HARMONIZATION OF LABOR LAW IN THE EEC

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My work at the EEC concerns the harmonization of labor law, and the brilliant talk given by Dean Beaird encourages me to describe the difficulty of harmonizing systems as different as the "voluntarist" industrial relations system in force in the United Kingdom, Ireland, and Denmark (because it is based on agreements and not on laws) and the "legalistic" system in force in the other member states of the Community. The fact that the system in force in the United States is nearly always the "voluntarist" one makes it easier to understand the violent reactions of business and government circles in the United States to the Vredeling proposal. It is a fact, however, that harmonization is necessary if an internal market is to be achieved together with the European social area. The latter implies, in particular, that an adequate legal framework be established for undertakings and their workers so that business can take place in all the Community countries without cropping up against the still too frequent barriers erected by the labour laws of each member state, whose jurisdiction is limited to national territory, and especially the law relating to the institutions representing employees which, like the trade unions, can generally only act within national frontiers.

A Community framework is necessary if the Community is not to remain a patch-work of disparate standards that create so much legal uncertainty and encourage investors to set up in less protective countries which penalize the states with more progressive social legislation. The completion of the large internal market implies that all Community undertakings should be subject to equivalent social charges and obligations. The recovery of the European economy, the necessary restructuring, and the introduction of new technologies cannot take place *against* the wishes of the workforce. Their success depends on close cooperation between the employers and the workers or their representatives. Cooperation requires transparency, which means infor-

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mation and dialogue, essential to a good social climate, without which there can be no economic regeneration in the Community.

The achievement of the large internal market and the organization of a social area through harmonization does not, however, mean that the importance of the social dialogue should be neglected. The Commission considers, on the contrary, that the social dialogue should be restored between the two sides of industry at both national and European levels. The dialogue is the responsibility of the employers and the trade unions, but for its part, the Commission has said it is prepared to seek goodwill and if its help is needed, to provide technical assistance, and to stimulate dialogue between the two sides on the social effects of creating a large internal market. The Commission will try to make Community nationals aware of the major challenges of our time — the questions of new technologies and competitiveness, and also the social aspect. It will also be responsible for ways of improving the decisionmaking process and achieving common progress in the fields where it considers action necessary to establish the European social area.

The social dialogue should ensure that the social standards suited to a modern economy may be constantly adapted without jeopardizing our Community system of social solidarity. The aim must be to reconcile economic efficacy with justice and the defense of social progress. This cannot be done without a social dialogue that encourages firms to create jobs and without structural changes on the labor market, including the promotion of vocational training and the readaptation and reduction of working time to be negotiated at a decentralized level without threatening the competitive position of firms. Labor market adaptability implies the adoption of measures to make it more flexible.

Apart from this difficulty, and also the need to harmonize labor law, there is another interesting question that is often raised: at what moment should employees be informed and consulted? The first answer given was contained in the Council directive on collective redundancies:

> When an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives with a view to reaching an agreement.
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> These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and mitigating the consequences.[1]

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[1] Directive of November 17, 1975, 18 O.J. EUR. COMM. (No. L 48) 29 (Feb. 22, 1975).

However, in the Vredeling proposal, the Commission has simply provided for the requirement "to have consultations . . . with a view to attempting to reach agreement on the measures planned in respect of the employees," i.e., on the second measures planned in order to compensate for any inconvenience caused to empoyees (at the social level), but not on the appropriateness of the decision for which the management retains full responsibility.

Another interesting question is which worker representatives' institution will be competent? The directive leaves this entirely up to the national laws and practices in force so as to avoid upsetting existing systems. This provision, however, applies to employees only if their employer has recognized an independent trade union, which he is not required to do by law. Absent such recognition the employer need not give any information or hold consultation before it carries out a decision having negative consequences for its employees.

I would like to say a word on a matter that has hit the headlines in the United States — the famous "By Pass." The amended Vredeling proposal no longer authorizes workers' representatives to send delegates to the seat (headquarters) to obtain information or consultations if the subsidiary refuses or is unable to do so. It authorizes them only to "approach in writing the management of the parent undertaking which shall be obliged to communicate the relevant information." In addition, the "by pass" relating to the consultation procedure has been abolished. This would therefore tend to remove the major objection raised by American business circles.