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## The Emergence of the Social Dimension of the European Economic Community

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# The Emergence of the Social Dimension of the European Economic Community

## I. INTRODUCTION

The nations that make up the European Community (EC or Community) plan to complete a single market without trade barriers by the end of 1992. To accomplish this unification, the EC legislative bodies must adopt and implement massive legislation. This legislation, which is designed to harmonize national laws and to remove barriers, affects both the economic and the social dimensions of the member nations. If the EC does not properly consider these dimensions, perceived gains from unification may be offset by losses in one or both areas.

The weak impact of EC social legislation affecting workers illustrates the importance of properly considering both the economic and the social consequences of unification.<sup>1</sup> The EC aimed its early social legislation at removing economic barriers and largely ignored the social consequences of its acts, believing that economic growth would automatically bring social progress.<sup>2</sup> When this social progress did not come, the EC members realized they needed to consider social goals independently. However, this realization has not sensitized the EC to the need to balance the social and economic consequences of its legislation. Rather, the EC now often focuses only on social objectives and ignores the economic consequences of its social agenda. This extreme approach has led to opposition to much EC worker legislation by at least one EC member.<sup>3</sup>

Section II of this paper examines the emergence and the changing role of the social dimension of EC legislation. Section III presents two examples of the EC's increased focus on the social dimension of specific worker issues. In the first example, sex discrimination, legislation has been successfully adopted by the EC members. In the second example, worker participation, legis-

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1. Although this comment focuses on legislation affecting workers, its arguments may apply to other legislation as well. Workers are particularly sensitive to both social and economic consequences of legislation, because workers have social needs, are producers, and also supply the labor market.

2. See *infra* notes 6-7 and accompanying text.

3. See *infra* notes 89-92 and accompanying text.

lation has mostly failed. Section IV examines important, current worker legislation: the Charter of Fundamental Social Rights (the Charter), and Britain's opposition to it. In this comment, I argue that the Charter will not be adopted in its current form because of its severe economic consequences, which the EC has ignored but should have anticipated. I also argue that the EC should balance the social and economic dimensions of social legislation for more stable and acceptable results.

## II. HISTORICAL DEVELOPMENTS

### A. *Treaty of Rome*

#### 1. *Motivation for the social objectives in the EEC Treaty*

The EC has little power to legislate social progress. The only legal basis for Community social legislation is the Treaty of Rome (the Treaty).<sup>4</sup> The Treaty, which established the European Economic Community, creates a common market in Europe. The Treaty's provisions are aimed at creating an efficient market by eliminating trade barriers and tariffs and by allowing the free movement of capital and workers.<sup>5</sup>

In addition, the Treaty contains several social policy provisions. When the EC members signed the Treaty, they believed that social progress would naturally result from economic prosperity and that it was unnecessary to establish social policy in the Treaty.<sup>6</sup> By including social provisions in the Treaty, the EC members did not attempt to create a social policy, but rather to eliminate economic barriers.<sup>7</sup>

During the negotiations of the Treaty, France expressed concern about artificial market distortions facing its companies, such as proportionately greater contributions to the social security system and higher wages for women than those paid in other EC countries.<sup>8</sup> France argued that these additional social costs would make its labor costs artificially high, resulting in distorted

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4. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3 (effective Jan. 1, 1958) [hereinafter Treaty of Rome]. An English translation is located at 1 COMMON MKT. REP. (CCH) ¶ 151 (1971).

5. R. OWEN & M. DYNES, *THE TIMES GUIDE TO 1992*, at 39-41 (1989); *EEC Competition Policy in the Single Market*, EUR. DOCUMENTATION 9 (Jan. 1989); see also J. HOLLOWAY, *SOCIAL POLICY HARMONIZATION IN THE EUROPEAN COMMUNITY* 41 (1981).

6. COMMISSION OF THE EUROPEAN COMMUNITIES, *THE SOCIAL POLICY OF THE EUROPEAN COMMUNITY: LOOKING AHEAD TO 1992*, at 3-4 (1988) [hereinafter *AHEAD TO 1992*].

7. J. HOLLOWAY, *supra* note 5, at 41.

8. *Id.* at 41-42.

production costs that would disadvantage French companies competing with other EC companies. France wanted the Treaty to call for harmonization among EC countries of social security financing and equal pay for women.<sup>9</sup>

Other negotiating countries, led by then-West Germany, disagreed with the French characterization of costs. They argued that these social costs are only a part of the total labor costs to France's economy.<sup>10</sup> They contended that France's market offset the higher social costs through lower wages and taxes, thus equating the total labor costs among EC members. These countries felt that social provisions in the Treaty were not necessary because they would create artificial barriers to trade rather than eliminate them.<sup>11</sup>

The disagreeing countries compromised, and articles 117, 118, and several other social policy articles ultimately were included in the Treaty.<sup>12</sup> Despite their inclusion, the reason for including these social provisions was to eliminate market distortion, not to provide for the needs of workers.<sup>13</sup>

## 2. Social Policy

Articles 117 and 118 have been central to the implementation and development of the EC's social dimension. Article 117 sets forth one of the objectives listed in the preamble:

Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained.

They believe that such a development will ensue not only from the functioning of the common market, which will favour

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* Additional social provisions contained in the Treaty of Rome are as follows: Article 19 requires the application of the principle that men and women should receive equal "pay" for equal work. Article 120 requires the maintenance of the existing uniform paid holiday schemes. Article 128 requires the formation of a common vocational training policy. Articles 123 to 127 create the European Social Fund.

Additional articles in the Treaty of Rome which have social implications but are not found under social policy are articles 48 through 51. They provide for the abolition of any obstacles to the free movement of workers, abolition of discrimination based on nationality, and adoption of necessary social security measures to provide for free movement of workers. TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 271-75 (1973) [hereinafter TREATIES].

13. J. HOLLOWAY, *supra* note 5, at 41-42.

the harmonisation of social systems, but also from the procedures provided for in the Treaty and from the approximation of provisions laid down by law, regulation or administrative action.<sup>14</sup>

The provision authorizes the Commission of European Communities (Commission), an EC lawmaking body established by the Treaty, to promote improved working conditions and improved living standards and make harmonization possible. Because members of the Community agreed early that the social programs of the different countries could not be made uniform, their goal was merely to harmonize them.<sup>15</sup>

Article 118 gives the Commission authority to promote close cooperation between EC members in the following fields: labor law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene, the right of association, and collective bargaining between employers and workers.<sup>16</sup>

Thus, the Treaty gives the EC a minimalist role in legislating social policy. The Treaty allows the Commission to promote certain social objectives, but does not give it direct authority to legislate.

### *B. The Emergence of the Social Dimension*

In the first years of the EC, the Commission attempted to change the focus of the Treaty's social provisions by rejecting economic efficiency as the primary aim and by pursuing harmonization of social policy.<sup>17</sup> This approach caused serious dissension among the members and the employers' associations. In the 1962 European Social Security Conference, which was to bring together representatives from the members, trade unions, employers' associations, and independent experts, the members refused to participate except as observers.<sup>18</sup>

In 1964, communication between the Council of Ministers (the Council) of the member states and the Commission broke down completely.<sup>19</sup> In December of 1966, the Ministers of Social Affairs of the member states signed an agreement limiting the

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14. TREATIES, *supra* note 12, at 271.

15. J. HOLLOWAY, *supra* note 5, at 44.

16. TREATIES, *supra* note 12, at 271-72.

17. J. HOLLOWAY, *supra* note 5, at 44.

18. *Id.* at 53.

19. *Id.* at 54.

Commission's activities and reestablishing cooperation among the members.<sup>20</sup> This compromise signaled a retreat from the Commission's pure social policy approach.<sup>21</sup>

### 1. *Social action program*

By the beginning of the 1970s, the emerging common market was not automatically generating social progress as had been originally hoped. The Community's minimalist social role was noticeably out of date.<sup>22</sup> In October of 1972, the members asked the Commission to write a social action program to identify and coordinate member efforts in dealing with social problems.<sup>23</sup> In 1974, the Commission singled out forty priority actions designed to achieve three major objectives: 1) full and better employment, 2) improved living and working conditions, and 3) participation of workers and social partners in decision-making processes.<sup>24</sup>

By adopting a social action program, the Commission changed the role of social policy in the EC from *laissez faire* to interventionist. Members recognized that they must actively deal with national and supranational social problems created or magnified by the emergence of the EC. They also recognized that many of these problems could be addressed only through greater coordination of national social policies at the EC level.

### 2. *The social dimension*

The initial social action program was unsuccessful.<sup>25</sup> In attempting to establish the internal market in 1992, the EC had to this point focused mostly on the needs of business and on eliminating obstacles to free trade. Even though the need for coordinated social policy was recognized, there was little progress in this area.<sup>26</sup> High, persistent unemployment, vast regional disparities, and other social problems lead many, including the Com-

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20. *Id.*

21. *Id.* at 57.

22. AHEAD TO 1992, *supra* note 6, at 3-4.

23. *Id.* at 4.

24. *Id.*

25. *Id.* at 6 (unemployment in the Community rose from about five million in 1975 to just over sixteen million in 1987).

26. *Id.* at 7 ("[T]he unwieldiness of the decision-making procedures, generally based on the unanimity rule, and the diversity of living standards and social traditions in the different Member States—grown from six to 12—have often constrained, scaled down, and even prevented intended harmonizations. . . .")

mission, to recognize the need to link harmonized social policy with harmonized economic policy among EC members.<sup>27</sup>

The recognition of the social dimension of economic development as an end in itself is now complete. A 1988 Commission report stated that it was time for "new progress" in the area of social policy.<sup>28</sup> The Commission's "new progress" includes purely social objectives which focus on three areas.

First, the Commission will focus on more effective economic and social cohesion. This is to be accomplished primarily by a continued call for the convergence of national economic and social policies.<sup>29</sup> Additionally, the Council has already agreed to spend roughly 50 billion EC units before 1992, mostly on regional projects to deal with the social disruptions caused by the advent of the internal market.<sup>30</sup>

Second, the Commission will focus on promoting improvement in the work environment. Drawing on the authority given to it by the Single European Act, the Commission will promote minimum social requirements, particularly in the area of worker health and safety.<sup>31</sup>

Third, the Commission will focus on a mandate by Article 118B of the Single European Act which requires dialogue between employers and workers at a European level. The Commission has interpreted this provision to mean that "[t]he road to collective European framework conventions is . . . open."<sup>32</sup> Out

27. F. DELORS, *NEW DIMENSIONS IN EUROPEAN SOCIAL POLICY* xviii (J. Vandamme ed. 1985). In October of 1983, Jacques Delors, President of the Commission, stated:

This improvement of the Common Market, this deepening of the internal market is also inseparable from a social move. How can we envisage going further in deepening the Common Market if there is not a minimum of coherence between the social aspects of each country or of each undertaking? It is here that the idea of a European social dimension takes on its true importance. The European social dimension is not uniformity, it is not the overlooking of specific and historical aspects of each country. The European social dimension is what allows competition to flourish between undertakings and individuals on a reasonable and fair basis, without the one being handicapped because of being more socially advanced than the other. It does not demand total unification at all. There is a minimum effort that has to be made. Here too social and economic aspects are intimately tied. Any attempt to give new depth to the Common Market which neglected this social dimension would be doomed to failure.

*Id.*

28. *AHEAD TO 1992*, *supra* note 6, at 7.

29. *Id.*

30. V. PRICE, *1992: EUROPE'S LAST CHANCE? FROM COMMON MARKET TO SINGLE MARKET* 26-27 (1988).

31. *AHEAD TO 1992*, *supra* note 6, at 8.

32. *Id.*

of this dialogue, the idea of a European charter defining fundamental social rights was born.<sup>33</sup>

### III. SPECIFIC SOCIAL ISSUES AND THE SOCIAL DIMENSION

The role of social policy in the EC has changed from being a mere by-product of economic objectives to an end in itself. Often the EC's social and economic objectives are so intertwined that it is difficult to tell whether the purpose of the EC is to promote social progress or economic progress. Among the legislation with purely social objectives, some has been supported by the members, while some has created enormous opposition.

#### A. Sex Discrimination in Employment

A major focus of the Commission's social action program was improving living and working conditions, which included ensuring and promoting equality of treatment between men and women in employment. Sex discrimination in the work place continues in the individual member states to varying degrees depending on historical and cultural factors. The call by the Commission to eliminate sex discrimination was resisted in the national legislatures of the member nations.<sup>34</sup>

Article 119 of the Treaty calls for equal pay for equal work among men and women.<sup>35</sup> The original purpose of this provision was to eliminate market distortions caused by the disparity among member states in women's wages, and was included as part of the compromise in the Treaty.<sup>36</sup>

Before the social action program, article 119 and case law interpreting article 119 required equal pay for equal work.<sup>37</sup> Still, most members did not implement these principles into their national laws.<sup>38</sup> Therefore, as a part of the social action program in 1975 and as an impetus to the members, the Council

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33. *Id.*

34. Burrows, *The Promotion of Women's Rights by the European Economic Community*, 17 COMMON MKT. L. REV. 191, 200 (1980).

35. *Id.* Article 119 states in part: "Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work." TREATIES, *supra* note 12, at 272.

36. Burrows, *supra* note 34, at 192.

37. See Landau, *Recent Legislation and Case Law in the EEC on Sex Equality in Employment*, 123 INT'L LAB. REV. 53 (1984); see also, Steiner, *Sex Discrimination under UK and EEC Law: Two Plus Four Equals One*, 32 INT'L & COMP. L.Q. 399 (1983).

38. Burrows, *supra* note 34, at 197.



adopted Directive 75/117, which provided for harmonization of national laws on the principle of equal pay.<sup>39</sup> The Directive also expanded article 119's limits by requiring elimination of discrimination based on sex for all aspects and conditions of remuneration. Members were given until February of 1976 to implement the new Directive. In 1976, the Commission began infringement proceedings against seven members for non-compliance.<sup>40</sup>

One of the underlying problems of equal pay opportunities for women has been segregation in the work place. Women have generally been relegated to the lower paying jobs in service and tertiary occupations, and have been denied access to higher-paying occupations and positions of responsibility.<sup>41</sup> In response to this problem, the Council passed Directive 76/207, which provided for equal access to employment, vocational training, and working conditions.<sup>42</sup> Members resisted the change, and several refused to implement the Directive.<sup>43</sup>

Another problem was the wide disparity between men and women in social security eligibility requirements and benefits. Two directives were adopted to alleviate this disparity. Directive 79, adopted in 1979, provided for equal treatment between men and women in statutory social security schemes.<sup>44</sup> Directive 86/378, adopted in 1986, provided equal treatment in occupational social security schemes.<sup>45</sup> This Directive is unique because it applies international social security standards to social security schemes in the private sector.<sup>46</sup> A third directive has been pro-

39. *Directive 117/75, Council Directive of 10 February 1975 on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women, the Implementation of Equal Pay for Equal Work*, 18 O.J. EUR. COMM. (No. L 49) 19 (1975).

40. The seven members subject to the infringement proceedings were Belgium, Denmark, France, the Republic of Germany, Luxembourg, the Netherlands, and the United Kingdom. See Landau, *supra* note 37, at 55.

41. Burrows, *supra* note 34, at 201.

42. *Directive 76/207, Council Directive of 9 February 1976 on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions*, 19 O.J. EUR. COMM. (No. L 39) 40 (1976).

43. *Id.*; Landau, *supra* note 37, at 62. Actions were filed against several member states for failing to implement the Directive.

44. *Directive 79, Council Directive of 19 December 1978 on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security*, 22 O.J. EUR. COMM. (No. L 6) 24 (1979).

45. *Directive 86/378, Council Directive of 24 July 1986 on the Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes*, 29 O.J. EUR. COMM. (No. L 225) 40 (1986).

46. Laurent, *The Elimination of Sex Discrimination in Occupational Social Secur-*

posed to tie up any loose ends not covered in the first two directives.<sup>47</sup> The implementation of these directives was also slow.<sup>48</sup>

Although implementation has been slow, the members have supported the equal employment directives and have adopted them. But despite this legislation, sex discrimination in employment still exists in the EC.<sup>49</sup> Women are still much more likely than men to be unemployed or to be in lower paying jobs.<sup>50</sup> "In all the countries of the Community, women face discrimination either in access to vocational training, education, employment prospects, or in the terms and conditions of employment."<sup>51</sup>

Sex discrimination in employment still continues in the EC despite social legislation. One reason may be that the economic downturn of the 1970s and the early 1980s in the EC prevented the members from financing the programs and benefit packages necessary to remove sex discrimination. Also, the downturn may have made women more reluctant to try to enforce their rights under the Treaty and directives for fear of losing their jobs.

Probably, however, the continuing disparity is mainly due to traditional social values among the individual members. Until there is a change in social attitudes, sex discrimination will persist. The Treaty, the directives, and other Community legislation have been an impetus for social change, but this change will take time.

### B. Worker Participation

Worker participation is another area in which the EC has tried to legislate changes in the social order. Worker participation is an institutional structure which can protect worker's interests by giving them a role in the decision making process. There are varying degrees of worker participation broadly classified in the following ways: 1) collective bargaining; 2) worker representation on advisory or consultive bodies; 3) worker repre-

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ity Schemes in the EEC, 125 INT'L LAB. REV. 675, 675 (1986).

47. PROPOSAL FOR A COUNCIL DIRECTIVE COMPLETING THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN IN STATUTORY AND OCCUPATIONAL SOCIAL SECURITY SCHEMES, 1986-1987 EUR. PARL. DOC. (COM No. 87) 494 (1987); see also Note, *The Final Directive: Equal Social Security Benefits for Men and Women in the European Economic Community*, 12 B.C. INT'L & COMP. L. REV. 437 (1989).

48. Note, *supra* note 47, at 442.

49. Buckley & Anderson, *Introduction: Problems, Policies, and Politics, in WOMEN, EQUALITY AND EUROPE* 1, 15 (1988).

50. *Id.*

51. Burrows, *supra* note 34, at 208.

sentation on boards of directors; and 4) employee ownership.<sup>52</sup> The proposed directives deal mainly with worker representation on consultive bodies and on boards of directors. Most individual members have had forms of worker participation as part of their national laws for some time.<sup>53</sup>

France passed legislation in 1945 and 1946 creating *comite enterprise* for all undertakings with more than fifty employees. The *comite enterprise* was a consultive board comprised of company officials and employees.<sup>54</sup> The company was required to inform and consult the *comite enterprise* on a variety of business matters such as new production methods, new purchases, general business trends, and planned layoffs or dismissals.<sup>55</sup> Several EC countries have adopted similar worker participation schemes.

The *Mitbestimmung*, or worker board member in Germany, traces its legislative roots to the early 1950s.<sup>56</sup> The Worker's Constitution Act of 1952 gave employees of companies with more than 500 employees one-third membership on those companies' supervisory boards.<sup>57</sup> The Codetermination Act of 1976 gave one-half employee membership on supervisory boards for companies with more than 2000 employees.<sup>58</sup> Other countries, such as Denmark and the Netherlands, have adopted somewhat similar national systems.<sup>59</sup>

The EC's involvement in Community-wide worker participation standards also has a long history. In the late 1960s, the EC was concerned that U.S. multinational corporations were dominating and progressively taking over the Community industrial structure.<sup>60</sup> To compete with the United States, the Europeans needed to create multinational enterprises on the U.S. scale. While transnational mergers were needed to create

52. Battlaille, *The European Commission's Proposals on Worker Participation in the European Economic Community*, 3 NW. J. INT'L L. & BUS. 517, 518-19 (1981).

53. Kolvenbach, *The Evolving Concept of European Labor Relations Legislation*, 3 NW. J. INT'L L. & BUS. 535, 535 (1981); see also Note, *The Proposed Vredeling Directive: A Modest Proposal or the Exportation of Industrial Democracy?*, 70 VA. L. REV. 1469 (1984).

54. Kolvenbach, *supra* note 53, at 539.

55. *Id.*

56. *Id.* at 543; see also Note, *supra* note 53, at 1471-72.

57. Kolvenbach, *supra* note 53, at 543.

58. *Id.*

59. M. SHANKS, *EUROPEAN SOCIAL POLICY, TODAY AND TOMORROW* 50 (1977); see also Kolvenbach, *supra* note 53, at 542-45.

60. M. SHANKS, *supra* note 59, at 48.

companies that large, the member's company laws were too diverse to permit such mergers. This situation gave rise to the idea of a "European Company" which is a company incorporated under EC law instead of national laws.<sup>61</sup>

The EC was concerned not to make its company law more favorable for companies than national laws when drafting the European Company law. A more favorable European company law could cause a mass exodus of companies out of national laws into European company law.<sup>62</sup> One consideration was diversity in worker participation. The German *Mitbestimmung* model was used in the proposed European Company law, because the EC believed that a European law excluding some form of worker participation would be more favorable to companies than national laws.<sup>63</sup>

The European Company law was seen as a temporary solution to the U.S. problem. The Commission decided that the long range solution was to harmonize or converge the company laws of the individual members.<sup>64</sup> The so-called Fifth Company Law Directive attempted to harmonize national laws concerning worker representation on boards of directors.<sup>65</sup>

As first proposed in 1972, the original draft of the Fifth Directive required all large companies in the EC to establish a two-tier board.<sup>66</sup> This two-tier approach is the German *Mitbestimmung* model, which creates a supervisory board to perform planning functions for the company and a management board to perform the daily operations functions. The model requires that some portion of the seats on the supervisory board be held by workers.<sup>67</sup> It soon became apparent that the Fifth Directive was "unsalable" to the Community, because countries like France and the United Kingdom had "radically different systems and traditions."<sup>68</sup> The Commission later adopted a more flexible approach which provided for one-tier and two-tier boards and gave companies an option on how to incorporate employee represen-

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61. *Id.*

62. *Id.*

63. *Id.*; see also Note, *supra* note 53, at 1469.

64. M. SHANKS, *supra* note 59, at 49.

65. *Proposal for a Fifth Directive on the Structure of Societes Anonymes*, 15 J.O. COMM. EUR. (No. C 131) 49 (1972); see also Conlon, *Industrial Democracy and EEC Company Law: A Review of the Draft Fifth Directive*, 24 INT'L & COMP. L.Q. 348 (1975).

66. Conlon, *supra* note 65, at 348-49.

67. *Id.*

68. M. SHANKS, *supra* note 59, at 51.

tation on the board.<sup>69</sup> However, despite the more flexible approach, the Fifth Directive has yet to be passed.

As the Fifth Directive stalled, the Commission began looking for alternative ways to protect employees.<sup>70</sup> As a part of the social action program of 1977, which called for greater employee involvement in the decision-making process of firms, the Commission proposed a number of directives in an attempt to harmonize national legislation over worker participation.<sup>71</sup>

One of the directives proposed during this time is commonly referred to as the "Vredeling Directive."<sup>72</sup> Some argued that "the place where industrial democracy can be most meaningful is not the boardroom but the shopfloor."<sup>73</sup> If the channels of communication are open between the policy makers and the shopfloor, employees can have more input into decisions that have a direct impact on them.<sup>74</sup> The proposed Vredeling Directive requires multinational companies in the EC, whether the parent company is located in the EC or not, to inform and consult workers' representatives about proposed decisions that might affect working conditions or their livelihood.<sup>75</sup>

Two main criticisms of the initial draft of the proposal were that it allowed employees to by-pass the subsidiary and go directly to the parent for information, and that the company would be required to give out secret information.<sup>76</sup> The Vredeling Directive was amended to deal with these criticisms, but it also stalled.<sup>77</sup>

69. Note, *supra* note 53, at 1475.

70. M. SHANKS, *supra* note 59, at 52.

71. Kolvenbach, *supra* note 53, at 537; see also Note, *supra* note 53, at 1475. Two worker participation directives have been passed dealing with information for employees in the event of layoffs or mergers: Council Directive of February 17, 1975 on the approximation of the laws of the member states relating to collective redundancies, 18 O.J. EUR. COMM. (No. L 48) 29 (1975), and Council Directive of February 14, 1977 on the approximation of the laws of the member states relating to the safeguarding of employee's rights in the event of transfers of undertakings, businesses or parts of businesses, 20 O.J. EUR. COMM. (No. L 61) 26 (1977).

72. Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings, 23 O.J. EUR. COMM. (No. C 297) 3 (1980).

73. M. SHANKS, *supra* note 59, at 52.

74. *Id.* at 52-53.

75. Note, *supra* note 53, at 1470.

76. Pipkorn, *The Draft Directive on Procedures for Informing and Consulting Employees*, 20 COMMON MKT. L. REV. 725, 742-43 (1983).

77. *EC Labor Ministers Fail to Approve Revised Version of Vredeling Proposal*, 20 Int'l Trade Rep. (BNA) No. 12, at 473 (Dec. 20, 1983).

The Vredeling Directive stalled because of opposition from EC members and because of forceful lobbying by the United States.<sup>78</sup> Some of the members, like Ireland and Luxembourg, objected to the proposal because of its potential effect on direct investment.<sup>79</sup> Other countries, particularly the United Kingdom, were concerned about the social implications of changes in their system and traditions.<sup>80</sup>

Both major EC directives in the area of worker participation, the Fifth Directive and the Vredeling Directive, have stalled for basically the same two reasons. First, countries that have developed worker participation schemes different from the model proposed by the Commission feel that the social implications of the proposed changes would be too severe. Second, the directives are viewed as placing burdensome restrictions on business. These restrictions reduce the competitiveness of EC businesses and strongly discourage foreign investment.

#### IV. CURRENT AND FUTURE DIRECTION OF SOCIAL POLICY IN THE EC

##### A. *Charter of Fundamental Social Rights*

According to several members, the European Commission, trade unions and others, handling the problem of worker's rights is vital to 1992's success.<sup>81</sup> Mathias Hinterscheid, the Secretary General for the European Trade Union Confederation, stated that unless worker's rights go hand in hand with the establishment of the internal market, the market will fail for lack of the worker's support.<sup>82</sup> The first step the EC has taken to deal with worker's needs is proposing the Charter.<sup>83</sup>

The Charter is designed to serve two purposes. First, a major political gesture on the part of the Community is needed to win back worker's support for 1992, because the workers have

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78. *Id.*

79. *Id.*

80. *Social Charter EEC Priority for French*, Daily Telegraph, July 7, 1989, at 11 (NEXIS, Nexis library, Omni file).

81. COMMISSION OF THE EUROPEAN COMMUNITIES, BACKGROUND REPORT: THE COMMISSION PROPOSES A COMMUNITY CHARTER FOR FUNDAMENTAL SOCIAL RIGHTS (May 24, 1989) [hereinafter CHARTER BACKGROUND REPORT].

82. *European Community: European Business and Labor Leaders Clash Over EC Worker Rights Proposal*, 6 INT'L TRADE REP. (BNA) No. 39, at 1278 (Oct. 4, 1989).

83. *Id.*; *EC Executive Commission Adopts Social Charter*, Reuters, Sept. 27, 1989 (B.C. cycle) (NEXIS, Nexis library, Omni file). The Commission is expected to announce a social action program to fill in the details of the Charter sometime in 1990. *Id.*

become discontent with their role in the Community and their share of the emerging market's economic prosperity.<sup>84</sup> The EC had previously focused on creating an environment for business prosperity. By providing a broad range of fundamental social protection and guarantees, the Charter assures that the EC is committed to worker's needs.<sup>85</sup>

Second, the main reason articulated for the necessity of the Charter is the problem of social dumping.<sup>86</sup> Social dumping occurs when a company moves its business from a member with high social obligations to a member with lower social obligations to avoid restrictive labor practices or to reduce production costs.<sup>87</sup> Labor's major concern about social dumping is that the level of social obligations in the EC will be driven down to the lowest common denominator by the movement of business to lower obligation states, and that the movement will continue until all of the gains made by unions in countries with higher obligations will be lost.<sup>88</sup> The proposed Charter intends to solve the problem of social dumping by establishing minimum social standards high enough to eliminate the incentive for businesses to move.

### B. Britain's Opposition to the Charter

The Charter is not likely to be adopted in its present form because the United Kingdom fiercely opposes it, and only one negative vote is needed to block it.<sup>89</sup> The idea of a Charter is fundamentally objectionable to the U.K. because the U.K. per-

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84. CHARTER BACKGROUND REPORT, *supra* note 81, at 2.

85. COMMISSION OF THE EUROPEAN COMMUNITIES, PRELIMINARY DRAFT OF COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS, 1988-1989 EUR. PARL. DOC. (COM No. 89) 248 (1989); see *infra* APPENDIX A (Summary of the Charter of Fundamental Social Rights).

86. *Four States Seek EC-wide Rules on Holidays and Work Rights*, Reuters, June 8, 1989 (B.C. cycle) (NEXIS, Nexis library, Omni file).

87. *Labor Rights of Europeans are Debated*, N.Y. Times, Sept. 25, 1988, at 6, col. 1 (NEXIS, Nexis library, Omni file).

88. *Id.*; 1992: *The Impact on Compensation and Benefits in the European Community*, 21 COMPENSATION & BENEFITS REV. (IAC) No.4, at 20 (July 1989) (NEXIS, Nexis library, Omni file) (unions fear that the creation of the new common market could unleash a wave of social Darwinism and undercut gains they have made at the national level). If businesses move to lower obligation member states when restrictions to movement are rolled back in 1992, then pressure is created for states from which the companies are fleeing to lower their social obligations. The pressure will continue until all of the states have low social obligations.

89. *EC Commission Set for Clash with Britain on Social Charter*, Reuters, May 15, 1989 (B.C. cycle) (NEXIS, Nexis library, Omni file).

ceives it as a socialist document that would reduce the competitiveness of EC businesses and hinder job creation.<sup>90</sup>

At a more fundamental level, Britain's vision of the future EC model sharply differs from that of the other members. Britain believes the Community should be limited to stimulating economic growth by eliminating trade barriers; whereas, the other member states are seeking a more general union.<sup>91</sup> This disparity creates great tension, because there is a trade off between promoting only economic efficiency and promoting social objectives. Generally, achieving a social objective through government intervention requires sacrificing some economic efficiency.<sup>92</sup>

This tension is manifested by the Charter because it represents legislation which consciously places social objectives above efficiency. The Charter is designed to stop social dumping by leveling up Community social obligations. The process of social dumping is driven by economic efficiency incentives to move capital from one member to another to take advantage of lower cost inputs. In this light, the objective of the Charter can be restated as blocking the free movement of capital or services by raising social costs in the low obligation members thus preserving high social obligations in other members. Since the United Kingdom views the Treaty as creating something close to a free market model in which economic efficiency is the prime objective, it will continue to oppose the Charter until its economic concerns are satisfactorily addressed.

### C. *Why the Present Charter Should be Rejected*

The Charter increases benefits for workers at the economic cost of restricting movement of capital and services. The problem with this approach is that it creates adverse economic effects by restraining movement of capital and services at both the EC and individual member levels. The Charter would also re-

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90. *EC Executive Commission Adopts Social Charter*, Reuters, Sept. 27, 1989 (B.C cycle) (NEXIS, Nexis library, Omni file). See also *France Proposes Compromise to Avoid EC Split on Social Charter*, Reuters, Oct. 24, 1989 (B.C cycle) (NEXIS, Nexis library, Omni file).

91. *No Wave of Social Standardisations for EC Members*, Delors Says, Reuters, Aug. 29, 1988 (B.C cycle) (NEXIS, Nexis library, Omni file).

92. In the absence of market failure, government interventionist policies generally distort the market equilibrium, thus reducing efficiency. See J. KEARL, *CONTEMPORARY ECONOMICS* 268-308 (1989).



duce direct and foreign investment, competitiveness, and job creation due to higher production costs to EC businesses.<sup>93</sup>

In addition to these economic consequences, the Charter would cause greater unemployment among the poorer members required to raise the level of their social obligations. It would do so by imposing a minimum compensation structure functionally equivalent to a minimum wage in those poorer member countries which would have to increase their current low social obligations.<sup>94</sup> The United States' experience has shown that minimum wages increase unemployment among those already making low wages.<sup>95</sup> The adverse effects of minimum wages also tend to fall disproportionately on women, youth, and minorities.<sup>96</sup> The Charter's intent is to help these social groups, but its scheme would hurt them. Therefore, the Charter should not be adopted in its current form.

#### *D. An Approach to Social Legislation*

Just as economic legislation which ignores the social dimension will not be unanimously supported, neither will social legislation which ignores the economic dimension. Social legislation always has both social and economic consequences. The EC should adopt an approach that fosters at least one of the two dimensions, both if possible, but does not adversely affect the other.

Women's rights legislation is an example of this approach. The rationale for equal treatment first began as a means of eliminating market distortion.<sup>97</sup> Then it progressed to a broader view of remuneration, and then to vocational training and access to

93. *Id.*

94. Social benefits are part of a worker's compensation package or total real wage. Assuming business has to finance at least part of the benefits, increasing the benefits is equivalent to increasing the real wage. The Charter would set minimum levels of benefits or minimum wages.

95. An effective minimum wage is a price floor in the labor market. The price of labor or wage is not allowed by law to go below a certain level. If the market clearing wage is below the price floor, then employers are not willing to hire as many workers who are willing to work at that wage. In other words, effective minimum wages create unemployment. See R. LIPSEY, P. STEINER & D. PURVIS, *ECONOMICS* 365 (1987).

96. *Id.* at 366. Minimum wages have a disproportionate effect on those social groups which are low wages earners.

97. See Burrows, *supra* note 34, at 192.

employment.<sup>98</sup> Finally, it included equal treatment in social security benefits.<sup>99</sup> These are clearly social benefits for women.

Although the focus of the women's rights directives becomes increasingly social, it also enhances the economic dimension. For example, vocational training helps alleviate structural unemployment and improves worker productivity and access to employment, while equal benefits remove possible barriers to free movement of women workers.

The women's rights directives were readily passed with little opposition, although implementation was a little slow. The worker participation directives, on the other hand, were strongly opposed both inside and outside the EC, primarily because of their economic consequences.

Worker participation is an example of promoting only a social position without regard for the economic consequences. The Fifth Directive was proposed to equalize competitive conditions, but the social element of worker involvement soon became its legislative aim, with little consideration for economic consequences.<sup>100</sup> The later Vredeling Directive was simply a continuation of the desire for worker involvement—again without regard for the economic dimension of social legislation. These two directives resulted in opposition and failure.

Like worker participation, the Charter is a purely social document which ignores economic consequences; therefore the EC should not approve it. The EC should seek instead a solution which fosters the same needs of the workers but does not have such negative economic effects. Such an approach would meet the needs of workers and win approval of Britain in its desire to support social progress.

## V. CONCLUSION

The role of social policy in the European Economic Community has grown from an insignificant stagehand in the Treaty of Rome, to a key player in the 1992 internal market production. The rationale for harmonizing social policy was based in pure economics until members recognized that eliminating social disparities for the sake of the workers was just as important to a unified market as eliminating trade barriers. The application of

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98. See *supra* note 39 and accompanying text.

99. See *supra* note 42 and accompanying text.

100. M. SHANKS, *supra* note 59, at 55.

social policy has gone from an automatic outgrowth of the market to an attempt at Community-wide legislation enforceable in the European Court of Justice.

The member-states disagree as to the proper course of this growth. The majority appears to favor a pure social objective approach with a strong and leading role for the Commission of European Communities in Community social policy. Others want social policy closely tied to economic progress and left up to the members with the role of the Commission as a coordinator of the various policies.

The tension created by the lack of unity regarding social policy will not go away. Community-wide social policy will help alleviate some of this tension, but at the same time it may create disagreement between the U.K. and the rest of the Community. In its zeal to provide social benefits, the Community must not ignore the central purpose of the Treaty of Rome. Social change takes time, and the Community should seek to harmonize social policy with economic realities.

*Timothy W. Dowdy*

APPENDIX A - SUMMARY OF THE CHARTER OF FUNDAMENTAL  
SOCIAL RIGHTS

—Right to Freedom of Movement

The right to freedom of movement is guaranteed to every citizen. Included in this right are the right to engage in any occupation under the same terms as applied to nationals and the right to equal treatment in all fields, including social and tax advantages.

—Employment and Remuneration

All employment must be fairly remunerated. Equitable reference wages for workers in different job structures, like part-time, seasonal, shift-work etc., are to be established.

—Improvement of Living and Working Conditions

The development of a single market must improve living and working conditions by harmonizing member policies regarding organization and flexibility of work time, and establishing a maximum work week and seasonal, part-time, temporary, and shift work.

Every worker in the EC is entitled to annual paid leave and a weekly rest period.

—Right to Social Protection

Every citizen has right to adequate social protection, and all workers shall enjoy social security coverage proportional to length of service, pay, and financial contribution. Also, workers who are not eligible for sufficient benefits for adequate means of subsistence shall receive a minimum income.

—Right to Freedom of Association and Collective Bargaining

Employers and employees have a right to belong to any professional or trade union organization. This right includes all of the rights associated with membership in a union: freedom to negotiate and make collective agreements, etc. This right implies that agreements can be established at the European level.

—Right to Vocational Training

Every worker shall have a right to vocational training during his or her working life, and there shall be no discrimination based on nationality in access to that training.

—Right of Men and Women to Equal Treatment

Equal treatment for men and women shall be guaranteed, and action shall be intensified to ensure equal treatment in re-

muneration, employment, social protection, education and vocational training, and career development. Equal opportunities for men and women shall be developed.

—Right to Information, Consultation and Participation of Workers

Information, consultation, and participation of workers must be developed. Particularly, these rights need developed when there are technological changes having major implications for the work force, or when restructuring or mergers of firms impact workers.

—Right to Health Protection and Safety at the Workplace

Every worker must enjoy satisfactory health and safety conditions. This protection cannot be jeopardized in a public works contract.

—Protection of Children and Adolescents

The minimum employment age is fixed at sixteen years old. Young people over sixteen who are gainfully employed shall receive equitable remuneration. They shall receive, for two years, complementary vocational training.

—The Elderly

Every citizen in retirement or early retirement shall receive income affording him or her a decent standard of living. Any citizen who has reached retirement age but is not eligible for a pension or does not have other adequate means is entitled to a minimum income. Additionally, social protection and medical assistance must be suited to the needs of the elderly.

—The Disabled

Measures should be taken to ensure the fullest possible integration of the disabled into working life.