

EUROPEAN PARLIAMENT

Working Documents

1974-1975

11 February 1975

DOCUMENT 385/74/rev.

Report

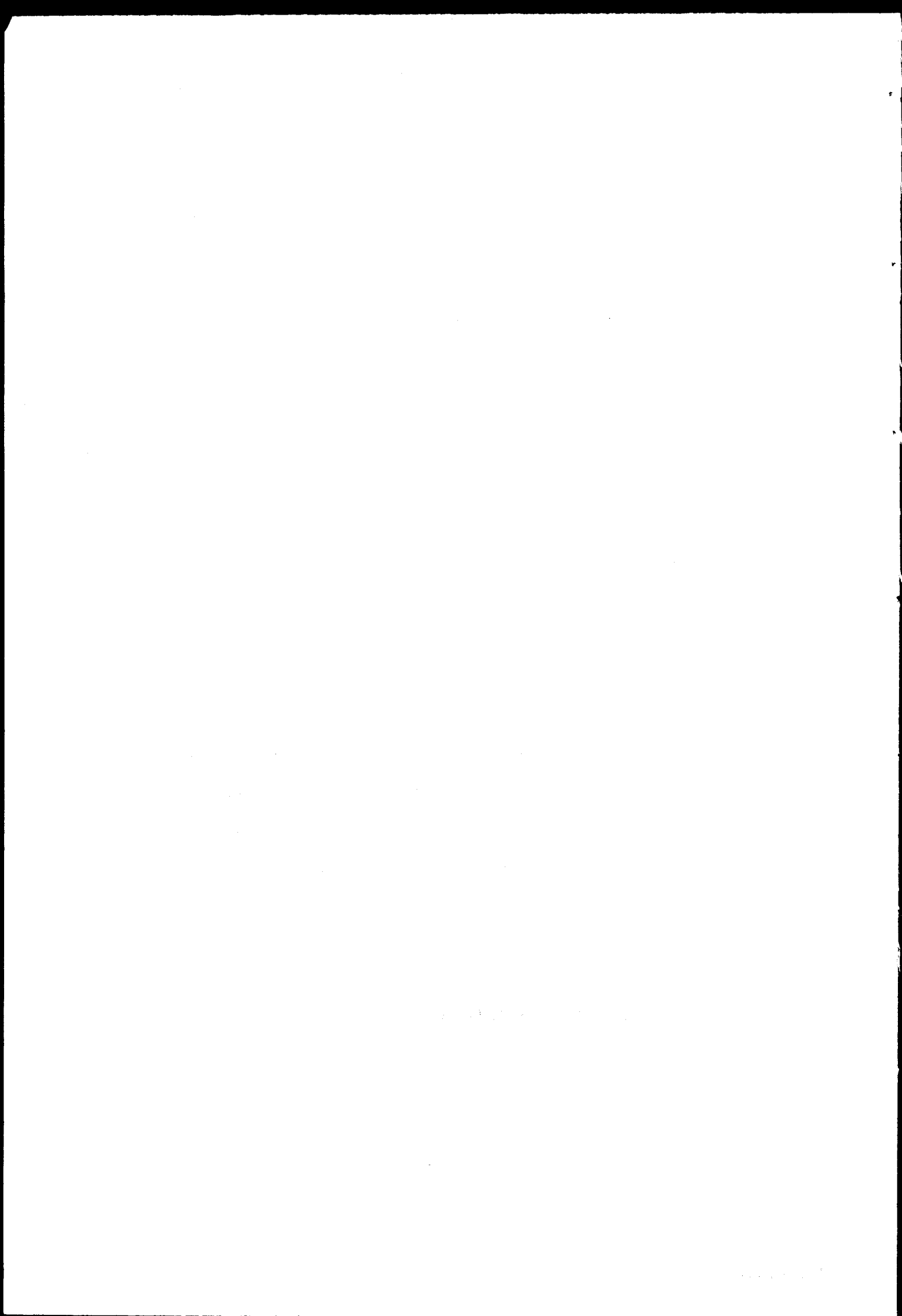
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drawn up on behalf of the Committee on Social Affairs and Employment

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

Rapporteur: Mr Michael B. YEATS

PE 37.832/fin./rev.



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By letter of 14 June 1974 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion 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.

On 27 June 1974 the European Parliament referred this proposal to the Committee on Social Affairs and Employment as the committee responsible and to the Legal Affairs Committee and to the Committee on Economic and Monetary Affairs for their opinions.

The Committee on Social Affairs appointed Mr Yeats rapporteur on 10 April 1974.

It considered this proposal at its meetings of 20 June, 4 September, 8 and 25 October 1974.

At its meeting of 25 October 1974 the committee adopted the motion for a resolution and the explanatory statement by 11 votes with 1 abstention.

The following were present: Mr Bertrand, chairman; Mr Marras, vice-chairman; Mr Yeats, rapporteur; Mr Albers, Mr Albertsen, Mr Bermani, Mr Dondelinger, Lady Elles, Mr Glinne, Lord O'Hagan, Mr Rosati, Mr Schwabe.

The opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs are attached.

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On 12 December 1974, the report, together with fourteen amendments tabled at the plenary sitting (Doc. 385/1 to 385/14, see Annex III to the report), was referred back to the committee responsible pursuant to Rule 26(2) of the Rules of Procedure of the European Parliament.

These amendments were considered at the meeting of 22 January 1975; they were all rejected.

Present: Mr Bertrand, chairman; Mr Marras, vice-chairman; Mr Yeats, rapporteur; Mr Albers, Mr Carpentier, Mr Dondelinger, Lady Elles, Mr Geurtsen, Mr Van der Gun, Mr Härzschel, Mr Petersen, Mr Pêtre, Mr Pisoni, Sir Brandon Rhys-Williams and Mr Vandewiele (deputizing for Mr Girardin).

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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/rev.),
1. Is of the opinion that the rapidly growing trend towards amalgamations between undertakings creates the necessity at Community level to harmonize 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;

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 Directive 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.

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

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| 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; |
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Recitals 5 to 8 unchanged

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

CHAPTER 1

General provisions

Articles 1 and 2 unchanged

CHAPTER 2

Automatic transfer of employment relationship

Article 3 unchanged

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.

Article 4

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 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

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. unchanged

Articles 5 and 6 unchanged

CHAPTER 3

Workers' representation and consultation

Article 7 unchanged

Article 8

Save for the operations mentioned in the Directive No. of the Council of , the following procedure shall be applicable to the other operations provided for under Articles 1 and 11 of this Directive:

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 OJ No. C 89 of 14.7.1970.

Article 8

First paragraph unchanged.

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.

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. 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.
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.
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.
4. The obligation to hold immediate discussions in paragraph 1 and the negotiation and arbitration procedures contained in paragraph 3 must be completed before the carrying out of the operation.