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INFORMATION — INTERIOR MARKET

THE EUROPEAN COMPANY STATUTE

96/75

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The Commission at its meeting in Luxembourg, April 30th, approved a proposal for a European Company Statute. Compared to the previous Commission's proposal of 30 June 1970 the proposal has been amended significantly, following, to a large extent, the advice given by the European Parliament in July 1974.
Since the debate of the European Parliament, extensive consultations have taken place with numerous industrial organizations, trade unions, governments and political parties as well as independent experts in the fields of workers' participation and company law.
The European Company Statute will provide a modern rational structure for the organization of companies in Europe and help to create what does not exist today - a common market for European enterprises beyond the common market for goods and services.

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I. The European Company - a new possibility

The purpose of the proposed ECS is to make possible cross-frontier mergers, holdings and common subsidiaries which would then exist and function as European companies. The proposal is meant to help industry to restructure itself by external growth and internal reorganization and by adaption to the dimension of the Common Market and the requirements of our times.

As yet, European enterprises do not have the opportunity of acting throughout the Community in the same way they can within the single Member State in which they are incorporated. They have to contend with serious legal, practical and psychological difficulties if they wish to engage in certain cross-frontier operations.

The European Company Statute does not seek to replace national company laws. It is a complete European Companies Act, which will exist alongside them. It opens up a new possibility for European enterprises that wish to overcome present legal differences and practical difficulties in cross-frontier operations.

The European Company Statute is optional. No enterprise is compelled to use this legal framework. They can choose to do so, if they fulfil the requirements of the Statute, including the provisions for workers' participation in the decision-making process of the enterprise on the supervisory board, in the European Works Council and through collective bargaining.

II. The need for a legal framework

The Community's ability to respond effectively to the political problems which arise today, and will undoubtedly arise in the future, depends to a great extent upon the existence of solid structural foundations. Without such a structure, the Community is like a modern building without its steel frame. When the winds blow it will fall apart. One of the elements in this structural foundation, not perhaps the most central component, but certainly a very important one, is a common legal framework. The looser economic trading arrangements appropriate in the 1950s and the 1960s will not enable the Community to meet the greater challenges of the 1970s and 1980s. The institutions of the Community must move on to construct a common market in the full sense: a solid economic, social and legal foundation for the Community.

The European Company Statute is a significant part of that common legal framework.

Enterprises cannot today adopt legal structures which are appropriate to the scale and requirements of the European market in which they operate or wish to operate. The European Company Statute will provide them with such a structure and, moreover, a structure of a modern sophisticated kind, which offers protection for the legitimate interests of all concerned in the running of the enterprise. In making this structure available, the European Company Statute will provide a real stimulus for economic activity throughout the Community. For enterprises will have the opportunity to choose a modern corporate form which enables them to operate as European enterprises and thereby increase their efficiency, competitiveness vis-à-vis the outside world and strength, in their own interest and, what is more, in the interest of society as a whole.

The purpose of the European Company Statute is not to encourage bigness in industry as such, but to free enterprises from legal, practical and psychological constraints deriving from the existence of nine separate legal systems. These constraints at present inhibit enterprises from arranging their affairs and relationships with other enterprises in the manner which would otherwise be the most efficient and profitable just as a national company does in relation to its domestic market. Small and medium-sized firms

can benefit as much as large ones from this opportunity.

The Statute will facilitate the formation of new multi-national companies, but of a different type. Multinationals which choose to take advantage of the new European form will have a transparant structure and clear obligations in relation to shareholders, creditors, employees and society as a whole. This will constitute a step towards establishing a modern uniform company law applicable to European multi-national companies throughout the Community.

III. The need for employee participation

The interests of society are increasingly related to wider considerations than economic efficiency.

This is nowhere more true than in the field of company law. In recent years there has been an increasing recognition, that in order to ensure that companies operate for the benefit of the society as a whole, other interests than those of the investor, entrepreneur and manager should be able to influence the decisionmaking of the company. Employees have interests in the functioning of the enterprises which are as substantial as those of shareholders and sometimes more so. Employees not only derive their income from the enterprises which employ them, but they devote a large proportion of their daily lives to the activities of the enterprise.

Decisions taken by the enterprise have substantial effects on their economic circumstances, their health and physical condition, the satisfaction they derive from work, the time and energy they can devote to their families and to activities other than work, and even their dignity and autonomy as human beings.

It is therefore not surprising that the problem of how and to what extent employees should be able to influence decisions of the enterprises, which employ them, has become a problem of paramount interest in all Member States. The European Communities can and should play an important role in the search for practical means to ensure employee participation.

This is all the more true in the current period of profound economic and social change in the world. The new situation relating to energy and other raw materials has changed the economic environment of the enterprises. The need for industrial reorganisation has increased while at the same time the prospects for immediate wage increases have become more limited. Consequently, conflicts of interest between different groups are more acutely felt.

But precisely in such a period of economic and social tension there is even more need for effective mechanisms whereby those involved and employed in industry can respond quickly and sensibly to the requirements of the situation. Difficult problems will be easier to solve properly, fairly and with a minimum of wasteful confrontation if there are mechanisms which involve all those affected in the process of finding solutions. Here, decision-making machinery at enterprise level and within the enterprise undoubtedly has an important part to play. The Community would fail to make its contribution to economic and social progress if it overlooked the problem of reconciling the principal interest groups in our society.

IV. Opinion of the European Parliament

The European Parliament in July 1974 with a large majority approved the policy, the concept and the principles underlying the Commission's original proposal of June 1970. However, three kinds of amendments were proposed:

- numerous amendments of a technical nature,
- several amendments of some economic, legal and (or) political significance, and
- a few amendments of high political significance.

As far as the technical amendments are concerned, most of them have been accepted by Mr. Gundelach on behalf of the Commission, during the debate in the Plenary because they were ameliorations or did not raise problems. The few technical amendments not acceptable are of minor importance.

As to the amendments of some economic, legal and (or) political significance, again the Commission agrees in all but two instances with the European Parliament:

The Commission wishes to maintain

- the possibility offered to European Companies to opt for several registered offices,

and it does not consider that

- the sanctions for the offences committed against provisions of the European Companies Regulation should be regulated in detail at Community level.

1. Access

Concerning the problem of the access to the European Company the Commission proposes to open access not only to sociétés anonymes (as proposed in 1970) but also to companies with limited responsibility and other corporate bodies for the formation of a common subsidary, and to lower the minimum capital for mergers and holding companies to 250,000 RE and for common subsidiaries to 100,000 RE.

2. Taxation

The European Companies will conform to the same taxation rules as national companies and will benefit on the same basis as national companies from the provisions of the directive on the common tax treatment of parent companies and their subsidiaries of different Member States, and the directive on the common system of taxation applicable in the case of mergers, divisions and contribution of assets taking place between companies of different Member States, which were proposed by the Commission to the Council in 1969 (O.J. No. C 39 of 22.3.1969).

The Commission supported by the European Parliament therefore now takes the opportunity to draw the attention of the Council to its timetable for the abolition of fiscal barriers to closer relations between undertakings as laid down in the resolution of December 1973.

V. Amendments of political significance

These concern three issues:

- the representation of employees in the Supervisory Board of a European Company,
- the problem of how to choose the representatives of the employees for the Supervisory Board and the members of the European Works Council, and
- the powers of the European Works Council.

The Commission has decided to modify its original proposal in accordance with the opinion of Parliament.

1. Composition of Supervisory Board

The Supervisory Board shall consist as to one third of representatives of the shareholders, as to one third of representatives of the employees, and as to one third of members co-opted by these two groups who are to be independent of both shareholders and employees and to represent "general interests".

The proposal to divide the number of seats on the Supervisory Board into three equal parts is intended to avoid some of the organizational, political and psychological difficulties which could result on the European level from a representation ratio of 50:50 between shareholder and employee representatives. In particular the proposal attempts to prevent deadlock situations arising which might adversely affect the economic efficiency of the undertaking. The additional proposal that the total number of members of the Supervisory Board should be uneven is also intended to reduce this danger. Moreover, the proposed one third - one third - one third formula has the attractive feature of enabling other, broader interests than those of the shareholders and employees to be represented on the Supervisory Board.

On the other hand, if the representation of shareholders is reduced to one third giving another third to the employees and the final third to other defined interests, there is said to be the risk of reducing the incentive companies may have for using the European Company form. However it should not be overlooked that no member of the final third can be co-opted without the consent of at least some of the shareholders' representatives because each co-opted member needs at least two thirds of the combined votes of the shareholders' and the employees' representatives.

The co-opted members of the final third must represent "general interests". This concept is intended to cover all interests affected by the activities of a European Company other than those of the shareholders and employees directly involved. The concept must be seen as one element together with two other requirements, that is that these representatives be "not directly dependent on the shareholders, the employees or their respective organizations" and have "the necessary knowledge and experience". The underlying idea is that the representatives constituting the final third will enable the Supervisory Board to take decisions which take into consideration all interests affected by the activities of the European Company, in other words to recognize the special responsibility of the enterprise toward those interests.

Since the "general interests" are not defined in a concrete way, the proposed system has some similarity with the system of the "eleventh man" prevailing in the German coal and steel industry since 1951 who is to be co-opted by the representatives of the shareholders and of the employees on the Supervisory Board. Nevertheless there are substantial differences. Since the final third of members on the Supervisory Board of an S.E. will normally consist of at least three members, there will be not just a single member, but a plurality of independent members who are all equally entrusted with preventing a deadlock in the Supervisory Board of the S.E.

The proposed system also contains substantial elements of the Dutch system in force since 1973. The candidates eligible for co-option are to be proposed by the General Meeting, the Works Council and the Management Board as under Dutch company law. Accordingly, the General Meeting, the European Works Council and the Management Board are each expected to propose candidates who will have the necessary knowledge and experience, will defend the long term interests of the enterprise as a whole, and will therefore probably be acceptable to both shareholders' and employees' representatives.

The shareholders' and the employees' representatives on the Supervisory Board will then probably elect those of the candidates nominated by the three organs whom they predict will act as mediators and conciliators rather than a substantial third force, at least as far as the last man to be co-opted is concerned, for the total number of the members of the Board must be uneven. As experience with the system in the German coal and steel industry shows, an uneven number tends to favour compromise candidates who subsequently act as mediators and conciliators.

The proviso that the shareholders' and the employees' representatives have to choose among lists of candidates submitted to them by the General Meeting, the Works Council and the Management Board is to some extent a

supplementary guarantee against the choice of nonentities. Since the lists of candidates will probably be a matter of public knowledge, the nominatory bodies will feel obliged to put forward candidates with reputation which will not attract undue criticism of the nominating body itself.

It will not be mandatory for employees to be represented on the Supervisory Board. It is left to the employees to decide - with a simple majority - whether they wish to participate in the Supervisory Board of an S.E. or not. If not, the Supervisory Board will consist of representatives of shareholders only, fulfilling its normal functions. It would not correspond to the normal rules of democracy if a minority of employees in favour of employees representation were able to impose their views on a reluctant majority.

2. Representations of trade-unions by persons not employed by the European Company

The ESC gives the statutory right to the trade unions represented in the establishments of the S.E. to submit lists of candidates for the election of the employees' representatives to the Supervisory Board. The lists can include a minority of trade union candidates from outside the enterprise, leaving the electors to express their preferences.

It is thus left to the electors and not to the law to decide whether persons not employed by the S.E. become employees' representatives on the Supervisory Board. The legitimation of all of the representatives of the employees on the board depends on their election, that is on the will of the majority of the employees of the European Company.

3. Election of employees' representatives to the Supervisory Board

Under the election rules the choice of employees' representatives takes place normally in two stages.

First stage: all employees elect in the establishments of the S.E. a number of electoral delegates by secret direct ballot. The election is subject to the principle of proportional representation. Lists of candidates may be submitted by trade unions represented in the establishment and by groups of employees entitles to vote.

10% or 100 employees in an establishment is the minimum requirement for putting up a list of candidates.

Second stage: the electoral delegates elect the employees' representatives to the Supervisory Board jointly by means of a secret ballot. They must exercise their voting rights freely and must not be bound by any instructions. The election is subject to the principle of proportional representation.

Lists of candidates may be submitted by the European Works Council, by trade unions represented in the establishments of the S.E., by 1/20 of the electoral delegates or by at least 1/10 of the employees of the S.E.

4. Election of employees' representatives to the European Works Council

The members of the European Works Council are elected by all employees of the S.E. by secret direct ballot. Lists of candidates may be submitted by trade unions represented in the establishment and by groups of employees (10% or 100 employees). The election is subject to the principle of proportional representation.

The European Works Council is thought to be the representative body of all employees employed in establishments of the S.E., irrespective of whether they are organized in trade unions or not. Hence, there must be direct and secret elections in which all employees of the respective establishment can participate. This is of particular significance in the case of undertakings

which have establishments in several Member States - and it is only then that a European Works Council is created. The degree of organization of workers in a trade union varies as much from one Member State to another as it does from one branch of industry to another.

But the degree of the legitimation of the members of the European Works Council should not differ and depend upon the degree to which labour is organized in each establishment.

All employees of the S.E., moreover, should enjoy the same rights relating to information, consultation and co-decision. These are intended to be statutory rights and therefore not reserved to organized groups, but available to all employees in accordance with democratic principles.

This does not mean that trade unions are in any way excluded from having members on European Works Councils. Where an election takes place, they have an equal right to submit lists of candidates. In addition, the European Works Council may at any time, by majority vote, invite a representative from a trade union represented in an establishment of the S.E. to attend certain meetings in an advisory capacity. Furthermore, experts may be called in to clarify certain difficult questions and these experts can be drawn from the ranks of trade unions.

5. Powers of the European Works Council

The European Works Council is competent for all matters which concern the S.E. as a whole or several of its establishments. The Works Council is to be kept regularly informed on the general economic position of the S.E. and of its future development. It has to be consulted before important economic decisions affecting the employees are taken. Decisions concerning certain social matters may be made by the Board of Management only with the agreement of the European Works Council. If the European Works Council withholds its agreement, agreement may be given by a court of arbitration whose members are appointed by the European Works Council and by the Board of Management.

The European Works Council must give its agreement to decisions planned by the Board of Management concerning the establishment of a social plan in the event of closure of the S.E. or of parts thereof. Before making any decisions relating to the winding up of undertakings and mergers with other undertakings, the Board of Management must consult the European Works Council.

On the other hand, the competence of the European Works Council shall extend only to matters which do not involve the negotiation or conclusion of conventions or collective agreements concerning the working conditions of employees. Thus a demarcation line has been drawn between the powers of the European Works Council and of the trade unions.

The European Works Council is not to interfere with the role of trade unions nor with the duties of employee representatives organized at plant level under national arrangements. These representatives will continue to exercise their functions, unless otherwise provided in the Statute. Such provisions exist only in cases where a uniform representation of all employees affected by a decision of the Management Board is desirable both for the representation of employees' interests and the viability of the decision making process within the European Company. Nor is collective bargaining on working conditions a matter for the European Works Council. The draft of the amended proposal expressly prevents the European Works Council from engaging in such procedures, unless it is authorized to do so by the contracting parties within a European collective agreement. It is hereby intended to forestall any possible conflict with the functions of the trade unions.

Indeed, the proposed European Company Statute goes much further than that and gives the trade unions the new, additional opportunity to operate

effectively in the specific environment of a company working at a transnational level. To these ends, it includes provisions enabling the European Company to conclude agreements with the trade unions represented in its different establishments on working conditions which are binding throughout the Community for all employees who are members of a trade union which is a party to such an agreement.

This reflects the feeling that the European Company will function better if the trade unions are sufficiently organized and possess specific rights at the transnational level on which the company works and are thus able to play an active role in the life of the undertaking.

Ref. Information P-24 of the Spokesman's Group.