The Committee emphasizes the importance of the Community role in this fight against poverty and accepts the Commission's view that 'the proposal to promote pilot projects demonstrates that the Community intends to play a role which, although limited in the resources involved, is potentially of great significance'. Through this programme, and with adequate arrangements to ensure follow-up action, the Community can begin to demonstrate a genuinely human face.

The Council now has the responsibility of approving and ensuring the early implementation of the programme of pilot schemes. The Section is of the opinion that approval should be forthcoming without delay, so as to permit an early start to work on the ground. This approval should be given in an appropriate legal form so as to ensure a sound basis for the long-term development and Community support of a small, but potentially most important, advance towards a comprehensive social policy of benefit to all the people of the Member States.

Done at Brussels, 24 April 1975

*The Chairman*
*of the Economic and Social Committee*
Henri CANONGE

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**Opinion on the proposal for a Council 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 text referred to the Committee was published in *Official Journal of the European Communities* No C 104 of 13 September 1974, page 1.

## A. LEGAL BASIS FOR THE OPINION

On 14 June 1974, the Council referred the abovementioned proposal to the Economic and Social Committee under Article 100 of the Treaty establishing the European Economic Community.

## B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee drew up its Opinion at its 129th plenary session, held in Brussels on 23 and 24 April 1975.

The Opinion is published below:

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the referral on 14 June 1974 by the Council of the European Communities of the proposal for a Council Directive on harmonization of the legislation of the Member States on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations;

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 thereof;

Having regard to the decision taken by its Bureau on 25 June 1974 instructing the Section for Social Questions to draw up an Opinion on the matter;

Having regard to the Opinion adopted by the Section for Social Questions at its meeting on 12 and 13 March 1975, and the report submitted by Mr Muhr, the Rapporteur;

Having regard to the discussions at its meeting on 23 and 24 April 1975 (129th plenary session of 23 and 24 April 1975);

Whereas mergers, takeovers and amalgamations may often entail manpower reviews in the course of which rights which have accrued to workers in the past may be lost or abridged, if the worker's rights are not ensured proper minimum protection under the law;

Whereas while it may be desirable to establish certain controls in respect of mergers, takeovers and amalgamations, in the general public interest and in order to ensure the protection of individuals, there is no case for blanket prohibition of such operations, which may serve technological progress, the maintenance of jobs that might otherwise be lost, and that accelerated raising of living standards which is one of the objectives of the Treaty of Rome;

Whereas important civil liability questions may arise in connection with mergers and takeovers, and whereas these questions, not dealt with in the present proposal for a directive, must not be neglected;

Whereas it is feasible to treat the proper social protection of the workers under the law and the implementation of merger, takeover or amalgamation operations separately, so that the procedures provided for in this Directive need not delay such operations,

HAS ADOPTED THE FOLLOWING OPINION

by 62 votes to 27 and with 14 abstentions:

The Committee approves the proposal for a Directive subject to the following comments:

## 1. General comments

1.1. The Committee endorses wholeheartedly the objective of the present proposal for a Directive, which is to introduce mandatory provisions to protect employees against loss of rights or claims as a result of mergers, takeovers or amalgamations. Adequate minimum protection of employees is today an even more important objective than in the past because industrial development at both national and Community level is now entailing an even larger number of changes in corporate structures, which are also on a larger scale than in the past: the effects on the social situation of the labour force of these changes are often far-reaching.

1.2. The Committee reaffirms the observation it has already made on several occasions, *viz.* that a merger, takeover or amalgamation is the right course in some circumstances, subject to certain criteria laid down in the interests of the Community economy and in the interests of employees. Such operations ought therefore not to be hampered by unnecessary or unduly burdensome obstacles. But the Committee believes that many harmful consequences for the workers could be forestalled if the implications of reorganization operations for the workers were considered carefully well before the operations were actually carried out. For it can happen that while such operations may be very beneficial for the profitability of the companies, the adverse effects are borne by the workers alone. The Committee accordingly attaches special importance to this Commission proposal, as it does to all Community proposals designed to prevent or compensate for damage inflicted on workers. The present proposal aims to ensure that workers alone do not bear the cost of achieving technological progress or alone make the sacrifices that may be necessary in the short run to achieve improved living standards in the longer run.

1.3. This said, the Committee wishes also to stress that the operations referred to in the present Directive can make an important contribution to the maintenance of employment, particularly when one of the firms concerned in the operation would otherwise not be able to stay in business. In this connection, it notes with satisfaction that the new Directive is not in any sense intended to constitute a legal obstacle to the desire of management to seek improved corporate structures and enhanced profitability.

1.4. The Committee starts from the premise that jobs and acquired rights can be safeguarded and existing terms of employment maintained by having either mandatory provisions of law which guarantee individual legal protection, or a collective system of safeguards centred on negotiations with workers' representatives. The Committee notes that the proposed directive is based on a combination of the two methods. When there is a change of employer, a system of mandatory legal provisions is to guarantee the automatic transfer of the employment relationship from the transferor to the transferee and the protection of employees against dismissal due exclusively to a change in the structure of undertakings, thereby precluding adverse effects as far as possible form the outset. And, in addition, there are to be procedures for information, consultation and negotiations with employees' representatives to find ways of offsetting in particular those negative effects which are not dealt with or satisfactorily mitigated by the system of individual legal protection.

1.5. The Commission's proposal does not cover all questions of civil liability towards employees arising in connection with changes of employer. The case for dealing with this issue under a different legal instrument from that at present referred to it has been considered by the Committee. Civil liability questions are, of course, extremely complex problems involving aspects of the law lying essentially outside the field of labour law, and they are particularly difficult to settle at Community level because of the differing legal situations in the various Member States. Another difficulty arising in connection with civil liability is that unduly strict rules could in certain circumstances hamper negotiations for takeovers.

1.6. The text as it now stands offers no answer to the question as to whether the old employer is still liable, alongside the new one, for workers' claims dating back to a time prior to the takeover or merger but not yet met by the old employer at the time of the operation. Nor is it clear whether former employees who left the firm being taken over before the time of the takeover can enforce outstanding claims against the transferee.

1.7. The Committee understands that the Commission has preferred to consider these matters as arising essentially in connection with insolvencies and bankruptcies, and prefers that they should be settled as part of the extensive work that is being carried out by the Commission in this important field.

1.8. Noting that a large number of insolvencies and bankruptcies occur outside the context of mergers, and a large number of mergers and takeovers occur without there being any danger of an insolvency or bankruptcy, the Committee considered whether it would be desirable to settle these questions of civil liability in the present Directive by providing for the joint liability of the transferee and the transferor. However, it agrees with the Commission that it would be preferable for the problem of the joint liability of the transferee and the transferor to be settled in a separate instrument. It considers that the question should be treated as a matter of urgency.

## 2. Specific comments

2.1. *Recitals*

The Committee considers that the fourth recital contains a statement which is too sweeping and therefore incorrect. Accordingly, this recital should be amended to read:

> Whereas changes in undertakings' structure are not *always* 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.

2.2. *Articles 1 and 2*

No comments.

2.3. *Article 3*

2.3.1. No changes are proposed by the Committee to paragraph (1) of this Article, which provides that in the case of a change of employer the employment relationship entered into by the transferor shall be automatically transferred to the transferee with all rights and obligations.

2.3.2. The provisions of paragraphs (2) and (3), however, concerning the continued validity of collective bargaining agreements, prompt the following comments.

2.3.3. In the Committee's view, collective agreements which were binding on the transferor, be

they plant, company or trade association agreements, should only remain in force until a new arrangement has been concluded between the two sides. It should be possible to negotiate such arrangements at any time, for example in the course of the procedures provided for in Article 8.

2.3.4. Moreover, the Committee does not agree with the distinction in Article 3 (3) between trade association collective agreements of limited and unlimited duration as regards the period for which agreements are temporarily to continue in force. It considers that trade association collective agreements of limited duration which are not superseded by a new arrangement should also not remain applicable for longer than one year.

2.3.5. Contrary to the last sentence of Article 3 (3), the previous conditions of service laid down in a collective agreement should also continue to apply temporarily if the transferee is bound by another collective bargaining agreement which also covers the undertaking that has been transferred. Otherwise, if the collective agreement governing the transferee were less favourable than that hitherto applicable to the employees, there would be a risk that the change of employer would automatically result in less favourable terms of employment for the transferred staff.

2.3.6. Finally, the Committee would draw attention to the fact that in some circumstances there could be grounds for applying the collective agreement governing the transferee to the transferred employees at once or before a year has elapsed. It thinks it is right, therefore, to allow this matter to be settled with the workers' representatives within the framework of the negotiations provided for in Article 8. Such a procedure would both allow imperative business requirements to be catered for in the settlement, especially where a small firm is taken over by a large undertaking, and would take account of the possibility that the new collective agreement may be more favourable than that hitherto applicable to the transferred employees.

2.3.7. For these reasons, the Committee proposes that Article 3 (2) and (3) be amended to read:

> 2. Where the rights and obligations arising from the employment relationship are based on plant or company collective agreements concluded by the transferor, these rights and obligations shall be automatically transferred to the transferee and *shall continue in force until such time as another collective agreement has been concluded between the parties concerned.*
>
> 3. Where the transferee is not bound by the same trade association's collective bargaining agreement as the transferor, the transferee shall nevertheless respect the terms of employment laid down in the collective agreement concluded by the transferor *until such time as another collective agreement has been concluded between the parties concerned. Should no other collective agreement be concluded between the parties within a period of one year from the date of the entry of the transferee into the employment relationship, the trade association's collective bargaining agreement, if any, by which the transferee is bound shall apply.*

2.4. *Article 4*

2.4.1. The Committee considers that before any dismissals are effected for 'pressing business reasons' under the second sentence of Article 4 (1), the workers' representatives must in all cases be informed and consultations with them held to try to find the workers concerned other jobs with equivalent advantages.

The Committee therefore proposes that the second sentence of Article 4 (1) be amended to read:

> This shall not apply to dismissals necessitated by pressing business reasons. In such cases, the employer must inform the workers' representatives of the planned dismissals and hold consultations with them to ensure that everything possible is done to help the workers concerned find other jobs with equivalent advantages.

2.4.2. The wording of Article 4 (3) is not, in the Committee's view, in keeping with the object of this provision. It considers that a 'substantial change' in working conditions is not an adequate criterion. This could mean that even if there was a considerable improvement in his terms of employment, an employee would be able to terminate the employment relationship with the employer being held responsible.

2.4.3. Such a legal consequence could, however, only be intended where the change in the terms of employment is to the employee's detriment. The Committee considers that this ought to be reflected in the text. It stresses, however, that changes detrimental to the employee need not necessarily take the form of a deterioration in material conditions.

They could also include cases where the employee is allocated new, better-paid work but is unable to do it for reasons of old age or ill health or is not prepared to accept the change in residence which the new post entails.

2.4.4. The Committee therefore proposes that Article 4 (3) be amended to read:

> 3. Where a labour contract is terminated by the worker because a merger of companies or a transfer of undertakings has brought about a substantial *adverse* change in his working conditions, such a termination shall be deemed to be due to the action of the employer.

2.5. *Article 5*

2.5.1. The Committee thinks that it should be brought out in the wording of the second sentence of Article 5 that an employee who, at the time of signing his contract of employment, agreed to a possible transfer but under completely different conditions is only obliged to keep his commitment in so far as the said conditions obtain.

2.5.2. Accordingly, the Committee proposes that Article 5 should read:

> Article 4 shall apply analogously to transfers of workers from one undertaking to another which are the consequences of mergers or takeovers. It shall not apply, however, if the worker, as a result of his employment contract, is bound to accept transfer to another undertaking and the conditions of the proposed transfer are compatible with those which obtained at the time of the signing of the employment contract.

2.6. *Article 6*

No changes are proposed by the Committee to this Article.

2.7. *Article 7*

2.7.1. Article 7 (2) needs to be amended, in the Committee's view. It considers that it is not necessary expressly to mention 'Community law', since at the moment there is no Community law regulating the election of workers' representatives. Should Community law on the election of workers' representatives be introduced subsequently through the Statute for the European Company or in connection with any other regulations, the proposed Directive could still be supplemented accordingly.

2.7.2. On the other hand, the Committee would like to see a reference to collective agreements in this provision. It points out that bodies representing workers can be founded not only on laws but also on the provisions of collective agreements. Therefore, application of Article 7 (1) must also be precluded where a collective agreement prescribes the holding of a new election of workers' representatives when the conditions referred to in Article 7 (1) obtain. The Committee considers that these objectives would be met if the present wording 'resulting from the laws, regulations and administrative provisions in the Member States or Community law' were replaced by 'under national law and collective agreements'.

2.7.3. The Committee also points out that application of Article 7 (1) must not be completely precluded where the national law prescribes new elections for merely some of the existing bodies representing workers. It therefore proposes that 'where' be replaced by 'in so far as'.

2.7.4. Finally, the Committee points out that a new election of the workers' representatives can be necessary for reasons other than 'changes in the composition of the body of workers'. For example, a new election may be necessary because only part of a business is taken over and afterwards run as an independent unit.

2.7.5. For these reasons, the Committee proposes that Article 7 (2) be amended to read:

> 2. Paragraph 1 of this Article shall not apply *in so far as under national law and collective agreements* the conditions for holding new elections for workers' representatives obtain.

2.8. *Article 8*

2.8.1. The Committee notes first of all that the introductory sentence in Article 8 places mergers between public limited companies at national level outside the scope of this Article. Rules on the information and consultation of the workers' representatives in the case of mergers of that type are laid down in Article 6 of the revised draft third Directive on mergers. These rules on the information of workers and their representatives are more detailed that those contained in Article 8 of the present directive and include, moreover, a time limit

for informing and consulting the workers. The Committee realizes that in the present Directive, with its wide scope, such more detailed provisions are not very practicable. However, to preclude unwarranted differences it thinks it desirable that more detailed legal safeguards should be devised for other specific forms of mergers and amalgamations as they have been for mergers of public limited companies at national level. Here the Committee has particularly in mind international mergers of public limited companies, mergers of private companies and amalgamations through share transfers. Such detailed rules should be regarded as implementing provisions of the general provisions of Article 8 of the present proposed Directive.

2.8.2. The Committee has doubts about the wording of Article 8 (1), which states that workers' representatives are to be informed simply 'before' the projected operation is carried out. This would enable an employer to delay giving information until directly before the operation takes place. The Committee considered whether there should be a fixed time limit to ensure that information was supplied in good time. However, it does not consider this to be advisable, since the observance of such a time limit could entail considerable practical difficulties due to the fact that at the time of conducting negotiations on operations covered by the proposed Directive it is often impossible to predict when these negotiations will be completed. On the other hand, the Committee does think it necessary to make it clear in the wording that the information has to be supplied to the workers' representatives 'sufficiently in advance of' the final decision to undertake the merger or takeover.

2.8.3. The Committee therefore proposes that Article 8 (1) be amended to read:

1. The transferor and the transferee shall be obliged to inform their respective workers' representatives, within the meaning of Article 7, sufficiently *in advance of* the final decision to undertake the merger or takeover, 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.

The Committee also proposes that the following be added to Article 8 (1):

> The workers' representatives must be supplied with all the documents they need in order to have the fullest possible information about the projected operations. In addition, the workers' representatives may call in one or more experts of their choice to assist them.

2.8.4. No account has been taken in the provisions on information of the fact that mergers between the parent companies of groups will have repercussions on their subsidiaries. The Committee considers that the question of the notification of workers' representatives in dependent undertakings affected by such operations also needs to be resolved.

2.8.5. The binding arbitration procedure for the settlement of disputes between workers and employers in connection with changes in corporate structure, which is provided for in Article 8 (2), already exists in some Member States and has worked satisfactorily there. The Committee would point out, however, that this arbitration procedure is alien to the legal system in other Member States. These countries have other procedures for dealing with disputes, and they should be allowed to retain them, since these procedures too have worked satisfactorily in the countries concerned. In particular, it is not usual in many cases for the decision on possible claims by employees against the employer to be left to an uninvolved third party or for an arbitration award to be accorded binding force if the two sides have not agreed to abide by it from the start. In the Committee's view it should therefore be left to the two sides to decide whether to use a procedure provided for under national law or conforming to national practice or to apply the arbitration procedure provided for in Article 8 (2), and in the latter case the arbitration award should only be binding if the two sides have agreed to abide by it from the start. For these reasons, the Committee proposes that Article 8 (2) be amended to read:

> *If the discussion provided for in paragraph 1 does not produce a result which is to the satisfaction of both parties, they may initiate. a procedure provided for under national law or conforming to national practice. Instead of using such a procedure, the parties may refer the matter to an arbitration board. This arbitration board shall consist of a number of assessors, of whom half shall be appointed by the employer concerned and the other half by the representatives of the workers, and a chairman appointed by common consent by the two parties in question or, failing*

*that, by the competent court. The arbitration board shall give a binding decision as to what measures shall be taken for the benefit of the workers, if both parties have agreed in advance that such decision shall be binding.*

2.8.6. It follows from Article 8 (3) that disregard of the obligations arising from paragraphs (1) and (2) will not make the undertakings' operation invalid. The Committee trusts, however, that other penalties are envisaged for such cases; the Directive should instruct the Member States to provide for such sanctions. At all events, without penalties of some kind the procedures laid down in paragraphs (1) and (2) would lose their importance.

2.8.7. The wording of Article 8 (3) should be aligned with the changes proposed to paragraph (2):

3. The obligation to hold immediate discussions in paragraph (1) and the procedures contained in paragraph (2) are not to prejudice the operation.

2.9. *Article 9*

2.9.1. Article 9 (1) stipulates that claims under supplemental occupational pensions and related benefit schemes by workers who, at the time of the change of employer, have already withdrawn from the employment relationship can only be made against the transferee where a special body of assets out of which such claims are to be met is also transferred to the transferee. The Committee considers, however, that the transferee must be liable also for benefits promised by the transferor which were to be covered from current operating receipts and not a special body of assets.

2.9.2. Therefore, the Committee proposes that Article 9 (1) be amended to read:

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, *unless there is a special body of assets out of which such claims can be met which is not transferred to the transferee.*

2.9.3. No changes are proposed by the Committee to Article 9 (2).

2.9.4. The Committee fears that the wording of Article 9 (3) could lead to a plurality of claims by employees. It is right that a transferred employee should retain the claims and entitlements he has already acquired, but the present text makes it possible for him to make additional claims under arrangements in force in the transferee' s business. The Committee considers that the possibility of such double claims being made should be precluded by making the text clearer.

2.9.5. Preferential treatment of transferred workers which does not seem justifiable could also occur if the transferor's business has been in existence longer than the transferee's and a pensions scheme geared to the number of years of service is operated by the transferee but was not by the transferor. If, for example, the transferee has a scheme under which employees are to receive supplementary benefits after 20 year's service, and his business has been in existence for only five years; whereas the business which has been taken over had been operating for 20 years, the transferred employees could immediately make claims against the transferee which they did not have, *vis-à-vis* the transferor, and would not have had, *vis-à-vis* the transferee, if they had been working in his business from the start.

2.9.6. For these reasons, the Committee proposes that Article 9 (3) be amended to read:

3. Entitlement to benefits from supplemental occupational pensions and related benefit schemes for workers whose employment relationship had not ended at the time of the merger or takeover *shall be maintained and shall apply also, vis-à-vis the transferee. The length of service with the transferee after the merger or take over shall be taken into account in the entitlement.*

*The transferee and the competent body representing the workers may agree that transferred workers' claims to benefits from supplemental occupational pensions and related benefit schemes shall be determined in accordance with the arrangements in force in the transferee's business instead of with those applicable in the relationship with the transferor prior to the merger or takeover. In such a case the entitlement to the said benefits shall be governed by the provisions of Article 6.*

*The entitlement of transferred workers to benefits from supplemental occupational pensions and related benefit schemes under arrangements in force in the transferee's business shall not be governed by the provisions of Article 6 if, at the time of the merger or takeover, there were no arrangements in the transferor's business for the granting of claims under supplemental occupational pensions and related benefit schemes.*

2.10. *Article 10*

2.10.1. The Committee considered whether this provision should be left in the proposed Directive now that the Commission intends to settle in a Council Regulation the whole question of the conflict rules to be applied in the Community in respect of employment relationships. Since the final content of the planned Regulation is not yet known, the retention of Article 10 as it stands, particularly its second paragraph, might lead to inconsistencies between the proposed Directive and the planned Regulation on conflict rules on the question of which labour laws are applicable.

2.10.2. In spite of this, the Committee is against total deletion of Article 10. It feels that since the Directive is meant to settle all the questions which might arise in connection with a change of employer, it should, if only for the sake of completeness, be made clear that in principle mergers and takeovers do not mean that other labour laws become applicable.

2.10.3. The Committee would also draw attention to the need to ensure that the present Directive and the planned Regulation on conflict rules do not contain provisions which are contradictory. It points out in this connection that under Article 10 (2) of the proposed Directive, the transfer of the place of work to another Member State is sufficient by itself to entail non-application of Article 10 (1); whereas in the regulation on conflict rules the posting of the employee to another country in the Community does not always automatically entail a change of the labour laws applicable to his employment relationship. Finally, the Committee draws express attention to its Opinion of November 1972 on the Commission proposal for a Council Regulation on the conflict rules to be applied in the Community in respect of employment relationships. In that Opinion the Committee took the line that even in the case of a transfer and a consequent change of the labour laws applicable, the protection of the employment relationship enjoyed under the labour legislation previously applicable had to be maintained. In the Committee's view this should also apply in the cases mentioned in Article 10 (2).

2.10.4. For these reasons the Committee, proceeding on the assumption that the Regulation on international conflict rules will enter into force before this Directive, recommends that Article 10 (2) be amended to read:

2. *Paragraph 1 of this Article shall be without prejudice to Regulation No ... of the Council of ..... on the conflict rules to be applied in the Community in respect of employment relationships.*

2.11. *Article 11*

2.11.1. The Committee considered whether concentrations between undertakings should also fall within the scope of the Directive. The purpose of the Directive is to protect employees against any loss of acquired rights and entitlements when a new employer takes over from the existing one, as in the case of mergers and takeovers. Concentrations between undertakings, however, do not involve a change of employer or have direct effects on the individual employment relationships.

2.11.2. On the other hand, the Committee considers that a concentration between undertakings can bring about a situation in which a previously independent undertaking is so dominated by another undertaking that the employer no longer has any control over decisions affecting his employees and is forced to change his personnel policy. The need to protect workers against the loss of rights and entitlements in such cases is, in the Committee's view, just as great as in the case of mergers and takeovers. The Committee is, therefore, in favour of the provisions of the Directive being applicable in principle to concentrations between undertakings.

2.11.3 The Committee observes, however, that the wording of the Articles referred to in Article 11 precludes their being directly applied to concentrations between undertakings, since they talk of the parties of 'transferor' and 'transferee', which do not exist in concentrations. Therefore, the Committee thinks it would be better to state that the directive as a whole is applicable, *mutatis mutandis,* to such structural measures.

2.11.4 The Committee also considered the question whether the reference in Article 11 to the Council Regulation on the control of concentrations served a useful purpose. It observes, however, that omission of this reference would mean that the Directive would have to give its own definition of 'concentrations between undertakings', because if it did not, there would be considerable legal uncertainty, even at national level. The Committee is therefore in favour of the reference being retained. It points out, however, that the definition of concentrations between undertakings now given in Article 2 of the Council Regulation on the control of concentrations will have to be included in the Directive if the latter enters into force before the Regulation.

2.11.5 For these reasons the Committee suggests that Article 11 be amended to read:

The *provisions* of this Directive shall apply, *mutatis mutandis,* to concentrations between undertakings, as defined in Article 2 of the Regulation No ... of the Council of ... on the control of concentrations, *in all cases where the consequences of the concentrations are the same as those of the operations covered by the present Directive* and irrespective of whether the concentration involves undertakings in the territory of one or more Member States or in the territories of one or more Member States and one or more third countries.

2.12. No changes are proposed by the Committee to Articles 12 to 14.

Done at Brussels, 24 April 1975.

*The Chairman*
*of the Economic and Social Committee*
Henri CANONGE

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*ANNEX*

**to the Opinion of the Economic and Social Committee**

The following amendments were rejected during the discussion:

**Alternative A — Item 1.8**

The Committee cannot accept this view, for a large number of insolvencies and bankruptcies occur outside the context of mergers, and a large number of mergers and takeovers occur without there being any danger of an insolvency or bankruptcy. It has reached the conclusion that the present Directive should provide for joint liability of the transferee and the transferor in respect of all workers' claims arising against the transferor before the takeover. This joint liability already exists under the civil law of at least one Member State. The Committee wishes to stress that if the joint liability principle were not applied, it would be possible for managements to sell ailing establishments or firms simply as a means of avoiding their obligations *vis-à-vis* the workers.

**Voting:**

For: 53

Against: 55

Abstentions: 2.

**Item 2.8. — Article 8**

Replace text from 'However, to preclude unwarranted differences... present proposed Directive' onwards by:

However, it considers that unwarranted fundamental differences resulting from the adoption of two distinct directives should be avoided, and so if the Council adopts the third directive in the form proposed by the Commission, the present proposed Directive will have to be revised.

*Reasons*

We do not think it in order to prejudge the decision to be taken by the Council on the revised draft of the third Directive, especially as various provisions of the said Directive are very controversial.

**Voting**

For: 35

Against: 45

Abstentions: 10.

**Item 2.8.3**

Delete from the proposed amended version of Article 8 (1) 'and before the final decision to undertake it is made'.

*Reasons*

Decisions to carry out mergers and takeovers are usually taken in several stages. It is hence difficult to specify the time of the final decision without giving rise to continual conflicts of interpretation. Moreover, in the firm's interest it is necessary that such decisions do not become known to the general public and hence to competitors too soon. For the employees' interests, which have to be protected, the exact time of the decision to undertake the merger or takeover is of only secondary importance. For them the most important thing is the protection they are to receive and the nature and extent of this protection can only really be talked about after the taking of the decision.

**Voting:**

For: 33

Against: 49

Abstentions: 9.

**Item 2.8.3.**

Amend the second paragraph of this item to read:

The workers' representatives must be supplied with all the documents they need in order to have the fullest possible information about the projected operations. *By agreement with the transferee and the transferor,* the workers' representatives may call in one or more experts of their choice to assist them, *in so far as this is necessary for the discussion of the situation.*

*Reason*

The negotiations will be about important interests of the employees and important interests of the firm. Since many of the subjects discussed must be kept secret to protect the firm's competitiveness, outsiders who are not representatives of the workers should be admitted only with the consent of the transferee and transferor.

**Voting:**

For: 22

Against: 45

Abstentions: 12.

**Item 2.8.3**

Proposed addition to Article 8 (1).

After '... projected operations', add the following sentence:

Any information contained in such documents shall be treated as confidential if, and to the extent that workers' representatives are requested to do so either by the transferor or by the transferee.

*Reason*

Information about mergers and amalgamations may need to be kept confidential from competitors. Premature release of such information could prejudice the whole operation and the future position of employees themselves.

It is understood that a similar provision is included in the laws governing the establishment and operation of Works Councils in West Germany and the Netherlands and it would appear to be equally important in this context.

**Voting:**

For: 40

Against: 48

Abstentions: 0.

**Item 2.8.5**

Delete the passage beginning with 'In the Committee's view it should therefore be left . . .' up to the end of item 2.8.5 '. . . have agreed in advance that such decision shall be binding', and replace by the following:

> Therefore the Committee considers that it would be preferable to let the two sides initiate the procedure provided for under their national law or conforming to national practice.
>
> For these reasons the Committee proposes that Article 8 be amended by replacing the second subparagraph of Article 8 (2) with:
>
> If the discussions and negotiations provided for above do not produce a result which is to the satisfaction of both parties, they may initiate whichever procedure is provided for under national law or accords with national practice.

**Voting:**

For: 20

Against: 41

Abstentions: 14.

**Items 2.11.2., 2.11.3., 2.11.4 and 2.11.5**

Replace (Specific comments) by:

> 2.11.2. In the Committee's view, the need to protect workers against changes in their rights can be just as great in concentrations between undertakings as in the case of mergers and takeovers.
>
> 2.11.3. However, the present Directive cannot be directly applied to concentrations between undertakings, since its operation is based on the transfer of the employment relationship from the 'transferor' to the 'transferee'.
>
> In concentrations between undertakings there are no such parties.
>
> 2.11.4. Furthermore, concentrations between undertakings has not yet been defined in a Community instrument. The legal uncertainty surrounding this concept will not be resolved until the draft Council Regulation on the control of concentrations between undertakings is adopted.
>
> 2.11.5. The Section would therefore like to see workers' rights protected on the lines proposed in the present draft Directive also in the case of concentrations between undertakings, but it considers that this protection should be provided in another instrument, not in the Directive.
>
> The Section therefore calls for deletion of Article 11.

*Reason*

The proposer recognizes the need to protect the employees of firms carrying out concentrations in so far as the concentration affects the workers' rights.

This protection cannot, however, be afforded in the existing uncertainty by an instrument whose basic conception is geared to a transfer of ownership between a transferor and a transferee.

**Voting:**

For: 41

Against: 51

Abstentions: 4.