EUROPEAN PARLIAMENT

LEGAL AFFAIRS COMMITTEE

Communication to the Members

Please find attached the text of the speech concerning the draft statute of a European Company, delivered by Mr. Gundelach, member of the Commission of the European Communities, to the Legal affairs Committee on April 13th, 1973 in Brussels.

THE DIRECTORATE-GENERAL FOR
COMMITTEES AND INTERPARLIAMENTARY
DELEGATIONS

May 4th, 1973

Speech on the European Company, delivered by
Mr. Gundelach, Member of the Commission,
to the Legal affairs Committee of the European Parliament
on the 13th of April 1973 in Brussels

I welcome this opportunity to address the European Parliament's Legal Committee on such an important issue as the proposed European Company Law.

Today, you are dealing with the amendments which have been proposed last December in the plenary session to the draft resolution and the report prepared by your Committee. This task is indeed urgent, urgent as well as important. As all of you know, the heads of state and of government asked in the final resolution of the Paris summit conference of October 1972 for the "rapid adoption of a statute for European Companies".

Why is the European Company such an urgent and important issue? There are several reasons for this.

The proposed European company is one of the legal instruments which you are dealing with or will be dealing with, in the field of company law, in the field of capital movements, in the field of movements of goods, in the field of establishment right, etc. And these various instruments again are elements of the infrastructure, which is to serve as basis for the construction of what is one of the Communities tasks over the years to come, the so called economic and monetary union.

The more far reaching ideas in regard to monetary policy and general economic policy, a common position toward the outside world, trade negotiations, etc., are bound to fail unless actions are taken as well in the legal field as in the economic and social fields to create a situation where convergencies can gradually be brought about among our economies and a solid framework is established on which a more unified economy can be built. We cannot bring together our exchange rate policies, maintain a common agricultural policy, a common industrial policy, make progress toward a social policy and a regional policy, unless there is a solid move towards a common structure of our economy. These policies will collapse if they are not based on such a structure.

What is sought by these endeavours? It is naturally a continued effort to reach the economic benefits of a larger and free market. But it is more than that. It is also creating the basis for action which has a social objective, an objective to protect the social partners and to protect the society as such. It is finding measures to obtain a reasonable balance and equilibrium between on the one side the benefits to be gained from free competition, a better use of our scarse ressources, and on the other side the protection of society against misuse, for instance, of large scale economic entities.

Having made these few conceptual comments, I would like to mention some specific considerations within the same framework behind the proposal you are to deal with.

Firstly, the proposed regulation is aiming at establishing a common market for enterprises. Until now, there is a common market only for employees, goods, and services. Our enterprises do not yet have the possibility to act within the territory of the Community the same way as they are permitted to act within each of our Member States. They are not allowed to do cross-frontier mergers. They have to overcome seriour legal and psychological obstacles if they wish to combine in cross-frontier holdings or cross-frontier joint subsidiaries because the reach of the national company laws to which they have to conform ends at each national border. They do not have the possibility to conform their legal structure to the dimensions and the needs of the European market, and to live not under nine national laws but under one European company statute.

The utility and the need to create a legal form based on Community Law have been underlined in the Legal Committee's report and none of the amendments proposed have been questioning this fundamental point.

But of course, we must take into account the consequences of such operations so far as competition is concerned. Therefore, the European Company Law must be complemented by appropriate instruments to control mergers affecting competition in the Common Market. Our competition policy tries to take care of this important aspect of mergers.

Let me take this opportunity to underline that the philosophy of the Commission is that there is not an equilization mark between efficiency and size. There is a number of indications that smaller and medium size firms in many respects can be more efficient than bigger companies. Therefore I wish to underline that the philosophy behind this proposal of an economic nature is not meant for the size. It is something else. It is to say that the decision on the optimal size of a company should be freed from legal problems at the frontier. What we are engaged in is to free our markets from non-tariffary barriers in the field of goods, to do away with legal obstacles against a reasonable cooperation among firms. And this is not necessarily concerning big firms. I am quite convinced that often the cooperation will be organized among firms of a small or medium size.

Secondly, the proposed European Company Law must be seen as part of the Commission's policy regarding the so called multinational companies. The statute makes possible new multinationals, but under quite different conditions than any of our national laws. The applicability of the European statute is not restricted to the territory of one country but comprises the whole territory of the Community. This is not only a considerable advantage for multinationals choosing to live under European law. At the same time the Commission's proposal permits to submit all European activities of such multinationals to one and the same uniform company law applicable all over the Europe of the Nine. This means that such European multinationals will all have the same organization or structure, the same obligations as against shareholders, workers and creditors and society, the same obligations as to the publication of their accounts and balance sheets. And European multinationals organized as groups will all have to respect the same rules in order to protect the interests of dependant companies and their shareholders, workers, creditors and the interests of the society as a whole.

Thus, the European statute could contribute substantially to a new, enlarged law on multinationals, based upon transparency of company affairs, modern structure, and sufficient protection of all interested parties involved.

As the Communiqué of the Paris summit conference says, "establishing a single industrial base throughout the Community implies ... the elaboration of provisions to ensure that concentrations affecting firms established in the Community are in harmony with the economic and social aims of the Community". The Statute for European Companies is one of the instruments needed to arrive at these goals.

Thirdly, the European Company Law is aimed at attracting private capital for undertakings situated and working in the Community and willing to set up a European Company. The proposal would stimulate investments within the nine countries and contribute to the establishment of a common European capital market. The proposed regulation does offer investors confidence, legal security, and protection. In this respect, the European Company is an important step on the way of creating the legal structure needed, as previously indicated, to implement the Economic and Monetary Union. A uniform company statute would make a major contribution to a better use of financial and technological ressources, based on the parameters of the whole common market and not on those of nine different domestic markets.

But the European Company Law is not an appropriate instrument to direct or to control capital movements. This is the scope of other policies, proposed or to be proposed by the Commission. To attract or to influence investments in particular sectors or in particular regions is not a task of company law and has never been so in any country.

Therefore, the Commission could only propose legal criteria for the access to the European Company which will be available for all capital to be invested within the European Community without regard to its origin, provided the European Company is organized by share companies established under laws of different Member States. We do not think that it is in the interest of the Community nor that it would be in conformity with the aims of the EEC-Treaty to restrain investors outside of the Community from buying shares in European Companies. Under the proposed regulation, a European company does not have to be owned by Europeans only but must be incorporated within the Community and follow the rules set out in the regulation and the objectives of the Community.

The proposal to limit the access to the European Company to share companies has been considered to be too restrictive. It has been said that undertakings organized in other legal forms, too, should have access in order to establish a joint subsidiary in the form of a European Company. I am quite willing to consider such a modification as claimed by this Committee when the Plenum will have adopted its resolution.

However, the proposed European Company Law is not only an instrument to establish a common market for companies, to contribute to the control of multinationals, and to attract and stimulate

investments. In addition, it is an effort to organize future European companies in an optimal way, both legally and economically. The law must provide for an efficient management as well as for an appropriate protection of all interests involved. This is why the Commission proposed the two-tier system board of management - supervisory board. The main advantage of the dual system is that it permits a true and effective control of how well the company is managed by independent men not involved in management. It introduces a clear-cut division of the functions and the responsibilities between the members of the management board and of the supervisory board. It is a system of "checks and balances".

Furthermore, it makes it possible to represent different interests in the European Company without affecting the homogeneity and uniformity of its management. The European Company Law affects closely not only the interests of the capital owners but also of the workers employed. There is a clear trend in quite a number of European countries to institutionalize the representation of these interests in the organs of the company. The Commission's proposal has certainly contributed to that development. In my opinion there is no need nor even a possibility to go backwards on that road.

You all know the contents of the proposal. The idea is to grant to the workers the right to participate in the decisions affecting them. This seems necessary in order to prevent a further alienation of the workers in regard to our free economic, social and political order. At the same time, we have to make sure that all possibilities of an efficient management are being maintained and that the European Company is able to face **worldwide** competition. Finally, the Commission wanted to propose a system which would have real chances to be adopted. Hence, the proposal has to be a compromise.

The Commission welcomes the general approval to introduce a European Works Council. But we think it must have a direct legitimation, being elected by all the workers of the European Company. This makes sure that it will become a true representation of the common interest of all the employees when it is exercising its function to have a steady dialogue with the management on all questions of importance for the workers and to share responsibility in questions affecting directly the status of the workers.

With respect to workers' participation in the supervisory board, quite some developments have taken place since 1970. The problem is being discussed today in all Member States and the chance to arrive at an agreement seems to have increased rather than decreased.

The Commission cannot accept to leave that question open to be dealt with in the memorandum of the company. The European legislative bodies cannot abstain from taking a decision on the problem of which place workers should take in European Companies. This is a political decision of great importance that cannot be left to the parties, that is the shareholders and the employees.

In addition, there cannot be alternative solutions of the problem, but a uniform solution is necessary. Indeed, this conviction is shared by all the Committees of the European Parliament having so far dealt with the question.

Concerning the extent of workers' participation in the supervisory board, the opinions of the Legal and the Social Committee have been divergent. Your Committee voted in favor of 1/3 workers' representatives, 1/3 shareholders' representatives and 1/3 chosen by both of these groups. The Committee on Social Affairs voted just two days ago in favour of the Commission's proposal. The final decision will have to be taken by the Plenum. The Commission tried to make a reasonable and realistic proposition. It is now up to European Parliament to pronounce itself on that proposal. It is only after we know the decision of this Parliament that the Commission will reexamine its proposal.

Finally, some remarks concerning the law on integrated groups, the "Konzernrecht" as provided in the European Company statute.

The Commission welcomes that the Legal Committee and the Economic Affairs Committe underline the need to adopt a cohesive regulation for integrated groups of enterprises where a European Company is a part, and we are glad that the proposed solution found the approval of both Committees.

An appropriate law on groups must provide both for flexibility and for guarantees protecting shareholders of affiliated companies, workers and creditors. Such guarantees have to be granted as soon as an integrated group becomes an economic reality, that means as soon as legally independent enterprises are submitted under the uniform direction of the group. In our opinion, it is not possible to leave it up to the holding company controlling the group whether it gives such guarantees or not.

However, the details of the guarantees to be offered by holding companies may well have to be reconsidered. A higher degree of flexibility, as wanted in your Committee's report, might be preferable.

To conclude, I should like again to emphasise how urgent it is to create the European Company Statute. In the view of my Commission, it is a very important step in building a real European Union.

And this proposal gives to this most respectable Parliament a unique opportunity to debate one of the most important political questions that Europe has to cope with.