SPEECH OF MR. FINN O. GUNDELACH

CONCERNING

THE STATUTE FOR THE EUROPEAN COMPANY

DELIVERED TO THE EUROPEAN PARLIAMENT

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I. Introduction

I am glad to be able to address the European Parliament on an issue as significant as the European Company Statute. First of all I would like to thank the members of the Committees concerned with the European Company Statute and in particular the rapporteurs most involved, Mr. Pintus, Mr. Adams and above all Mr. Brugger. We are well aware of the time and attention which has been spent in considering and improving our original proposal. The result is a report and a proposed resolution of outstanding quality.

It is perhaps particularly satisfying in that the proposed Statute is a clear example of how article 235 of the Treaty of Rome and the parliamentary procedure which it requires can be used in a constructive and important way.

The Commission welcomes the fact that all the Committees of the European Parliament have recognized the value of the proposed new legal form. But it is appropriate for me at the start of this important debate to state why the European Company Statute is so significant. I will do so first in very general terms and then I would like to develop my answer in a somewhat more detailed manner. Finally, I propose to deal as briefly as I can with 3 or 4 specific issues of particular importance upon which you must reach decisions, concluding with the most important, employee participation.

II. The Significance of the European Company Statute

To begin then, why in general terms is the European Company Statute significant?

Recent events provide us with part of the answer, probably the most important part. The Community's ability to respond effectively to the political problems which arise today, and will undoubtedly arise in the future, depends to a great extent upon the existence of solid structural foundations. Without such a structure, the Community is like a modern building without its steel frame. When the wind blows, it will fall apart.

One of the elements in this structural foundation, not perhaps the most central component, but certainly important, is a common legal framework. The European Company Statute is a significant part of that common legal framework.

The looser economic trading arrangements appropriate to the 1950's and 60's will not enable us to meet the greater challenges of the 1970's and 80's. We must move on to construct a common market in the full sense: a solid economic, social, and legal foundation for the Community. If we do not, we know what will happen when the wind blows. Recent events have given us fair warning.

But there is also a second answer to the question of why the European Company Statute is significant. It is significant because it has been drafted so as to take account of the basic purposes which we seek to achieve. In particular, to paraphrase the Treaty, fairly distributed and balanced improvements in the welfare of the peoples of the Community taken as a whole. This is not the less important in a period when economies are growing more slowly.

As we shall see, the European Company Statute seeks to promote these objectives both directly in its own provisions, and indirectly in so far as it constitutes a sound basis and stimulus for further legislation.

I will now attempt to develop these two general themes in greater detail to explain first the role which the European Company Statute will play in the framework or foundation which we must construct, and second the manner in which it furthers the fundamental social objectives of the Community:

III. The Role of the European Company Statute as Part of the Framework or Foundation of the Community

The role of the European Company Statute as part of the framework is to encourage the formation and concentration of business enterprises at the European level by providing a modern, rational structure for these enterprises. In a phrase, it is to create a common market for European enterprises.

As yet our enterprises do not have the opportunity of acting throughout the Community in the same way as they can within the single Member State in which they are incorporated. They have to contend with serious legal, practical and psychological difficulties if they wish to engage in certain cross-frontier operations. Cross-frontier mergers are normally impossible. The cross-frontier formation of holding companies or subsidiaries, though possible, is difficult, because national company laws are in principle territorial. The resulting complexity is an undeniable disincentive to cross-frontier transactions within the Community. Moreover enterprises cannot adopt legal structures which are appropriate to the scale and requirements of the European market in which they operate or may wish to operate.

The European Company Statute will provide them with such a structure; and moreover, a structure of a modern sophisticated kind which offers protection for the legitimate interests of all concerned in the running of the enterprise: shareholders, creditors, and not least employees.

In making this structure available, the European Company Statute will provide a real stimulus for economic activity throughout the Community. For enterprises will have the opportunity to choose a modern corporate form which enables them to operate as European enterprises and thereby increase their efficiency, competitiveness and strength, in their own interest and in the interest of society as a whole.

I would like however to make the important point here that the Commission is not making the proposal because it believes that "bigger" means "more efficient". There is evidence that more often than not the contrary is true. The purpose of the European Company Statute is not to encourage bigness as such but to free enterprises from legal, practical and psychological constraints deriving from the existence of nine separate legal systems. These constraints at present inhibit enterprises from arranging their affairs and their relationships with other enterprises in the manner which would otherwise be the most efficient and profitable just as a national company does in relation to its domestic market. Smaller and medium-sized firms can benefit as much as large ones from this opportunity, and in my opinion will undoubtedly avail themselves of it.

Moreover, as I have said, the European Company Statute is part of the framework which we are building, but it is only a part. It will be complemented by appropriate instruments in other fields: instruments to control mergers adversely affecting competition and to channel capital investment, in relation to particular regions for example. But company law has never been the vehicle for such measures and for this reason the European Company Statute does not speak of them. However, it is important to remember that the European companies will be affected by such instruments in the same way as enterprises with other forms.

Similarly, the Statute does not exclude the possibility of employees participating in the profits or assets of a European Company, a matter which will be of increasing interest in the future.

In this connection I would like to make one further comment. We agree that Community instruments dealing with related matters should be co-ordinated as far as possible. We are attempting to achieve this.

IV. The Role of the European Company Statute with regard to Fundamental Social Objectives

Turning now to the question of broader social objectives, the European Company Statute makes an obvious direct contribution to the objective of "harmonious development of economic activity". For the mechanisms which it proposes ensure that adequate recognition is given to the legitimate interests of all who are involved in the operation of the enterprise: shareholders, creditors and employees. I shall return to the matter of employee participation subsequently. It is sufficient to say here that the two-tier structure of supervisory board and management board, the recognition that employees should be represented on the supervisory board, the provisions concerning the right of the European Works Council to approve specific management decisions, and the rights of shareholders in general meeting constitute a sophisticated response to the problem of reconciling the principal interest groups in our societies. It is difficult to exaggerate the importance of this problem. We must actively seek the means whereby the conflict which too often prevails at present is replaced by dialogue and co-decision, or when it is inevitable, as it sometimes will be, at least takes place in a more enlightened atmosphere.

The European Company's structure though undoubtedly not the only means to that end, is an important contribution.

As for the indirect contributions of the European Company Statute as a basis for further regulation and legislation, we should first consider the role which it will play in the development of Community policy with regard to the multinational company. The Statute will facilitate the formation of new multinationals, but a new different type of multinational. Multinationals who choose to take advantage of the new European form will all have the same transparent structure and obligations in relation to shareholders, creditors, employees and society as a whole. The basis of a modern, uniform company law applicable to European multinationals throughout the Community will have been created. The European Company Statute thus provides an opportunity for us to develop in the future sound measures for achieving a balance between on the one hand the benefits to be achieved from free competition, for example, a better use of scarce resources, and on the other hand, the problems caused by the activities of unrestrained large-scale economic entities operating internationally. Such an opportunity is of great value.

Finally, in this connection let us not overlook the effect that the European Company Statute will have on national company laws. It does not seek to replace those laws and will not do so. It will exist alongside them. But I am of the opinion that its modern lines will attract the attention of those concerned with company law throughout the Community and that it cannot fail to have an effect on their thinking. I am positive that this process will be beneficial and will give added impetus to the trends towards convergence which are already discernible in the various national systems, and are wholly desirable from the Community's point of view.

Of course, we must not lose sight of the fact that the proposed company structure is not just a theoretical model. It must be workable, capable of effective decision-making and action. Otherwise we will have failed in our task.

V. Specific Matters

Now let me deal as briefly as I can with problems in some specific areas which have to be resolved before the European Company Statute becomes a part of Community law. First let me say that if Parliament accepts the amendments proposed by the Legal Committee, then the substance of a great number of those amendments are acceptable to the Commission. The amendments in question are those relating to the following articles: 4; 6; 8; 9; 19; 27; 42; 46; 55; 57; 58; 60; 64; 77; 83 paragraphs 1, 3, 4, and 5; 86; 89; 93; 95; 98; 99; 100; 102; 102 a; 103; 103 a; 105; 107; 108; 109; 110; 111; 112; 113; 114; 116; 117; 119; 120; 121; 123 subparagraphs 1 (f), 1 (g) and 1 (i); 124; 125 subparagraphs 1 (b) and 1 (c); 126; 127; 128; 130; 131; 132; 138; 139; 140; 141; 142; 143; 144; 144 a; 145; 247; 249; 255; 264; 269; 271; 274; 283; 284.

We especially agree with point 5 of the proposed resolution relating to harmonisation of taxation. We too strongly share the view that the necessary work, which is the responsibility of the Council, be speeded up.

Let me now deal with those matters which do require further consideration and comment from me.

First I shall deal with the problem of access to the European Company form which is limited at present to existing "sociétés anonymes" or analogous companies which desire to undertake certain specific cross-frontier operations.

The extension of access to other corporate forms is in principle attractive. Accordingly the Commission agrees with the Legal Committee's proposal to enlarge access to the European Company to include other corporate forms, for example companies with limited responsibility and co-operatives. Such firms however would be able to have access to the European Company form only by forming a common subsidiary.

As for allowing access to companies which have already performed a cross-frontier operation and are engaged in activity on a European scale, the Commission agrees that in principle such enterprises should be admitted, but the problem of formulating a rule to define the kind of cross-frontier operation which would qualify an enterprise has proved immensely difficult.

To admit these companies would involve a complex addition to the Statute. Moreover these enterprises will not find it unduly difficult to adopt the form of a European Company if they wish.

The Commission also accepts the Legal Committee's proposal to lower the required minimum capital for formation of a European Company as a common subsidiary from 250,000 to 100,000 units of account. It further proposes to lower proportionately the figures for the other modes of formation (by merger or holding company) from 500,000 to 250,000 units of account.

The second problem with which I wish to deal now is the problem of plurality of seats.

It may be that where two enterprises are closely linked by tradition, name or otherwise to the countries in which they have their registered offices, to oblige them to choose one registered office in one country will constitute a disincentive to their combining as a European Company.

On the other hand, the Commission is of the opinion that the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgements concluded in 1968 between the Members of the Community prevents a situation arising whereby several Courts in different countries might be competent to decide the same case involving a European Company and might reach different conclusions.

Accordingly, there seems to be no reason for imposing the possible disincentive of obliging a European Company to have a single seat.

The third problem concerns the sanctions for the criminal offences listed in the annex to the European Company Statute. The Statute as presently drafted imposes on the Member States the obligation of creating offences to cover the conduct described in the annex. The Legal Committee has proposed that we should go further and draw up a Community directive to establish the nature of these offences and the appropriate penalties.

Indeed, from the conceptual point of view there is much to commend the proposal.

However, to attempt to draw up a directive as suggested would be a complicated task in the sensitive area of criminal jurisdiction and procedure. We might create more problems than we would solve and delay the adoption of the proposed Statute. The Commission is of the opinion that it will be sufficient in practice to ensure that certain practices become criminal offences and to leave the penalties and associated procedures to national legislation.

VI. Participation of Employees

The final issue upon which I wish to address you is perhaps the most difficult of all: the problem of the manner in which the Statute should organize the participation of the employees of the European Company, and in particular, their representation on the supervisory board.

As we have already seen, the European Company Statute does not treat the new legal structure simply as a means of organising invested capital. Recognition has been given to the interests which employees have in the enterprises in which they work. Moreover it is clear that the basic purpose of the Statute, which is to create a European corporate form, requires that the Statute contains uniform provisions as to employee participation. Reliance cannot be placed on the varying systems of employee participation prevailing in the Member States. We must create a common system for the Statute.

The principles of the system which we have proposed are well known to you.

The Commission welcomes the fact that all Committees have agreed on the three fundamental principles, namely the principle of establishing a European Works Council with rights of information, consultation and approval with regard to specified management decisions; on the principle of representation of the employees on the supervisory board; and on the principle that European Companies should be able to conclude collective agreements at the European level. Such collective bargains may well become instruments of great significance in the future.

(1) European Works Councils

In relation to the provisions concerning the European Works Council, two proposals have been made. First, there is the proposal for the introduction of uniform election rules (which would also be used in the election of workers' representatives to supervisory boards). Second, there is the proposal to enlarge the list of management decisions subject to the prior approval of the European Works Council to include the closure of the undertaking or parts of it, and the settlement of a social plan in the event of closure. I will deal with these proposals in that order.

The introduction of uniform election rules has been proposed by the Legal Committee because of the absence of national election rules for works councils in the United Kingdom and Ireland to which the simple renvoi to national law originally proposed by the Commission might apply. The Commission approves of the introduction of uniform election rules because it believes that the role of the employees' representatives, and in particular of the European Works Council, will be greatly strengthened if all representatives are elected by a democratic election procedure giving them a common legitimation.

To turn to the question of the European Works Council's power to approve closures and the associated social plans, the Commission takes the view that employees should have the right through their representatives to approve social plans to deal with the consequences of basic economic decisions taken by enterprises. These social plans deal with matters immediately affecting the interests of the employees. However, the right to approve a social plan should not be a right to an indirect veto of the basic economic decision itself. Accordingly if the plan does not meet with the approval of the employees, it is right that there should be an independent arbitration.

Such a social plan requiring the approval of the employees' representatives and independent arbitration has been a consistent part of the Commission's policies with regard to mergers and amalgamations. For example, you may remember our discussion last year on article 6 of the proposal for a third directive on mergers between "sociétés anonymes" of January 1973. The same idea is to be found in chapter 3 of the proposal for a directive

on the retention of rights and advantages of employees in the case of mergers, takeovers and amalgamations of May 1974. It is therefore wholly justified to extend the principle and to include it in the European Company Statute in relation to closures as proposed by the Legal and Social Affairs Committees.

Provided employees' representatives have such rights, there is no necessity to give them the right to approve or disapprove the closure itself. In the opinion of the Commission it is the supervisory board by reason of its mixed composition which is best able to resolve these basic economic questions, and to reach a decision which constitutes a reasonable balance of the various interests involved in relation to the closure of an enterprise, which in many cases may no longer be economically viable. Neither the European Works Council nor the shareholders meeting which each represent one interest group only, should have the right to approve or disapprove the fundamental issue of the closure itself.

(2) The Supervisory Board

Finally, I turn to perhaps the most crucial subject of today's debate: the composition of the supervisory board.

The principle of employee representation on the supervisory board seems, I am glad to say, to be generally accepted within the Committees of this Parliament, at least as regards the European Company. Perhaps this is the most opportune moment to observe that of course any solutions which are developed for the European Company do not inevitably set the pattern for the proposed fifth directive on the structure of "sociétés anonymes" and analogous companies. There is no doubt some link between the two, but approximation of nine national systems with their own long standing traditions of industrial relations is a different, and more difficult matter than the creation of a new optional European form.

I would like to take this opportunity to announce that the Commission intends to publish in the autumn a document of the kind known in the United Kingdom as a "Green Paper". This will provide a record of the present positions and trends throughout the Community with regard to company structure and employee participation. The basic purpose of the document will be to provide in a convenient form the [illegible] necessary gain for a constructive consideration of the fifth directive.

Though the principle of employee representation on the supervisory board appears to be accepted, there appears however to be no discernible consensus yet as to how best to implement the principle in concrete terms.

The Commission's original proposal was that employees should have one third of the seats on the supervisory board unless a greater proportion is specified in the Statutes of the European Company.

But since the Commission proposed the European Company Statute with employees' representation on the supervisory boards, increased powers for work councils, and collective bargaining, a constructive and far-reaching debate has developed in all the Member States of the Community and, indeed, in this Parliament. I am sure the debate today will provide another example of this.

In the course of this debate, a considerable consensus has developed that in the type of modern society in which the European Company will operate, such companies have responsibilities far beyond the classical responsibilities towards shareholders. They have responsibilities towards the employees, towards local interests and to the public.

We are naturally aware that there are still people on the one side and on the other side who believe that the classical confrontation between industry and workers is the right way to solve problems even in a modern industrial society. Let me underline that the proposed rules for the employee participation in the European Company Statute do not infringe or diminish the rights and possibilities of the labour unions. Let me also state that there will continue to be confrontations and maybe sometimes that this is good and inevitable.

But the Commission continues to believe, together with a growing majority, that a modern and complex society needs mechanisms which will avoid unnecessary and for everybody harmful, confrontation, and which will ensure that when confrontation is unavoidable, it takes place in a more enlightened atmosphere. The discussion on this subject is still going on. Your debate today can constitute an important milestone in the process towards a first set of solutions. It is now your responsibility to give as clear and decisive advice as you possibly can. There will be difficult considerations and negotiations ahead of us before the European Company Statute can be implemented. You can influence that process by expressing yourself clearly with cogent arguments and with authority today.

As far as the Commission is concerned, we have actively participated in the debate on the subject from the very beginning. We have, indeed, taken a leading part. We shall continue to do so also in the future. We shall take

fully into account the views expressed here today and the conclusions you arrive at, with an open mind. I can best emphasize our willingness to seek solutions appropriate to the state of development of our societies by underlining that we shall not insist on our original proposal.

We are ready to seek more advanced solutions.