Workers' rights in industry

European File

More and more, questions are being asked about the position of the employee in industry. Do employees have enough protection against the everyday risks of economic life: redundancy, loss of rights through takeover or merger, bankruptcy of their employers? Are they sufficiently well informed and consulted? Should they be in the position to supervise the activities of the company they work for, or participate in its management?

Various factors have combined to highlight the problems of workers' rights in industry:

- In a domestic society, those who are affected by company decisions naturally want to be able to control, be consulted or even participate in the decision-making process. This is the case for workers who not only earn their incomes in a company but also spend a large part of their lives there.
- Just like the rest of the world, Europe is confronted by changes which affect the economic environment, a good example of which is the rising cost of energy. The repercussions are considerable on industry and technology, and fundamental changes have occurred: the economic crisis has multiplied factory closures or reductions in the level of their activity; to survive or expand, companies must restructure, conclude agreements or mergers, which, nowadays, frequently draw them across national frontiers; multinational companies consequently cover a growing section of industry.
- Finally, it is evident that the functioning of the European Community stimulates certain structural changes due to the existence of a single market stretching from the West of Ireland to the Greek islands, from Copenhagen to Palermo. Workers cannot be left outside such fundamental changes.

Commission of the European Communities
Directorate-General for Information,
Rue de la Loi 200 - B-1049 Brussels

€ 15/81
October 1981

Such problems call for a Community response.

- ☐ Firstly, for social reasons. In its Social Action Programme (1974), the Community expressed its willingness to strengthen the protection of workers' interests, to contribute – in conformity with Article 117 of the Treaty of Rome – to the improvement and increased equality of living and working conditions. Economic and social change together with various trade-union and legal developments, have encouraged workers to recognize their rights within their company, although to a degree which varies from country to country. European action is needed therefore:

  - to reduce the relative ineffectiveness of national legislation which itself is often faced with severe limitations when dealing with companies based in several countries;

  - to give to all European citizens progressively improving social rights by way of an 'upward' harmonization of the different national legislations.

- ☐ Secondly, for economic reasons. Article 100 of the Treaty of Rome, which is the foundation-stone of the Community, calls for the harmonization of national legislations which have a direct impact on the functioning of the common market. In reality:

  - economic evolution and the development of the Community have stepped up the interaction between companies on both sides of national frontiers; the Community's job is to track these movements and propose common operating frameworks which will make life easier for companies faced with many – and often very different – legal requirements;

  - the maintenance of healthy competitive conditions – one of the basic principles of the European Treaties – requires that the burden of certain regulations will not be notably heavier for some companies than for others;

  - excessively divergent industrial and social trends in Community countries could hinder trade and economic development. It could also disrupt the flow of investment funds when provisions in force in one country become notably more attractive than those prevailing in others.

There are many good reasons for action at the Community level, but solutions are not easy to find and can be slow to implement because:

- ☐ the problems are complex and the solutions have to resolve conflicting interests. Both at the national as well as European levels, employers wish to hold onto their decision-making power, and workers wish to extend their rights;

- ☐ the national responses to these problems proposed in member countries reflect the countries' national traditions and history and tend to be relatively divergent.

It is not, therefore, surprising that proposals made by the European Commission in this area, following extensive discussions with national experts and representatives of the different parties involved, are relatively complex and require a long time before taking effect.

Generally presented in the form of draft directives which define a certain number of principles, but which leave to Member States the job of translating the principles into national law within a stipulated period of two to three years, these texts describe a 'middle' course of action; each of them stipulates that Member States can adopt measures which are more favourable to the workers, if they so wish.

Three directives have already been adopted by the Community's Council of Ministers, following consultation with the European Parliament and the Economic and Social Committee (composed of representatives of employers, workers and other interested parties).

These texts aim essentially at protecting workers against certain economic risks. Three other much more ambitious proposals – one very recent and the others dating from some ten years ago – dealing with information, worker consultation and participation, are still in the pipeline.

Worker protection

- ☐ Collective redundancies: proposed in November 1973, adopted in February 1975, and in force since February 1977, a European directive harmonizes national legislation relating to mass redundancy and stipulates an information and consultation procedure. Some categories of workers are not covered: public servants, seamen, workers whose contracts expire in any case, or where a company ceases operations through a court decision. For the rest, mass redundancy is taken to mean any redundancy decision affecting either – at the discretion of Member States – 20 workers over a 90-day period; or, over a period of 30 days: 10 workers in establishments employing between 21 and 99 persons, 10% of the payroll of a company employing 100-299 persons, 30 workers in an establishment with under 300 employees. If an employer envisages such a mass lay-off, he is obliged to:

  - send a written and explanatory statement to the representatives of the workers concerned and hold discussions with them to try and reach agreement on ways to avoid or limit such redundancies and their consequences;

  - inform the competent public authority which can delay the redundancy for a certain period (in principle at least one month) to find a solution to the problem. The redundancies can only become effective after the expiration of this period, which may also be prolonged.

- Transfers of undertakings, businesses or parts of businesses: proposed in May 1974, adopted in February 1977, and applicable since March 1979, a European directive aims to assure workers' rights when, following a conventional closure or a merger, they find themselves working for a new owner. In such cases:

  - the rights and obligations contained in a contract of employment or an 'employment relationship' are automatically transferred to the new employer. If the latter then makes redundancies for economic or other reasons, he cannot use the transfer or merger as an excuse. The protection of rights relating to company social schemes (supplementary pensions, etc., outside statutory social security schemes) are a matter for specific national provisions. Other contract conditions contained in collective agreements will remain in force for the period of their agreement or, at least, for a period of one year. Measures have also been taken to guarantee the rights of worker representatives;

  - a procedure for prior information and consultation has been established. Representatives of workers must be informed of the reasons for the transfer, the legal, economic and social consequences, as well as measures which are envisaged to compensate for the negative effects which the transfer could have for the workers. Consultation should therefore be used to reach agreement. The procedure applies principally to companies where such a system of worker representation exists; it deals primarily with measures which affect the situation of workers or, where arbitration systems exist, with measures which could lead to substantial disadvantages for a considerable part of the workforce.

- Insolvency of the employer: proposed in April 1978, adopted in October 1980, and applicable from October 1983, a European directive aims to guarantee payment of wages and other outstanding claims from workers in the case of the opening of insolvency proceedings, in the event of bankruptcy or failure of the employer to meet his payments. The position of the workers is all the more difficult when there are many creditors, when the procedures are drawn out and when, in any case, the assets of the company are likely to be insufficient to cover all debts. The directive therefore provides for:

  - the creation of guarantee institutions, financed most often by employers and public authorities, and the requirement that the assets of the institution shall be totally independent from the company's operating capital to ensure that it cannot be seized in proceedings for insolvency;

  - the payment by these institutions of certain outstanding claims from workers. The national authorities can, however, decide to put a ceiling on payments or limit them to remuneration for a certain period depending on the case, from 8 weeks to 18 months. It may also exclude the employer's social security obligations. However, all the necessary measures must be taken so that workers continue to benefit under the statutory social security system and that they do not lose rights earned under supplementary systems. In some countries, certain categories of workers

can be excluded from the field of application of the directive. Such is the case for certain fishermen in Ireland and the United Kingdom, and British seamen who benefit from other guarantees.

Worker information and consultation

Two of the preceding directives already cover information and consultation procedures in the event of serious economic problems affecting the company and its workers. However, according to the European Commission, information and consultation should be a permanent characteristic of the working life of a company. The German example shows that the competitivity of companies will in no way be affected. A proposal put forward in October 1980, but which could still be modified in the light of the opinion of the European Parliament and the Community's Economic and Social Committee, aims therefore at organizing the information and consultation of workers employed in companies with a 'complex structure'. This relates to firms with several subsidiaries of establishments situated either in the country of the parent company or not. The directive will also apply, therefore, to transnational companies, whether or not they have their headquarters in the Community. The current text covers the following:

- ☐ The management of a dominant undertaking must regularly transmit to its subsidiaries data on the activities of the company as a whole: payroll, investment programmes, employment and production outlook, changes in structure, methods, activities, etc. Each subsidiary employing more than 100 persons would have to communicate such information to worker representatives without delay.

- ☐ 40 days before action is taken on certain decisions which could substantially affect the interests of the workers (closures, important reorganization, etc.) in the dominant undertaking or in the subsidiary, the management of the parent organization must inform the management of its subsidiaries employing more than 100 persons, of the reasons and economic and social consequences of the project. Informed of this, in turn, workers have a period of at least 30 days to give their opinion. If they think the project risks affecting their conditions of employment or work, the management must open up consultations with the workers directly concerned to search for an agreement on the measures envisaged.

- ☐ When the subsidiary is not in a position to inform or to consult the workers, the latter can address themselves directly to the dominant undertaking. Moreover, if the location of the parent organization is outside the European Community, its responsibilities are transferred to its representative in the Community, or to its Community subsidiary employing the most workers.

- ☐ Information and consultation are organized within the institution representing the whole of the personnel of the dominant enterprise and of its subsidiaries when national law or an agreement between the parties concerned has stipulated the creation of such an institution.

Towards participation

Do we need to go further than information and consultation ? In two long-standing proposals, the European Commission responds affirmatively to this question. It suggests that limited companies should be managed by a two-tier structure composed, on the one hand, of a board in charge of management and, on the other hand, by a supervisory body. According to the Commission, such a structure best helps define responsibilities whilst encouraging the participation of workers. All too often, shareholders represented at the annual general assembly of a company are not in the position to supervise effectively the conduct of a company's business. In such a situation, certain managers may be tempted to pursue their own personal interests at the expense of the company's. The creation of a supervisory body can help remedy this problem; workers can be represented on this body and influence the long-term policy of the company without becoming involved in day-to-day management. Such participation not only corresponds to a democratic ideal, it can also strengthen the effectiveness of companies which, in a difficult economic environment, must be able to adapt to change and introduce new strategies which can be understood and accepted by all interested parties.

- A draft regulation dating from 1970 but revised in 1975, presents a complete statute for a European limited company to be freely adopted by companies working in several Community countries and consequently avoid the mosaic of legislation in force in each Member State. Certain conditions have been stipulated: the headquarters of these companies must be situated in the Community and their minimum capital must exceed either 100 000 or 250 000 ECU,[1] depending on whether it is the creation of a subsidiary or a merger. At the social level, this statute stipulates:

  - that the company must have a dualist (two-tier) structure, composed of a management board (responsible for business management) and a supervisory board which nominates, controls and, possibly, replaces members of the board. If the majority of workers so desire, the members of the supervisory board are, themselves, divided into three groups: one-third is designated by shareholders and one-third by the workers; the two groups subsequently co-opt the other one-third of independent members representing the general interest;

  - that a European enterprise committee be constituted. Representing all workers, it would have certain rights to information, to consultation and to co-decision-making on social matters, particularly for redundancy procedures. In the case of a holding company, a European group committee would be formed.

- A draft directive, submitted in 1972, stipulates obligatory rules to be respected by all limited companies. According to this proposal:

  - all limited companies constituted in a Community country should adopt a two-tier structure;

[1] 1 ECU (European currency unit) = about £0.60 or Ir £0.68 (at exchange rates current on 18 September 1981).

- if they employ more than 500 persons, they should ensure the participation of the workers in the formation of the supervisory board. Member States can stipulate that the workers or their representatives nominate at least one-third of the members of the supervisory board. When the latter is re-elected through co-opting, the workers would have the same right as the shareholders to oppose and veto a nomination.

Various objections were made to this proposal and the European Commission consequently published a 'green paper' in 1975 entitled, 'Worker participation and company structure', insisting that this draft directive was only a framework with a large part of detail depending on national situations. During a transitional period, the older forms of company comprising a single management body could exist parallel to the new bodies. As for worker participation, it would be organized through this period either within the supervisory board, or outside of it by the introduction of a body with extended rights regarding information and consultation. In addition, the majority of workers would have the possibility of refusing all form of participation at the company level.

And the company assets ?

Finally, another stage of a logical progression of workers' rights: the participation of wage earners in asset formation. In August 1979, the European Commission presented a working and consultative document on this theme, which also suggested reinforcing the social aspect of individual savings schemes and which has been submitted to the parties concerned and to the various Community institutions. According to the Commission:

- ☐ worker participation is justifiable irrespective of ownership of shares, but participation in the profits or in the assets of the enterprise forms an important element of participation and can help reduce social inequality;

- ☐ if workers are requested to accept a certain adjustment in wages to enable, for example, new investment, it is fair to assure them, by contrast, rights to these productive assets;

- ☐ an active assets policy can help boost productive investment whilst constituting a modern way of regulating the economy and combating inflation.

How do we do this ? Having examined the existing or envisaged systems in the various member countries, the Commission's memorandum sketches the following alternative:

- ☐ Employers give their employees a flat-rate allowance in addition to their wages but 'freeze' it for a certain period (long-term saving, building society type saving schemes, etc.). The social partners could conclude conventions detailing such a system within a legal framework which would also stipulate measures for public support.

☐ Wage earners participate, always in a 'frozen' form, in the profits, capital growth or in the capital of the company. In other words, ownership of shares could be transferred directly to the workers in each company concerned, or through the intermediary of a collective fund, to the workers in a specific sector or to all wage earners. The sums involved in the asset formation could also be divided according to these two formulae. In the situation where a collective fund is created, should there be one or more than one per country ? Numerous formulae are imaginable, the essential fact being that the gap between wages earned in companies and between branches varies considerably. The management of the fund could be undertaken by workers' representatives, public authorities, or even by the companies themselves. The 'frozen' capital should, above all, be put at the disposal of companies for the creation of new jobs, but it could also help to improve pensions, finance early retirement, etc. ■

Commission of the European Communities

Information offices (countries fully or partially English speaking*)

Ireland	39 Molesworth Street, Dublin 2 – Tel. 71 22 44
United Kingdom	20 Kensington Palace Gardens, London W8 4QQ – Tel. 727 80 90 – 4 Cathedral Road, Cardiff CF1 9SG – Tel. 37 16 31 – 7 Alva Street, Edinburgh EH2 4PH – Tel. 225 20 58 – Windsor House, 9/15 Bedford Street, Belfast BT2 7 EG – Tel. 40 708
Australia	Capitol Centre, Franklin Street, P.O. Box 609, Manuka 2603, Canberra A.C.T. - Tel. 95-50 00
Canada	Association House (suite 1110), 350 Sparks Street, Ottawa Ont. KIR 7SB – Tel. 238 64 64
USA	2100 M. Street, N.W. Suite 707, Washington D.C. 20037 - USA – Tel. 202-862-9500 – 245 East 47th Street, 1 Dag Hammarskjold Plaza, New York, N.Y. 10017 - USA – Tel. 212-371-3804

* Offices also exist in other countries including all Member States.

Office for Official Publications of the European Communities
L – 2985 Luxembourg

ISSN 0379-3133

Catalogue number: CC-AD-81-015-EN-C