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"THE INFLUENCE OF THE EEC ON IRISH COMPANY LAW"

Talk by Liam Connellan, Director General, Confederation of Irish Industry
to Institute of Chartered Secretaries, Dublin Branch. 1 p.m. Wednesday,
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Introduction

After nearly 9 months as members of the EEC it is clear that Irish industry is performing well. Industrial production is growing at a rate of at least 9% ahead of 1972; exports are up 34% in value - a better export performance than any other EEC country except the Netherlands; and business confidence is at its highest level since 1968. Almost 20% of this rapidly growing export trade is with the old EEC compared to 10% in early 1972. We are therefore experiencing export led growth with increasing emphasis on the markets of the original Six.

Entry into Europe has not only affected our trade. It is now, *inter alia*, gradually beginning to influence our company legislation.

How legislation is made in EEC

The approach of industry is no longer primarily affected by local issues. Every directive and regulation passed in Brussels has and will have a direct influence here. We must be in there influencing the development of EEC legislation and policies right from the beginning - so that we know the probable outcome a couple of years before it comes into effect. Fortunately as yet only one of the six proposed directives or company law has been decided. It is still possible to participate in forming the other five.

The development of EEC legislation and policy follows three main steps:-

1. Preparation of a draft proposal by the Commission following consultation with European Industry Association - UNICE - and Government Missions.

This is the crucial stage for involvement, and as soon as the first document appears it is essential that the Irish industrial sector is both involved in UNICE consultations, and briefs the Department of Industry and Commerce on its attitude.

The Irish Business Envoy in Brussels can also be of considerable help in finding out what positions are being taken up by other groups.

The second stage is consultative when the draft proposal is sent to both the European Economic and Social Committee and the European Parliament for their opinion. As a result the proposal may be held up, or considerably modified. Irish industry has 3 representatives on the 154 man Economic and Social Committee all of whom are members of the Confederation's European Affairs Committee. Ireland also has 10 out of 208 members of the European Parliament.

At the final stage is the modified version of the proposal is sent to the Council of Ministers for decision. It is still possible, through the Minister for Industry and Commerce, to influence the decision at this stage.

Company Law Directives

Let us now look at the major points in the company law directives.

First Directive

This directive specified that companies should state the place of registration, registration number, and the address of its registered office on its letterheads.

It also specifies that the persons, outside the Board of Directors, who are authorised to commit, or bind, a company must be registered; and that anyone dealing with the company in good faith will not be at a loss if one of these authorised people acts beyond the limit of his powers.

This became law on 1st July 1973.

Second Directive

This proposal was introduced in March 1970, and is still under discussion.

It proposes that

- a) the authorised share capital of public companies cannot be less than £10,000; and that this must be fully paid up. This is greater than the nominal capital of ~~over~~^{SOME} ~~half~~ Irish public companies and much of this nominal capital is not fully subscribed. The effect could be to greatly increase the capitalisation of many small Irish public companies.

- b) the authorised share capital of private limited companies cannot be less than £1,700 and this too will have to be fully paid up. This will involve increasing the capitalisation of more than a quarter of Irish private companies. It will also mean that the threshold of capital required to start a limited liability company will be increased from £1 paid up to £1,700. This regulation would also incidentally have the effect of removing many redundant companies from the register.

Third Directive

This proposal was introduced in June 1970, and is concerned with Mergers. The object is to develop uniform standards in relation to information, and the protection of shareholders, staff and creditors.

Thus it is proposed that the managements of the merging companies should prepare a merger plan, and draw up a report justifying the merger;

- that the plan should be checked by an independent expert who will report to shareholders.

- that the management should report to the staff on the effects the merger will have on them. The staff, if they wish, would be entitled to place a written submission before a general meeting of shareholders with any disagreement to be settled by arbitration.

Finally all reports would have to be available 2 months before the General Meeting of shareholders which would decide on the merger plan.

This directive if passed in its present form will clearly slow down

significantly the process of merging companies.

Fourth Directive

This proposal was introduced in November 1971.

Its main provision is that Irish private companies would have to publish their Balance Sheets and Profit and Loss accounts, and to follow a standard format.

The object to ease comparison of the performance of companies throughout the Community.

Fifth Directive

This proposal was introduced in September 1972, and is probably the most controversial.

It proposes two tier boards - a supervisory board and a management board. The supervisory board would be elected at a general meeting of shareholders. The management board would report to the supervisory board, would have responsibility for managing the company, No member of the management board could be appointed for more than 6 years. He would however be eligible for re-election.

In the special case of companies having more than 500 employees it is proposed that some form of employee representation on the board must be arranged. Either one third of the supervisory board would be appointed by the workers, or the worker representatives would be coopted subject to agreement by the general meeting of shareholders, and the workers' representatives.

Sixth Directive

A proposal is expected governing the relationships between companies within a group, and also the relationship between parent companies and subsidiaries.

There are three other draft directives of interest:

- a) Groups of Economic Interest which will make it possible for firms in different community countries to set up an organisation which will jointly market, develop know-how, and share information without becoming enmeshed in the different tax laws of member states.

b) The European Company Statute.

A European company could be formed only by public companies in two member states. It would have a minimum capital of £200,000 for a merger or holding company. The aim is to reduce legal obstacles which currently hinder transnational cooperation.

c) Stock Exchange Regulations

The proposed directive will harmonise the quantity, quality and comparability of information available on quoted companies within the Community.

Finally, from the 1st January 1974 a tax of 1% will be levied on the new issued capital of all companies.

Summary

To summarise, I have mentioned in all nine directives which have either been passed, or are being considered by the EEC.

- First directive on letterheads, and authorised officials.
- Second directive on company share capital.
- Third directive on Mergers.
- Fourth directive on publication of accounts.
- Fifth directive on two-tier boards.
- Sixth directive on relationships between companies in a group.
- Groupings of economic interest.
- The European Company Statute.
- Stock Exchange Regulations.

Eight of these are still at the discussion stage.

Conclusion

The Confederation has the task of representing Irish Industry. It is actively involved in discussions on Company Law with Government Departments, with UNICE and with the European Commission. The main channel for distillation of the viewpoint of industry is through the CII Policy Committee on Company Law.

The Confederation would welcome input from the Institute as a body of professional people. You may approve, or disapprove of many of the proposals and changes in Company Law which I have mentioned. It is essential that Irish industry - and that means all of us - is fully involved in the development of legislation which will affect our companies for many years to come.