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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. 149/74) 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

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PE 37.832/fin.

English Edition

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A

The Committee on Social Affairs and Employment hereby submits to the European Parliament the following motion for a resolution together with explanatory statement.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council 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

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council, [1]
- having been consulted by the Council pursuant to Article 100 of the Treaty establishing the EEC, (Doc. 149/74),
- having regard to the report of the Committee on Social Affairs and Employment and to the opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (Doc. 385/74),

1. Is of the opinion that the rapidly growing trend towards amalgamations between undertakings creates the necessity at Community level to harmonise and preserve workers' entitlements and benefits;
2. Considers that the wide differences in national legislation in the field of labour law are a real obstacle to this aim;
3. Welcomes, therefore, the initiative of the Commission in attempting to deal with the question of the preservation of the rights and advantages of employees in the case of mergers, take-overs and amalgamations;
4. Approves the principle of automatic transfer of existing employment relationship and of consultation with the workers' representatives;
5. Doubts, while in general agreement with the aims of the Commission, whether the means are sufficient;

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[1] OJ No. C104, 13 September 1974, p.1

6. Urges the Commission to bring out a directive on individual dismissals in addition to the one on mass dismissals;

7. Approves the Commission's proposal in general, but invites it to adopt the following amendments pursuant to the second paragraph of Article 149 of the EEC Treaty, and in drafting the final text of the directive to take account of the explanations contained in the explanatory statement;

8. Invites the Council, taking account also of the Final Communiqué of the Paris Conference of Heads of State or Government of the countries of the enlarged Community in October 1972, to adopt the proposed Directive with all possible speed;

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

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES[1]	AMENDED TEXT
Proposal for a Directive of the Council 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	
Preamble and recitals 1 to 3 unchanged	
4. Whereas changes in undertakings' structure are not in line with this purpose, but on the contrary adversely affect conditions for workers on and off the job, more especially as regards preservation of the workers entitlements and benefits, and whereas the same problems arise irrespective of the precise form of the takeover;	4. Whereas changes in undertakings structure (7 words deleted) may on the contrary adversely affect conditions for workers on and off the job, more especially as regards preservation of the workers entitlements and benefits, and whereas the same problems arise irrespective of the precise form of the takeover;
Recitals 5 to 8 unchanged	

[1] For complete text see OJ No. C104, 13 September 1974, P.1

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
CHAPTER 1	
General provisions	
Articles 1 and 2 unchanged	
CHAPTER 2	
Automatic transfer of employment relationship	
Article 3 unchanged	
Article 4	Article 4
1. Mergers and takeovers shall not constitute in themselves a reason for termination of the employment relationship on the part of the transferor or the transferee. This shall not apply to dismissals made in connection with mergers and takeovers necessitated by pressing business reasons.	1. unchanged
	(new) 2. Save where otherwise determined by the laws, regulations and administrative provisions of the Member States, 'pressing business reasons' have to be determined during the negotiations between workers' representatives and the transferor and transferee as shown in Article 8. The Directive No of the Council of the European Communities concerning Mass Dismissals shall not be affected by this provision.
2. The legal consequences of a dismissal prohibited by paragraph 1 of this Article shall be decided according to the laws, regulations and administrative provisions of the Member States. This shall not affect compensation and other legal requirements which the laws, regulations and administrative provisions of the Member prescribe for dismissals.	3. Unchanged

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
3. Where a labour contract has been terminated by the worker because a merger of companies or a transfer of undertakings has brought about a substantial change in his working conditions, such a termination shall be deemed to be due to the action of the employer.	4. Wording unchanged.
Articles 5 and 6 unchanged	
CHAPTER 3	
Workers' representation and consultation	
Article 7 unchanged	
Article 8	Article 8
Save for the operations mentioned in the Directive No of the Council of [1], the following procedure shall be applicable to the other operations provided for under Articles 1 and 11 of this Directive:	First paragraph unchanged.
1. The transferor and the transferee shall be required, before carrying out the projected operation, to inform the representatives of their respective workers, within the meaning of Article 7, of the reasons that led them to consider such an operation and also of the legal, economic and social consequences it entails for the workers; they shall, moreover, indicate what measures are to be taken in relation to the workers. If the workers' representatives so request, a discussion shall take place immediately on the content of this information.	1. The transferor and the transferee shall be required, before carrying out the proposed operation, to inform the representatives of their respective workers, within the meaning of Article 7, of the reasons that led them to consider such an operation and also of the legal, economic and social consequences it entails for the workers; they shall, moreover, indicate what measures are to be taken in relation to the workers. This information shall be given at least two months before carrying out the projected operation except in special justified cases. If the workers' representatives so request, a discussion shall take place immediately on the content of this information.

[1] OJ No. C 89 of 14.7.1970.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
	2. (new) Should there be no representative of the workers in an undertaking or company within the meaning of Article 7, previous notice as provided in paragraph (1) of this Article shall be given to the workers concerned of the act that the merger or takeover is about to take place.
2. At the request of the workers' representatives who consider that the operation is likely to be prejudicial to the interests of the workers, the transferor and the transferee shall be required to enter into negotiations with the representatives of their workers with a view to reaching agreement on such measures as should be taken in relation to the workers. If the negotiations fail to secure agreement between the parties within two months, each of them may refer the matter to an arbitration board which shall give a binding decision as to what measures shall be taken for the benefit of the workers. This arbitration board shall consist of a number of assessors of whom half shall be nominated by the employer concerned and the other half by the representatives of the workers and a president nominated by common consent by the two parties in question, or failing that by the competent Court.	3. At the request of the worker's representatives who consider that the operation is likely to be prejudicial to the interests of the workers, the transferor and the transferee shall be required to enter into negotiations with the representatives of their workers with a view to reaching agreement on such measures as should be taken in relation to the workers. If the negotiations fail to secure agreement between the parties within two months, each of them may refer the matter to an arbitration board which shall give a binding decision as to what measures shall be taken for the benefit of the workers. This arbitration board shall consist of a number of assessors of whom half shall be nominated by the employer concerned and the other half by the representatives of the workers and a president nominated by common consent by the two parties in question, or failing that by the competent Court in the Member State in which the company to be taken over is situated.
3. The obligation to hold immediate discussions in paragraph 1 and the negotiation and arbitration procedures contained in paragraph 2 are not to prejudice the operation.	4. The obligation to hold immediate discussions in paragraph 1 and the negotiation and arbitration procedures contained in paragraph 2 must be completed before the carrying out of the operation.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT

CHAPTER 4

CLAIMS UNDER SUPPLEMENTAL OCCUPATIONAL PENSIONS AND RELATED BENEFIT SCHEMES

Article 9	Article 9
1. Claims under supplemental occupational pensions and related benefit schemes by workers who, at the time of the merger or takeover, had already withdrawn from the employment relationship, may, in so far as the laws, regulations and administrative provisions in the Member States do not lay down at least equivalent rules, be made against the transferee, where the body of assets out of which such claims are to be met is also transferred to the transferee.	1. unchanged
2. Where the body of assets out of which claims under supplemental occupational pensions and related benefit schemes are to be met is not transferred to the transferee, the Member States shall take appropriate legislative measures to ensure that the claims of former workers are met.	2. The Member States shall take appropriate legislative measures to ensure that the claims of former workers are met whether or not the body of assets out of which claims under supplementary occupational pensions and related benefit schemes are to be met is transferred to the transferee.
3. Entitlement to benefits from the supplemental occupational pensions and related benefit schemes for workers whose employment relationship had not yet ended at the time of the merger or takeover shall be determined by Article 6	3. unchanged

CHAPTERS 5, 6 and 7

Articles 10 to 14 unchanged.

B

EXPLANATORY STATEMENT

1. Taking into consideration the necessary changes in the structure of commercial enterprises caused by industrial developments[1] on the one hand and the necessary development of the social aspects of the Community policy on the other, it is indeed time that the proposal of the Commission on the problems of the preservation of workers' entitlements and benefits in the face of takeovers, mergers etc. should be implemented.

The Committee on Social Affairs and Employment has already dealt with one part of this problem in 1973 with the Commission's proposal for a Directive concerning mergers of joint stock companies. The committee therefore is extremely grateful that at last they have seen the need for legislative measures in this complex field.

2. In general, the proposal tries to guarantee its aim of protecting the prior acquired entitlements of workers in the case of a change of employer by:

- automatic transfer of the employment relationship from the old to the new employer;
- protection of employees against dismissal due exclusively to a change in the structure of the undertaking (question of compensation payments);
- information, and consultation and negotiations with the representatives of employees in regard to the interests of these employees;

Looking at the legislative measures which the Commission envisage, however, it seems doubtful whether they are adequate for their purpose.

3. A comparison of national legislation shows that to fulfil the intention of the Commission to harmonise the means of protection of workers' interests would require fundamental changes. For example, there is no general principle of automatic transfer known in national legislation except in Germany. The application of the principle of automatic transfer (Article 3) must therefore be regarded as a major step toward the preservation of workers' rights.

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[1] In some of the Member States the growing trend towards amalgamations has led to a situation where the share of the 100 largest industrial undertakings has risen to 50% of the total industrial turnover.

4. That could be said too of the principle of consultation laid down in Article 8 if it were to go as far as the ideas of the Third Directive on mergers[1] between joint stock companies. There is no doubt that the procedure shown in this Directive, as brought out in the report of the Legal Affairs Committee[2], should be followed. Not to do so would be an unnecessary backward step.

5. Obviously, the weakness of this guideline is its inability to make a decision between real harmonisation and mere references to national legislation. In its introduction it says that harmonisation is necessary because of lacks in national legislation concerning the preservation of workers' rights. But when there is a real need for a definition of legal terms it simply refers to national legislation, although this national legislation either does not exist or is open to different interpretations; there are for example differing interpretations of what constitutes a pressing business reason in Italy or in Germany.

6. The same thing is true for the problem of the definition of 'unfair dismissal'. National legislation differs widely on this point, as shown in Annex I. The articles which cover this point, as for instance Article 4, paragraphs 1 and 2, do not give any practical proposals. In particular, the problem of legal consequences is inadequately dealt with. The Commission has not put forward any proposals as to how the rules on this point should be enforced: does the Commission consider that the Community Institutions do not have the power to enforce Community law ? The changes adopted by the Committee on Social Affairs and Employment result from these fundamental omissions in the proposal by the Commission.

7. The Committee on Economic and Monetary Affairs further finds that, at least in the case of mergers, there will now be a Community regulation on protection against dismissal. While warmly welcoming this provision, it emphasizes that this is a partial regulation since it deals only with protection against dismissal in the case of mergers. In view of this circumstance it wonders whether the provisions of the proposal for a directive are adequate to exclude the perfectly possible case that agreements between the firm 'acquiring' or 'taking over' and the 'transferred' or 'merged' firm may cause the operational reorganization to be effected at a time preceding the publication of the merger plans, thus avoiding the obligation to consult the employees. The effects of such an agreement, which would be to the disadvantage of the employees and their representatives, could be prevented by making the provisions of this directive retroactive in cases where mass dismissals have taken place within 12 months preceding the merger.

The Committee on Social Affairs and Employment is of the opposite opinion namely that it is not necessary to make this directive retroactive because a directive on mass dismissals already exists.

8. The Commission has been asked to put forward proposals which deal with the problems outlined in realistic terms. Therefore the Committee on S cial Affairs and Employment looks forward to the proposed Directive on individual dismissals, wherein there should be a specific interpretation of the terms 'legal consequence' and 'unfair dismissal'.

Further the Commission has to make sure that - without digging deeper into the problem shown in the last section of Article 1 in the proposal in hand - its texts are sufficiently clear in all languages to avoid misinterpretations which would have legally binding effects.

9. Moreover the Committee on Social Affairs and Employment agrees with the view expressed by the Legal Affairs Committee

- to stipulate where the 'competent Court' referred to in Article 8, paragraph 2 should be situated,

- to safeguard the workers' claims whether or not the body of assets were transferred to the transferee, as stated in Article 9, paragraph 2; and shares the recommendation of both consulted committees to abbreviate the 4th recital.

At the same time the Committee on Social Affairs and Employment recorded a majority vote, against strong opposition, in favour of the rapporteur's proposal that the negotiation and arbitration procedures in Article 8, paragraph 4 must be completed before the carrying out of a merger, takeover or amalgamation.

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1 Doc. COM(72) 1668/final

2 Report HEGER (Doc.154/73)

Annex I

QUESTIONS ON SPECIAL POINTS OF NATIONAL LEGISLATION WHICH ARE OF INTEREST IN CONNECTION WITH THE PROPOSAL OF THE COMMISSION (Doc.149/74)

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1. Is there an automatic transfer of the existing employment relationship from the transferor to the acquirer (the old to the new employer) ?

Belgium	General, but inadequate, rules provided in civil law.
Germany	General automatic transfer in form of universal succession, or according to paragraph 613 BGB
Denmark	No special legislation and no definition of the problem in general.
France	Article 23 of the Premier Code du Travail; theoretical universal succession.
Ireland	Generally, no. Depends on whether the identy of the company is preserved. This means 'no' in the situation of a take-over, 'yes' in an amalgamation.
Italy	Article 2112 of the civil law generally defines the right to automatic transfer. This is not binding on the management - the employee is able to relieve the employer of the liability.
Netherlands	At the moment, no such term under the civil law. Any decision depends on the interpretation of the Courts.
United Kingdom	No general succession; possibilities of agreements with the new employer in the new contract (question of identity of company). However certain statutory rights have to be preserved.
Luxembourg	Automatic transfer (since 1970 general).

2. Under what specific circumstances are dismissals allowed ?

Belgium	No term for 'unfair dismissal' . No reasons necessary for dismissal.
Germany	Any action by the employer contrary to the contract of employment is defined as unfair. Reasons for unfair dismissals could be changes in organisation and production. Less protection to the management.
Denmark	Dismissals are unfair when there are no proper reasons respecting the work of the employee, or the general policy of the enterprise.
France	So-called 'unfair dismissal' is possible for economic reasons. It must be authorised by the departmental head (Directeur departmental de la main d'oeuvre).
Ireland	No regulations if an employer provides proper length of notice. No reason necessary.
Italy	Possible for sufficiently important reasons. (Not only because of a merger; it has to be socially acceptable).
Netherlands	Dismissals in general have to have the consent of the Bezirksarbeitsämter (GAB). There is no appeal against this decision.
United Kingdom	'unfair dismissal' is a unilateral variation of the contract of employment - use of dismissal to coerce an employee to accept a new contract of employment, the closure of the plant, and change in production. The normal legal custom is to include in the contract of employment the right to transfer employees from one job to another, from one part of the U.K. to another, even abroad, and to demote or reduce wages. In the case of unfair dismissal, a minimum period of notice according to seniority and some statutory rights have to be observed.
Luxembourg	In the case of unfair dismissal, a minimum period of notice according to seniority and some statutory rights have to be observed. The national 'Arbeitsamt' has to be informed in case of dismissal of more than 10 workers in 30 days time.

3. What kind of legal consequences follow on unfair dismissal ?

In general, there is no specific information about **this in the papers.**

4. Is there a right to compensation payment in case of dismissal ?

Belgium	In some not specially defined cases.
Germany	A 'Sozialplan' creates the right to payment in the case of a merger.
Denmark	When the contract is broken by the employer, there can be a decision by the Court on compensation and the amount due.
France	A right to compensation payment out of collective agreements.
Ireland	Redundancy payment in some cases.
Italy	Employer has to pay wages until contract is terminated. If a workers' representative is dismissed, a sum of money has to be paid into the firm's pension fund.
Netherlands	Either pay compensation or effect re-employment, according to the decision of the Court.
United Kingdom	If a worker has been continuously employed for more than two years, he is entitled to a sum under the Redundancy Payments Act, 1965 (S.2, 3 and 13) but in reality it is extremely complicated.
Luxembourg	right to compensation and interest for his loss of money.

5. Are collective agreements legally binding ?

Belgium	Collective agreements are not legally binding. Their value depends on the strength of the trade unions.
Germany	yes
Denmark	Not generally legally binding.
France	No information
Ireland	No. Some statutory rights to be preserved.
Italy	Normally the main ideas of civil rights are part of the collective agreements.
Netherlands	There is a tendency to consider collective agreements legally binding.
United Kingdom	A code of practice which is not legally obligatory in combination with the Industrial Relations Act provides some informal contacts. Strength of trade unions could oblige the employer to act in conformity.
Luxembourg	Legally binding

6. Are consultations with the workers' representatives necessary in case of mergers, amalgamations etc. ?

Belgium	No consultations.
Germany	Consultations, specially to create "Sozialplan", which may be enforced by Court.
Denmark	The workers' representatives should be heard. No legal consequences if not.
France	No information.
Ireland	No
Italy	No
Netherlands	Ondernemingsraad is very influential. Dutch equivalent of 'Sozialplan'.
United Kingdom	No.
Luxembourg	Not necessarily

7. What is the legal position of workers' representatives ?

Belgium	No special information
Germany	No change in situation by change of employer.
Denmark France Ireland Italy	No special information.
Netherlands	Ondernemingsraad is very influential. Dutch equivalent of 'Sozialplan'.
United Kingdom	Depends on strength of trade union position.
Luxembourg	Collective agreements are normally binding, in general depends on strength of trade union position.

ANNEX II

Remarks concerning terminology

Further to the notes in paragraph 6 of the opinion of the Legal Affairs Committee[1] concerning the texts in the various languages (Art.1, Art.4(3) and Art.8(2) here are a few more examples of inaccurate terminology:

1. 'free' translations

Art.3(3):	F. conventions collectives professionnelles
	D. Verbandskollektivveetrag
	N. bedrijfstak c.a.o.

2. mistranslations

Art.4(1):	F. contrat de travail
	D. Arbeitsverhaltnis
	N. arbeidsovereenkomst
Art.4(2):	F. entache d'irregularités
	D. unaulassige Kundigung
	N. onregeimatig ontsiag
idem	E. compensation
	N. schadoloosstelling
	F. indemnisation
	D. Abfindung
Art.4(3):	E. en N. compensation/compensatie
	F. indemnisation
	D. Entschadigung
Art.8(2) second indent:	F. assesseur
	D. Beitsitaer
	N. persoon

[1] Page 4 of attached opinion.

Opinion of the

LEGAL AFFAIRS COMMITTEE

Draftsman: Mr G. PIANTA

At its meeting on 12 September 1974, the Legal Affairs Committee appointed Mr PIANTA draftsman for an opinion on the Commission's proposal to the Council for a directive on the 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 (Doc. 149/74).

It considered this draft opinion at its meeting on 21 November 1974 and adopted it unanimously, with 2 abstentions.

The following were present: Mr Bermani, vice-chairman and acting chairman; Mr Pianta, rapporteur; Mr Broeksz, Mr Brugger, Mr Concas, Mr Espersen, Mr Lautenschlager, Lord Mansfield, Mr Rivierez, Lord St. Oswald (deputizing for Mr Brewis), Mr Schmidt and Mr Vernaschi.

1. The object of this directive is to ensure the harmonisation of the legislation of Member States on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations. As such it falls within Article 100 of the Treaty which requires harmonisation to be accomplished by way of Council directive: the legal form adopted is therefore correct.

2. Article 2 of the Treaty, which requires the promotion of a harmonious development of economic activities, and Article 117 aimed at promoting improved working conditions and an improved standard of living for workers, furnish an adequate legal basis for the proposed directive.

3. The Legal Affairs Committee feels that there is a strong case for the publication in one document of the current legislation on the protection of the rights of workers afforded by Community legislation. The provisions of the European Company Statute, regulations controlling mergers and mass dismissals, the third directive on coordination of safeguards and the present proposals, should be available in convenient format for the benefit and information of those they are designed to protect.

4. With the exceptions noted below (Paras 6 & 7), the proposal appears to be apt to provide the desired solution although lacking precision in certain respects; it also takes account of the possibility of conflict of laws and of problems which may arise in relation to complementary schemes of social security.

5. It may be noted that the objective of the directive is broadly in accordance with the views expressed by the Legal Affairs Committee in the report of Mr Charles Héger on the third Directive on coordination of safeguards for the protection of members and others in connection with mergers between public limited companies (Doc. 154/74). It would appear therefore that the protection afforded by the current proposals would meet the wishes of both the Committee on Social Affairs and Employment and the Legal Affairs Committee on this point, although the provisions for workers' consultation and negotiation are markedly weaker in the present proposals than in those recommended for inclusion in the third Directive on coordination of safeguards.

6 Your rapporteur is concerned to note a number of points on which there is an unacceptable degree of disparity between the proposed final texts in three (at least) of the Community languages.

By way of example one might mention -

(i) that the time limit of one month for the decision of the arbitration board in (2) of Article 8 is omitted entirely from the English version;

(ii) that the phrase "sur le territoire d'un seul ou de plusieurs Etats membres ou" seems to have been omitted in the penultimate line of Article 1 (French version);

(iii) that there is a significant difference of meaning between "ist davon auszugehen" (Article 4(3)) and "shall be deemed to be due" : in this case an equivalent for the legal formula of the English text appears to be preferable.

It is therefore suggested that the final legislative texts be reviewed in order to eliminate such discrepancies.

7(a) The Legal Affairs Committee considered that the idea expressed in the 4th recital to the proposal for a directive required correction and adopted an amendment, by 10 votes with 2 abstentions, rewarding the text as follows:

'Whereas changes in undertakings' structure (7 words deleted) may, on the contrary adversely affect.....' (rest unchanged)

7 (b). It is suggested that the wording of Article 1, which is clearly intended to be comprehensive, may in fact create an undesirable lacuna where a merger takes place which is subsequently held not to have been authorised by the laws, regulations and administrative provisions of Member States or by Community law; in such a case there is a risk - albeit small - that the workers might forfeit the protection intended to be given. It is not clear that there is anything to be gained from the inclusion of this phrase and the Legal Affairs Committee proposes that it be omitted.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 1	
This directive shall apply to any merger between companies or firms as these are defined by the second paragraph of Article 58 of the Treaty which is authorised by the laws, regulations and administrative positions of Member States, or by Community law and which has the result that another company replaces a hitherto existing company in its capacity as employer, etc.	This directive shall apply to any merger between companies or firms as these are defined by the second paragraph of Article 58 of the Treaty which (omit 18 words) has the result that another company replaces a hitherto existing company in its capacity as employer, etc.

The Legal Affairs Committee adopted this amendment by 5 votes to 4, with 3 abstentions.

Note:- the definition in Article 58 of the Treaty reads as follows:

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making."

7 (c) For the sake of clarity the Legal Affairs Committee unanimously adopted an amendment to Article 8(2) stipulating that the competent court for nominating the president of the arbitration board, when the parties cannot agree, must be the court 'of the Member State in which the company to be taken over is situated'

To define the scope of the obligations imposed by paragraphs 1 and 2 of Article 8, the Legal Affairs Committee unanimously adopted an amendment to Article 8 (3) to replace the words 'are not to prejudice the operation' by the words 'shall not prevent the operation being carried out.'

7 (d). The object of Article 9 appears to be to protect the accrued rights of workers both in the case where the body of assets out of which supplementary occupational pensions and benefits are payable is transferred to the transferee (Article 9 (1) and in the case where it is not (Article 9 (2). It would therefore afford a greater measure of protection to the workers involved if Article 9 (2) were redrafted to impose a duty of enforcement upon Member States in either case.

The Legal Affairs Committee unanimously adopted the following amendment:

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 9 (2)	
Where the body of assets out of which claims under supplementary occupational pension and related benefit schemes are to be met is not transferred to the transferee, the Member States shall take appropriate legislative measures to ensure that the claims of former workers are met	The Member States shall take appropriate legislative measures to ensure that the claims of former workers are met <u>whether or not</u> the body of assets out of which claims under supplementary occupational pension and related benefit schemes are to be met is transferred to the transferee

8. On groundsof legal clarity the following minor amendments appear desirable:

(i) Article (2) add at end
"in such circumstances"

(ii) Article (3) amend
"for a period of one year..." to
"for a period of at least one year...."

(iii) Article (6) amend
"shall be taken fully into account..." to
"shall, for all relevant purposes, be taken fully into account.."

(iv) Article (10) (1) amend
"shall also apply after the merger..." to
"shall also apply to such relationships after the merger..."

9. Finally, the Legal Affairs Committee wishes to draw the attention of the Committee on Social Affairs and Employment to the following points which may occasion practical difficulties:

(i) Article 3 (2): The automatic transfer of rights and obligations arising under agreements which are essentially local in character could lead to problems of detail in such matters as hours of attendance.

(ii) Article 3 (3) : The proposals does not envisage the possibility that workers and management might both choose to adopt immediately a more favourable collective bargaining agreement.

(iii) Article 4 (1) : The phrase "pressing business reasons" is susceptible of a wide variety of interpretations and should be more closely defined.

(iv) Article 4 (3) : If the employee is to be given the option of withdrawing from an unsatisfactory employment relationship arising from merger or takeover, it would seem necessary to provide for adequate notice to be given to each employee affected of the date and nature of any impending changes in the conditions of his employment.

(v) Article 5: The exception in the second sentence is perhaps framed in too loose a form: it would for instance be a very different proposition to face transfer within a multi-national organisation after takeover, if previously the employee had been liable to transfer (for example) only within the British Isles.

(vi) Article 8 (2): The proposal does not make it clear how it is intended that the "binding decision" of the arbitration board is to be enforced.

(vii) Article 8 (3) : While it is no doubt reasonable to impose time limits on the negotiations, the fact that discussions, negotiations and arbitration "may not prejudice the operation" appears to negate the value of this provision.

(viii) Article 9 (1): It is not difficult to envisage supplementary social security schemes which are financed not out of a body of assets but out of current, or future business profits; it seems desirable to legislate for continuity of benefit in such cases.

(ix) Article 9 (ii) : Here too anomalies might arise from the form of the present proposal ; what, for example, would be the position of an elderly employee with no pension rights whose firm is taken over by another which has instituted a supplementary retirement benefit scheme based on length of service?

Opinion of the

COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr Herman SCHWÖRER

The Committee on Economic and Monetary Affairs appointed Mr Schwörer draftsman of an opinion on 6 September 1974.

It considered the draft opinion at its meeting of 25 October 1974 and adopted it unanimously.

The following were present: Mr Lange, chairman; Mr Schwörer, vice-chairman and rapporteur; Mr Notenboom, vice-chairman; Mr Artzinger, Mr Carpentier, Mr Cifarelli, Mr Cousté, Mr Delmotte, Mr Flämig, Mr Van der Hek, Mr Kater, Mr Leenhardt, Mr Brøndlund Nielsen and Mr Normanton.

1. One of the important objectives in founding the European Communities was the creation of better conditions for European understakings to benefit from the economic advantages of scale and thereby compete more effectively against foreign firms.

It is therefore hardly surprising that economic development in the sixties and the first half of the seventies has been characterized by a considerable increase in amalgamations.

2. Increasing concentration may have negative effects from the viewpoint of both competition policy and social policy.

The Committee on Economic and Monetary Affairs therefore recommends the drawing up of Community rules to protect the rights and privileges of employees in cases of mergers etc., so as to avoid or at least mitigate the adverse effects. It is sympathetic to the objectives and formulation of the proposal for a directive and welcomes the fact that the directive covers not only limited companies but all companies constituted under civil law, and that it makes provision - which is important - for the automatic transfer of the employment relationship from the old to the new employer.

3. The Committee on Economic and Monetary Affairs cannot, however, agree with the exaggerated formulation of the fourth recital of the directive, to the effect that changes in undertakings' structure are not in line with certain purposes (the harmonious development of economic activities throughout the Community, an accelerated raising of the standard of living and improved working conditions and an improved standard of living for workers).

It therefore proposes the following amended wording:

'Whereas changes in undertakings' structure may, on the contrary, adversely affect the working conditions and standard of living of workers, expecially ...' (remainder unchanged).

4. The generality of the wording of Article 4(1) might give rise to differences in interpretation. Organizational and production changes and rationalization measures may to a certain extent justify dismissals for economic reasons. The regulations must therefore leave open the possibility of effecting organizational changes etc., even in cases where the existence of an undertaking or part of an undertaking does not depend thereon.

The committee therefore welcomes the fact that the definition of 'pressing business reasons' will in practice (see Article 4(2)) depend on the exact interpretation of the legal and administrative provisions of the Member States on the admissibility of individual or collective dismissals.

5. The committee further finds that, at least in the case of mergers, there will now be a Community regulation on protection against dismissal. While warmly welcoming this provision, it emphasizes that this is a partial regulation since it deals only with protection against dismissal in the case of mergers. In view of this circumstance it wonders whether the provisions of the proposal for a directive are adequate to exclude the perfectly possible case that agreements between the firm 'acquiring' or 'taking over' and the 'transferred' or 'merged' firm may cause the operational reorganization to be effected at a time preceding the publication of the merger plans, thus avoiding the obligation to consult the employees. The effects of such an agreement, which would be to the disadvantage of the employees and their representatives, could be prevented by making the provisions of this directive retroactive in cases where mass dismissals have taken place within 12 months preceding the merger.