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# The Evolving Concept of European Labor Relations Legislation

*Walter Kolvenbach\**

*The subject of worker participation in the decision-making process has become one of the major topics in the developing area of EEC labor law. The EEC Treaty, however, does not provide the direct legal basis for the introduction of worker participation legislation by the Community. The Commission, therefore, has concentrated on harmonizing the company legislation of the Member States in its drive to develop a European labor legislation. In this article, Dr. Kolvenbach surveys the existing company legislation in the Member States dealing with worker participation and discusses the recent harmonization proposals of the Commission. He then concludes by supporting the harmonization efforts as the most practical means of achieving the goal of a European labor law.*

## INTRODUCTION

The Treaty establishing the European Economic Community (EEC)<sup>1</sup> refers in its Title III to "Social Policy."<sup>2</sup> This title contains some general statements regarding the social policy of the Community and assigns to the Commission the task to promote close cooperation between Member States in the social field. In the field of labor relations and social policy, the activities of the authorities of the EEC have not been as extensive as in other fields. However, the EEC has initiated

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\* General Counsel, Henkel KGaA, Düsseldorf, Federal Republic of Germany; Dr. Jur., University of Cologne, 1949; member of the German Bar since 1952. For a more detailed treatment of the subject of employee representation in companies within the EEC, see W. KOLVENBACH, *EMPLOYEE COUNCILS IN EUROPEAN COMPANIES* (1978) and W. KOLVENBACH, *WORKERS PARTICIPATION IN EUROPE* (1977).

<sup>1</sup> Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered in force Jan. 1, 1958) [hereinafter cited as EEC Treaty].

<sup>2</sup> *Id.* at art. 118.

discussion of various subjects in this field among the Member States, especially worker participation in the decision-making process. Over the years this subject has become one of the major topics in the developing field of EEC labor law.

Currently, some of the directives pending before the Council of Ministers address the question of worker participation in decision-making processes either at the shop level or at the board level. This raises the question of whether the European Authorities have responded to a widespread movement in Europe or whether its activity has prompted this development in the Member States. It appears that the EEC is following a trend which began long before its establishment.

The economic, social and legal traditions of the Member States differ widely, so that completely different structures for industrial decision-making have developed in the Member States. This conflicts with the objective of the Community creating a Common Market with a single industrial base. Therefore, the harmonization of legislation is intended to abolish obstacles for the free flow of goods and to create the same competitive environment in all Member States. To achieve this goal the Commission has emphasized the harmonization of company laws of the Member States.

The legal authority for harmonization of company legislation is Article 100 and Article 101 of the Treaty of Rome, which deal with differences between regulations in Member States that distort the conditions of competition. The EEC authorities do not create binding labor relations legislation, but rather issue directives to the Member States which they must implement into national law within certain time periods. This procedure functions quietly but very effectively. The evolution of an integrated European labor law is, therefore, a slow development. Consequently, it will take centuries to harmonize labor law and labor relations law in the Member States.

An important regulation concerning labor within the Common Market is Article 49 of the Treaty of Rome which asks for "freedom of movement for workers" within the Member States. To implement this article the Council has issued directives dealing with details of free movement of workers.<sup>3</sup> On January 21, 1974 the Council passed a resolution on a social action program.<sup>4</sup> This program includes high priority steps to be taken to achieve equality between men and women regarding access to employment, full and better employment in the

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<sup>3</sup> Council Regulation (EEC) No. 1612/68 of Oct. 15, 1968, 11 J.O. COMM. EUR. (No. L 257) 2 (1968).

<sup>4</sup> 17 O.J. EUR. COMM. (No. C 13) 1 (1974) and 4 BULL. EUR. COMM., Supp. 2/74 (1974).<sup>1</sup>

Community, vocational training and promotion and working conditions, including pay. As one consequence of this program the Council has adopted Directive 75/117/EEC which deals with the approximation of the laws of the Member States regarding equal pay for men and women.<sup>5</sup> A further step was Council Directive 76/207/EEC dealing with the principle of equal treatment as regards access to employment, vocational training and promotion, and working conditions.<sup>6</sup> These directives and others dealing with details of the questions mentioned implement the various articles of the Treaty guaranteeing to the employees certain "individual rights." The Member States are compelled to change their labor legislation accordingly. Thus an important step has been made to equalize individual rights of employees.

#### WORKERS PARTICIPATION IN THE MEMBER STATES OF THE EEC

In Articles 8 and 9, the EEC social action program calls for greater involvement of management and labor in the economic and social decisions of the Community, and of workers in the life of undertakings. The Commission of the EEC, therefore, has presented a number of proposals for the harmonization of existing legislation in the field of industrial democracy. These activities, though, must be evaluated against the legislative background existing within the Member States. Legislative action regarding the establishment of works councils, the extension of their rights and duties, and the participation of employees in the decision-making process in companies has increased. Even in countries like the United Kingdom, where no legislation exists, discussions center around this highly political and emotional issue. It is, therefore, necessary to look briefly at the situation existing in the Member States before considering the steps proposed by the Commission.

This is not the place to describe extensively the sociological background and history of industrial democracy in Europe, but one should note that this development has a long history in most European countries and that, already during the last century, particularly in Germany, the ideas of the establishment of works councils and the participation of labor in shop decisions were discussed.<sup>7</sup> Co-determination, co-gestion and similar terms falling under the heading of "industrial democracy"<sup>8</sup> became important parts of the sociological and political

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<sup>5</sup> 18 O.J. EUR. COMM. (No. L 45) 19 (1975).

<sup>6</sup> 19 O.J. EUR. COMM. (No. L 39) 40 (1976).

<sup>7</sup> For a discussion of the historical development in Germany, see J. TEUTEBOURG, *GESCHICHTE DER INDUSTRIELLEN MITBESTIMMUNG IN DEUTSCHLAND* (1961).

<sup>8</sup> Sidney and Beatrice Webb completed *INDUSTRIAL DEMOCRACY* in 1897. In the preface to

discussions of Central Europe. Finally, supra-national organizations have considered these problems and still exhibit a strong interest in their development.

The International Labor Office in Geneva advises employers and workers to promote consultation and cooperation at the level of the undertaking "on matters of mutual concern not within the scope of collective bargaining machinery."<sup>9</sup> The Organization for Economic Co-Operation and Development has occupied itself repeatedly in international seminars and publications with worker participation.<sup>10</sup>

#### WORKERS PARTICIPATION AT THE SHOP FLOOR LEVEL

Works councils or similar institutions, which exist in almost all Member States of the European Community, influence the decision-making process at the shop floor level.

##### *Belgium*

The *conseil d'entreprise* (*Ondernemingsraad*) typically exists in all enterprises which employ more than 150 employees. Its members are appointed representatives of management and elected employees. Employer and *conseil d'entreprise* have to consult in certain matters; decision-making participation is limited to matters immediately affecting the employee. A Royal Decree<sup>11</sup> has extended considerably the information rights of the *conseil d'entreprise*.

##### *Denmark*

The Danish Employers Conference and the Danish Trade Unions have concluded an agreement providing for the establishment of "co-operation committees" in the enterprise. These cooperation committees have as members representatives of management, of the technical and commercial staff not organized in trade unions and elected representatives of the remaining employees. The Committee serves several

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this book, the authors state that they attempt to give a scientific analysis of Trade Unionism in the United Kingdom and that "a large portion of the book was given in the form of lectures at the London School of Economics and Political Science during 1896 and 1897." They consider it to be an "imperative lesson that political democracy will inevitably result in industrial democracy." S. WEBB & B. WEBB, *INDUSTRIAL DEMOCRACY* 842 (4th Impression, 1902).

<sup>9</sup> Recommendation No. 94, 35th Session, Geneva, June 1952 (published as Annex I to Labour-Management Relations Series No. 13).

<sup>10</sup> The latest of such seminars was held in 1975 in Versailles and the proceedings have been published by the OECD 1976 under the title "Workers' Participation."

<sup>11</sup> *Arrêté royal portant réglementation des informations économiques et financières à fournir aux conseils d'entreprises*, Nov. 27, 1973, *MONITEUR BELGE* Nov. 28, 1973, at 13,359.

functions. First, it keeps the employees informed about its work. Second, it influences the general policy of day-to-day production and work planning and the implementation of major alterations in the enterprise. Third, it receives information from management on the economic situation and the future prospects of the enterprise.<sup>12</sup>

### *Federal Republic of Germany*

The Works Constitution Act (*Betriebsverfassungsgesetz*) of 1972 extended the rights and duties of works councils.<sup>13</sup> It is the most advanced regulation in this field within the Common Market. Members of the works council are elected by all employees of the enterprise regardless of membership in a trade union. The council has important co-determination rights especially for decisions affecting the individual employee. Employment, job transfer and firing decisions require the consent of the works council, along with decisions affecting working conditions, method of payment of wages, industrial security, and other employee-related decisions.

### *France*

As early as 1945 and 1946, France passed regulations creating *comité entreprise* for all industrial and commercial enterprises employing more than fifty employees.<sup>14</sup> Members include the manager or his representative and the elected delegates of the personnel. Management must inform the *comité entreprise* of production programs, general developments of the business, and the employment situation, transformation of equipment, purchases of new equipment, new production methods and facilities and all questions regarding working conditions. It must be consulted on personnel reductions, including planned dismissals for economic reasons.

### *Ireland*

Neither legislation nor nationwide agreements require the establishment of works councils but there exist some works councils in Irish firms that are regarded as tests for general introduction of a works council system. The shop stewards play an important role as representatives of the trade unions in the factories. They deal primarily with grievances of the workers and negotiate or consult with management.

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<sup>12</sup> For an English translation of this agreement and existing legislation, see W. KOLVENBACH, *EMPLOYEE COUNCILS IN EUROPEAN COMPANIES* 103 (1978).

<sup>13</sup> 1972 BGBI 13 (W. Ger.).

<sup>14</sup> C. TRAV., Tome I (1975).

### *Italy*

No legislation or nationwide agreements exist in Italy as well. Some of the usual rights and duties of works councils are handled by *Commissione Interna* which exist in companies with forty or more employees. The *Commissione* submits proposals for production increase or improvements of working methods to management. It supervises the correct application of labor agreements and observes safety and hygienic regulations regarding social facilities.

### *Luxembourg*

*Comités Mixtes* have existed in Luxembourg since 1974.<sup>15</sup> Membership consists of an equal number of representatives of the employer and the employees. Employee representatives are elected. The employer must inform and consult the committee before making important decisions concerning technical equipment for production and administration of working methods and production processes. The managing director also must inform and consult on the requirements and development of personnel, methods of training for the work force, economic and financial decisions which might have a major influence on the structure of the company or its level of employment.

### *The Netherlands*

This country has a long history of works council legislation. The first works council act was passed on May 4, 1950. A completely revised act has been in effect since July 5, 1979.<sup>16</sup> The new legislation extends the field of application to a greater number of companies. Only elected representatives of the work force serve on the works councils. Its rights have also been extended. The council must be kept informed of all important company matters, future plans and projections, financial statements and capital investment plans. The company must seek its advice on all major policy questions of the company, of course, including sale, merger, closing down or extensive lay-offs of personnel. In a number of important areas management needs the approval of the works council before it can take certain steps including changes of the remuneration systems, retirement plans, work or vacation time, hiring and firing, promotion policy and similar matters related to personnel decisions.

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<sup>15</sup> *Loi du 6 Mai 1974 instituant des Comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes*, reprinted in MEMORIAL JOURNAL OFFICIEL DU GRAND-DUCHÉ DE LUXEMBOURG 620 (A. No. 35).

<sup>16</sup> 1979 Stb. 448.

*United Kingdom*

There exists no legislation or nationwide collective bargaining agreement on works councils, even though some companies have works councils by separate agreements. The British Trade Union Movement relies upon its shop stewards in the factory who are of considerable importance for the industrial relations climate. Their work covers two areas, namely solving grievances for members of the trade union and, therefore, negotiating with management and acting as representative of the trade union members, including providing representation of the trade union in the workshop, recruiting new members and collecting union membership dues.

Works council institutions on the one hand, and collective bargaining instruments on the other hand, co-exist in most member countries of the EEC. The underlying general principle of the works councils is to solve conflict situations or, even better, to avoid such situations. It is necessary to emphasize this because in some countries trade unions believe in opposition to management and only if one understands the different environment of European labor relations can one see the reason for the existence of works councils or equivalent institutions.

WORKER PARTICIPATION AT THE BOARD LEVEL

The next "hierarchical" step in the development of workers participative institutions was the participation of employees in the decision-making process at the board level through employee-appointed or elected directors. Legislation of several Member States of the EEC requires that decision-making bodies of companies include elected or appointed representatives of the workers. This new development not only influences the economic and managerial decision-making process but also the legal status of the board of directors or its equivalent in the Member States. Traditionally, the shareholders or their representatives elected or appointed the members of the board or supervisory organ of a stock corporation. Under the new system, the shareholders have lost part of this right since the new system transfers the election or appointing rights to the work force. Corporation law has changed as a result. The company is no longer a purely capitalistic organization but a combination of capital and work force. Management must consider the interest of the work force as an important element of public interest and corporate social responsibility.<sup>17</sup> This new concept presents a

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<sup>17</sup> Schmitthoff, *Social Responsibility in European Company Law*, 30 HASTINGS L.J. 1419, 1421



strong challenge for management and changes completely the existing structures and its work.<sup>18</sup> The system not only changes the managerial process but also raises complicated legal issues. Some European company legislation has the "two-tier-system" consisting of a management board and a supervisory board. The supervisory board supervises the management board, which is the executive body of the company and is responsible for the day-to-day operations of the company. It also appoints the members of the management board and no person may be a member in both institutions at the same time. The "one-tier-system" combines management and supervision in one organ. The presence of employee-elected members in a unitarian organ creates legal questions regarding the individual responsibility of board members and their liability to the shareholders of the company.<sup>19</sup> The status of employee representatives on boards in the Member States is as follows:

### *Belgium*

There exists no representation of workers on the board of directors in the private sector, but the public sector has some examples of employee representation appointed by the minister in charge of the railroad or other transportation organizations.

### *Denmark*

Two laws dating from 1973 gave the workers of all companies employing at least fifty persons the right to elect two members to the board of directors, in addition to those elected by the shareholders.<sup>20</sup> New legislation extended employee membership on the board to one-third of the total members.<sup>21</sup> The employee-elected members possess the same rights and obligations as the other members. Since they must protect the interests of the company, a strict secrecy obligation prevents

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(1979); Roth & Fitz, *Corporate Social Responsibility: European Models*, 30 HASTINGS L.J. 1433, 1437 (1979).

<sup>18</sup> The new management concept enforced by the membership of employee representatives in supervisory boards has also been commented upon outside the legal community. See e.g., Ball, *The Hard Hats in Europe's Board Rooms*, FORTUNE, June 1976, at 180; Orr, *On Employee Representation and Cooperation*, 55 HARV. BUS. REV. 36 (Jan.-Feb. 1977); J. FURLONG, *LABOR IN THE BOARDROOM, THE PEACEFUL REVOLUTION* (1977).

<sup>19</sup> For a discussion of the two systems, see Schoenbaum & Lieser, *Reform of the Structure of the American Corporation: The "Two-Tier" Board Model*, 62 KY. L.J. 91 (1973) and Roth, *Supervision of Corporate Management: The "Outside Director" and the German Experience*, 51 N.C.L. REV. 1369 (1973).

<sup>20</sup> Al No. 370; ApsL No. 371 (for companies with limited liability).

<sup>21</sup> On June 16, 1980, Laws No. 266 and No. 267 extended employee membership in Danish boards.

the employee members to give their colleagues information about the work of the board. The employee representatives may not attend deliberations and decisions on labor conflicts, or concerning the relationship of the company with trade unions or manufacturers associations.

*Federal Republic of Germany*

Germany has three different laws regulating the membership of employee representatives on the supervisory board. The first was the Coal and Steel Act of 1951.<sup>22</sup> The Works Constitution Act of 1952 gives one-third of the membership in the supervisory board in companies with more than five hundred but less than two thousand employees to the representatives of the work force.<sup>23</sup> The Co-Determination Act of 1976 gives one-half of the seats of the supervisory boards in companies with more than two thousand employees to the representatives of the work force.<sup>24</sup> For the employee members of the supervisory board the law differentiates between three categories: employees working in the company, representatives of trade unions, including officials of all trade unions who are active in the company, and representatives of senior employees or management personnel (*Leitende Angestellte*). Dependent upon the size of the supervisory board these groups are represented according to specific rules in the Act. Since the law requires an even number of members of the supervisory board (12, 16 or 20), an equal vote would result in a deadlock. To prevent this the Co-Determination Act provides that in such a case in a second poll the chairman has a double or tie-breaking vote. Thus, the shareholders' bench has a slight advantage because the chairman of the board is always a shareholders' representative.

The Federal Republic of Germany utilizes different systems for each of three categories of companies. All three systems have influenced discussion in the EEC. Under the Coal and Steel Act, shareholders and employees have the same number of representatives on the board. In addition, a "neutral man" acts as tie-breaker in case of a tie vote. In companies with less than two thousand employees, one-third of the board members is elected by the employees. In companies with more than two thousand employees there is again an equal number of

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<sup>22</sup> 1951 BGBI at 347 (with amendments).

<sup>23</sup> 1972 BGBI at 13.

<sup>24</sup> 1976 BGBI at 1153. For English language commentaries, see Mertens & Schanze, *The German Codetermination Act of 1976*, 2 J. COMP. CORP. L. & SEC. REG. 75 (1979) and Wiedemann, *Codetermination by Workers in German Enterprises*, 28 AM. J. COMP. L. 79 (1980). For the survey in relation to the United States, see Bonnano, *Employee Codetermination: Origins in Germany, Present Practice in Europe and Applicability to the United States*, 14 HARV. J. LEGIS. 947 (1977).

shareholders' representatives and employee representatives. But here, the chairman as representative of the shareholders, has a double or tie-breaking vote.<sup>25</sup>

Experience with the new co-determination system reveals many problems because this system has not been incorporated but was "pulled" over the existing company legislation drafted under completely different circumstances.<sup>26</sup>

### *France*

Worker participation is referred to in the preamble to the French Constitution. Legislation in 1945 provided for a limited form of co-gestion for French companies employing fifty persons or more.<sup>27</sup> In these companies, two delegates of the works council are permitted to participate with consultative status in meetings of the *conseil d'administration*. Executive and supervisory staff constitute a special group entitled to appoint delegates to the meetings.

### *Ireland*

The Workers Participation Act of 1977 regulates worker participation in Ireland.<sup>28</sup> One-third of the members of boards of state-owned enterprises listed in the Act will be elected by and from the work force. The employees thus elected are appointed as directors of the board by the minister concerned. They have the same rights and duties as the other directors and receive the same fees and allowances. These worker directors share with the other directors general responsibility for the overall objectives of the enterprise and the government policy for the particular sector. To avoid a conflict of interest, the elected directors are not permitted to participate or assist in collective bargaining. When passing the Act, it was stressed that the elected directors would be appointed within the existing single tier board structure. The Act is considered a first step in employees' representation at the management level which will be followed by further steps following an evaluation of the experience.<sup>29</sup>

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<sup>25</sup> Mooney, *A Delicate Balance: Equal Representation for Labor on German Corporate Boards*, 16 HARV. INT'L L.J. 352 (1975).

<sup>26</sup> For a survey of difficulties encountered so far, see Kolvenbach, *Co-Determination in Germany, History and Practical Experiences*, 9 (iv) INT'L BUS. LAW. 163 (Apr. 1981).

<sup>27</sup> [1945] J.O. 954.

<sup>28</sup> No. 6 of 1977 (Wt.-800.5/77. Cahill. (7317).G.16).

<sup>29</sup> This statement was repeated by the Irish Government in its White Paper NATIONAL DEVELOPMENT 1977-1980 (Gov. Pub. Prl. 6836).

*Italy*

Workers' representation on the board of companies in the private sector is not known in Italy.

*Luxembourg*

For all companies employing at least one thousand persons, legislation<sup>30</sup> provides that the conseil d'administration shall have a minimum of nine members, one-third of which must be representatives of the employees. The employee representatives are not elected directly but through the *délégation ouvrière*. In the iron and steel industry, three of the employee representatives can be appointed by the trade unions. The law states expressly that those members of the board who are appointed by the employees are responsible for faults during their membership on the board as are all other board members.

*The Netherlands*

Holland has developed a most interesting system because appointment and removal of members of the supervisory board is no longer a privilege of the shareholders' meeting, but rather is a privilege of the supervisory board itself. This system is unique in Europe and consequently has generated great interest because it has made co-determination effective without direct workers representation in the board of Dutch companies. Its purpose is to avoid one-sided influence on the board by vested interests. It assumes that the supervisory board is a team which must consider the interests of capital and labor. It must assist management and assume co-responsibility on general company policy. The supervisory board itself nominates candidates for co-optation. Also, at the shareholders' meeting, the works council and management may make recommendations for appointment but the board is not bound by these recommendations. On the other hand, the shareholders' meeting and the works council may object to persons nominated by the board for co-optation. The Social Economic Council, which deals nationwide with objections, solves deadlocks and encourages coordination and cooperation on the board. The system creates the necessity of permanent discussion between labor, shareholders and management on matters of company policy. Co-optation ensures that all board members have the full confidence of both shareholders and employees. The work of the board is to be guided only by the interests

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<sup>30</sup> See note 15 *supra*.

of the company and its business.<sup>31</sup>

### *United Kingdom*

Britain has no legislation governing membership of employees on its board of directors, but discussions on this subject have taken place during the last few years. Political debate became especially heavy following publication of the Report of the Committee of Inquiry on Industrial Democracy (Bullock Report).<sup>32</sup> This discussion was strongly influenced by proposals of the EEC and it has been charged repeatedly that the EEC forces Britain to accept systems which are outside of its legal tradition.<sup>33</sup>

#### PARTICIPATION THROUGH OWNERSHIP IN THE COMPANY: ASSET FORMATION OR PROFIT-SHARING?

The Commission has published a memorandum on the subject of participation through ownership in the company which surveys the legislation and systems existing in the Member States.<sup>34</sup> Harmonization of these systems is extremely difficult and will necessitate considerable changes, especially in the tax legislation of the Member States. Therefore, it is unlikely that the Commission will introduce proposals in this field for some time.

#### HARMONIZATION PROPOSALS OF THE EEC

The activities of the Commission to harmonize labor legislation must be viewed against this background of participative institutions existing in the nine Member States. The existing systems have influenced harmonization proposals because in the Council all Member States must reach agreement. They are unwilling to change extensively existing legislation which entails compromise between the political forces, management and the trade unions. Material changes imposed by European legislation would, in most Member States, provoke heated controversy. Therefore, the Commission proposals seek to combine

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<sup>31</sup> B.W. at art. 158.

<sup>32</sup> Her Majesty's Stationary Office (HMSO), Cmnd. 6706 (1977). For a review of the British trade union situation and the work of the committee, see J. ELLIOT, *CONFLICT OR COOPERATION? THE GROWTH OF INDUSTRIAL DEMOCRACY* (1978).

<sup>33</sup> Schmitthoff, *Company Structure and Employee Participation in the EEC—The British Attitude*, 25 INT'L & COMP. L.Q. 611 (1976). For the present status of the discussions in Britain, see Kolvenbach, *Industrial Democracy: Legal Developments in Europe 1977-1979*, 1 N.Y.J. INT'L & COMP. L. 77, 122 (1980).

<sup>34</sup> *Employee Participation in Asset Formation*, COMMISSION OF THE EUROPEAN COMMUNITIES, COM (79) 190 Final (Aug. 29, 1979).

elements of existing systems from which Member States would have the option to choose between the various systems.

The Commission has chosen two methods for the introduction of employee participation in the corporate decision-making process. One such method is revealed in the discussion concerning a statute for European companies, which proposes a company especially designed for transnational activities and inter-Member State commerce. The other method involves the harmonization of existing company legislation in the Member States. To non-European lawyers, it may appear strange that labor legislation is considered in connection with company legislation, but in most European countries, the workers participate in decision-making processes within the company structure, through the supervisory board or the board of directors. Worker involvement has led to changes in company legislation and integrated some areas of company and labor law. Experience in Germany and other countries with strong co-determination legislation, shows that company law gradually becomes more important than the relevant labor law regulation. It is, therefore, logical that the Commission is attempting to influence the national co-determination scenery through harmonization of company laws on the one hand and the creation of a transnational company law on the other.

### *Statute for the European Company*

In 1958, the Commission asked Professor Gérard Lyon-Can in Paris to study and describe possibilities for the representation of employees' interests in the European company. With expert assistance, Professor Lyon-Can developed proposals which are included in the statutory draft for the European company.<sup>35</sup> He suggested that a contractual agreement be made between the new European company, its employees and the trade unions. This collective agreement would regulate co-determination in the company. Even though this method is flexible, the study acknowledged that trade unions in Germany, for example, would be reluctant to accept less co-determination than already existing by German law. The original statutory proposal<sup>36</sup> was part of an effort to create centralized incorporation facilities for companies wishing to be active in all member countries and to strengthen inter-

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<sup>35</sup> The study has been published in German and French by the Commission of the European Communities in REIHE WETTBEWERB-RECHTANGLEICHUNG-1970-10 with the (German) title *Beitrag zu den Möglichkeiten der Vertretung der Interessen der Arbeitnehmer in der Europäischen Aktiengesellschaft*. The French title is *Contribution à l'étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes*.

<sup>36</sup> 13 J.O. COMM. EUR. (No. C 124) 1 (1970); 3 BULL. EUR. COMM., Supp. 8/70 (1970).

company co-operation across borders. The French took the initiative to put this matter on the agenda of the Common Market authorities.<sup>37</sup> The deliberations in the European Parliament revealed an ideological schism regarding employee co-determination through board membership. On July 10, 1974, the European Parliament voted for a kind of German Coal and Steel Model.<sup>38</sup> One-third of the board would be comprised of representatives of shareholders and workers, respectively. Both groups would agree on the last third, which would consist of representatives of the "general interest." These representatives cannot be dependent on interests of shareholders or workers.

As a result of the debates in the European Parliament and the Economic and Social Committee, these proposals were altered by the Commission. Additional adjustments became necessary by the accession of Denmark, Ireland and the United Kingdom to the EEC. A new proposal was published and ultimately presented by the Commission to the Council on May 13, 1975.<sup>39</sup>

In Title V, the proposal deals with the representation of employees in the European company. Representation occurs through works councils and membership of employees on the supervisory board of the European company, both of which are described below.

### *European Works Councils*

A European works council must be formed in the European company if it has at least two establishments in different Member States, each one having a minimum of fifty employees. Since employees' representation existing under national law will continue, the European company will have concurrent national and European work councils. The members of the European works council are elected by the employees of all establishments of the company within the EEC. Annex II of the proposal contains elaborate election rules. During their term of office, the members of the European works council are dispensed from the obligation of carrying out the duties of their employment. This release is valid only to the extent to which the European works council considers it necessary for the performance of a representative's duty, which includes the representation of the interests of the employees. Members are pledged to confidentiality. The secrecy obligation applies

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<sup>37</sup> For the history, see Kohler, *The New Corporation Laws in Germany (1966) and France (1967) and the Trend Towards a Uniform Corporation Law for the Common Market*, 43 TUL. L. REV. 58, 81 (1968).

<sup>38</sup> 17 O.J. EUR. COMM. (No. C 93) 22 (1974).

<sup>39</sup> 8 BULL. EUR. COMM., Supp. 4/75 (1975).

to information expressly declared confidential by the management board. The works council regularly informs its constituency of its non-confidential work. Its competence covers all matters which concern more than one establishment which is not located in the same Member State and which cannot be settled by national employees' representative bodies. Thus, the works council deals primarily with transnational problems arising out of the existence of a transnational company with a transnational work force. Its competence does not include collective bargaining agreements.

The information rights of the European works council would be similar to the rights which already exist in some Member States. The same communications and documents which are given to the shareholders also have to be submitted to the works council, including particular annual accounts, annual reports, consolidated or part-consolidated accounts and consolidated annual reports. Written information on any matter which, in the opinion of the works council, affects the fundamental interests of the European company or its employees, must also be submitted.

The board of management has to consult with the European works council in certain matters. In addition, the works council participates extensively in the decision-making process. This includes practically all matters regarding the work of the employees, compensation and work time. But, training, industrial safety and management of social facilities also require the agreement of the European works council.

### *Employee Board Membership*

The proposal also provides for employee representation on the supervisory board. By a majority vote, the employees of the European company can waive their representation right on the board. The representatives are to be elected by all employees and have the same rights and duties as the other members of the supervisory board. Out of three employee representatives, one may be a person who is not in the employment of the European company, i.e., an outside trade union official. If there are more than three employee representatives, two employee representatives on the board may be from outside the company. Annex III regulates in detail the election procedure. To facilitate the election in companies with more than one establishment, delegates charged with voting on the employee representatives are elected in the various establishments of the European company.<sup>40</sup>

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<sup>40</sup> The German Co-Determination Act of 1976 also provides for an electorate system for companies with a certain number of employees. During parliamentary procedure, this system has



According to Article 74 of the Statute of the European Companies, the supervisory board shall consist of one-third representatives from the shareholders, one-third representatives from the employees and one-third of members co-opted by these two groups. Candidates for co-optation may be nominated by the general meeting, the employees' representatives body or the board of management. Only persons representing general interest, possessing the necessary knowledge and experience, and not directly dependent on the shareholders, the employees or their representative organizations may be nominated. For election, two-thirds of the votes within the supervisory board are required.<sup>41</sup> Regardless whether legislation for a European company will in the future be enacted, the Commission has shown in its drafts how employees' representative institutions can be included in company law. This has had, and will have in the future, an important influence on the national legislation of the Member States. However, the draft statute is not yet ready for enactment and it is uncertain when the Council will decide on the proposals.

### *The Fifth Directive*

In its program to harmonize the company laws in the member states, the Commission published the

Proposal for a fifth directive to coordinate the safeguards which, for the protection of the interests of members and the others, are required by Member States of companies within the meaning of the second paragraph of article 58 of the Treaty, as regards the structure of *Sociétés Anonymes* and the powers and obligations of their organs.<sup>42</sup>

In essence, this directive, if adopted by the Council of Ministers, would make the two-tier system (i.e., supervisory board and management board) compulsory for the company structure. This is of special importance for countries with the traditional single board of directors. The directive would also give workers the right to elect members to the supervisory board. This proposed directive is one of a number of direc-

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been strongly opposed with the argument that direct election of candidates is more democratic. But the German trade unions exercised pressure in favor of the electorate system. As a compromise, the German Act opens the possibility to change the system with certain voting majorities. The European Rules for the election of employees' representatives to the Supervisory Board do not grant such option to the employees except for European companies with only one establishment.

<sup>41</sup> It is obvious that this system includes elements of the Dutch co-optation model as well as the German Coal and Steel Act. The so-called "neutral" board member became under the European proposal a "neutral" bench. Elements of this system can also be found in the Bullock Committee's proposal.

<sup>42</sup> 5 BULL. EUR. COMM., Supp. 10/72 (1972).

tives in this field which either are already in effect or are still in the proposal stage. Their aim is to harmonize company law in the member states. The directive not only deals with worker participation in supervisory boards, but it would change fundamentally the structure of the company in some Member States. The question of whether to have one-tier or two-tier boards is a controversial aspect of the proposal. The original draft of the Commission postulates three company organs, namely, management, a supervisory organization and the shareholders. Management was to be appointed and dismissed by the supervisory board. In companies with more than five hundred employees, either one-third of the supervisory organ was to be appointed by the workers or the supervisory organ can itself co-opt new members. Furthermore, the draft contained provisions regarding the rights and duties of the supervisory organ and obligated the board of management to obtain the approval of the supervisory board for certain management decisions.<sup>43</sup>

The public and parliamentary discussions surrounding the draft Fifth Directive induced the Commission to issue its so-called "Green Paper"<sup>44</sup> on employee participation and company structure in the EEC. This paper discusses the principal positions and trends in the EEC regarding company structure. Its aim was to support and explain the proposed Fifth Directive and "to give a new impetus to the debate amongst all interested parties on the decision-making structure of industrial and commercial firms."<sup>45</sup>

In the "Green Paper," the Commission maintained that the dual board system is the desirable system and remains one of the objectives of the Commission. It proposed a transitional period to permit Member States to adjust to this structure. The Commission argued that employee representation on the supervisory board has a valuable role to play in the Community because it enables employees to influence the decision-making process of the company. In view of the objections raised against the proposal, the Commission indicated that uniform rules for employees' representation on boards probably are not appropriate but that certain general provisions should ensure that all systems,

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<sup>43</sup> For a review of the original draft, see Conlon, *Industrial Democracy and EEC Company Law: A Review of the Draft Fifth Directive*, 24 INT'L & COMP. L.Q. 348 (1975). Conlon also questioned the legality of the draft in Conlon, *The Draft 5th Directive—A Question of Legality*, 125 NEW. L.J. 39 (1975).

<sup>44</sup> 8 BULL. EUR. COMM., Supp. 8/75 (1975) (The term "Green Paper" is borrowed from British parliamentary procedure).

<sup>45</sup> EUROPEAN COMMUNITIES, TRADE UNION INFORMATION 2 (1976).

in effect, guarantee that employees' representatives are truly the elected representatives of the company's work force.

After publication of the "Green Paper" the Commission was optimistic about the future of the Fifth Directive.<sup>46</sup> But there is hardly a parallel to the debates and amendments which the European Parliament proposed, an experience widespread among the Member States when national co-determination legislation was proposed. This subject has ideological, political and emotional aspects which became apparent again in the parliamentary discussions at Strasburg.

For eight years, the draft was debated and revised in the old appointed European Parliament and thereafter in the new Parliament following the first European elections in June, 1979. The old Parliament had hoped to conclude the work on the draft, especially since the Economic and Social Committee had reached an opinion on employees' participation and company structure in the EEC. In this opinion, the Committee pointed out that workers' participation is favorably viewed but that the development of participation has not reached the same stage in all Member States due to different political, historical and ideological backgrounds. Consequently, "the Committee considers that this is an issue, like many others, on which one must not seek instant uniformity."<sup>47</sup> The community provisions on participation must be flexible. The Legal Affairs Committee of the European Parliament adopted on April 26, 1979, a report prepared by its rapporteur<sup>48</sup> in which it drew the attention of the Council to the close inter-relationship between the proposal for the Fifth Directive and the statute for a European company. It rejected the co-optation model because it was considered not to be a genuine form of employees' participation.

One of the most surprising amendments was the newly introduced concept of a labor director (*Arbeitsdirektor*).<sup>49</sup> For the draft Fifth Di-

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<sup>46</sup> Commissioner Gundelach pointed out on Oct. 1, 1975 in Frankfurt that in the European Parliament the attitude had changed between 1972 and 1974. Originally there was a number of motions to delete the co-determination proposals from the agenda, but in 1974 no such move was made (Mitbestimmung, Wirtschaftsordnung, Grundgesetz: Wissenschaftliche Konferenz des DGB) (mimeographed).

<sup>47</sup> 22 O.J. EUR. COMM. (No. C 94) 2 (1979).

<sup>48</sup> [1979-1980] EUR. PARL. DOC. (No. 136) (1979).

<sup>49</sup> This term is borrowed from the German co-determination legislation. The Coal and Steel Act demands that the labor director cannot be appointed against the vote of the employee members of the board. Under the Co-Determination Act of 1976 the *Arbeitsdirektor* is an ordinary member of the management board who can, therefore, be elected also against the vote of the employee members. The Committee suggests the following wording for Article 3(2): "An employee director shall be appointed a member of the management organ with the same rights. The employee director may not be appointed against the votes of a majority of the employees in the

rective, it proposed a minimum of one-third employee directors on the supervisory boards of all companies employing more than two hundred and fifty people.

The draft of the Legal Affairs Committee was awaiting final vote in plenary session when the first European elections took place in June, 1979. At the session of May 7, 1979, the President of the Parliament formally announced the receipt of the Legal Affairs Committee's Report.<sup>50</sup> A quorum call on May 11, 1979, failed to bring the number of members required under the rules of procedure and the vote was placed on the agenda of the next meeting. But at the end of this day, Parliament adjourned without having voted on the draft.

At the first meeting of the new Parliament's Legal Affairs Committee on September 4, 1979, British member of Parliament Turner, who had been elected Vice Chairman of the Committee, initiated a new debate on the directive. The Committee decided to withdraw the directive from the next plenary session for further consideration. New proposals were worked out, providing for an option of a two-tier or a unitary board. If the company opts for a unitary board, workers' participation takes place in a separate consultative council elected by all employees including management. If desired by the employees, each union or class of employees can vote separately. The consultative council has to consider proposals of the board on major issues of investment, redundancy, change of factory site, change in company activities and profitability. The council is intended as a forum for the exchange of views which will lead to a genuine consultative process.

The new proposal limits participation to companies with more than two thousand employees.<sup>51</sup> This proposal establishes the voting and thus participative rights of the individual employee regardless of whether or not he belongs to a trade union. It attests to the necessary inclusion in any proposal, acceptable to continental European Member States, the absolute right of every individual employee whether a union member or not and whether managerial or not, to vote by secret ballot. This is contrary to the present situation in the United Kingdom where trade unions want to limit influence to their members.

This proposal ignited considerable public opposition, especially in the United Kingdom. The Confederation of British Industry and the British Institute of Directors informed Members of the British Parlia-

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supervisory organ or against the vote of the institution representing the company's employees  
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<sup>50</sup> 22 O.J. EUR. COMM. (No. C 140) 7 (1979).

<sup>51</sup> European Parliament, Legal Affairs Committee, PE 62.045 of July 18, 1980.

ment that they refused to support "the implementation of the directive if it includes any reference to the statutory enforcement of workers' representatives on company boards."<sup>52</sup> Secret ballot by all employees, regardless of whether they belong to unions or not, would be mandatory for the acceptance of any proposal.

#### THE PROTECTION OF WORKERS IN MULTINATIONAL COMPANIES

The Commission has considered the problem of multinational companies, specifically whether the EEC can propose control of such undertakings. The Commission took the view that international organizations like the United Nations, the Organization of Economic Cooperation and Development and the International Labor Office, have no legal powers to implement their policies in their member countries. The EEC as a political organization was distinguishable. The EEC has a system of laws and institutions for adopting, applying and enforcing such legislation.<sup>53</sup> The Commission sent proposals for nine directives to the Council, two of which have since been adopted. The two directives that passed and one of the proposals are discussed below.

#### *Council Directive on the Approximation of the Laws of the Member States Relating to the Safeguarding of Employees' Rights in the Event of Transfer of Undertakings, Businesses or Parts of Businesses*<sup>54</sup>

This provision substitutes the new employer for the old employer in the event of transfers of undertakings, businesses or parts of businesses. Rights and obligations based on plant agreements or collective agreements remain applicable until their normal expiration date. The transfer in itself does not constitute a reason for dismissal of employees. The transferor and transferee employers are required to inform the rep-

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<sup>52</sup> Elliot, *UK Employers Oppose EEC Proposals on Worker Directors*, Financial Times, Aug. 12, 1980, at 3. In July 1980, the Institute of Directors published a paper by A. Hutchinson, *The EEC Vth Directive, A Trojan Bullock?* Lord Bullock, being a famous historian, commented on this title in a letter to the author: "Evidently their classical learning is not very good, since the arrival of the Trojan horse was the prelude to the fall of Troy." The progress of the Fifth Directive through the machinery of the EEC induced the British publication *The Director* to ask its Chairman's Panel about the attitude towards employee participation in decision-making. The answers reported in the December 1980 issue (at 20) show that there is still a considerable lack of understanding about the workability of participative institutions.

<sup>53</sup> Multinational Undertakings and Community Regulations, Commission Communication to the Council of Nov. 8, 1973, 6 BULL. EUR. COMM., Supp. 15/73 (1973).

<sup>54</sup> Council Directive 77/187/EEC of Feb. 14, 1977, 20 O.J. EUR. COMM. (No. L 61) 26 (1977). For a discussion of Council Directive 77/187, see Bartlett, *Employees' Rights in Mergers and Takeovers—EEC Proposals and the American Approach*, 25 INT'L & COMP. L.Q. 621 (1976).

representatives of their employees affected by the transfer of the reasons, the legal, economic and social implications of the transfer for the employees, and the measures envisaged in relation to the employees. Such information must be provided within a reasonable time before the transfer is carried out.

*Directive on the Approximation of the Laws of the Member States  
Relating to Collective Redundancies*<sup>55</sup>

This directive makes it compulsory for the employer to begin consultations with the representatives of the employees whenever collective redundancies are planned. The employer must discuss the possibility of avoiding and reducing dismissals, the choice of workers to be dismissed, the possibilities of employment elsewhere in the firm, compensation and the priority to be given to the redundant workers for reemployment after a certain period. The employer must notify public authorities of any collective redundancies planned with the understanding that the redundancies may not be put into effect for a period of thirty days. This period must be used to seek to avoid or to reduce the dismissals in question and to ease the consequences.

*Proposal for the Directive on Procedures for Informing and Consulting  
the Employees of Undertakings with Complex Structures, in  
Particular Transnational Undertakings*

In its communication to the Council on multinationals, the Commission proposed that large national and multinational companies should provide better information on their activities, especially to their employees. Surprisingly, in the summer of 1980, the Commission worked out a draft directive which was submitted on October 24, 1980 by the Commission to the Council.<sup>56</sup> In its explanatory memorandum to the proposal, the Commission explained that because of the structural changes of undertakings, the procedures for consulting and disclosing information to employees were inconsistent with those new structures since their employees continued to be informed and consulted only at local level.

The proposal, therefore, advocates that additional information be supplied by employers "in each member state relating to their com-

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<sup>55</sup> 18 O.J. EUR. COMM. (No. L 48) 29 (1975).

<sup>56</sup> *Proposal for a Council Directive on Procedures for Informing and Consulting the Employees of Undertakings with Complex Structures, in Particular Transnational Undertakings*, COMMISSION OF THE EUROPEAN COMMUNITIES, COM (80) 423 Final, Oct. 24, 1980, 23 O.J. EUR. COMM. (No. C 297) 3 (1980) [hereinafter cited as Commission Proposal].

pany's transnational operations so that they can provide their employees with a complete picture of the activities and performance of the concern as a whole in the various countries in which it is established."<sup>57</sup> To complete this information, it is necessary to make provisions which enable employees' representatives to approach management at the level of the decision-making centers in another country, i.e., employees are encouraged to press for international consultations at the headquarters level. This will result in higher centralization of management in contrast to the present management which favors decentralization and will strengthen the responsibility on local management levels. The Commission believes that a legal structure for the disclosure of information to and consultation with employees will lead to a uniform operating environment for all undertakings in the Community. It is claimed that the Community regulation does not seek to interfere with existing national systems but endeavors to integrate the procedures existing under national legislation or on a voluntary basis, into the Community system.

This proposed directive relates to procedures for informing and consulting employees who are employed by an undertaking whose decision-making center is either located in another Member State or in a non-member country. It applies to employees in undertakings with several establishments or subsidiaries in a single Member State.

This proposal requires the management of the parent company to disclose certain information every six months via the management of the subsidiaries to employee representatives in all subsidiaries employing at least one hundred employees in the EEC. This information includes: (a) structure and manpower needs; (b) economic and financial data; (c) the current situation and probable development of the business and of production and sales; (d) current employment and probable trends; (e) production and investment programs; (f) rationalization plans; (g) manufacturing and working methods, in particular the introduction of new working methods; and (h) all procedures and plans liable to have a substantial effect on employees' interests.

The management of the subsidiary is required to communicate this information without delay to the employees' representatives of the subsidiary. If the subsidiary management is unable to do so, it is the duty of the parent company's management to comply, and such compliance can be enforced by "appropriate penalties."

If the parent company intends to make a decision concerning the

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<sup>57</sup> Commission Proposal, *supra* note 56, at COM (80) 423 Final at 2.

whole or major part of the dominant undertaking or one of its subsidiaries which might have a substantial effect on the interests of the employees, it is required to forward precise information to the management of each of its subsidiaries within the EEC not later than forty days before adopting the decision. This information must include details of the reasons for the proposed decision; the legal, economic and social consequences for the employees concerned; and the measures planned in respect of these employees. This affects all decisions relating to: (a) closure or transfer of an establishment or major parts thereof; (b) restrictions, extension or substantial modifications to the activities of the undertaking; (c) major modifications with regard to organization; and (d) the introduction of long term cooperation with other undertakings or the cessation of such cooperation.

The subsidiary management has to communicate this information to the employees' representatives. Moreover, it must ask for their opinion within a period of not less than thirty days. If the employees' representatives are of the opinion that the proposed decision will have an effect on the employees' term of employment or working conditions, the management of the subsidiary has to consult with them in order to reach agreement on the measures planned. If the management does not inform or consult the employees' representatives, they have the right to open direct consultation with the management of the parent company. In order to obtain this information and, if necessary, to reach agreement on the planned measures, appropriate penalties shall be provided for by the Member States for non-fulfillment of this obligation.

Under the definition of Article 2 of the proposed directive, the term "employees' representatives" means the representatives provided for by local legislation or practice of the Member States, i.e., primarily the works councils existing in most Member States. Article 7(3) states that "[a] body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives."<sup>58</sup> This could result in pressures from trade unions to establish works councils on an international level for enterprises operating in more than one Member State of the EEC.<sup>59</sup> If the parent management is located

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<sup>58</sup> 23 O.J. EUR. COMM. (No. C 297) 5 (1980).

<sup>59</sup> This development would certainly increase the attempts of trade unions to negotiate through international trade union organizations with multinational companies. See, e.g., Tyler, *International Solidarity on Trial*, Financial Times No. 28, Jan. 21, 1981, at 13.



outside of the EEC, *i.e.*, in the United States of America, and does not ensure the presence in the Community of at least one person able to fulfill the requirements of this proposed directive, the management of the largest subsidiary within the EEC is held responsible for fulfilling these obligations.

Even though Article 15 contains secrecy requirements it seems quite unrealistic to imagine employers seeking to impose sanctions for breaches of the obligation to maintain secrecy especially in view of the fact that secret information has been passed on to a large number of representatives in various countries. The draft also does not consider that companies with shares quoted on a stock exchange have to disclose publicly the same information to the stock exchange and the shareholders. These requirements place these companies at an immediate competitive disadvantage.

The Commission acted on the proposal despite the fact that UNICE (*Union des Industries de la Communauté Européenne*), the representative of the European industry argued strongly against the draft. It was pointed out that employers have assisted in establishing the OECD Guidelines for Multinationals and the ILO Tripartite Declaration of Principles which represent a large measure of consensus and enjoy employer support. The success of those programs confirms that industrial relations should be handled within the national context of each country and that national legislation and local practice on these matters have been proved adequate. Therefore, UNICE argued that no case has been made for the introduction of the proposed Community machinery.

One might argue that the proposal has certain discriminatory aspects because it does not affect single unit companies. Parent multinational companies located in non-Member States are excluded because the subsidiary with the greatest number of employees shall be responsible for the information and consultation with employees, even though it cannot be assumed that the subsidiary has at its disposal the necessary information. Thus, while the OECD Guidelines and the ILO Declaration are based on the principle of non-discrimination against multinational enterprises this proposed directive has the opposite tendency.

In most EEC countries, there is no obligation for employers to supply such extensive information at such frequent intervals to employees' representatives. Because of the amount of information involved, the frequency with which it would have to be given, and the translation which has to be provided to make this information accessible to local

employees' representatives, enterprises coming under this regulation will have to create large administrative bodies to comply with these requirements. Especially for small and medium-size companies, compliance, including establishment of the necessary translation machinery, may be impossible.

The intervals at which information must be shared and the requirement of consultation of employees' representatives before important decisions can be taken, make the corporate decision-making process cumbersome and inflexible. Thus, decisions which are necessary for the effectiveness and sometimes even for the survival of the company can be unnecessarily delayed. In its comments UNICE accurately pointed out that at a time of serious economic difficulties these rigid procedural requirements can only further inhibit potential investments.<sup>60</sup>

It is difficult to determine whether this proposal of the Commission is likely to be adopted by the Council. The representatives of some Member States have already indicated that the subject has great political implication. Existing national co-determination legislation is based on the cooperation principle. Some Member States have a preference for confrontation. It is, therefore, difficult to reconcile these opposing philosophies by legislative action. Apparently, the Commission has recognized that it will not be easy to obtain council approval for the draft directive. Replying to an inquiry of a member of the European Parliament, the Commission admitted that the problems dealt with have many aspects and that some of these aspects need further clarification. Further contacts, not only with the European Parliament and the Economic and Social Committee, but also UNICE and ETUC (European Trade Union Confederation) will be necessary before the proposal can advance.<sup>61</sup>

## CONCLUSION

The activities of the Commission show that the Common Market authorities favor legislation to harmonize industrial relations in the Member States. The Commission is of the opinion that the problem of social justice "involves progress towards participation by both sides of

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<sup>60</sup> Newspaper comments underlined these consequences. See, e.g., *Diese Informationspflicht geht zu weit*, Frankfurter Allgemeine Zeitung No. 231, Oct. 4, 1980, at 13; *Why You may have to bare your Soul to the Workers*, Financial Times, Oct. 10, 1980, at 27; *Ein neues Mitbestimmungskapitel in der EG?*, Neue Zürcher Zeitung, Nov. 11, 1980.

<sup>61</sup> 23 O.J. EUR. COMM. (No. C 345) 7 (1980).

industry in the decision-making process."<sup>62</sup>

But the Treaty of Rome does not give the Community the legal basis to introduce employees' participation because neither co-determination nor employees' participation is mentioned in the Treaty establishing the EEC. Therefore, the Commission bases its attempts to legislate in this field on the harmonization clause for company law in order to further its social policy objectives.<sup>63</sup> Since practically all continental Member States have co-determination legislation as part of their company laws, it is only logical to use these harmonization clauses. Different legal standards requiring harmonization have developed within the Community in this field.

The Commission can also justify its activities in this area with the Declaration of the Heads of States and Governments of the Member States after the first summit conference of the enlarged Community. This Declaration states that part of the Community's social policy program is to "secure the collaboration of workers in the function of undertakings."<sup>64</sup> The legislative attempts of the EEC have demonstrated the close interrelation between company law and labor law. In addition, workers' participation has become part of the company legislation of the EEC Member States. The efforts of the EEC to create a European labor relations legislation, however, cannot neglect the legal situation which the Treaty of Rome has created. Therefore, European labor relations legislation can only gradually develop as part of the Member State company laws.

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<sup>62</sup> Preliminary Guidelines for a Community Social Policy Program, 4 BULL. EUR. COMM., Supp. 2/71, at 48 (1971).

<sup>63</sup> See Constas, *The Developing European Community Law of Worker Participation in Management*, 11 N.Y.U.J. INT'L L. & POL. 93 (1978).

<sup>64</sup> 5 BULL. EUR. COMM. (No. 10) 9, 19 (1972).