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SUPPLEMENTARY REPORT

drawn up on behalf of the Legal Affairs Committee

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

Rapporteur: Mr P. de KEERSMAEKER

PE 38.854/fin.

12.1

English Edition

As its sitting of 17 October 1973, the European Parliament referred Mr Héger's report (Doc. 154/73), drawn up on behalf of the Legal Affairs Committee, on the amended proposal from the Commission of the European Communities to the Council (COM(72) 1668/fin) 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, back to the Legal Affairs Committee as the committee responsible, and to the Committee on Social Affairs and Employment for its opinion.

On 20 June 1974, the Legal Affairs Committee instructed Mr de Keersmaeker to draw up a supplementary report since Mr Héger was no longer a Member of the European Parliament.

At its meetings of 3 December 1974, 23 January and 7 February 1975, the Legal Affairs Committee considered the draft supplementary report.

At its meeting of 7 February 1975, it unanimously adopted the motion for a resolution and explanatory statement.

Present: Mr Schuijt, chairman; Mr de Keersmaeker, rapporteur, Mr Adams, deputizing for Mr Calawaert), Mr Bayerl, Mr Brewis, Mr Broeksz, Mr Brugger, Mr Geurtsen, Mr Hansen (deputizing for Mr Bermani), Mr Outers, Mr Rivierez, Mr Santer, Mr Schmidt and Mr Vernaschi.

The opinion of the Committee on Social Affairs and Employment is incorporated in this supplementary report.

C O N T E N T S

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 its opinion of 16 November 1972 on the Commission's original proposal;[1]
- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Social Affairs and Employment (Doc. 154/73) and the supplementary report of the Legal Affairs Committee and opinion of the Committee on Social Affairs and Employment on the amended proposal (Doc. 513/74);

1. Approves the Commission's amended proposal;

2. Nevertheless invites the Commission, pursuant to Article 149(2) of the EEC Treaty, to adopt the following amendments;

3. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

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[1] OJ No. C 129, 11 December 1972, p. 50

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES[1]	AMENDED TEXT
AMENDED PROPOSAL FOR A THIRD COUNCIL DIRECTIVE	AMENDED PROPOSAL FOR A THIRD COUNCIL DIRECTIVE
on coordination of safeguards which, for the protection of the interests 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.	on coordination of safeguards which, in Member States, for the protection of interests of Members and others, are required of companies within the meaning of the second paragraph of Article 58 of the Treaty, in connection with mergers beween sociétés anonymes.
Preamble, recital and Articles 1 to 4 unchanged	
Article 5	Article 5
1. The management organs of each of the merging companies shall draw up a detailed report explaining the draft terms of the merger, and in particular the share exchange ratio, and setting out the legal and economic grounds therefor.	1. unchanged
2. In addition, for each of the merging companies one or more independent experts designated or approved by a legal or administrative authority shall examine the draft terms of the merger and draw up a report for the shareholders. These experts may be the persons responsible for auditing the company's accounts.	2. unchanged
Each expert shall be entitled to obtain from merging companies all relevant information and documents and to carry out all necessary investigations.	
In their report the experts must state whether in their opinion the share exchange ratio is justified or not. In support of their statement they shall give at least the following particulars:	

[1] For complete text, see Doc. COM(72) 1668/fin.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
(a) the relationship between the companies' net assets on the basis of actual values;	
(b) the relationship between the earnings yields of the companies, taking future prospects into account;	
(c) the criteria used in evaluating the net assets and earnings yields.	
In addition, the report shall indicate what special difficulties of evaluation have arisen, if any.	
3. Every shareholder shall be entitled to have access to the following documents at the registered office at least two months before the date of meeting of the General Meeting which is to decide on the proposed merger:	3. unchanged
(a) the draft terms of the merger;	
(b) the balance sheets, profit and loss accounts and annual reports of the merging companies for the last three financial years;	
(c) a financial statement drawn up as at the first day of the second month preceeding the date of the draft terms of merger, if the last balance sheet relates to a financial year which ended more than six months before that date;	
(d) the reports of the management organs of the merging companies provided for in paragraph 1 of this Article and in Article 6(1);	
(e) the experts' reports provided for in paragraph 2 of this Article.	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
4. The financial statement provided for in paragraph 3(c) shall be drawn up in accordance with the same methods and in the same form as the last annual balance sheet. However: (a) no fresh physical inventory shall be taken; (b) the figures in the last balance sheet shall be altered only to reflect changes in the accounts; the following shall nevertheless be taken into account: - interim depreciation and provisions; - material changes in actual value not shown in the accounts.	4. unchanged
5. Every shareholder shall be entitled to obtain free of charge on request copies, in full or in part, of the documents referred to in paragraph 3.	5. Every shareholder shall be entitled to obtain free of charge on request copies, in full or <u>if required</u> in part, of the documents referred to in paragraph 3.
<u>Article 6</u>	<u>Article 6</u>
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

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
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. 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 the full text 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.	4. If the employees' representatives consider that the merger may be 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 for the benefit of the employees. If, after these negotiations, or at the end of a period of two months at the latest from the time they began, no agreement has been reached between the parties, each of them may refer the matter to an arbitration body which shall reach a final decision on the measures to be taken for the benefit of the employees. This arbitration body shall consist of assessors appointed in equal numbers by the two parties and a president appointed by common consent. If either party fails to arrange for the appointment of its assessors or if agreement is not reached on the choice of the president, the competent Court shall make these appointments.
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.	5. Every employee or employees' representative shall be entitled to obtain free of charge on request copies, in full or if required in part, of the documents referred to in paragraphs 2 to 4.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
6. This Article is without prejudice to the laws of those Member States which are more favourable to employees in cases of mergers.	6. unchanged

Articles 7 to 24 unchanged

B

EXPLANATORY STATEMENT

I. BACKGROUND

1. On 16 November 1972 the European Parliament delivered its opinion[1] on the proposal for a directive from the Commission to the Council 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.

Following this opinion, the Commission submitted to the Council an amended proposal and sent the text of this amended proposal to Parliament, for information.

2. The Committee on Social Affairs and Employment considered the amended proposal in question and drew up an opinion for the Legal Affairs Committee, responsible for the report.

On 13 July 1973 the Legal Affairs Committee decided to draw up a report on the amended proposal for a directive.

At its sitting of 17 October 1973 the European Parliament considered the new report by the Legal Affairs Committee (Doc. 154/73), but, in the light of the differences of opinion which emerged as regards Article 6(4) of the proposed directive, decided to refer it back to committee.

3. The principal purpose of this report is to present the European Parliament with a new text for Article 6(4).

II. RECONSIDERATION OF THE AMENDED PROPOSAL

(a) Reconsideration of Article 6

4. Article 6(4) of the amended proposal stipulates that before the General Meeting discusses the merger, the management organs shall reach agreement with the employees' representatives on any measures to be taken regarding the employees. Where no agreement is reached, the parties may ask the public authority to act as intermediary.

5. The Legal Affairs Committee's first report on the amended proposal[2] had suggested adding a sentence stipulating that the merger could not take place unless the negotiations were successful.

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[1] See OJ No. C 129 of 11 December 1 72 and Mr Héger's supplementary report (Doc. 168/72) on behalf of the Legal Affairs Committee.

[2] Doc. 154/73

In other words, this would have given employees a power of veto.

6. In the discussion of this point in the European Parliament on 17 October 1973 in Strasbourg it was pointed out that it was difficult to accept that the employees should have the power to veto a merger.

In reply, it was stated that the Commission's text gave the General Meeting the power to block a proposed merger so that the shareholders effectively had the right of veto. It would therefore be fair to give the employees the right of veto.

7. Faced with this difference of opinion, the European Parliament asked the Legal Affairs Committee and the Committee on Social Affairs and Employment to seek a solution which might meet with general agreement.

The Legal Affairs Committee has now agreed on a formula which, in the case of disagreement between the parties, provides for resort to an arbitration procedure thus conforming to the procedure adopted in the proposal for a regulation on the European Company[1] and the proposal for a directive on harmonization of the legislation of Member States on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations.[2]

There was a wide-ranging debate in the Legal Affairs Committee on the advisability of setting a time-limit within which the arbitration body would have to reach its decision. At the end of the discussion it was decided not to fix any time-limit in order to avoid serious difficulties of a legal and procedural nature which would be difficult to resolve by means of a directive. The arbitration procedure will, therefore, be governed by the relevant national legislations.

The Legal Affairs Committee wishes to make it quite clear also that the provisions on safeguarding workers' interests do not prevent the possibility of a conciliation procedure being set up between the parties; they also do not affect national laws and national practice on the exercise of the right to strike.

The Legal Affairs Committee considers that the formula chosen by it should be acceptable to both the European Parliament and the Commission of the European Communities.

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1 See opinion of the European Parliament on this proposal (Article 128), OJ No. C 93, 7 August 1974

2 See Doc. 149/74 (Article 8)

(b) Consideration of the amendments tabled in plenary sitting

8. During the debate on Mr Héger's report on the Commission's amended proposal in plenary sitting, Mr Broeksz tabled three amendments clarifying the contents of Article 5(5), Article 6(3) and Article 6(5) respectively, concerning the obligation on companies to forward certain documents to the interested parties.

Since the Commissioner responsible, Mr Gundelach, declared that he was prepared to adopt these amendments, the Legal Affairs Committee thought it advisable to incorporate them in the text now submitted to the European Parliament.

It is worth stressing, however, that companies remain free, in accordance with their respective statutes, to forward to their own shareholders, to the workers and to their representatives all documents that the companies consider would be useful to them for their information.

III. OPINION OF THE COMMITTEE ON SOCIAL AFFAIRS AND EMPLOYMENT

9. A delegation from this committee took part in the proceedings of the Legal Affairs Committee to explain orally the opinion of the Committee on Social Affairs and Employment on the amended proposal for a directive.

This delegation approved the text adopted by the Legal Affairs Committee.

IV. CONCLUSION

10. The principal purpose of this report is to bridge the differences of opinion which emerged on the introduction of the concept of workers having the right to veto a proposed merger.

If employees are given a specific right of veto, their action may obviously prevent proposed mergers which might be useful from an economic point of view. It would not be advisable, therefore, to give them this right.

On the other hand, it seems only fair that the rights of employees should be safeguarded in cases of mergers between undertakings.

In your committee's opinion, this safeguard may be adequately given in the last instance by an arbitration body. In addition, a similar formula is used in other Commission proposals on company law.

It seems worth pointing out in this context, that, under Article 6(6), the laws of those Member States which are more favourable to employees are not prejudiced.

11. To enable the content of this directive to be clearly understood, it is worth noting that it must necessarily be confined to laying down general principles. It follows that it must be left to national legislations to regulate various matters which, even though they have a certain importance, are nevertheless questions of detail.

Finally, it must be remembered that mergers between companies and the social plan in favour of workers are two distinct and separate operations.

12. In the light of the above, the Legal Affairs Committee invites the European Parliament to approve the motion for a resolution submitted to it.