies and labour, freedom of establishment and free enterprise.

If the Community does decide to follow the Commission's proposal and lay down Community-wide provisions for worker participation, these provisions must, in view of the differences of opinion there are between the social groupings, be sufficiently flexible. Indeed, because of the big differences between the Member States' systems of participation, the Community provisions can be no more than a framework, laying down (a) the goals to be aimed at and (b) minimum rules which leave scope for due account to be taken of the different traditions, social trends and industrial relations systems in the Member States. The important thing is to prevent any further divergence between the

participation rights of employees and their representatives in the different countries and to open up possibilities which lead to a convergence between the different systems.

Community provisions for workers' participation must take account of the following :

a) Employees' Right to Choose

Some members take the view that employees in Member States that do not have employee representation on the board, or do not want it, must have the right to refuse such representation indefinitely. The rule to this effect could be modelled on that in the amended draft Statute of a European Company.

Other members are afraid that if Member States had divergent rules, this would lead to discrimination between companies and to a danger of companies moving to another country where the rules were less stringent. They are therefore opposed to employees having unlimited freedom of choice. In their opinion, it would be enough to say that the purpose of the Community provisions was to open up

the possibility - where the general circumstances so permitted - for firms in Member States which did not have statutory employee representation on company boards to seek new forms of participation on the lines of the proposals put forward in the Green Paper.

b) More Far-reaching Provisions

Some members consider that employees who, either through national legislation or through collective agreements, secure more far-reaching participation rights than the minimum prescribed in the Community provisions - either in the form of equal representation on company boards or participation in the company's capital - must not be prevented from exercising such rights by the Community's provisions.

Some of these members are not interested in employee representation on any governing body whatsoever of the company if it is a minority representation. Instead of a minority representation they would much rather see the facilities, information rights and powers of the employees' representative machinery (Works Councils) expanded.

Other members, who want the shareholders to retain their authority, oppose the above approach if only because it involves the danger of discrimination and individual companies relocating.

c) Sphere of Application of the Community Provisions

Since the worker participation question arises in a different way for smaller companies, some members believe that the Community must lay down criteria as to the size of companies to which the Community provisions are to apply.

Some members consider that these criteria should relate to number of employees, turnover and balance sheet total. Other members consider, however, that the number of employees alone should be the deciding factor, since turnover and balance sheet total are not suitable criteria.

Some members also agree with the Commission that the same structures must be required for companies forming part of a group as for independent companies. But this principle raises a number of problems, they feel, which, to



ensure the effectiveness of the Community worker participation provisions, necessitate rapid adoption of the Commission's proposed Directive on coordination of the Member States' law relating to groups of companies. That Directive must include provisions to the effect that :

- employees are to be represented on the boards of all companies which make binding decisions for associated companies. A parent company may give mandatory instructions to a subsidiary which has employee representation on the board, in matters which require board approval, only if the employees are represented on the board of the parent company in the same way as in the subsidiary company and the board of the parent company has approved the mandatory instructions;
- employees are also to be represented on the boards of parent companies whose registered office is in the Community but which have a number of subsidiaries outside the Community. However, there are legal, political and practical arguments against having the employees of subsidiaries outside the Community participate in the nomination of the employee representatives on the parent company's board;
- finally, employees are to be represented on the boards of subsidiaries which have their registered office in the Community but which are controlled by parent companies outside the Community. The freedom of decision of such subsidiaries in matters requiring board approval must be safeguarded.

Other members consider that groups of companies raise a number of problems which the Committee can only go into when it knows what the Commission's intentions are for the Directive to coordinate Member States' laws relating to groups of companies.

d) Powers of the Board

Adoption of a two-tier board structure consisting of a management body and a supervisory body on which employees are represented raises the problem of defining more closely the powers of the two bodies in the Community provisions.

Members are divided in their views about this. Some consider that the Supervisory Board, in addition to its powers to appoint and dismiss the Management Board, should be able to take important decisions concerning the company and its employees. Others, however, hold that the Supervisory Board ought to have a purely monitoring function that does not detract from the Management Board's responsibility for the running of the company.

There is general agreement, however, that the powers of the boards should be laid down in national provisions, which should be progressively aligned afterwards at Community level.

e) Procedure for appointing Employee Representatives

The procedure for appointing the employee representatives on company boards must be left open by the Community provisions so that allowance can be made for the particular conditions in the Member States. The Member States must be left to decide the exact procedure under which the employees or their representatives on the works council or alternatively the trade unions represented in the company elect or delegate the employee representatives on the Board. Matters such as how to ensure proper representativeness of the employee representatives, how to ensure that the procedure is democratic, and how to protect minorities, can only be settled in the light of each Member State's provisions and experience.

Some members urge that the appointment procedure should not interfere with trade union freedom as recognized by the ILO. A requirement that all employees should take part in the appointment of employee representatives on company boards would be only superficially democratic if this eliminated the responsibility of representative trade unions.

Other members, however, point to the difficulty of deciding which unions are representative when, as is frequently the case in some Member States, there are a

variety of unions - industry-wide, craft-based or representing a specific ideological approach - in one and the same company. Therefore, they insist that the electorate must comprise all employees of the company. They would like this and other safeguards of a democratic election procedure to be prescribed in Community provisions.

Some members consider that employee representatives on company boards should include persons who do not work for the company. The extensive relations of major companies and groups impinge on the national economy as a whole, and this makes it necessary for the employee interest in general to be represented alongside employees of the actual company concerned.

Other members would like a fundamental ban on employee representatives from outside the company.

f) Rights and Duties of the Employees' Representatives

Employee representatives on company boards, where provided for, must have the same rights and duties as the shareholders' representatives. As the Commission emphasizes, the basic philosophy behind employee representation at board level is to widen the aims of the company to embrace the interests of the employees as well as those of the

shareholders. Employee representatives, like all board members, are bound by the office they hold to act in the interests of the company as a whole, and not just in the interests of those they represent. Ultimately, it is in the employees' interest that they should do so.

Transitional Provisions or Alternative Formulas for Employee Representation

Some of the members in favour of employee representation on company boards throughout the Community after a transitional period are opposed to transitional substitutes intended to perform some of the functions that would normally be exercised by employee representatives at board level. In their view, the Commission is right in saying that any transitional arrangement is less satisfactory than the desired end result. Such transitional arrangements cannot be fully effective substitutes, for it is not so easy to make them provide the worker with the same comprehensive rights to information and consultation that he would enjoy by having representatives on the company board, let alone to align such rights at Community level. On top of this, substitute arrangements, intended to be temporary, would tend to become permanent fixtures, which would perpetuate the differences between employee participation systems in the Community.

However, these members are still anxious to reinforce employees' rights of participation, and emphasize that their rejection of transitional arrangements does not signify that the information, consultation and participation rights of employees' representative institutions (enterprise councils, work councils or plant-level trade union machinery) should not be enlarged.

Other members who support employee representation at board level are in favour of transitional provisions as suggested in the Commission's Green Paper. They think the most important thing is to extend worker participation rights in all the Member States and gradually work towards the final objective. They do not regard the risk of substitute arrangements becoming entrenched as very great and think a later transition to employee representation at board level will be quite possible.

The views of the members who are in favour of transitional arrangements may be summarized as follows :

The Community provisions must require those Member States which do not feel able to introduce at once employee representation at board level to establish

transitional substitutes which perform some of the functions exercised in the other Member States by employee representation on boards.

A Member State's transitional arrangements for employee representation must, however, build on existing, and tried machinery for this purpose. As the Commission rightly points out, the various systems for the representation of workers' interests are an important and potentially fruitful element of industrial relations. It is neither necessary nor wise to alter these systems in an arbitrary manner, for they are the result of decades of evolution and enjoy the confidence of workers, and, to a degree, of employers and the general public.

However, employees' representative institutions as substitutes for employee representation at board level do need to be established at company and group level, including that of the multinational company or group. The employees' representative institutions at company and group level must, as is already the practice in some Member States, be constituted from the representative institutions of the dependent companies and plants, whether these be enterprise councils, works councils or plant-level trade union bodies.

The procedure for constituting these representative institutions for employees, like the procedure for appointing employee representatives to the board, must be left open by the Community provisions so that due allowance can be made for the particular conditions in the Member States.

Institutions representative of all the employees concerned are also possible and necessary in those companies and groups which have dependent companies and plants in other Member States where a different procedure for the formation of employees' representative institutions applies. The Community provisions merely need to lay down a uniform ratio of representatives to employees for all Member States. Furthermore, the Community provisions must require Member States which have already introduced employee representation at board level to set up a procedure for appointing representatives to employees' representative institutions in parent companies and groups in other Member States.

Conversely, the Community provisions must also make it compulsory in Member States which initially do not introduce employee representation at board level to institute a procedure for appointing employee representatives to the boards of parent companies and groups in other Member States.



Finally, the Community provisions must lay down minimum rules on the rights of access to information, rights of consultation and rights of participation in decision-making to be assigned to the employees' representative institutions. These minimum rules should, as the Commission suggests, be based on common principles to be derived from the law and practice of the Member States.

The Community provisions should impose fairly stringent requirements as to information, specifying a minimum which must be given and requiring it to be given in sufficient time for there to be a proper discussion of the issue before any decision is taken. The minimum would have to include information about the company's medium-term development and investment plans and their implications for jobs, training qualifications, pay and conditions.

Consultation of employees should be required to take place sufficiently in advance of projected decisions and on certain matters should be compulsory to make sure that the employees could exercise sufficient influence on the decisions.

Finally, provision should be made for checking on how decisions are being implemented so that employees can tackle management on the implementation of decisions and their consequences.

The provisions of the amended draft Statute of a European Company might, in fact, serve as a starting point for discussing this issue.

The employees' representative institutions must be assigned the same rights to information as employee representatives have at board level. They must also be granted comprehensive rights of consultation and, in matters directly affecting employees, participation in decision-making. Here it must be understood that the rights of access to information and the rights of consultation and participation in decision-making which are assigned to employees' representative institutions under transitional arrangements are to continue to apply when, after the transitional period, employee representation at board level is introduced for all companies of a certain form and size.

Another group of members welcome the Commission's suggestion that substitute arrangements be introduced in those Member States which do not feel in a position to prescribe employee representation on company boards. In their view, the Commission's suggestion is an attempt to open the way for other employee participation systems to evolve in the Community. This new approach should be encouraged and developed with a view to finding solutions suited to the traditions, social conditions and industrial relations systems in the Member States of the Community.

For the foreseeable future it must be accepted that introduction of employee participation at board level is not the only way of solving satisfactorily the manifold problems of employee participation in the Member States of the Community; there can be other ways.

These members feel, however, that it is unrealistic to plan such substitute arrangements to operate only for a predetermined transitional period, after which employee representation on supervisory boards would automatically have to be introduced. The participation of employees should in their view be introduced in stages. But a programme for stage two cannot be decided until the aims of stage one have been accomplished. It is impossible to fix in advance when this will be.

These members are in favour of a comprehensive investigation into employee participation to study the issues of common importance to employees and companies, irrespective of the particular system obtaining. This could lead to a conception of participation that would form the basis for minimum rules for fixing employees' and employers' rights in companies.

General agreement has been reached in the Sub-Committee, however, that a future Community Directive might make provision for two practical measures to sustain the convergence between Member States' arrangements for employee participation. The first would be the introduction of the two-tier board system as an option in Member States where it is not available at present. The second would be the setting up in large companies which do not have board-level employee representation of a special body on which the employees are represented and have minimum rights of information and consultation. The right of employees ought to be more or less comparable under both systems.

C. RECORD OF PROCEEDINGS OF THE ECONOMIC AND SOCIAL  
COMMITTEE

The CHAIRMAN proposed that point 7 on the agenda should be discussed. This provides for the formulation of an Opinion on

Employee participation and company structure in the European Community, prepared by the Green Paper Sub-Committee.

1. Statement by Mr de FERRANTII, Chairman of the Committee

My first task is to very warmly welcome on your behalf the Viscount DAVIGNON. He tells me he was ill and I think we are both honoured and very pleased to be able to know that he considers this occasion important enough to rise from his sick bed to be with us.

This subject of the Green Paper has been in discussion in the Committee since soon after its publication under your predecessor nearly two years ago. It has been a very, very long discussion. A great deal of work has been done, a great number of people consulted and the quite brief Opinion produced which you have before you this morning.

We regard this in this Committee as a most important subject. Despite the brevity of our Opinion, the fact that there is a considerable amount of information in the report indicates the expertise on which the Committee

can rely and also the very fundamental links that it has back to all our organizations throughout the Community, giving it a fundamental role in opinion-forming in this area. We are very glad indeed that the way the debate has gone gives the opportunity for flexibility. I feel sure, Viscount DAVIGNON, that you will this morning learn a great deal which will help during further deliberations on this subject.

2. Statement by Sir John PEEL, Chairman of the Sub-Committee on the Green Paper

I am very relieved in many ways to be sitting here after such a long period of time that the Committee has been sitting, because at some stages in the work we wondered if we would ever arrive at this state. Many of you may be wondering why after such an inordinately long gestation period, the Committee has given birth to such a puny, rather under-nourished child. But this brief Opinion is what the Committee has arrived at ultimately. I could explain very briefly how we have worked but, I leave the nitty-gritty of the Opinion and Report to the Rapporteur. I think our initial problem was the request for an Opinion on a subject which was put forward in the form of a Green Paper as a document for discussion and there was such a wide range of differences of opinion about many aspects of what is a fundamental and very important

subject. I think there was general consensus on the main broad principles of worker participation but there are variations and differences in the various countries and this created many of the difficulties.

Many members of the Sub-Committee felt at the beginning of the debate that it would be very difficult, if not impossible, to arrive at an Opinion and were from the beginning in favour of producing a brief Opinion and a lengthy report which would explain all the different viewpoints of the members. However, we had been asked for an Opinion and so we strove to achieve one. The Rapporteur's noble effort in producing an original Opinion, unfortunately produced so many amendments that by the time we had been through them all, which took us a long time, we arrived at an Opinion which really was not an Opinion at all because it contained so many different views and contradictions. And so, after discussion with the President and with the Bureau, the Sub-Committee met again and arrived at this brief Opinion which highlights the areas of agreement and at the same time draws attention to the report which is a very valuable document, and which we hope will be given adequate publicity and wide circulation.

We know it is the Opinion that is published in the Official Journal but nevertheless in this particular instance, I think that the report is a more valuable document.

I think that is all I need say, except that I would very much like to express my very sincere thanks to the Rapporteur, Mr CARROLL, and the Co-Rapporteur, Mr SAVINI, and their experts, because it meant an immense amount of work with a great many redrafting sessions. I would like, too, to thank the members of the Sub-Committee who have been incredibly patient in sitting through 16 long meetings, all-day meetings, in which the arguments have gone to and fro in a very friendly and constructive manner. This, I think, has been one of the pleasant features of the two years of Sub-Committee meetings which we have had.

Lastly, I would like to thank the Secretariat, Mr LOUET and Mr SIMOND in particular, who have been very very patient in dealing with repeated redraftings. I thank them very sincerely for bringing us to the stage that we are now at. The Sub-Committee at its last meeting voted unanimously in favour of this brief Opinion and the extended report.

### 3. Presentation of the Opinion by Mr CARROLL, Rapporteur

The Chairman, Sir John PEEL, in introducing the topic to us, reminded us that we have given birth to what might seem to be a rather lean child. I do not think that there is any doubt of the fact that we, collectively, are the mothers of the child but I am not too sure at this



point of time, who the father is. I think it suffices to say that out of the two years of work which the ESC have put into this, there is a very important lesson to be learned by the Commission. I say this with due respect to the Commission, but having regard to our debate here yesterday and indeed on other occasions about the influence and impact of views of this body here, I would hope that as a result of today's debate, the Commission will be fortified with information and views coming from the social partners within the Community who have no political axe to grind; and it can be said for us that although we took two years to reach a point of consensus in some areas, that we did act as this Committee is charged to act, in a way independent of the other institutions within the Community.

As a result, I think we can proudly boast that our views are, in fact, extraordinarily representative of the main stream of commercial, industrial and social activity within the Community. That is why, I think, whether we acknowledge it or not, the Commission has spoken for all of us when it said that in the Green Paper the democratic imperative, the need of the extension of worker participation was not beyond yes or no, and that the only question that really arose was how quickly and in

what form could we seek general agreement throughout the Community on either the harmonization of company law and/or other elements or areas of company activity around which the whole question of participation could circle.

Earlier on in its Green Paper the Commission reminded us that the reasons which it had felt before producing the Green Paper for putting such an emphasis on the whole question of developing worker participation still remain valid.

And, if anything, the Commission was fortified in its view about these reasons, because of the obvious necessity, if we are to have a European Union in the absolute sense that so many of us have been subscribing to, that barriers between companies, barriers between countries and barriers between people within the Community would have to be removed as rapidly as possible, always of course bearing in mind the rights of people to operate within their own national culture, their own national social activity and their own broad concept of life generally. To state it again, this was in harmony with the whole idea of Europeanization. In this context I would just like to emphasize the point that in a recent interview I gave to a German magazine I highlighted the fact that this body here (ESC) has the opportunity, and avails of the opportunity because of its independence, to

represent this type of view so that it can guide and I would hope influence the Commission in its ultimate decisions. I am thankful to whomsoever is responsible within the Secretariat for having made copies available of that interview to some members I believe of the ESC. I believe there are some copies available of that interview in French, and maybe Danish, and maybe Italian. So, if anybody, incidentally, is interested in it, it is available in the "Forum Europa". It does highlight the relevance of this body to Commission decisions.

As we move away from the Green Paper into the work of our Committee, one thing sticks out very prominently from all the work we have put in. And it is paragraph 2 of the Opinion. Paragraph 2 states that "general agreement has been reached within the Committee that employee participation in the broadest sense of the term is a desirable development in a democratic society". I think this is a very profound statement, and one which can be quoted for many, many years to come as indicative of the view of this body. And I would hope that this view will become representative of the ultimate decision which in fact the Commission and the Council will come to on this important issue. If anything I might cavil at one word in the Opinion, although I am presenting it. It is the use of the word "desirable".

We all subscribe, it says, to the concept of employee participation as a desirable development. It is desirable, we all say, that we would have an extension of employee participation. But what about the problems associated with bringing that to fruition? What about the power struggle that exists between us? What about the obstacles which are there to cross-border traffic because there are disparities in the legal formation of companies and in other elements of their activity? And what about the reluctance of some employers, not all, but of some employers, to accord to their employees rights and entitlements in the matter of knowledge about what is happening in the company, rights in respect of participation in the important decisions which weigh heavily on workers' shoulders and indirectly on their welfare and the welfare of the family? And what about the objection of some companies who are wary about handing all of this type of power to some workers, and who might feel and fear that because of that type of development the position of shareholders, and hence of potential investors, might be threatened or indeed might be put at risk.

I would suggest very respectfully that the history of development in the economic and social spheres in Europe over the last ten years has shown a recognition by employers and indeed by unions (because not all unions are agreed on this question either) that if we do not come closer together in the creation of, in the expansion and

the maintenance of the truly democratic society, we will or could in fact make way for other elements or other things which might seek to impose a type of "democracy" that would be alien and foreign to our desires and wishes.

So if nothing else I think, the very progression of time has forced a deeper realization on the part of employers, on the part of some unions, and indeed on the part of some workers that it is imperative to use the Commission's words, that democracy in the full sense as it applies within a company, is of value to the development and evolution of a truly European economy and a truly European society.

When we write in our report drawing attention to the areas of agreement, this was the easiest portion of our task. When we, in the report, drew attention to the areas of disagreement, it was not that we wanted to highlight conflict, but rather to pinpoint the particular elements of difference which would lend themselves to further debate and further discussion. And I wonder even now if, within the Economic and Social Committee over the past two years, we had taken a leaf out of Commissioner BRUNNER's book and instituted some type of hearings into this question of industrial democracy or worker participation would we in fact be nearer a broader understanding of the issue than we are at this point of time. I say that for this reason : even in my own country and within my own union it is a fact of life that quite a number of workers are not

evidencing the interest in this matter that the trade union officials feel is appropriate to it. And it is like that in other countries also. The argument is then advanced that there are other priority issues involving workers, so why should we be spending so much time on this industrial democracy question. But as we argue in my union, and I think this argument is supported in other unions, too, as long as a worker is in conflict over his standard of living and the quality of his life (which he has little or no control at this point of time), he is in fact arguing for a greater extension of his democratic entitlements within the work place.

It is only a question of us recognizing this and when we recognize it, seek to apply it in terms appropriate to the national scene or, of course, within an overall European concept. And it troubles me a little that during our debate on this question (and this is enshrined in the report and indeed in our Opinion), that we emphasize the need for flexibility. It troubles me that over-emphasis might be placed on this question of flexibility to the point of weakening the actual role which workers could and should play in the role of enterprises. It does please me, despite the slight pessimism I have expressed, to meet

quite a few employers nowadays who are saying : now that we have accepted the rights and entitlements of workers in the fulfilment of their destiny by participating in our decisions, we see the positive results, we see an improvement in industrial relations, we see an improvement in human relations, we see an improvement in productivity, we see an absolute identity with the welfare of the enterprise and we see the results in our capacity, our ability to give a higher wage, better employment conditions to the workers and a better return to the shareholders; and, of course, and equally important, good service to the consumer. My comments so far are by way of a type of rambling approach to the overall topic of industrialized democracy. Of course, we could branch out into the whole society itself and extend one element of democracy into the other. It is all part of the potpourri anyway. I would hope in the course of our debate here this morning that many of the things which were said during our two years of meeting and which are recorded, I think, faithfully in our report, will be again highlighted, so that the Commission when it sits down to make a final judgment will bear all these things in mind. And if I may be bold enough to ask the Commissioner to give consideration to the personal point, which I threw in, i.e. even at this late stage at the Commission level it may be well worthwhile for some type of European hearings to be undertaken by the

Commission, hearings at which direct representation of workers would be heard rather than the leaders of the movement like fellows like me and other trade union officials, and even some managing directors who are not dependent on their daily bread and butter, by the decision of the management board or supervisory board or board of directors.

I think this would be a fantastic display of real interest in the welfare of ordinary people, and I am quite sure if it can be done, the Commission would willingly do it. I do not want anybody to run off saying I am making a revolutionary suggestion or it will be impracticable. I repeat Commissioner BRUNNER proved it can be done, I am sure if by consulting the social partners here (the best avenue for consultation in these matters), the Commission was anxious to broaden this debate back to the ordinary shop floor, it could find a means of doing that which would enable all of us to be satisfied that there was a truly European debate on this very, very important topic which may well determine the future role that capitalism within the European Community will take. Thank you.



4. Introduction by Viscount DAVIGNON, member of the  
Commission

I am very pleased to be here today to show the Commission's interest in your Committee's discussions.

The Commission's decision to offer employers and labour different options in the form of a "Green Paper" has been a good choice. I believe it makes it possible to strike the right balance between progress, which implies a certain number of new rules, and flexibility, which is essential since the situation is not the same in all the Member States.

This discussion is very timely. I wanted to wait for the Economic and Social Committee to reach its final conclusions before making certain suggestions to the Commission on improving the Fifth Directive.

I congratulate the Committee on the balance it has achieved in its work. It has reached unanimous agreement on its support of the Commission on employee participation, but has also shown the various areas of disagreement in a more detailed report. This is particularly useful for the Commission.

In the first place, the Commission's approach is to maintain a comparable balance in the Fifth Directive, the aim of which is to achieve the harmonization which is necessary for the proper functioning of the Community market, in spite of the great disparity between the rules of the different Member States. These rules are frequently the cause of - or the excuse for - the problems encountered when certain major projects must be put into effect. Any such balance is vital at this point in time, when Europe is going through a period of industrial and structural changes.

Secondly, I do not see how, in our present society or in the kind of society we are trying to create in the Community, a policy of rationalization and innovation in industry can be developed without the consensus of those who will be affected by such measures, i.e. in this instance, of all those who are part of a company's activity.

But it will be a long discussion: I do not think the Member States will be quick to approve the Fifth Directive. This is partly because it is a very difficult problem from the legal point of view, and partly because it raises certain political questions, as you have seen in the work of the Committee.

Nevertheless, the Commission will not submit a document unless it is quite clear. In other words, it must indicate the final system to be arrived at, with allowances made for a sufficiently long and flexible transitional period. But what I am afraid of is that the transitional arrangements might become the norm, that is to say, we might go through a period with several different systems in conjunction, and with no goal in mind. Therefore, we must lay down certain principles, and for the duration of the transitional period anything that complies with these principles will be acceptable. But after that period is over, we must have a situation where not only the principles are the same, but the majority of the implementing rules as well.

For the time being, therefore, the Commission's approach is to determine final objectives which are clear enough for us to discuss and to make the transitional arrangements in accordance with them. This was the line taken by Mr GUNDELACH, my predecessor, with whom I am in agreement, and this is the philosophy behind the "Green Paper".

I should like to come back to certain specific points after I have heard your discussions, which are very helpful for the Commission. This can be seen from my decision not to submit any proposals to the Commission until the Committee's work was completed. This seems to me to be the exact

definition of the term consultation: one submits a question to someone because one has not yet formed one's own Opinion. It is in this spirit that I am here today.

5. General discussion

Speeches

Mr SAVINI

I should like to address the Session as Co-Rapporteur and on my own behalf. Other colleagues will give the opinion of the Employers' Group, to which I belong.

I accepted this task because I was, and am, convinced of the need for an in-depth study of the problems relating to employee participation. Although varying significance is attached to the term "participation" in the different Member States, these problems are becoming more and more topical.

I believe the "Green Paper" will play a useful part in provoking discussion.

But it must be criticized for coupling the examination of the future development of an institution which is still in its infancy - participation - with the exhumation

of initiatives in the area of company law which have been dying for years.

In my opinion, the apparent intention of the Green Paper to bail out those initiatives with hasty decisions on participation ran the risk of not serving the intended purpose and sabotaging any serious discussion of employee participation.

This juxtaposition of the two questions has already complicated our work. It has added the old, deeply-rooted divisions over the rules governing joint stock companies to the many doubts about participation shared by each of the Committee's representative groups.

We had to separate these two questions before we could begin to consider the various attitudes towards the concrete and detailed aspects of participation.

During the long period of preparation, we were frequently faced with the prospect of these widely differing attitudes preventing us from formulating an Opinion at all, if we were to avoid having a text contrived for the sake of a meaningless compromise.

The Committee was unanimous in its belief that it should not disguise the difficulties involved (since the Commission needs to know the reality of a situation in order to deal with it constructively), but it gave the Rapporteurs and the Chairman of the Sub-Committee its full support in their patient attempts to attain the common ground we find in the three pages of the Opinion.

The 33-page Report shows the divergent opinions. It also provides an essential background to the discussion in the Green Paper which should be taken into account in future developments. It supplements the inadequate presentation given in the Green Paper and gives substance to the over-simplified solution proposed by the Commission. This solution would have meant the end of all progress towards a new vision of social relations, with greater participation in all areas of society replacing the class struggle.

Where the tendency is for the social role of business undertakings to supplement (and even replace) the traditional profit motive with increasing social responsibilities, thanks to our present flexible economic and political system, participation obviously has its place as an alternative to industrial disputes, for the benefit of employers and workers

alike. And the type of undertakings which participation will produce, with a greater productive capacity and a better social climate, is always preferable to the type which prevails in countries with state-controlled economies.

The fact that we have a general agreement on participation and its objectives, in spite of the many differences over the details and procedures involved, is no mean achievement, especially when we remember the violent attacks on our present economic system - even within this Assembly - only a few years ago.

Let us hope this consensus is also present in the Member States.

In conclusion, I should like to express to Commissioner DAVIGNON the hope that :

- the European Community will take full account of the clear and well-thought-out Opinion and Report of the Economic and Social Committee, and
- that the Opinion and the Report will be published together in the Official Journal and will always be regarded as complementary.

Mr EICHLEF

This remarkable Sub-Committee's two-year history has been adequately depicted by the Chairman and the two Rapporteurs. I also believe from my point of view that we

have not wasted valuable time. It has not been possible to lay a detailed Opinion before the Committee today. Perhaps, it should have been recognized at an earlier stage in proceedings that this would not be possible. However, the Report bears witness to the in-depth discussions and also to the different views on the matter. This Report is, together with the Opinion, the centrepiece of the Sub-Committee's work, and I would like to take this opportunity to pay tribute to the Rapporteur and to the Co-Rapporteur, who have set out the divergent views of the Sub-Committee's members with a remarkable exactitude and fairness. Special thanks should also be extended to the Sub-Committee's Chairman, Sir John PEEL, for keeping an even keel. We should perhaps ask him once more to bear with us for the troubles we occasionally caused him when discussing both formal and substantive points.

The first Opinion contained so many majority views arrived at by chance that it no longer seemed credible as a whole and was not a practical proposition. The new draft may not be very profound, but despite its brevity I believe that it sets out the basic principles on which we were able to reach a minimum agreement in the Sub-Committee. The difference of opinions which existed are shown in the Report.



If I may make a brief assessment of this Opinion from the employer's point of view, I believe that firstly all those concerned in the production of this document acknowledge that worker participation in firms is a desirable development in a democratic society. Secondly, however, and this point I must stress just as clearly, the Opinion agrees with earlier Committee votes on the European Company and the Fifth Directive that the firm management's responsibility and the firm's efficiency must not be jeopardized as a result - a point on which we employers - and here I would ask for understanding, ladies and gentlemen - have naturally placed great emphasis.

Making allowance for divergent developments - and this, too, is a part of the Opinion - is a necessity which is based on deep-rooted historical differences. We need flexible structures. To this extent I disagree with what the Rapporteur, Mr CARROLL, has just said. I believe that this flexibility is not an easy way-out but is an urgent necessity which we must recognize. The ascendancy of national legislation is therefore very important. However - and this is a point also made in the Opinion - we must abolish barriers standing in the way of future harmonization and at the same time preserve acquired rights. But it must be stressed again and again that the solutions found must not be rigid. And finally, human relations, which play such an important

part in working life, do have many aspects. The issue which we have had to deal with was just one of these aspects. Two realistic short-term goals have been mapped out : the two-tier system option and a special body on which employees with minimum rights and rights to be consulted are to sit. To what extent the wish for comparable rights in different set-ups can be put into effect, remains problematic in view of the fact that structures differ radically in part.

The Opinion, I would like to stress in closing, can only be understood in conjunction with the Report. The largest possible measure of agreement was reached within the Employers' Group - and here I think that we in our Group can be satisfied - despite the very strong national differences and differences of interest. We have the hope - and this is something I would ask Viscount DAVIGNON to think about - that the Commission will take note of not only the Opinion but also the Report. We would ask for great care to be shown in this matter. We cannot achieve everything we should like to achieve.

Mr FRIEDRICHS

The Workers' Group in this Committee has asked me to give you a brief account of its general views on this matter. During the general discussion some members of our

Group will raise points which affect them in particular. Allow me to start by making a general comment. In the Green Paper the Commission has introduced the reasons why it thinks there should be Community legislation on the subject of company law and worker participation on companies' boards. Viscount DAVIGNON has stated in his introductory address this morning that it is not possible to speak about a Common Market until the legal restrictions which still impede the freedom of movement of firms in the Community have been abolished by and large and until a comparable solution has been found to the problem of worker participation in these firms. However, I would like to underline that these are not the sole reasons, at least as far as worker participation is concerned, why we believe that something must be done here. Each day important decisions are reached in firms throughout the Community - decisions which not only affect the shareholders but also have a major impact on the lives of the workers in these firms. We believe it goes without saying that workers must be able to have a say in these decisions, though how this is done may vary from case to case and will have to be discussed.

Workers must be able to voice their views in this decision-taking process or, in other words, the underlying idea on which a democracy is based must also be put into effect by firms.

Our Community's sole goal cannot be to simply develop into a Community where goods can move freely and firms can set up in business wherever they want to. This Community's ultimate goal is a social goal. However, a socially-minded Community must also be in a position to guarantee workers in all Member States comparable worker participation rights. In my eyes, this is a very important reason why company law should be harmonized, and because of these two considerations we are pleased that the Commission has already taken a very close look at these problems in the past and we would ask it to continue its efforts.

I have one other comment to make in this connection. The Commission has not only dealt with the approximation of Member States' company laws but has also tabled a proposal for an EEC-wide legal instrument within the framework of company law, namely the draft statute for a European

company. The Committee has studied this proposal very carefully. It has delivered an Opinion which, subject to a number of reservations, was basically very much in favour of this proposal. A slightly amended version of the proposal has been awaiting a Council of Ministers' decision for two years now, I think. We should take this opportunity to state quite clearly that we expect the Council of Ministers to give serious thought to this Commission proposal at once and to put it into effect, if possible. The introduction of a statute for a European company will, we hope, not only bring advantages for the firms which will thus be able to operate more readily across frontiers within the Community, but will also trigger off the alignment of Member States' company laws.

Mr Chairman, I would now like to make a few comments on the Opinion before us today. First of all, I would like to stress what the Sub-Committee's Chairman and our Rapporteur have already said and I believe Mr EICHLER remarked on this point too : the Commission published its Green Paper in order to provoke a discussion. We in this Committee have now had a real chance to discuss this matter in great depth and at great length and although the results may not please some, this discussion must be considered as having been useful on

the whole. There were many problems. Mr SAVINI has just referred to one of them : the problem of terminology. There were also many misunderstandings. But all in all I believe that this discussion was useful. It will have to be continued in the foreseeable future so that we will be able to go into the problems in greater depth and submit even more detailed proposals than we are doing now.

I do not want to refer to individual points in the Opinion. We have gone into the most important questions raised in the Green Paper and have also worked out some sort of answer, and I believe this has been a useful exercise. One thing, however, has become clear : the differences between the Member States as regards their political and social structures and their historical developments are still so great that uniform legislation on company law does not seem possible in the foreseeable future. Thus, it will be necessary for the Commission to give some thought to alternatives and to propose flexible solutions which must nonetheless lead to a certain convergence and ensure that we one day have comparable set-ups throughout the Community. I would like to stress one further point on the subject of worker participation, Mr Chairman. This point is not expressly stated in the Opinion but it formed the basis of all discussions - the fact that whatever solution to the problem of

worker participation is found, it must guarantee at all events that the unions retain their freedom of action and that the machinery for free collective bargaining is not encroached upon. This self-evident fact was constantly at the backs of our minds and it should be stated once more in this discussion. In conclusion I can say that the Workers' Group endorses this Opinion. We thank the Rapporteur for his efforts. His task was very difficult and, in the final analysis, it was also a somewhat thankless task, for he endeavoured to give the Opinion more body than it now has. It has been shown that this was not possible. I hope nevertheless that this Opinion carries some weight, that it is adopted by the Committee and that it gives the Commission some important hints for their further work in this field.

Mr ROLLINGER

In our examination of employee participation and company structure in the European Community, we should not lose sight of the general background to this discussion. This is the free enterprise system chosen by the Treaty of Rome, which has produced relatively favourable results for everybody, compared with the results of other economic

systems. Our free enterprise system is based on the principle of freedom of action, which must not be inordinately restricted by legislation.

The economic system and the principle of freedom of action must, however, respect certain social objectives. There has been substantial agreement within the Sub-Committee on these objectives, as set out on page 6 of the Report. But opinions differed as to the means of attaining them within business undertakings, particularly with regard to the harmonization, if not the standardization, of company structure. The discussion within the Commission and the Sub-Committee centred on the joint stock companies.

We should bear in mind that participation does not have the same implications for all companies. This is especially true of the smaller companies which are not part of a group, to which page 24 of the Report Refers. This is because the size and structure of these companies are such that relations with the company executive(s) can be more direct. Thus, if general measures to promote more direct participation were adopted, they might needlessly discourage the formation of new small and medium-sized personal



enterprises as joint stock companies and jeopardize the creation of new jobs. The Commission must therefore take this into account and decide what size companies are to be subject to any Community regulations to encourage employee participation in business undertakings.

Mr HENNIKER-HEATON

I do not speak on behalf of the Confederation of British Industry, nor indeed on behalf of the UK Employers members of this Committee. I speak only as an individual - and I believe that all members of this Committee should do this - as an individual who has worked for more than fifty years on the factory floor, as a Union member, as a manager, and in national and international employers' organizations.

The Commissioner has heard that the greatest attention was given to this matter; this is reflected by the shortness of the Opinion and the length of the report.

Most of us who had had practical experience of employer/worker relations, in a number of countries as well as our own, probably knew that this result was inevitable.

That did not prevent us from spending nearly two years in exploring every possibility of formulating a longer Opinion which would receive a large measure of support. Here I must pay a tribute to the patience and good humour of our Chairman, our Rapporteurs and our staff.

In fact, in the early stages of our debates, an Employer representative from one of the smaller Member countries tried to convince us of the near perfection of the system in his own country. But this highlighted the fact that, however good the plan, however clearly drawn the blueprint, it could never be generally applied because of the different ways in which worker participation and industrial democracy has already developed over many years.

Here I must put forward a little criticism of the Green Paper. It has been described as a point of departure for discussion, but it did in fact put forward suggestions or proposals or conclusions which approximated very closely to those in the old draft Fifth Directive which had already been rejected - and rightly rejected. The Green Paper covered this up to some extent by suggesting that there should be a "transition period" before its suggestions were put into force. I believe that our debates have shown that there is no general blueprint which will ever be generally applicable, however long the transition period. Flexibility must be the rule; complete harmonization is not necessary, not now and not ever.

On the short Opinion itself, I only want to draw attention to one paragraph - paragraph 8 on page 2. It rightly mentions two practical steps towards convergence: Firstly, it very reasonably recommends the introduction of the two-tier board system as an option in any Member State where it is not already available, and secondly, as an alternative, it suggests the setting up in large companies, which do not have employee representation at Board level, of a special body on which employers would be represented and have minimum rights of information and consultation.

Neither here, however, nor indeed in the report do we really deal with the third possibility, which has been so successful in many sectors of industry in my own country - including my own sector, the cotton and allied textile industry where we have had no strikes of any importance since before the war.

This third possibility is that of leaving to joint bodies at firm level or concern level such matters as information, health and safety and leisure activities, but developing the direct participation and consultation between Employers' Associations and Trade Unions and between Union representatives and Management at firm level by responsible collective bargaining.

What we must avoid in free enterprise industry is a situation where management does not continue to take the final responsibility for industrial, commercial, organizational and economic decisions. No management should have to share this final responsibility, which should be limited only by law and by collective agreements, or be able to shift this responsibility on to others or on to the decisions of a Joint Committee.

Collective bargaining can only fail if one or other of the parties tries to exercise its bargaining power not in trying to find a common and fair solution but by enforcing its own views and interest exclusively at the expense of others within the industry and at the expense of the general public.

I am not starting on an industrial, political diatribe here; what I do want to stress is by the desirability of acceptance of the fact that flexibility should not only be the aim for a transition period but for always.

Mrs BADUEL GLORIOSO

I should like to start by saying that Viscount DAVIGNON is well-known to Italian workers on questions

relating to the iron and steel, shipbuilding and textile industries. And I must in all honesty say that he is not very popular.

What employees are waiting for is an overall industrial policy, taking into account the new relationships with the developing countries, along the lines of the reorganization which our economy needs. They are perhaps also hoping to see Europe defended as it faces other aggressive and protectionist powers.

This policy requires the support of the employees in the form of participation. The importance of participation has been seen over the last few years in Italy and it has been the subject of much debate for four reasons.

The first was the publication of the "Green Paper" by the Commission, which we think had a positive effect.

Second, employee participation has become increasingly important. This is because the employees themselves are calling for it at all levels, both in business undertakings and also to help solve general economic problems.

Third, it should not be forgotten that Italian employees have already had experience of this through collective agreements giving them the right to information and consultation, on investment for example. Some of the results have been positive, others negative, but participation was involved, in the form of consultation and information on important decisions taken by the undertakings.

Fourth, the Italian trade unionists want to seek as much common ground as possible with the other unions in Europe. This is a point of union strategy that I should like to emphasize.

For all these reasons, the subject has been widely discussed in Italy, both in the seminars and symposiums organized by the unions and on the employers' side, in the legal establishment and political parties.

The three Italian trade union organizations discussed this question at their Congress last June. They concluded that it is of fundamental importance to safeguard employee and trade union autonomy, and their attitude to participation is based on this. Participation is a necessity, but within business undertakings it already exists in the form of collective bargaining, which provides the best guarantee of autonomy through the right to information and consultation.

The Italian employees support this Opinion, but feel they have already obtained more than they would with the creation of a body in which employees would be represented: they would like to see a direct channel established for information and consultation between the trade union bodies and the works councils.

We support the Opinion because it takes into account the historical differences as well as more recent experience and because it gives a clear indication of where we must seek alignment in order to achieve European union.

Mrs EVANS

Thank you, Commissioner, for coming to listen to our report. Mr ROLLINGER from Group III, from which I also come, has said that we are not directly involved. Well, this is not strictly true, because those of us in Group III - and like Mr HENNIKER-HEATON, I have been a Union card holder, a worker and an employer - those of us in Group III, some of us are concerned with small companies and I think that we have set an example which other people might well follow in the way of communications, really because we are small it is easier for us, and therefore we

tend to have far less industrial problems, because we can explain all of our problems and we can feel that we are working as a team.

However, consumers, whom I also represent, also I speak now as an individual, might well feel that both this Committee's approach and the Commission's approach is slightly old-fashioned because we think that this should be about participation, not just worker participation, but participation. Now, consumers feel that trade and industry in their methods have changed to such a degree that the old adage that the customer is always right no longer applies, and that it could be to the great profit of both employers and employees if consumers had a great deal more rights of participation in the way in which companies were run. At the moment, in my country certainly, in order to get any consumer participation, you either have to have a title, you have to be a very beautiful lady in close communication with the managing director of the board or, to quote the words of my chairman, you have to have 55% of the equity. I am not going to tell you, gentlemen, how I managed to get on the board of my company !



I think this is wasteful and I think that the Commission, when it is looking at this transitional period and is looking, by all means at all the flexible methods, should open its mind a little more. Look and see what is being done in America to the great profit of all sides of industry by involving the consumers in this debate, because after all what you produce is directly going to affect us.

That is all I have to say, Chairman.

I want to thank the Rapporteur and the Chairman for the enormous work. I followed very closely the workings of the Study Group although I have not participated, but I did want to make this one plea on behalf of more participation, not less.

Mr DEBUNNE

I should like the assembly to consider the fact that we are discussing a matter which is of fundamental importance not only for the present but also for the future of democracy and of Europe.

Democracy is an indissoluble whole. The political democracy which has developed through universal suffrage is one aspect of it. It is an aspect which has presented problems and where there is still room for improvement.

But there can be no real political democracy without industrial, social and cultural democracy, and it is to this that we must turn our attention.

Participation has no meaning unless it is seen as industrial democracy.

I am pleased to note that nobody has sought to impose a single solution, because there are many possible methods and many experiments which must be tried. But there are certain indispensable common denominators which I will mention briefly.

First, it is unthinkable that, in an industrial democracy, those who work in an undertaking and who would be the ones to suffer from bad management should not have access to complete information on the situation. The employees, represented by their union, must be able to check this information to see where they stand.

Second, on the basis of this information and checking process, we should try to set up what I call a constant dialogue, with an understanding of all the social and economic factors involved, in order to achieve concrete results. In any event, we must not imagine that it will be easy to set up a so-called dual system: this kind of

co-management can just as easily lead to corporatism or company protectionism in the opposite spirit of the industrial democracy we are pursuing.

I therefore support the Opinion, which recognizes the need for progress. We must indeed boldly and cautiously seek a better democratic understanding at all levels and more effective management. This should not apply solely to the large undertakings. We must keep an overall view of the situation in the various sectors and deal with their problems as part of an overall, coherent economic policy through a process of information, dialogue and confrontation.

To sum up, we are still in the early stages of this industrial democracy. We think we have achieved political democracy, but this will only be effective when we also have industrial democracy throughout Europe.

Mr DE BIEVRE

I also intended to speak about economic democracy and, since Mr DEBUNNE has preceded me. I can comment on his remarks.

You know my theory that I only recognize one form of democracy and that is political democracy. I do not accept that you can't have political democracy without economic democracy.

Political democracy is supreme and is capable of setting up employee participation at all levels through its own procedures. But we cannot have two levels of decision-making of parallel supremacy. This would only lead to serious conflict and would endanger political democracy.

The various Commission proposals on employee participation have already gone through various stages: Draft Statute of the European Company, 5th Directive, Green Paper, and soon a White Paper or a new 5th Directive. The Committee Opinion, which I support as a compromise which is likely to win the vast majority, if not all, the Committee votes, is a useful document for the Commission. The Opinion is flexible enough to be adapted to the different national legal systems, social structures and patterns of behaviour. Employees have gradually acquired a number of rights: the right to protest, the right to strike, the right to make wage claims, the right to be informed, the right to be consulted, and now the right of participation, which may vary from context to context.

If we are to have strict rules throughout the Community, we must bear in mind that, within the framework of the legal systems, there is now considerable variation in employee behaviour in the various countries. There can be no doubt that, if employees continue to give free reign to their right to protest, strike, make wage claims and participate, our economic and political system may be thrown out of gear. This has already happened in some EEC countries, where disorder is the norm.

Clearly, if employee participation is to be effective, it requires a responsible attitude to the proper functioning of business undertakings and, in many cases, greater discipline in exercising the above rights.

I agree with this Draft Opinion because, among other things, it outlines the sense of discipline and responsibility required on the part of the employees. Thus, page 2 at the end of point 3, referring to an Opinion of 29 May 1974, states that "employees must be permitted to defend their interests within the undertaking and participate in certain decisions, without diluting management responsibility and effectiveness".

If participation, whatever form it takes, does not lead to the better functioning of the system, it will have failed in its aim of balanced expansion for the common good.

With regard to the surveys which the Rapporteur believes the Commission should make of undertakings, I think the Commission already has enough scope to do this within its general power to request information. It is up to the Commission itself to decide how useful such surveys would be. It must in any case find a common denominator, which will not, however, cover all the factual situations within the Community.

Mr MUHR

I can confine myself at this point in the discussion to simply making a few concrete remarks about the Opinion. In particular, I would like to comment on two points. The first point has to do with paragraph 2 where it is written that employee participation is a desirable development in a democratic society. We can support this point wholeheartedly, I think, though not only because co-determination has something to do with the balance of power. Naturally, co-determination is also intended to make workers on the shop-floor less subordinate and to provide them with openings for influencing and having a

say in decision-making. However, since I am speaking after Mr DE BIEVRE, I must add that co-determination has naturally also got something to do with political democracy.

Mr DE BIEVRE stated that we have only one form of democracy. However, has it escaped the notice of some members that, owing to the ever increasing concentrations in industrial countries outside the democratic structures laid down by law, centres of influence have arisen that are in urgent need of control? This is not only a problem for small developing countries with weak governments; it is also, as we have seen from our experience most certainly a problem for large countries whose governments too - I must be very careful about what I say here - are not always immune to the self-centred interests of certain firms or concerns. Whoever is serious about political democracy must therefore be in favour of such interests being democratically controlled, too.

I would like to comment on a further point, raised in paragraph 3 where it is stated that co-determination may not be detrimental to the responsibility and effectiveness of a firm's management. In Germany, we have had for close on 30 years a very advanced form of co-determination in certain sectors, namely joint representation on supervisory boards. I can tell you from the way this co-determination has worked in practice that it is quite wrong to believe

that only a firm's management is interested in the existence and efficiency of a firm. On the contrary, we have discovered that the workers' representatives on these supervisory boards have often been the very ones who have made pleas for investments and who have safeguarded firms' existences through the business policies they have pressed for, while the interests of many shareholders have been confined more or less to nothing but the returns they make on capital. This has gone so far in some cases that shareholders have thought that the profits made should not be ploughed back. Instead, they have wanted their firms to act almost like banks and invest the profits where it received the most interest. Not only have investments been made outside our countries but there have also been investments in property and in other purely profit-making assets. Thus I believe that from this angle, too, we have no reason to fear that firms' existences will be threatened by co-determination. Our experiences show the opposite. Let me now say one last word. I am naturally keen to say more, but time is short. Co-determination is a way of solving conflicts as far as we are concerned, a model for eliminating the tensions naturally present in a firm in a form which befits our late



20th century society. Co-determination therefore prevents firms from getting into the same situation as a steam boiler in which overpressure is either let off through a shrill-sounding valve or leads to the boiler exploding. Thus, we believe that co-determination is a timely way of solving conflicts.

Let me say one final sentence to my friends in the various trade union movements throughout Europe. There is a wide suspicion that co-determination could, or is threatening to, take over the place and role of the unions. Here, too, we can say from our own experiences that we have the most stable relations amongst members and the highest level of union membership in firms where co-determination is most advanced and the influence on the firm's management and the firm's affairs is most far-reaching. Therefore, from what we have seen co-determination does not usurp the unions. Instead it provides an outstanding example of how the place and role of the unions can be strengthened.

Dr BAGLIANO

Perhaps we expected more from the discussions in the Economic and Social Committee. However, this discussion between the representatives of the various socio-economic groups has been an interesting and useful exercise.

To sum up, there are two fallacies we must do away with: first, that employers are completely against "employee" (rather than union) participation, and secondly, that even those who are for participation only want to integrate them into the "system" and remove them to some degree from union influence.

Thus, some employers agree with the Green Paper's line of thought, but not its conclusions. It is difficult to speak for all employers. But it is also difficult to speak for all trade unionists, and I say this for the benefit of those present who always claim to speak on behalf of certain categories or unions, which is not the case. However, since I belong to a large industrial group, I can at least say that I represent a certain number of employers.

The Commission has made a clear choice. It has not fixed a timetable or deadline, but reserves the right to do so. It has adopted a flexible approach (which is not a sign of weakness or weakening of its role) and temporary alternatives. But the final objective is fixed and firm. This is the "two-tier" solution to the problem of participation.

The Commission also states in the Green Paper that every EEC Member State is, so to speak, a prisoner of its own legal system. And because the legal system is the end product of the legal, socio-economic and cultural history of each nation, it is not possible to set a date for the release from this national legal prison.

We can promote changes, and hope they will be in alignment, but we cannot set deadlines for them, as we did for removing customs barriers within the Community.

The Commission is the guardian of the Treaty and takes account of the Parliament's resolutions and, frequently,

of the ESC's Opinions. It must also promote and speed up the construction of Europe. But history cannot be forced.

Thus, while the Commission must establish the principles of participation, there are many ways of achieving it, and they must be compatible and complementary. Respecting this need for flexibility is the only way to avoid having more and more projects piling up on the Commission's desk.

In other words, it is better to proceed with caution. If we are over-ambitious, we may fail or lose our balance.

There is a need for greater participation, not only in industry, but also in the organization of our whole western society. But if we are to have the necessary agreement on participation, we must first agree on certain primary values of our civilization : justice and liberty. The economic and industrial system of Europe is capable of contributing to social as well as economic progress. Greater participation is possible in the free enterprise system, but only if we respect the rules of the system - liberty and efficiency - and the responsible part each of us wishes to play in this great European adventure.

Mr BORNARD

I should like to personally thank the Commission for having had the courage to tackle this extremely difficult but vital problem. The problem relates to the future position of employees in our economic life, particularly in the basic economic unit of the business undertaking. While opinions differ as to the relative importance of the public, nationalized and private sectors, nobody disputes the importance of a large sector in which undertakings are necessary and must survive.

But, while the Commission is to be congratulated on its courage, it is regrettable that, after two years of discussions, the Committee has not come up with more clearly defined lines of action and has confined itself to a broad survey of the various positions.

True, there are different traditions in the EEC Member States; the various professional groups each have vital interests at stake and we must allow for flexibility in complying with any measures that are adopted. But the Commission has put forward some fundamental proposals, for instance that employees should be represented on supervisory

boards. The means of achieving this representation are debatable, but the proposal is nevertheless an unequivocal recognition of the economic power of employees in companies. It would also put an end to the present monopoly which the owners of capital have in determining business policies, even though labour is an essential part of undertakings. There is no question of rejecting the need for productivity and profitability in business policy. What is needed is more attention to social and human concerns, and employee representation will provide the forum for this.

I am afraid that the Committee may even have drawn back from the position taken a few years ago on the Statute of European Companies, with the employers giving their agreement in principle to the idea of representation.

This apart, the managerial and supervisory functions must not be confused, and the Commission's proposal succeeds in avoiding this confusion in the largest companies. It provides for a two-tier structure, with a board of directors to administer company affairs and a supervisory board to

formulate and supervise company policy. Such a structure seems to be one of the few means of preserving effective management, while allowing the unions to perform their real and essential function.

Whatever method of achieving employee representation is chosen, it must have the security of union backing. This is because employees are in a subordinate position in undertakings, and this must be offset by union support if a balance of power is to be achieved.

For these reasons, I personally hope the Commission will continue along these lines and not be paralyzed by the opposition it faces. If we are not able to make rapid progress in this direction, there is likely to be serious confrontation, resulting in false solutions which will not maintain the balance the Commission has tried to achieve in its "Green Paper" proposals.

Mr JENKINS

First I should like to thank the Rapporteur for his tremendous efforts and for having succeeded in at least bringing an Opinion before us.

I think that the Opinion is worth supporting, if only because, as the Rapporteur said, and as Mr MUHR also said, it tells the Commission that general agreement has been reached in the Sub-Committee that employee participation is a desirable thing in a democratic society, and as other speakers have said democracy that is what it is all about.

In Britain worker participation is called industrial democracy, at least trade unionists call it industrial democracy. I think that the interpreters might have some problems in describing what some of our less enlightened employers might call it (But not Mr HENNIKER-HEATON, who I notices did use the expression).

I believe that legislative action in the field of industrial democracy is necessary, and I believe that statutory backing should be given to all unions wishing to establish joint control of strategic planning decisions in the enterprises where they operate. Something new has cropped up in our thinking here, well if not new, it's at least a departure, and that is that we think that perhaps in the public sector we might have more chance of achieving early steps towards employee representation than in the private sector. And perhaps the Commission might consider.



how we could make the public sectors in our countries serve social purposes further by strengthening effective worker participation in the public enterprises.

Now I have spoken of legislative action and of course it is needed but it is not the only way forward. Collective bargaining can be extended to increase trade union influence over company decisions. For this to be achieved, we need firms to become more forthcoming with their disclosure of information.

The Opinion says that acquired rights of employees must be safeguarded. To my mind this means that we must have a clear commitment to the continuous use of collective bargaining as a means of extending employee participation and that means that our shop stewards' organizations which operate at company level must not be undermined by other types of organizations which would be alien in the British context. And here of course I refer to the works councils on the German pattern which are not appropriate to the United Kingdom and I am glad that the Green Paper in fact recognizes this.

I listened with interest to what Mr MUHR says about the works councils and the trade unions' organizations going hand in hand and complementing each other but I don't

think that in the United Kingdom the same would occur. So instead of that we would prefer our system of shop stewards' organizations which should be strengthened even more.

Now I turn to the two practical measures which are mentioned in the Opinion. The first one concerns the introduction of two-tier board systems as an option. Well this is all right but I would underline as an option because there are some problems about the two-tier structure in our own country.

The other proposal concerns the setting up of a special body on which employees are represented. Well this is a vague formulation but in the British context this must mean a representative body based entirely on the existing trade union channels and trade union organization.

Of course here I am afraid that we depart quite drastically from the Green Paper. I believe that the views in the Green Paper are a recipe for conflict rather than for harmony at least in the British context.

The Green Paper presents us with other problems and I shall mention just one more. It affirms that shareholder and employee representatives should bear the same responsibility acting in the general interests of the enterprise. Well I disagree with that. This affirmation is not realistic in any case and I don't think it is right

because surely representatives must be accountable directly to their own constituencies. I am sure that shareholder representatives always have done it and we will not accept that the trade union representatives should not do it.

But let us not be too gloomy. I believe that the Green Paper is a step forward from the original Fifth Directive. Particularly we welcome the emphasis in the Green Paper on convergence rather than the need for complete harmonization.

Finally, I hope that the Commission will take into account two points in their further consideration of the matter. The first is that Member States should be afforded flexibility in determining how the election of board representatives should be carried out; and the second one also dealing with flexibility regarding the legal duties of Board members. I think they should be given maximum flexibility in how their legal duties will be determined.

Mr VAN RENS

The European Commission has wanted to obtain further suggestions for the Fifth Directive from the discussions on the Green Paper. The Commission has suggested

a transitional period in the Green Paper and listed a number of solutions for this period. The Opinion laid before us by the Sub-Committee agrees, I think, in principle with what the Commission is planning in the Green Paper and how it envisages the transitional period.

I would like to refer to a number of points which may be important for the solutions which the Commission selects in the near future, and I also want in this connection to ask the Commissioner a number of questions to which I would be pleased to receive an answer.

When the Commission redrafts the Fifth Directive, it can, if it takes into consideration what it has said itself in the Green Paper and what is stated in paragraph 8 of the Draft Opinion, choose between two systems, viz. worker representation on a company's body or a separate worker body. I would like to stress the term "worker body" for, as my colleague Mr JENKINS has stated, such a body must consist solely of workers.

The Commission states in the Green Paper, and the Commissioner has just underlined this point again, that it will be necessary to agree on clear-cut solutions for after the transitional period, too. On this matter, I agree with the Commissioner that the solutions, above all

those leading up to the solution finally opted for, must be flexible but that the Commission must lay down clear limits for Member States' legislation. In connection with the representation of workers, I would like to ask the Commissioner whether he intends to oppose minority representation of workers on company boards and, secondly, whether he is also against the co-opting of the members of the supervisory board. These are questions to which I would like to receive concrete answers.

The trade union movement is at any rate against minority representation and also rejects a system of co-opting.

As I have just said, I would appreciate it if the Commission presented proposals quickly, with a transitional period of 8 to 10 years, as stated in the Report, being followed by the general obligation to introduce a two-tier system in which workers are ensured at least equal representation on company boards. In this connection, Mr Chairman, it would seem wise for the European Commission to opt for the solution whereby, in addition to equal numbers of workers' and shareholders' representatives, one or more independent members are also appointed to sit on

the boards. Expressed in a formula, this might read  $2x + y$  where  $x$  = the workers' and shareholders' representatives and  $y$  = the independent members and where  $y$  is never greater than  $x$ .

Those were my questions and general comments, Mr Chairman, on the Green Paper seen in relation to the Fifth Directive. It is desirable, I think, for the Commission to come up with proposals quickly. Moreover, it would be very interesting for Commissioner DAVIGNON to view the current problems in individual industries - also in relation to the restructuring which must take place - in the context of worker participation. In my opinion, the restructuring problems existing in individual industries will not be able to be tackled effectively in the longer term unless workers are involved at company and industry-wide level in discussions and in the search for solutions, and are able to actually exert their influence (e.g. through the introduction of further joint committees).

Mr LAVAL

We have perhaps placed too much emphasis on our differences of opinion. It is human nature to see what divides, rather than what unites us. These differences exist, of course, even within the employees' group, and the historical reasons for them have been dealt with in depth.

We should also discuss the trends in the different Member States and the lines of thinking which lead up to these differences.

But I would particularly like to see the Commission take into account in future the basic agreement which was apparent from these discussions.

There is first of all a fundamental, political agreement. We are faced with a period of social development in which employees and their unions are aspiring to greater consideration and more participation in decisions that concern them.

Some have spoken of industrial democracy, others of economic democracy. I will speak of democracy by itself. We are frequently reminded of the sad fact that there are now only about twenty countries left in which the word democracy still has any meaning. The nine Community countries are among them.

But the future of democracy in these countries is rightly being questioned. In my opinion, the future of democracy in these free societies is closely connected with their ability to solve the problem of participation

which labour has set them. This is why I subscribe to the statement made by several colleagues to draw attention to the importance of this vital aspect of our discussions.

Of course, we do not agree on what kind of organization should be set up. But we should not make the mistake of not seeing the forest for the trees. There must be a range of possible solutions. Indeed, the Report and the Opinion allow for various possibilities for implementing participation. This is normal. But I would like the Commission to understand that this debate has introduced new rights for employees: rights of information, consultation and supervision.

This is why I would not like to see the Commission paralyzed by the differences of opinion expressed during this debate. It must not confine itself to national solutions, but must take steps to stimulate further action.

In conclusion, I should like to make a suggestion. In addition to the Commission's work on the future directive, the Green Paper analysis of the trends and various



solutions in the Member States should be revised. For my part, I am not satisfied with the analysis of the French situation. Moreover, since the Green Paper was published, there have been a number of new developments in various countries. A revision and updating is therefore necessary, by way of information.

Mr RENAUD

I wanted to participate in the discussions in the event that the assembly was not in complete agreement on the Opinion, since I had played a part in aligning the different points of view.

I have observed, and I am sure Commissioner DAVIGNON has also, a kind of "Yes, but" attitude behind our agreement. While some have complained that we have not gone far enough, it must be pointed out that, in spite of the differing opinions expressed, there were certain important points of agreement in the Opinion. Nevertheless, point 9 of the Opinion indicates that there are still differences and refers to the Report, which mentions

everything we have said today. The Commission must bear in mind the opinion of certain members when it is trying to come up with solutions.

6. Reply by Viscount DAVIGNON, Member of the Commission

These discussions have certainly confirmed both the complexity of the problem and the fact that it is not enough simply to analyze the difficulties that confront us.

I do not wish to enter into the discussion on the subject of democracy. But, like Mr LAVAL, I am convinced that if our response to the problems we now face is to spend our time analyzing in detail why it is difficult to do anything, we will be headed along the road to decadence, and the fate of our society will be in no doubt. Neither the Commission nor I want any part of this.

I therefore believe that we are here faced with a crucial question on which there must be no political ambiguity. As others have indicated, we will not overcome the structural and industrial problems to which Mr van RENS

and Mrs BADUEL GLORIOSO referred by saying that our policy is criticized rather than popular, if we leave aside certain fundamental issues that have enriched our society.

I should just like to say that before we adopted any principles or drew up any policies in this area, we had very detailed and close consultations with the European and national unions, each time this was requested. Thus, if more detailed discussions are required to explain to the Italian unions that the Commission is not trying to hide the problem but wants to achieve real security in employment, which will involve adjusting to changing circumstances, I am more than ready to go to Italy to fulfil my responsibilities in this matter.

To return to the subject in hand, in the kind of society we have which is based on consensus in all the essential areas, it is impossible to have differences of opinion over actual policy, which implies basic agreement on what is to be done, even though there may be disagreement on the strategy to be used.

I do not see how we can bring about all the economic and social changes called for, not all of which

are negative or difficult, without stating clearly what rights everyone is to have to be informed, to be consulted and to participate in decision-making.

I consider this to be essential, and it is apparent from the discussions today that there is agreement on this point, and that it is up to the Commission to put forward proposals, unless it is felt this can be done at the national level. But how can it be, when you state in your Opinion that the rights obtained must be comparable? Is this comparison to be made by each national union, or each national group of companies? Or will each State be able to say: we have decided that our system provides the same rights as the others?

It is obvious that we must decide at the Community level whether the fundamental rights we wanted to achieve do in fact exist, even if they may be implemented in various ways.

This was made clear by Mr MUHR's explanation of how the system worked in West Germany, with no contradiction between normal union activity and the employee

participation bodies. We must remember, of course, that this system cannot be transposed rapidly and exactly to another country.

But the fundamental issue is that we must know what rights are to be put into effect and the parameters for the specific regulations.

The Commission's decision is a difficult one, since everyone immediately adds: but you must also be flexible. I think I have acquired a certain experience of flexibility from negotiations.

Flexibility is often a polite term for lack of agreement on strategy, tactics and essentials.

This does not interest me and I leave it to others to be more flexible than me.

I would like to see flexibility in its true sense. In other words, let us take into account the particular situation in each State and the changes in progress and then implement our policies flexibly for as long as this is necessary. It is not true that the same results are always achieved with the same means.

That is the true meaning of flexibility.

But if being flexible means leaving it up to others to decide what to do, we should state frankly that we consider our work is done once we have decided on our objectives. This is completely different and it is unacceptable to the Commission. Such a step would be illogical in view of the procedures we have set up, and we shall not take it, even if we are ultimately defeated. The purpose of the Green Paper is to draw certain conclusions and to provide a framework which is both precise and flexible enough to take into account the particular situation in different States and different companies.

I think I have said enough to indicate the direction I would like the Commission to take and the discussions to continue in, because they are not yet over.

Finally, how should the discussions be continued?

I am not sure we really need any further information. We have got all the information we need from the discussions at the national level, in the Committee and in the European Parliament.

The work is done in the trade union congresses, the discussions within individual companies and at government levels, as well as your work here have provided us with all the information we need.

On the other hand, it seems clear to me that we have not even begun the task of informing the public of our objectives, and this is what we must now do. In my opinion, a hearing would simply give an idea of the atmosphere surrounding the question. But Mr CARROLL is right to insist that, once we have decided on our objectives, we must explain that these objectives will improve the situation for everybody. This will translate into real terms the kind of society we want, in which certain essential elements of business activity will remain. Various speakers here have emphasized the importance of negotiating agreements, and nothing will alter this fact. What we want to do is to create the feeling among all those who work for a company that they have all the information and the right to express themselves they need for their future in the company.

A company is not an abstract idea. It is something which concerns everyone who is part of it. I do not believe, therefore, that there are automatically two camps defending two different sets of interests. I think a company is a group of people who must know in what direction they are heading. That is essential.

Thus, we will certainly have to decide what steps to take to keep the public informed.

I think the Commission will probably produce a working document modifying the Directive. This will probably not be a formal proposal for an amendment but a document taking into account the discussions here today, the discussions we have had outside the Economic and Social Committee with the Parliament and the bilateral discussions we have had with various groups. This will concentrate the debate on the essential points :

- What are the minimum requirements?
- How can they be transposed in a comparable manner into the legislation of each Member State, during a period which has still to be determined?



The term "comparable" implies that at the end of this period, we will not be able to choose from among the whole range of present options but will have a choice of a certain number of equivalent options. Otherwise, we will not have a comparable system.

I am not in favour of harmonization for its own sake. But I would like to say to Mr HENNIKER-HEATON that if by flexibility he means there would be no cases in which the different systems would be comparable, I cannot agree with him.

Let me summarize the three points I wanted to make:

- If we want an industrial policy which will bring social justice and improve our economy, we have no other choice but to improve the present situation in our business undertakings.
- To do this, we must have a clear definition of the essential rights and the requirements to be met.
- Since all our systems are not the same, we must be sure during the transitional period that the existing systems are comparable. In other words, we may not be aiming at a single system, but we must aim for a set of rules which will provide the definitive system.

That is what I wanted to say today, and I should like to give special thanks to the Chairman of the Subcommittee and the Rapporteur. I have read not only the Opinion but also the Report, which was indeed a remarkable document since it enabled me to judge what would be said here today. I should like to thank the members for their statements, and I am sure this will not be the last time that I shall be appearing before the Committee.

I say this not with any feeling of nostalgia or disquiet, but because this seems to me to be the best way of drawing up policies such as this one which are essential for the kind of society we are trying to create in Europe.

7. Reply by Mr CARROLL, Rapporteur

Mr CARROLL

Mr Chairman, I am certainly not going to take the meeting over the ground that's been covered because much of what has been said is a reiteration of all that was said during the 16 or 17 meetings of the Study Group and indeed is a reiteration of what is embodied in the Report itself.

In essence I suppose I could sum up everything by saying that the kernel of the problem is power, economic power, social power, industrial power, political power. Who has it, why have they got it, should they hold on to it or should it be shared? And this is the debate that will have to develop from here on and I don't propose at this stage to develop it.

Mr van RENS raised the point about the inclusion in the Report of some of the views he had expressed which were preceded by the expression "some members said". Already we had a look at some of Mr van RENS' suggestions and where it is possible to do so we did embody them in the Report. But if there are any specific areas even at this point of time which do reflect what some members said and which are not covered in the Report, I am quite sure the Secretariat would have no objection to those points being embodied and if I may make the suggestion to you, Mr van RENS, if you could direct the attention of the Secretariat to those particular areas I would leave it to them to see what they could do.

For the rest I think the case rests.

#### 8. Vote on the Opinion as a whole

The Opinion as a whole was adopted unanimously with one abstention.

European Communities - Economic and Social Committee  
"Employee Participation and Company Structures in the  
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Opinion of the Economic and Social Committee

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DK, D, E, F, I, N.

This is the Committee's reaction to the Commission's Green Paper. The Committee advocates flexible Community provisions for worker participation. It has agreed on two practical measures that should be included in the Community provisions, a) introduction of the two-tier board system as an option in Member States where it is not available at present; b) the setting up in large companies which do not have board-level employee representation of a special body on which the employees are represented and have minimum rights of information and consultation. The rights of employees ought to be more or less comparable under both systems.