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Report

on behalf of the Legal Affairs Committee

on the amended proposal by the Commission of the European Communities to the Council (COM (72) 1668 final) on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes

Rapporteur : Mr Charles HÉGER

PE 33.834/fin.

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Following the opinion delivered by the European Parliament on 16 November 1972¹ on the proposal for a directive on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes, the Commission has submitted to the Council an amended proposal for this directive.

The Committee on Social Affairs and Employment submitted an opinion on this amended proposal, drafted by Mr Adams, to the Legal Affairs Committee.

At its meeting of 13 July 1973 the Legal Affairs Committee decided to draw up a report on the amended proposal for a directive and appointed Mr Héger, who prepared the Legal Affairs Committee's original report on the initial proposal from the Commission of the European Communities, rapporteur.

At its meeting of 7 September 1973 the Legal Affairs Committee discussed the amended proposal for a directive and adopted the motion for a resolution, together with explanatory statement by 15 votes in favour and one abstention.

The following were present: Mr Schuijt, chairman; Mr Bermani, vice-chairman; Mr Héger, rapporteur; Mr Brewis, Mr Broeks, Mr Brugger, Mr Corterier, Mr D'Angelosante, Mr Delmotte (deputizing for Mr Lautenschlager), Mr Harmegnies (deputizing for Mr Ballardini), Mr Kollwelter (deputizing for Mr Lucius), Mrs Nielsen, Mr Radoux (deputizing for Mr Vermevlen), Mr Scelba, Mr Schmidt, Mr Vernaschi.

The opinion of the Committee on Social Affairs and Employment is attached.

¹ See OJ No. C 129 of 11 December 1972, p. 50

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A.

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the amended proposal from the Commission of the European Communities to the Council for a third directive on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes.

The European Parliament

- having regard to the amended proposal from the Commission of the European Communities to the Council (COM(72) 1668 fin.),
 - having regard to the opinion adopted by the European Parliament on 16 November 1972¹,
 - having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Social Affairs and Employment (Doc.154/73),
1. Approves the amended proposal from the Commission;
 2. Requests the Commission to make the following amendments to its proposal, pursuant to Article 149, paragraph two, of the Treaty establishing the EEC;
 3. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

¹OJ No. C 129 of 11 December 1972, pp. 50

AMENDED PROPOSAL FOR A THIRD COUNCIL
DIRECTIVE¹

on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes

AMENDED PROPOSAL FOR A THIRD COUNCIL
DIRECTIVE

on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes

Preamble, recitals and
Articles 1 to 5 unchanged

Article 6

- | | |
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| 1. The management organs of each of the merging companies shall draw up a detailed report explaining the legal, economic and social effects of the merger on the employees over a period of at least two years and indicating the measures to be taken regarding them. | 1. unchanged |
| 2. Every employee or employees' representative shall be entitled to have access to the report provided for in paragraph 1 and the other documents referred to in Article 5(3) at the company's registered office at least two months before the meeting of the General Meeting which is to decide on the merger. | 2. unchanged |
| 3. Before the General Meeting discusses the merger the management organs of the merging companies shall discuss the reports provided for in paragraph 1 with the employees' representatives. The latter may deliver a written opinion. The General Meeting which is to decide on the merger shall be informed of that opinion. | 3. unchanged |

¹ For full text, see COM(72) 1668 fin.

4. If the merger is prejudicial to the employees' interests the management organs shall initiate negotiations with the employees' representatives, before the General Meeting discusses the merger, with a view to reaching agreement on the measures to be taken regarding the employees. If no agreement is reached in these negotiations, each of the parties may ask the public authority to act as intermediary.

5. Every employee or employees' representative shall be entitled to obtain free of charge on request copies, in full or in part, of the documents referred to in paragraphs 2 to 4.

6. This Article is without prejudice to the laws of those Member States which are more favourable to employees in cases of merger.

4. If the merger is prejudicial to the employees' interests the management organs shall initiate negotiations with the employees' representatives, before the General Meeting discusses the merger, with a view to reaching agreement on the measures to be taken regarding the employees. If no agreement is reached in these negotiations, each of the parties may ask the public authority to act as intermediary.

If no agreement is reached through mediation, the proposed merger shall not take place.

5. unchanged

6. unchanged

Articles 7 to 24 unchanged

EXPLANATORY STATEMENT

1. The amended proposal contains few material changes. The amendments serve chiefly to adapt the original directive to the situation created by the accession of the new Member States.

In addition, they tend to bring it into line with the proposed provisions for the European Company.

2. Some of the editorial changes in the text are to be welcomed.

In this connection, thought could have been given to reversing the word order in the title of the French text, to read: '... tendant à coordonner les garanties qui, dans les Etats membres, sont exigées des sociétés ...'

Your committee is able to accept these minor adaptations and changes without discussion.

3. On the other hand, the new version proposed by the Committee on Social Affairs and Employment for Article 6 (4) raises a more delicate question.

By proposing that 'the merger may not take place unless negotiations between the social partners have been successfully concluded', it creates a new and important precedent.

New, because no existing legislation in any Member State contains a comparable provision. Important, because it could involve delaying the merger and giving one of the parties a virtual right of veto.

4. Nevertheless, your committee as is has written elsewhere, considers that European law, being new, need not correspond to national law. As it may play a pioneering role, measures for which there is no precedent are warranted.

5. Your committee is therefore able to endorse the motives which led the Committee on Social Affairs and Employment to table its amendment; however, the negotiations provided for in Article 6 (4) should apply only to measures intended to prevent a proposed merger from prejudicing workers' interests.

6. It would be more in keeping with this aim if the original text of the directive were retained and the following paragraph added to Article 6 (4):

'If no agreement is reached through mediation, the proposed merger shall not take place'.

7. Subject to the above remarks, your committee proposes to the European Parliament that it adopt the amended proposal from the Commission of the European Communities.

OPINION of the Committee on Social Affairs and Employment

Draftsman: Mr R. Adams

Following the Legal Affairs Committee's report, drawn up by Mr Albert DE GRUYSE (Doc. 221/71), and the opinion of the Committee on Social Affairs and Employment, drafted by Mr Rudolf ADAMS, on the proposal from the Commission of the European Communities to the Council (Doc. 90/70) for a third Council directive on coordination of safeguards which, for the protection of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers between sociétés anonymes, the Commission submitted an amended proposal for this directive.

The Committee on Social Affairs and Employment took this opportunity to discuss the matter again and on 16 May 1973 it appointed Mr ADAMS draftsman of the opinion.

It considered the draft opinion at its meeting of 26 June 1973 and adopted it by twelve votes to one, with three abstentions.

The following were present: Mr DELLA BRIOTTA, chairman; Mr DURAND, vice-chairman; Mr ADAMS, vice-chairman and draftsman; Mr BERMANI
Mr CHRISTENSEN, Baroness ELLES, Mr GIRARDIN, Mr van der GUN, Mr HÄRZSCHEL,
Mr LAUTENSCHLAGER, Mr MARRAS, Lord O'HAGAN, Mr VERMEYLEN, Mr PÊTRE,
Mr WALKHOFF, Mr WIELDRAAYER.

I. INTRODUCTION

The Committee on Social Affairs and Employment is seriously concerned by the feeble response to its proposal for a compulsory social scheme to cover workers adversely affected by mergers. The scheme was approved in principle, it is true, but was not made a condition to the passing of a resolution on the merger by the general meeting¹.

The need for social measures is paid lip service but is not given legal backing through incorporation, for instance, in the merger plan. Instead, the new paragraph 4 of Article 6 contains no more than a non-committal phrase to the effect that, in the event of disagreement, each of the parties may ask the public authority to act as intermediary. When it is remembered that the problems of corporate redundancies were left to a similar kind of arbitration procedure², the weaknesses inherent in such methods will be clearly realized. As the weakest link in the financial chain, workers cannot be expected to enter a merger without appropriate assurances, even if the acquiring company is the legal successor and hence bound by existing commitments. The argument that none of the Member States imposes anything like such a far-reaching requirement is unacceptable in that it can scarcely be the Commission's purpose to endorse national rules of law on every occasion but rather to lay down Community rules which may possibly go further than existing legislation.

II CONCLUSIONS

The Committee on Social Affairs and Employment

- having regard to the proposal³ and the amended proposal⁴ from the Commission of the European Communities to the Council;
 - having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affairs⁵ as well as the opinion of the Committee on Social Affairs and Employment⁶;
1. Notes with satisfaction that in its amended proposal, the Commission has acted on the recommendations of the Committee on Social Affairs and Employment insofar as:

¹ Doc. Com 72/1668 fin. p.3. (explanation of Art. 6)

² Doc. 200/72, Report 323/72 Della Briotta

³ Doc. 90/70

⁴ Doc. COM (72)/1668 fin.

⁵ Doc. 222/71

⁶ PE 29.380/fin.

- a) in Article 5(3), the period of advance notice to employees has been extended from one to two months (the Committee had asked for three months);
 - b) a detailed report is required explaining the legal, economic and social effects of the merger on the employees over a period of at least two years;
 - c) the safeguards of Article 6 are also applied to operations similar to mergers (Art. 21).
2. Urges that a plan for compulsory social measures should be drawn up prior to a merger, and mandatorily incorporated in the merger scheme (Art. 6(4));
 3. Requests the Commission to incorporate the following amendment in its proposal pursuant to Article 149 (2) of the EEC Treaty.

III. CONSIDERATION OF THE INDIVIDUAL ARTICLES

The Committee on Social Affairs and Employment adopted the following amendment by a majority vote:

Article 6

Article 6

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| <p>1. The management organs of each of the merging companies shall draw up a detailed report explaining the legal, economic and social effects of the merger on the employees over a period of at least two years and indicating the measures to be taken regarding them.</p> | <p>(1) unchanged</p> |
| <p>2. Every employee or employees' representative shall be entitled to have access to the report provided for in paragraph 1 and the other documents referred to in Article 5(3) at the company's registered office at least two months before the meeting of the General Meeting which is to decide on the merger.</p> | <p>(2) unchanged</p> |
| <p>3. Before the General Meeting discusses the merger the management organs of the merging companies shall discuss the reports provided for in paragraph 1</p> | <p>(3) unchanged</p> |

with the employees' representatives.
The latter may deliver a written opinion.
The General Meeting which is to decide
on the merger shall be informed of that
opinion.

4. If the merger is prejudicial to
the employees' interests the
management organs shall initiate
negotiations with the employees'
representatives, before the General
Meeting discusses the merger, with
a view to reaching agreement on the
measures to be taken regarding the
employees. If no agreement is reached
in these negotiations, each of the
parties may ask the public authority
to act as intermediary.

5. Every employee or employees'
representative shall be entitled to
obtain free of charge on request
copies, in full or in part, of the
documents referred to in paragraphs
2 to 4.

6. This Article is without prejudice
to the laws of those Member States
which are more favourable to employees
in cases of merger.

(4) If the merger is prejudicial
to the employees' interests the
management organs shall negotiate
with the employees' representat-
ives before the General Meeting
discusses the merger.
The merger cannot take place
unless negotiations on the plan
for social measures have been
successfully completed.

If no agreement is reached in
these negotiations, each of the
parties may ask the public auth-
ority to act as intermediary.

(5) unchanged

(6) unchanged