European Communities

EUROPEAN PARLIAMENT

Working Documents

1982-1983

21 June 1982

DOCUMENT 1-325/82

Report

drawn up on behalf of the Committee on External Economic Relations

on the recommendation from the Commission of the European Communities to the Council (Doc. 1-176/82 - 9584/81) for a regulation concerning the conclusion of a protocol to the Agreement between the European Economic Community and the Portuguese Republic consequent on the accession of the Hellenic Republic to the Community

Rapporteur: Mr H. M. RIEGER

Or. It.

PE 78.765/fin.

1.2.2

English Edition

By letter of 15 April 1982 the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council (Doc. 1-176/82) for a regulation concerning the conclusion of a protocol to the Agreement between the European Economic Community and the Portuguese Republic consequent on the accession of the Hellenic Republic to the Community.

By letter of 29 April 1982 the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible.

On 19 May 1982 the Committee on External Economic Relations appointed Mr Rieger rapporteur.

At its meeting of 27 May 1982 the committee approved the Council's proposal without amendment.

The committee unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Sir Fred Catherwood, chairman; Mrs Wieczorek-Zeul, Mr van Aerssen and Mr Seal, vice-chairmen; Mr Rieger, rapportuer; Mrs Baduel Glorioso, Mr Bonaccini, Mrs Carettoni Romagnoli, Mr Cohen, Mr Del Duca, Mrs Gredal, Mr Jonker, Mr Lemmer, Mrs Lenz, Mrs Moreau, Mrs Nikolaou, Mr Paulhan, Mr Pelikan, Mrs Phlix, Mrs Pruvot, Mr Radoux, Mr Stella, Sir Frederick Warner and Mr Welsh.

C O N T E N T S

A

The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the recommendation from the Commission of the European Communities to the Council for a regulation on the conclusion of a protocol to the Agreement between the European Economic Community and the Portuguese Republic consequent on the accession of the Hellenic Republic to the Community

The European Parliament,

- having regard to the recommendation from the Commission to the Council[1],

- having been consulted by the Council (Doc. 1-176/82),

- having regard to the report by the Committee on External Economic Relations (Doc. 1-325/82),

1. Welcomes the fact that the Community has followed a line of action consistent with the individual initiatives taken by it as regards adaptation of its trade agreements with the Mediterranean countries;

2. Hopes that the EEC-Portugual Agreement will be duly adapted also in preparation for Portuguese accession to the Community;

3. Approves the content of the proposal for a regulation under consideration;

4. Instructs its President to forward to the Commission and the Council the proposal from the Commission as voted by Parliament and the corresponding resolution as Parliament's opinion.

---

[1] OJ No. C 238, 17.9.1981, p. 1

EXPLANATORY STATEMENT

The Community signed a trade agreement with the Portuguese Republic in Brussels on 22 July 1972. Such agreements need to be adapted to the requirements of a Community of Ten as a result of the accession of Greece to the Community. Since Greece is obliged to comply with the 'acquis communautaire', even in the case of relations already established between the EEC and third countries in the form of trade agreements, it is required, from the time of its accession, to accord third countries the same treatment as the Community does in its trade relations with them, except for some transitional measures laid down to take account of the economic situation of each of its partners.

The proposal under consideration deals with the transitional measures to be applied by Greece to imports from Portugal, and is thus mainly technical in nature.

It should also be pointed out that an ad hoc study carried out by the Commission of the European Communities has revealed that Greece's accession has not greatly affected its trade with Portugal. For this reason, too, the scope of the regulation is relatively limited.

The Committee on External Economic Relations welcomes the fact that, in drawing up its proposal for a regulation, the Community has followed a line of action consistent with that which it adopted when adapting its agreements with the Mediterranean countries consequent on the accession of Greece.

The committee is therefore able to approve the content of the proposal for a regulation.

E8

European Communities

EUROPEAN PARLIAMENT

Working Documents

1982-1983

12 July 1982 DOCUMENT 1-324/82/B

REPORT

drawn up on behalf of the Committee on Social Affairs and Employment

on the proposal from the Commission of the European Communities to the Council (Doc. 1-561/80 - COM(80) 423 final) for a directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings

Part B : Explanatory Statement

Rapporteur : Mr T. SPENCER

1.21

PE 76.054/fin./B

English Edition

PART I

A. Background to the draft Directive

The European Parliament has been deeply concerned about certain aspects of the development of transnational companies for some years. For a full recital of the opinions of both Parliament and the Commission, your Rapporteur refers Members to the survey contained in the Caborn Report[1]. Despite the high degree of interest shown by those institutions, little Community action has been sanctioned by the Council of Ministers.

The "Proposal for a Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings", has come to be known as the Vredeling Proposal. This is not merely a convenient contraction of a cumbersome title, but a tribute to a distinguished former Member of this Parliament and of the Commission. Without Henk Vredeling's determination and political skills the proposal might never have been approved by the Commission. The content of the proposal owes much to creative and innovative thinking by the European Trade Union Confederation.

The original draft of the proposal was discussed, but only briefly, with the social partners in the summer of 1980. It was pointed out that its provisions might be seen as discriminating against transnational companies. The Commission therefore hurriedly drafted Section III which brought companies of a complex structure in one Member State within the scope of the proposal. The Commission moved with surprising and, no doubt, commendable speed and approved the draft directive in September 1980. UNICE complained about the lack of in-depth consultation. The proposal was sent to Parliament and the Economic and Social Committee on 4 November 1980. On 1 January 1981 the composition of the Commission altered, and Commissioner Richard took over from Commissioner Vredeling.

In the ensuing months, the proposal has been exhaustively considered by three Committees of Parliament. They have come to differing conclusions. This is apparent from the attached Opinions of the Legal Affairs and the Economic and Monetary Affairs Committees. Part II of the Explanatory Statement examines in detail the amendments proposed by the Social Affairs and Employment Committee.

(1) OJ C.287, 9 November 1981

Before Parliament as a whole decides its position on this complex matter, it is as well to restate the two questions which dominated consideration of the proposal during the deliberations of the Committees. Is a directive in this field needed? If so can Parliament improve the Commission's draft proposal in any way?

B. Is a Directive in this field needed?

Although the legal base for the directive is Article 100, it is quite clear that the argument for the directive starts from social considerations. Thus the Commission's Explanatory Memorandum discusses the need for a directive in terms of the increasing complexity and geographic scope of undertakings. The employees of undertakings, and the channels for representing their views, have become "inconsistent with the structures of the entity whose decisions affect their interests". The crux of their argument lies in paragraph 2:

> "It therefore follows that decisions which may have serious repercussions for employees at local level may well have been considered and taken at a much higher level (in the same country or even abroad). Even local employers may be ignorant of the motives behind such decisions. Generally speaking, disclosure of information to employees is still confined to the affairs of the local business entity, with the result that the workers concerned are only able to obtain a partial or even incorrect picture of the affairs of the concern as a whole."

The Commission also makes reference to existing information and consultation procedures and to the OECD Guidelines.

Such justifications have not been accepted by business representatives, who immediately pointed out that such matters and many more were satisfactorily covered by various voluntary codes and guidelines. In fact the proposal has been met by a torrent of opposition from business organisations. UNICE have taken a position, unique in their history, of refusing to discuss the details of the directive and maintaining a stance of outright opposition in principle. A quite remarkable degree of partisanship has characterised the debate. Commissioner Richard has spoken of "trench warfare". To date, the traditional consensus-creating mechanisms of the Community have failed. The key to this exceptional hostility may well be that the proposal is part of a much wider argument about transnational companies, conducted worldwide in the United Nations, the International Labour Organisation, and the Organisation for Economic Cooperation and Development. The debate involves external actors and neither ETUC

nor UNICE wish to concede points of principle which may have an influence on other discussions.

Discussion on the need for a directive came to centre on the question of the efficacy of voluntary action. If the guidelines and other examples of "voluntary but morally binding" action were operating satisfactorily, there would be little need for complex Community action in this area. The Social Affairs Committee held a public hearing in October 1981 at which both ETUC and UNICE gave evidence. A wider taking of evidence was regrettably ruled out by shortage of time. The hearing became something of a "dialogue of the deaf". The employers maintained that the OECD Guidelines were observed honestly and were working efficiently. They pointed to the small number of complaints made and to their resolution by the I.M.E. (Investment and Multinational Enterprises) Committee of the OECD. The trade unions responded by citing a series of abuses of transnational power in which foreign subsidiaries had been closed down with little or no notice. They made it clear that the guidelines were often inoperative or insufficient. Many of the cases quoted happened to be in the automobile industry. Such examples impressed the Social Affairs Committee even though, in some instances such as the closure of the Ford plant in Amsterdam, it was arguable that the existence of the Vredeling directive in law would have made little difference to the actions of the Dutch court or to the ultimate resolution of the situation. Members of the Committee were puzzled by the degree of disagreement over the operation of the Guidelines. It became clear that judgement on the effectiveness of the Guidelines was determined by how an individual interpreted them in the first place. The words of Mr McCullough, Employee Relations Manager of Exxon, speaking in 1977 about the Guidelines, sum it up nicely: "We know what we think it means, but we don't know how others will interpret it". [1]

This disparity of interpretation has been explored by INSEAD in a monumental study in the final stage of preparation. Some members were fortunate enough to be given advance notice of its main findings during a seminar in May 1982 in Strasbourg. The findings cast interesting light on aspects of the wider debate. The study is complex and its conclusions suitably academic and tentative. Any misrepresentations or errors of emphasis reproduced here are, of course, the responsibility of your rapporteur, who is grateful to INSEAD for permission to make use of their findings. The authors conclude, towards the end of their consideration of disclosure under the OECD Guidelines:

> "From our survey, we identified or confirmed certain areas of agreement where a satisfactory implementation of the Guidelines should be relatively easily ... obtained. There are other areas, especially those concerning the provision of certain information to employees, that will remain major stumbling blocks."

[1] McCullough George in "The OECD Guidelines for Multinational Enterprises: a Business Appraisal" edited by P. Coolidge, G. Spina and Dr Wallace Jr., The Institute for International and Foreign Trade Law, 1977, p.109

The survey found significant degrees of conflicting interpretation of the Guidelines on the question of the geographical scope of disclosure, on disclosure of intra-company payments and of production and investment information. The Guidelines require management -

"within the framework of law, regulations and prevailing labour relations and company practices, in each of the countries in which they operate -

2a) to provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment

3) to provide to representatives of employees, where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole."

The survey found considerable dispute about what was "meaningful" in this context.

Furthermore, in paragraphs 6 and 9, "of the Guidelines", concerning notice of decisions, consultation on mitigation of adverse effects and access to decision-making, there was a similar mix of consensus and disagreement about the interpretation of the Guidelines. It would not be reasonable to impute a conclusion on the effectiveness of the Guidelines to the authors of the survey. However, they do note that "disclosure by Multinational Enterprises was highly correlated with whether such disclosure was required by law or the appropriate accountancy body in the country where the firm was based".

The Social Affairs Committee, and your Rapporteur, having considered the matter at length, came to the conclusion that the Guidelines, while worthwhile, are not satisfactory alone. There was agreement that there is a role for the Community in this field. It is arguable that the Commission have chosen a particularly difficult area in which to attempt to legislate for transnational companies, but those who seek to defend multinational business cannot claim, with credibility, that the voluntary action alone has proved an undisputed success.

C. Can Parliament improve the draft directive?

All three Committees of Parliament voted to accept the directive, but each one of them suggested amendments that would tighten up the drafting of the text. It is true to say that no-one who has considered the proposal has been impressed by the expertise of its drafting. The House of Lords Select Committee (37th Report, "Employee Consultation") "reluctantly came to the conclusion that a directive is necessary" (p. xix). They also concluded that "the present draft is too detailed and too doctrinaire". A very different body, the Economic and Social Committee, in its Opinion welcomed the directive, but added in paragraph 19 "the structure of the directive should be generally tightened up and simplified. The undertakings covered by the directive should be defined in a single Article. The repetition of the provisions on information and consultation rights for different types of undertakings is also superfluous". Indeed the Commission have made it clear that while they are steadfast in defence of the principle of a directive, they would welcome Parliament's amendments. Their Explanatory Memorandum states that "certain points will undoubtedly require subsequent clarification in the light of consultations to be held with the European Parliament and the Economic and Social Committee". And further, "in the light of the opinions which it receives, the Commission will clarify or where appropriate amend the proposed directive in accordance with Article 49(2) of the EEC Treaty." The fact that Parliament's opinion in this matter is widely regarded as important is attested by the widespread and intensive lobbying of Members of Parliament in recent months. Your Rapporteur remains convinced that with goodwill and wisdom Parliament could amend the proposal in such a way as to produce the consensus between the social partners, which will in reality be needed to make any legislation in the field workable.

The proposal has been criticised for its complexity and the cost of implementing it. Only part of this criticism is valid, but much could be done to produce a tighter, slimmer, more effective piece of legislation. The proposal's "secrecy requirements" in Article 15 have been attacked as inadequate. Community legislation already exists that contains formulations designed to protect business secrets. A similar solution can be found here without rendering the directive valueless. On the consultation provisions, the INSEAD study shows that a degree of consensus exists on the need to give advance warning of decisions. In fact the respondents in that survey indicated that even three months' notice was to be regarded as a minimum. Consultation with employees' representatives "to mitigate the adverse effects" of a decision on the workforce commands widespread support.

Only where this consultation is over the substance of a decision rather than on its consequences does disagreement arise.

Perhaps the most contentious parts of the discussions came over the so-called "by-pass", the right of direct access to those "authorised to take the decisions". Management and labour disagree almost totally on this point. Both have some valid arguments. On the one hand, business is right to argue that an ill-drafted directive could damage the status and credibility of local management. Labour, however, is justified in its anger when faced by a local management who are merely the carriers of messages from "on high", or who lack sufficient information to be helpful.

The recession has had the logical but unforeseen effect of causing employees to worry rather less about immediate wage rates and rather more about the longer-term security of their jobs. Confidence to do one's job well depends on some sense of the totality of the company for which one works. It must not seem a mysterious and distant entity. Many transnational companies are excellent employers, excellent "citizens" in all ways. Some, however, are not. The few who are not have massively undermined public confidence in transnational business activity as a whole. It is to restore public faith in a key part of modern business that the Community must take some action within its own jurisdiction. Provided that European legislation is well drafted, workable and enforceable, it may set an example that will be copied outside the Community.

PART II

Preamble

The Committee felt it important to add a clear reference to Article 117, in addition to Article 100. They took careful note of the Legal Affairs Committee's opinion on this matter.

Article 2 (a)
The Election of Representatives

The Committee was aware that the text proposed by the Commission could have led, at least in some countries, to Trade Unions appointing employees' representatives without an election. There was considerable interest in the 'principles for election of representatives' adopted by the Legal Affairs Committee in the proposed Vth Company Law Directive. The Committee also took note of Vetter's Opinion in which it is stated that "in particular the Legal Affairs Committee considers that the employees' representatives for the purposes of the draft directive should be elected according to democratic principles". The text as adopted has some linguistic problems, which will need to be clarified by the plenary vote.

Article 4
Lower limit for applicability of the Directive

The Committee considered a range of figures from 50 to 5000 as the cut-off point for such legislation. Its considerations were hampered, to a considerable degree, by an almost complete lack of information from the Commission as to the percentage of the total workforce who would be affected by the legislation at each possible level. Even on the less useful question of how many companies, or their subsidiaries, would be involved, the statistics were of an incomplete nature. Different definitions were used in each Member State, and there was no indication of the ownership of subsidiaries. The expansion of the proposal to include Section III, covering companies of a complex nature based in only one Member State, has clearly involved a large number of companies who fall outside the scope and intentions of the Directive, as originally proposed, which was concerned with remedying abuses of Trans-national powers. Opinion on the Committee was divided. The majority felt that it was more appropriate to include everybody and voted to bring the limit down to 50. The minority, seeking some coherence with the proposed Vth Company Law Directive, suggested inclusion of any subsidiary employing 100 or more, provided that such a subsidiary was part of a Group employing at least 1000 in the Community.

Article 5 Paragraph 1

a. Annual Information

The Committee suggests that information should be provided on an annual basis. Much of the information required is already prepared, on an annual basis, for other purposes, and could therefore be made available to employees' representatives without the great costs in printing, preparation and distribution referred to by opponents of the current draft of the directive. This reduction in frequency would be unacceptable if it led to a real loss of information. Consideration of the matter, however, leads the Committee to doubt that there will be any such significant loss. The prime value of the directive is in making such global information available to workers in the first place. Any information that is genuinely urgent, such as rationalization plans or potential closures, will become a matter for information and consultation under Article 6.

b. "Intelligible general information"

The Committee preferred this phrase to the concept of 'relevant' information.

c. "Intelligible specific information, etc."

The Committee grappled with the problem of the classification and presentation of the Information List. Clearly it is not the intention of Article 5 to give information on particular subsidiaries, it is designed to give the general background of information and thereby to increase the knowledge and confidence of workers. However, certain information can only be of value if it is presented at an intermediate level between group and individual subsidiary. For example, a relevant frame of reference might be all the subsidiaries in Europe, or all the subsidiaries producing a particular product group.

Article 5 Paragraph 2
Changes to the list

Having decided to extend the level of information demanded beyond the Commission's text of "giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole", the Committee was in some doubt as to how to amend the individual items in the list. The majority included measures to protect the health and security of workers at the workplace.

The Committee included a specific reference to the introduction of new technologies but neglected to include a parallel amendment to the list in Article 6.

The catch-all indent h) was deleted as its intent had been subsumed in the amendment to paragraph 1.

Article 5 Paragraph 3
"Meeting"

The majority of the Committee included the right of employees' representatives to a meeting at which matters covered by Article 5 could be explained. No arrangements were envisaged for communication of the information to the employees themselves.

Article 5 Paragraph 4
"By-pass"

The Committee considered the problems associated with direct access to the management of the dominant undertaking, both in terms of its legal enforceability and in terms of its effect on the status of local management. While, in your rapporteur's opinion failing to solve these problems, the Committee did pass amendments which clarify questions of timing and procedure.

Article 5 Paragraph 5
"Legal remedies"

The Committee was united in feeling that, given the problems of extraterritoriality, legal recourse should be clearly seen to be against the management of local subsidiaries within Community jurisdiction.

Article 6 Paragraph 1
"Information to all subsidiaries"

There was considerable debate in the Committee on the wisdom of sending information about a specific decision affecting a particular subsidiary to each of the subsidiaries in the Community. Your rapporteur had suggested a system of "opting in" which was described in detail in a previous document (PE 76.054 20/11/81 page 19). No doubt due to the pressure of complicated voting on a mass of amendments, the Committee appears to have adopted only the second half of this proposal, creating thereby (AM. Art. 6/8) a meaningless sub-paragraph. The plenary will have to make a clear choice between the Commission's text and the alternative idea of informing only the subsidiary concerned, but allowing any others who deem themselves to be affected to "opt in".

Article 6 Paragraph 3

"The 30 days"

This amendment is a necessary clarification of the timing provisions.

Article 6 Paragraph 4

a. "Linguistic clarification"

This is an alternative to the English text that was agreed without dispute. The original English text had been mis-interpreted to suggest that the Commission was proposing consultation on the decision itself, rather than consultation on the consequences for the employees of the decision.

b. "Safeguards for Receipt of the Employees' Opinions"

This amendment is a further attempt to safeguard employees' representatives right to be listened to during the 40 day period before adopting a decision.

Article 6 Paragraphs 5 & 6

"By-pass"

These amendments approved by the majority of the Committee are similar to those moved to Article 5. They have the same advantages and the same defects as their equivalents in Article 5.

Article 7 Paragraph 2

"Safeguarding of employees' rights at the subsidiary level"

The Commission provides for information to be given to a body at a higher level than that of the individual subsidiary. It also envisages the creation of Community-wide bodies, should management and labour agree. The majority of the Committee felt that a necessary condition of such moves to a higher level was the agreement of the employees' representatives at the level of the individual subsidiary to cede their rights.

Article 8

"Hostage provisions"

The Committee rejected the Commission's criterion of "the subsidiary employing the largest number of employees within the Community". It was replaced by the concept of either an authorized agent or the local management of the subsidiary concerned.

Article 9

"Establishments"

These amendments merely ensure that establishments will be treated in the same way as subsidiaries.

Articles 10 - 14

Section III of the Proposal

The Committee echoed the criticisms voiced by the Economic and Social Committee and others about the dual nature of the proposal. It was unwilling, however, to undertake the massive redrafting that a merger of Sections II and III would have entailed. It therefore moved parallel amendments to Section III as it had to Section II. It would clearly be illogical and undesirable if Parliament were to recommend differing amendments to the two sections, when there are no logical or political grounds for treating the two classifications of companies in different ways.

Article 15 Paragraph 1

a. Linguistic difficulties

During the Committee's consideration of this paragraph, it became apparent that the Commission's text contained linguistic problems. It would appear that the German text would require workers to maintain "secrecy" while those following the English or French texts would only undertake the less onerous duty of maintaining "discretion".

b. "Third parties"

The majority of the Committee introduced this amendment that would ease the position of trade union advisors in any dispute.

Article 15 Paragraph 2

"Penalties"

The consequence of this amendment was to delete the Commission's paragraph 2 in which Member States were empowered to let tribunals or other national bodies settle disputes on the confidentiality of certain information. This vote reflected the tension in the Committee between those who recognise that businesses could be severely damaged by leaking of confidential business secrets, and those who feared that any exclusion of such matters from the Proposal would so weaken it as to render it worthless.