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## NOTE FOR THE RECORD

## PRIME MINISTER'S MEETING WITH MR JACK PEEL

Jack Peel came to see the Prime Minister on Tuesday, 20 June.

Most discussion centred on the Commission's proposals for a Social Charter. The Prime Minister paid tribute to Mr Peel's April 1989 Common Cause pamphlet on the subject. Mr Peel also handed over to the Prime Minister the attached further note on the Charter proposal prepared by Industrial Relations Europe.

In discussion the main point Mr Peel raised was the use that could be made of the argument that the Commission's proposals included only workers' rights and said nothing about their duties.

There was also some brief discussion of the current industrial disputes in the transport industries. Mr Peel mentioned two possible courses of action:

- in parallel with current consideration of measures to outlaw unofficial action, the idea might be developed of outlawing official one-day strikes in the essential services;
- although this was a more aggressive approach, employers in some countries had successfully used the tactic of one-day lock outs in retaliation for one-day strikes.

Mr Peel undertook to send me a note on these two ideas. He said he had also been in touch with Michael Portillo at the Department of Transport and would be more than ready to provide consultancy advice to the Government in this area.

PGG

PAUL GRAY

20 June 1989



S U P P L E M E N T

## III. Proposals for the Social Charter

The concept of a Common Market Charter of Fundamental Social Rights is provided for in the social action programme drawn up in connection with the Market's 1992 unification project (IRE supplements, January and March 1989). In May 1989, the Market's executive European Commission produced, first, a lengthy communiqué on the Charter and, second, a preliminary draft text.

The Charter covers a dozen broad topics: freedom of movement; employment and remuneration; improvement of living and working conditions; social protection; freedom of association and collective bargaining; vocational training; equal treatment of the sexes; workers' information, consultation and participation; health and safety; protection of children and adolescents; the elderly; and the disabled.

The full text of the communiqué appears on the centre pages of this supplement, and there is a special commentary on page 4S. Together, they give a detailed picture of the Charter's aims and proposed scope.

Below, we examine some of the practical issues associated with the Charter.

### Legal form

The European Commission wants the Charter adopted as a "solemn declaration" by the 12 Market member-states. This means that, of itself, it will probably not be binding in Market law. However, article 32 of the preliminary draft stipulates that signatory nations should implement it "either through legislative measures or by encouraging both sides of industry to conclude collective agreements at national, regional, sectoral or company level".

Furthermore, the Commission is asking the member-states to permit it to draw up, by June 30, 1990, a supplementary programme of "related instruments" to put the principles of the Charter into effect. At least some of those instruments will almost certainly be binding. In addition, there is a considerable overlap between topics in the Charter and those covered by proposals for Market legislation in the already-adopted social action programme — for example, health and safety and equality of treatment.

So, whatever the precise nature of the Charter at present, its authors ultimately envisage it as a framework for binding rules.

### Planned timetable

The draft of the Charter is currently being circulated to employers' and union representatives for comment. It was expected also to receive preliminary scrutiny by national governments in June. In the light of the reactions, the Commission hopes to prepare a final draft in the summer, to table for heads of member-governments to consider at the Market summit in Paris in December.

In theory at least, therefore, the Charter could be formally adopted this year. However, past experience shows such speed is rare.

### First reactions

The European employers' federation UNICE apparently has few problems with most of the rights listed in the Charter, except for the provisions on information and consultation (*see below*). However, it is concerned about the legal status of the measure — in particular, whether courts might decide that individuals are entitled to exercise the rights it contains even if those rights are not enshrined in specific legislation.

By contrast, the European Trade Union Confederation says it is not satisfied with a simple declaration "however solemn it may be". It wants cast-iron guarantees in the form of legislation, and a firm timetable for its implementation. The content of the draft Charter is broadly welcomed "as a first step".

### Two documents

The contents of the preliminary draft Charter largely follow those of the preceding communiqué (*text inside*). In some cases, however, the draft amplifies the earlier document — notably over the right to information, consultation and participation.

Thus, the paragraph on the subject in the communiqué is followed by another in the draft. It states:

"In particular (information, consultation and participation) shall be implemented in the following cases: when technological changes that have major implications for the workforce as far as working conditions and work organisation are concerned are introduced into firms; in connection with restructuring operations in firms or mergers having an impact on the employment of workers; when transfrontier workers are affected by employment policies pursued by the firm where they are employed".

Other additions to key provisions in the communiqué include:

**Employment and remuneration:** "Every individual is free to choose and engage in an occupation. Every individual shall have access to placement services free of charge".

**Improvement of living and working conditions:** "Every worker residing in the European Community shall have a right to annual paid leave and to a weekly rest period".

**Freedom of association:** "The dialogue between the two sides of industry at European level must be developed, in particular at inter-occupational and sectoral level".

**Equal treatment:** "Action shall be intensified to ensure the implementation of the principle of equality between men and women in the matters of remuneration, access to employment, social protection, education, vocational training and career development".

**Health and safety:** "Protection may not be jeopardised by the provisions concerning implementation of the single market, especially where public works are concerned".

# THE COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS

The following is the official English-language version of the European Commission's communiqué on its planned Social Charter. In certain respects it is not a direct translation of the original French. Notably, the reference under "freedom of association" to contractual relationships at European level was absent from the original.

*Note — The numbered references in the text below cross-refer to the commentary on page 4S, in the sequence used there.*

The Commission has put forward a Community Charter of Fundamental Social Rights. It covers those rights pertaining to employment which guarantee, pursuant to the Treaties, an improvement in the living and working conditions of workers by making possible their upward approximation. The rights included in the Charter represent the essential features which would impart a social dimension to the completion of the internal market, more particularly with regard to freedom of movement, living and working conditions, social protection and training. The Commission is proposing that the Heads of State and Government proclaim the contents of the Charter in the form of a solemn Declaration. The Commission is also asking for a mandate to produce, by 30 June 1990 at the latest, an action programme<sup>(1)</sup> and an initial set of Community instruments to implement the Community Charter of Fundamental Social Rights. The Charter will be examined by the Ministers for Social Affairs and Employment on 12 June; and also by the social partners (particularly UNICE, the Economic & Social Committee and the European Committee for Public Enterprises). The Commission will adopt the final proposal for the Charter in July, in the light of their reactions.

## Does the Community need a Social Charter?

In the Commission's eyes, the social dimension of the internal market is not a new phenomenon which the reactions recorded in the Member States make it necessary to take into account. It was already present in the Treaty of Rome, which provided that there should be an improvement in living and working conditions enabling them to be approximated while progress continued. It is among the objectives consolidated and developed by the Single Act.

More generally, the Commission is convinced that 1992 will be a success only if both sides of industry are involved in it, and that there will be no sustained economic growth in the Community without a social consensus. Europe cannot be built against the opinions of the employers or of the workers or of the general public, and efforts must be made, as the Commission has been stressing since 1985, to prevent distortions of competition leading to forms of social dumping.

The Economic & Social Committee, in its opinion on the Charter adopted in February, and the European Parliament, in its resolution on the internal market, both stressed the importance of a major political gesture in this field<sup>(2)</sup>.

A legitimate question arises at this point. Are there not already adequate international instruments in this field? The instruments already adopted by intergovernmental organisations, such as the Council of Europe's Social Charter or the ILO Convention, are not sufficient. Some have not been ratified by all the Member States, while some have been ignored or explicitly rejected.

Furthermore, above and beyond the ILO Conventions or the Council of Europe's Social Charter, specific provisions need to

be adopted for the completion of the internal market, especially in respect of the freedom of movement of workers, health and safety, social security etc., areas which are covered only partially or not at all by existing international instruments.

## The contents of the Charter

The Charter covers the following rights:

### \*Improvement of living and working conditions

The development of a single European labour market must result in an **improvement in the living and working conditions** of workers in the European Community. This will be brought about by an **upward approximation** of such conditions.

This approximation concerns first and foremost the **organisation and flexibility of working hours**, in particular by establishing a **maximum working week**<sup>(3)</sup>.

It also concerns all forms of employment other than employment of **indefinite duration**, in particular **fixed-duration employment, seasonal employment, part-time employment, temporary work** via an employment business, **nightwork** and **shiftwork**.

This improvement will also have to involve, where necessary, the development of some aspects of employment regulations such as procedures relating to **collective redundancies** or those relating to **bankruptcies**.

### \*Right to freedom of movement<sup>(3)</sup>

This right makes possible the exercise of any trade or occupation in the Community on the same terms as those applied to nationals of the host Member State subject to the provisions of Community law<sup>(6)</sup>.

The right to freedom of movement implies entitlement to **equal treatment** in all fields, including **social and tax advantages** and the further harmonisation of **conditions of residence**, especially those concerning **family reunification**.

Furthermore, social protection must be extended to all citizens of the Community engaged in gainful employment in a Member State other than their country of origin on the same terms as those enjoyed by nationals of the host Member State<sup>(6)</sup>.

### \*Employment and remuneration

All employment must be fairly remunerated. To this end:

Either by law or by collective agreement at national, regional, intersectoral, sectoral or company level, in line with the situation specific to each Member State, a **fair wage**<sup>(7)</sup> must be established;

Rules must be laid down under which workers subject to terms of employment other than a contract of employment of indefinite duration are assured of a **fair reference wage**;

Wages may not be withheld, attached or assigned except in conformity with national regulations and in no case may an employed person be deprived of the means necessary for his own subsistence and that of his family.

#### \*Right to social protection

Subject to the arrangements proper to each Member State, any citizen of the European Community is entitled to **adequate social protection**.

All workers, whatever their status and whatever the size of the undertaking by which they are employed, must enjoy social security cover in proportion, where appropriate, to the length of service, to the pay they received and their contribution to the financing of the relevant social protection scheme.

Workers who are unable to find employment and are no longer entitled to unemployment benefit and workers who do not have adequate means of subsistence shall be entitled to a minimum income and appropriate social assistance.

#### \*Right to freedom of association and collective bargaining

Every employer and every worker in the European Community has the right to **belong freely to the professional and trade union organisations** of their choice.

This right entails recognition of the right to **belong to a union**, the freedom to **bargain** and conclude **collective agreements**, to resort to **collective action** in the event of a conflict of interests, including the **right to strike**, the freedom to join any association of a democratic nature or to renounce that right without any personal or professional harm being thereby suffered by the individuals concerned. The establishment and utilisation of procedures for **conciliation, mediation and arbitration** for the settlement of industrial disputes should likewise be encouraged.

This right implies that **contractual relations** may be established between the two sides of industry at **European level** if they deem this desirable. The contractual agreements thus concluded may deal with employment and working conditions and the social protection guarantees for the workers concerned.

#### \*Right to vocational training<sup>(3)</sup>

Every worker in the European Community has the right to continue his **vocational training** throughout his working life. The public authorities, employers and, where appropriate, the two sides of industry, each within their own sphere of competence, shall set up continuing and permanent training schemes enabling every citizen of the Community to undergo retraining, in particular through **leave for training purposes** to improve his skills or acquire new skills, especially in the light of technical developments.

#### \*Right of men and women to equal treatment

**Equal opportunities and equal treatment** for women and men must be guaranteed and developed.

#### \*Right to information, consultation and worker participation

**Information, consultation and worker participation** must be developed along appropriate lines and in such a way as to take account of the legal provisions, contractual agreements and practices in force in the Member States of the Community. This will

apply especially to companies or groups of companies having establishments or undertakings located in several Member States.

#### \*Right to health protection and safety at the workplace

Every worker must enjoy satisfactory **health protection and safety conditions**, especially at his place of work, and appropriate measures must be taken to continue upward harmonisation of conditions in this area.

#### \*Protection of children and adolescents

The protection of children and adolescents must be assured by appropriate measures.

Without prejudice to such rules as may be more favourable for young people, in particular those enhancing their employment prospects by means of vocational training, the **minimum working age** must be set at 16 years.

All young people over the age of 16 who are in gainful employment shall receive **fair remuneration** and, furthermore, for a period of no less than two years they shall receive additional **vocational training** during their working hours so that they may adapt themselves to the demands made on them by their working lives.

#### \*Elderly persons

Every citizen of the European Community in retirement or early retirement shall receive an income which guarantees him a decent standard of living.

Any citizen of the European Community who has reached retirement age, but is not entitled to a pension, for example because of a long period of unemployment and who has no other adequate means, shall be entitled to a minimum income.

#### \*Disabled persons

To achieve the fullest possible integration of disabled persons in working life, measures must be taken in respect of vocational training, integration and rehabilitation; measures must likewise be taken in the field of social integration by improving accessibility, mobility, transport and housing.

## Implementation of the Charter

The initiatives to be taken to implement these social rights are the responsibility, depending on the case in question, of the Member States or the Community in line with the principle of decentralisation<sup>(2)</sup> and require the involvement of the two sides of industry. Anxious to obtain the widest possible political support, the Commission is proposing that the European Council make a solemn proclamation of these fundamental social rights and empower it to prepare before 30 June 1990 an action programme<sup>(1)</sup> and an initial set of Community instruments relating to it in the areas connected with the implementation of the internal market and the Single Act. This solemn proclamation may not justify any retrograde steps in relation to the situation currently existing in any Member State.

Commission of the European Communities  
(P-25 REV) Brussels, 17 May 1989

# Questions on the Charter business needs to ask

The preliminary documentation on the proposed Common Market Social Charter shows it to be flawed — too one-sided, and capable of arousing fears without necessarily fulfilling expectations. In an exclusive article, Philippe Meyer looks at the Charter's antecedents, its apparent shortcomings and where it goes from here. He suggests some key questions to which employers should seek answers.

*Note: The numbered references below cross-refer to the text of the communiqué that appears in full on pages 2S-3S.*

The European Commission's communiqué of May 17 confirms the formal name of its promised Social Charter and that its gestation has begun — but little else. The Charter's antecedents are mixed. There will be arguments for a long time yet over its precise status and scope. They may well delay its eventual birth.

The Community Charter of Fundamental Social Rights will emerge to the satisfaction of the trade unions, of the Common Market's Economic & Social Committee and European Parliament, and of socialist and social democratic political parties throughout the member-states, even though these last are not happy about the abandonment of a legally-binding Market Directive in favour of the easier-to-achieve "solemn declaration".

On the other hand, the preliminary draft includes rights and formulations to make employers wince — notably the reference to an action plan to follow in 1990<sup>(1)</sup>. Mention of the concept of subsidiarité<sup>(2)</sup> will mollify some people.

*(Editor's note: The French expression subsidiarité, sometimes rendered as the meaningless word subsidiarity in English, is translated by the European Commission as decentralisation in this context. The underlying idea is more complex than that — the Commission will not seek to intervene in matters except where Community-level action seems to it "sensible and worthwhile". Of course, views on where such intervention would be worthwhile differ widely.)*

What stands out in the declaration of May 17 (though less so in a subsequent document of May 25) is the familiar, almost-traditional nature of the content and the way it is expressed. This derives largely from the corresponding charters of the International Labour Organisation and the Council of Europe. There are, it is true, some important exceptions — for example, in the paragraphs dealing with freedom of movement and vocational training<sup>(3)</sup>.

This traditionalism indicates the trade union origins of the plan and the support it has received from the Economic & Social Committee and the European Parliament<sup>(4)</sup>. There is political advantage in dealing on such familiar ground.

**But employers have contributed to this, too — through their reluctance to insist that the Charter should set out both rights and duties, instead of rights alone. Nowhere is there mention, for example, of obligations such as performance, attendance, quality of work, participation in training, cooperation with management or the renunciation of certain types of strike (such as during new product launches, or in transport during the holiday season).**

Equally surprising, from the opposite standpoint, is the absence of any reference to such putative basic rights as job satisfac-

tion, participation in the drawing-up of professional goals and the lodging of complaints without risk of reprisal.

Probably for reasons of politics, tradition and timing, the Charter will, it seems, largely reflect those standards already in existence. A more up-to-date approach, perhaps promoting the idea of enterprises and employees as partners, will not be its principal quality.

All this does not diminish the Charter's strategic importance, nor its mobilising effect on those for whom the emergence of a "social Europe" accompanying the achievement of the single market is an obligatory step in securing European union and the abolition of frontiers.

In the coming weeks, discussions of the Charter within the European Commission and the Council of Ministers, after employers and unions have stated their positions, will be numerous and difficult. Careful reading of the texts and communiqués shows that the debate is already well under way. One of its objectives is to reach a unanimous "solemn declaration" that includes Britain.

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**It is too early yet for personnel directors and their top management to formulate policy on the Charter. What they can do, through their professional associations, is to pose the questions the Commission needs to answer to clarify the grey areas. Those could include, for example:**

- How the rights in the Charter will affect the social action programme of which it forms part (*IRE supplement, January 1989*), and how respect for the principle of subsidiarité<sup>(2)</sup> will be assured?
- Why set maximum weekly working hours<sup>(5)</sup>, when up to now the Commission has refrained from proposing such limits?
- When will the Commission take a position on the rights of non-Community workers, and in what circumstances will dual standards be accepted? How should one interpret the expression "the same terms as those enjoyed by nationals of the host member-state"<sup>(6)</sup>?
- How is it proposed to define the fairness of a wage<sup>(7)</sup>? Will the definition be established at Community level in the foreseeable future? If so, that implies transfers of wealth far greater than those currently carried out through the Community's structural funds.
- Is it by oversight or deliberately that the free determination of pay between employer and employee (outside collective agreements) is not mentioned in the draft?
- So far as the protection of workers' acquired rights is concerned, is the aim to guarantee even those rights that may be excessive or distortive, and to regard as "anti-European" any reduction or modification in them?

\* \* \*

Finally, this Charter, which has many positive aspects (freedom of movement, training, fairness), follows the logic of the major European initiatives — the founding Treaties, the White Paper, the Delors Report — and will have a strategic role that is going to grow.

It is to be hoped that the parties concerned will take the time and allocate the resources to arrive swiftly at a declaration that will serve as both framework and motor for economic and social cohesion, and will clarify areas of practical, Community-wide application, rather than arouse fears.

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