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A Symbol of Future European Social Policies: Establishing the Right to Information and Consultation of Workers within the European Union

INTRODUCTION

The European Union’s (EU) attempts at implementing a social mandate of informing and consulting employees of management decisions in large undertakings, or companies, span over twenty years. The current Directive, titled “Council Directive on the establishment of a European Works Council or a procedure in Community–scale undertakings and Community–scale groups of undertakings for the purposes of informing and consulting employees” (Directive), establishes as its goal the improvement of employees’ rights to information and consultation. Accomplishing this goal requires the establishment of works councils or procedures for informing and consulting employees in all undertakings covered by the Directive.

Four principles integrated throughout the new Directive ensure success after twenty years of failed attempts: subsidiarity, flexibility, consensus, and guaranteed rights. The Directive implemented the principle of subsidiarity by granting Member States the freedom to adopt the key principles of the Directive while complying with pre-existing national arrangements. By designing a format best suited to

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2 Directive 94/45, Council Directive of 22 September 1994 on the establishment of a European Works Council or a procedure in Community–scale undertakings and Community–scale groups of undertakings for the purposes of informing and consulting employees, art. 1, ¶ 1, 1994 O.J. (L 254) 64 [hereinafter Council Directive]. Community–scale undertakings are defined in the Directive as any company with at least 1000 employees within the Member States as a whole and at least 150 employees in each of at least two Member States. Id. art. 2(1)(a).

3 New European, supra note 1, at 18.

each undertaking's individual needs, the Directive incorporated a degree of flexibility previously lacking.\textsuperscript{5} The Directive achieved the consensus necessary for a level playing field within the Union by creating a minimum level of worker rights.\textsuperscript{6} From some perspectives, the most important aspect of the newest compromise on social policy centered on the Directive's effective guarantee of employee rights and the employees' ability to exercise their new rights.\textsuperscript{7} While these four abstract changes ensured theoretical success, in reality, implementing the Directive also required concrete changes such as the implementation of the Maastricht Treaty on European Union,\textsuperscript{8} and Britain opting out of the Social Protocol.\textsuperscript{9}

Part I of this Note provides a historical perspective of the Directive, including the initial attempt of the Vredeling Directive and the factors which both supported and ultimately ended the Vredeling Directive's chance of adoption. Part II focuses on the events throughout the EU which created a renewed interest in employee information and consultation. Part III details the specific objectives and provisions of the new Directive. Part IV analyzes the legal authority of the EU to implement directives on social policy and how the Maastricht Treaty on European Union strengthens the requisite authority. Part V deals with the future. It focuses on the implications of implementing the Directive.

\textsuperscript{5} Id.
\textsuperscript{6} Id.
\textsuperscript{7} Id.
\textsuperscript{8} Treaty on European Union and Final Act, Feb. 7, 1992, art. 189c, 31 I.L.M. 247, 297 [hereinafter Maastricht Treaty]. The Maastricht Treaty was adopted in November of 1993. George A. Bermann, Cases and Materials on EC Law 1155 (1993). It includes a Protocol on Social Policy annexed to the main treaty. Id. At the time adopted, 11 of the Member States agreed to the Protocol, which allows qualified majority voting on social policy issues, while Britain maintained the right to opt-out of any social laws adopted by the EU. Id.
\textsuperscript{9} Maastricht Treaty, supra note 8, Protocol on Social Policy, 31 I.L.M. at 358 [hereinafter Social Protocol]. The Social Protocol includes the agreement on Social Policy between the Member States with the exception of Britain. The British consistently maintain clear opposition towards the accelerated harmonization of key aspects of social and labor policy. Michael Gold, Social Policy: The UK and Maastricht, Nat’l Inst. Econ. Rev., Feb. 1992, available in LEXIS, Nexis Library, Asapii File. This opposition led to the Social Protocol, in which Member States agree to pursue the adoption of social and labor policies through the existing provisions of the EEC Treaty, but includes the provision that the Member States, excluding Britain, could pursue the more contentious issues outside the formal provisions of the Treaty in the face of U.K. opposition. Id. In such cases, majority voting in the Council will govern in the policy-making process for social and labor issues. Id. The Social Protocol states that the U.K. shall not take part in either the deliberations or the adoption by the Council of Commission proposals made on the basis of the Social Protocol. Id.
from the perspectives of the EU institutions, the Member States, and the companies affected.

I. HISTORICAL BACKGROUND OF WORKS COUNCIL PROPOSALS

Throughout the last twenty years, the EU unsuccessfully attempted to implement a policy of informing and consulting employees. Motivated by a belief in the importance of employee participation, increasingly complex international business operations, and the widely disparate legislation in the Member States, the EU continued developing proposals in this area. Motivated, in part, by the increasing development of the Single Market, the EU also recognized the enhanced necessity for a comprehensive social policy. Since achieving a competitive advantage must occur through free trade and not through divergent labor policies within the Member States, attaining the maximum benefits of the Single Market requires a comprehensive social policy.

A. The Vredeling Directive

In 1980, Mr. Henk Vredeling, a Social Affairs Commissioner, proposed the draft directive (Vredeling Directive) on procedures for informing and consulting employees in large national and multinational companies which subsequently provided the basis for the current

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11 Id.
12 The Single Market was to be achieved by 1992. Simon Bulmer & Andrew Scott, Economic and Political Integration in Europe 3 (Simon Bulmer & Andrew Scott eds. 1994). The goals of the Single Market included the elimination of barriers to the free movement of goods, services, capital, and labor within Europe. Id. The ultimate goals of the Single Market included increasing the competitiveness of Europe and increasing the economic growth of the EU. See id.
13 See Information and Consultation in European Multinationals—Part One, supra note 10, at 15.
14 See Baynes, supra note 1, at 87.
15 Mr. Vredeling was a member of the EU Commission appointed by the Netherlands. Christopher Docksey, Employee Information and Consultation Rights in the Member States of the European Communities, 7 Comp. Lab. L. 32, 34 (1985). As one of four main institutions of the EU, the Commission consists of members appointed by Member State governments for four year terms. Bermann, supra note 8, at 57. The Commission serves a function similar to the function served by the U.S. executive branch, in that it formulates general legislation and exercises power delegated to it by the legislature. Id.
Directive. Under the Vredeling Directive, undertakings employing at least 1000 employees within the European Union,\(^\text{17}\) must provide annual financial and economic data to employee representatives in the subsidiaries and establishments of each company.\(^\text{18}\) Additionally, the Vredeling Directive mandated consultation with the employee representatives before implementing important decisions that affect employees.\(^\text{19}\) As part of this second obligation, the undertaking must inform its employees in writing of any event which may effect the employees' interests and allow a response within thirty days.\(^\text{20}\) While obligated to inform, the undertaking is not obligated to implement the employees' opinion in its final decision.\(^\text{21}\)

The obligations imposed by the proposed Vredeling Directive focused on achieving goals on two levels. First, by establishing the goal of protecting the rights of individual workers, the Vredeling Directive ensured “that workers employed by a subsidiary in the Community are kept informed as to the activities and prospects of the parent undertaking and the subsidiaries as a whole, so that they may assess the possible impact on their interests.”\(^\text{22}\) Second, by setting certain goals for the Union itself, including the creation of a uniform operating environment for all companies within the Union,\(^\text{23}\) the Vredeling Directive established the goal of leveling the economic playing field and increasing European competitiveness.

B. Reasons for the Failure of the Vredeling Directive

Three major criticisms prevented the enactment of the proposed Vredeling Directive in the EU.\(^\text{24}\) Critics claimed that the Directive would decrease the EU’s competitiveness by increasing the obligations on EU companies not incurred by other companies.\(^\text{25}\) The increased

\(^{17}\) Dr. Walter Kolvenbach & Dr. Peter Hanau, HANDBOOK ON EUROPEAN EMPLOYEE CO-MANAGEMENT, Vol. 4, 57, 58-59 (1993).
\(^{18}\) Id. at 58.
\(^{19}\) Id. at 58-59.
\(^{20}\) Id. at 59.
\(^{21}\) See Kolvenbach, supra note 17, at 59.
\(^{22}\) 1983 O.J. (C 217) 5; Kolvenbach, supra note 17, at 58.
\(^{23}\) Baynes, supra note 1, at 87.
\(^{25}\) Kolvenbach, supra note 17, at 57.
obligations of informing and consulting employees raised speculations of increased delays and difficulties in planning for the management of companies, which would work against the goal of an efficient, flexible business structure. 26 The European Trade Union Confederation (ETUC) criticized the proposal on an alternative basis, arguing that it would decrease worker rights by allowing Member States to introduce less protective standards than those already in existence, thereby placing workers at a disadvantage as compared to their current position. 27 The third area of criticism came from certain Member States. The British government, fearing a decline in national sovereignty, advocated voluntary employee involvement, rather than involvement by strict legislative rules. 28 Similarly, the German government favoring a solution based on state initiatives, argued that the proposal interfered with the Member States’ pre-existing labor structures, and if implemented, could slow the reduction of unemployment. 29

II. EVENTS CREATING AN IMPETUS FOR THE NEW DIRECTIVE

After the Vredeling Directive, three events created the impetus for the new Directive on worker information and consultation. The implementation of the Social Charter, in 1989, served as the first step toward the new Directive. 30 The Member States created the Social Charter as a result of their increasing awareness of the role social policies must play in strengthening the Single Market and because of their fear of social dumping caused by varied national policies. 31 The Social Charter

26 Id.
27 Id. at 61.
28 Id. at 62.
29 See id. at 63.
31 Terence P. Stewart & Delphine A. Abellard, Labor Laws and Social Policies in the European Community After 1992, 23 LAW & POL’Y INT’L BUS. 508, 539 (1992). Social dumping occurs when firms choose to invest or locate their business in Member States with less protection for workers, basing the decision on the perceived lower overall cost of business. See id. at 540. While this may benefit the economies of countries with lower standards, it takes investment away from countries with higher standards, increasing the pressure on those countries to lower protection standards. See id. The divergent protection policies found in the national laws of the Member States raises the possibility of a two-tiered Europe, where only some members of the Union implement a uniform standard and others gain from lower standards, ultimately decreasing the cohesiveness of the Union. See id. at 539–40.
established as one area of fundamental social policy the information, consultation and participation of workers.\footnote{32 See Social Charter, supra note 30, Tit. 1, para. 17.} The Social Charter required that companies inform and consult workers when the company’s decisions affect the workers.\footnote{33 Id. para. 18.} Such decisions include technological change, restructuring, collective redundancy, and decisions affecting trans-frontier workers.\footnote{34 Id.} Even though the Social Charter established as early as 1989 the importance of consulting employees, it was not legally binding upon the Member States.\footnote{35 See Stewart & Abellard, supra note 31, at 542.} Instead of automatically changing the laws of Member States, it merely provided suggested objectives for the Member States.\footnote{36 Id.}

The Maastricht Treaty provided another impetus for the current Directive. The Maastricht Treaty ultimately included a Protocol on Social Policy (Protocol).\footnote{37 See generally Social Protocol, supra note 9.} One of the Protocol’s objectives is the promotion of dialogue between labor and management.\footnote{38 Id. art. 1.} To achieve this goal, the Union must support and complement the activities of Member States in the field of informing and consulting workers.\footnote{39 Id. art. 2.} The significance of the Protocol is twofold. First, Britain opted out, making the adoption of measures possible without its approval.\footnote{40 See Wolfgang Munchau, Paternity Policy Works Faster Without the Portillo Factor, The Times Newspapers Ltd., Sept. 27, 1994, available in LEXIS, Nexis Library, Times File.} Second, the Protocol provided for an increase in qualified majority voting in social policy areas, increasing the likelihood and quickness of policy changes.\footnote{41 Social Protocol, supra note 9, art. 2, para. 2. Paragraph two cites to article 189c of the Maastricht Treaty which provides in relevant part that the Union will follow the Parliamentary cooperation procedure. Maastricht Treaty, supra note 8, art. 189c. See infra note 105 for discussion of qualified majority voting.}

The drafting of the new Directive provided the final impetus.\footnote{42 See Information and Consultation in Multinationals, supra note 10, at 15.} The Directive, before described as rigid and prescriptive, now consists primarily of flexibility of choice.\footnote{43 Id.} The Vredeling Directive, for example, aimed at direct information and consultation of employees, whereas the more recent Directive aims at creating a flexible framework by
which companies will create the specific means for conveying such information and for creating consultation procedures. 44 Similarly, instead of automatically imposing a mandatory structure for companies to establish a works council, the new Directive grants Member States the discretion to follow the existing structure of worker participation within each Member State. 45 The new Directive also protects the autonomy of company management by ensuring flexibility in choice, so long as the company maintains the minimum standards. 46 The changes in the content of the Directive suggest a change from an attempt to harmonize toward an attempt to equalize while using existing institutions. 47

III. Council Directive on the Establishment of Works Councils or Procedures in Community-Scale Undertakings for the Purpose of Informing and Consulting Employees

On September 22, 1994, the Council approved the “Directive on the establishment of Works Councils or Procedures in Community-scale undertakings for the purposes of informing and consulting employees.” 48 The Directive limits its scope to Community-scale undertakings or groups of undertakings with at least 1000 employees in the Union as a whole, and at least 150 employees in each of at least two Member States. 49 By limiting the scope of the Directive to transnational undertakings, the Union maintained the existing information and consulting procedures within Member States which are based on existing legislation. 50 Instead, it regulates only those undertakings currently subject to multiple national legislation governing this issue. 51 The following sections will discuss the obligations on the undertaking and the creation of the works councils.

A. Key Obligations of the Directive

The Directive imposes two main obligations on undertakings: to inform and to consult employees. 52 The first obligation consists primar-

44 Kolvenbach, supra note 17, at 64.2.
45 Id. at 64.2-64.3.
46 Id.
47 Id. at 64.3.
48 See 1994 O.J. (C 135) 8.
51 Id.
52 See Council Directive, supra note 2, § 1, art. 1. This article provides that “the purpose of this
ily of disseminating information on the progress of the undertaking’s business and prospects.53 This information should include details on the undertaking’s structure, economic and financial situation, employment outlook and investment prospects.54 All information provided remains confidential and in some cases may be withheld if the information would substantially damage the interest of the undertaking.55 The second primary obligation requires management to consult56 with employees whenever a decision could adversely affect the interests of the employees.57 Examples of such decisions include transfers, mergers, cut-backs or closures of firms, any organizational changes, working methods, or manufacturing processes of the company.58 After management consults the employee representatives, the representatives have the right to reply.59 Management is not obligated to incorporate the employees’ opinion in its final decision.60

B. Procedure for Establishing Works Councils

The responsibility of setting up works councils initially lies with the management of each undertaking.61 Until September 22, 1996, undertakings may establish a works council without the restrictions or requirements of the Directive affecting their decision.62 According to the Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.” Id. art. 1, ¶ 1. The two obligations also apply to undertakings whose parent organization is based outside of the European Union. Id. art. 4(2). In such a situation the responsibility of setting up a works council shall lie with the parent organization’s representative agency in the Union. Id.

53 See id. at Annex (2).
54 Id.; Community Social Policy, supra note 50, at 138.
55 Council Directive, supra note 2, art. 8(1); New European, supra note 1, at 22. The withholding of confidential information by management applies only in specific cases and under conditions established by national legislation. New European, supra note 1, at 22. Some Member States subject the withholding of information to a prior administrative or judicial authorization. Id.
56 Consultation is defined as “the exchange of views and establishment of dialogue between employees’ representatives and central management or any other more appropriate level of management.” Council Directive, supra note 2, art. 2(1)(f).
57 Community Social Policy, supra note 50, at 138.
58 Id.
60 See id. at Annex (3), ¶ 3. The two obligations also apply to undertakings with a parent organization based outside of the European Union. Id. In such a situation, the responsibility of setting up a works council shall lie with its representative agency in the Community. Id.
61 Id. art. 4(1). Negotiations for the establishment of a European Committee or procedure may also be initiated by the written request of 100 employees or their representatives in at least two undertakings in at least two Member States. Id. art. 5 (1).
62 European Works Councils: A Major Success Story for the EU, supra note 4. Article 13 of the
Directive, the management of each undertaking should, in the interim, initiate negotiations with the special negotiation body (SNB) which includes employees from each country.\textsuperscript{63} The SNB, once formed, should reach a written agreement with the central management on either a works council or on an information and consultation procedure.\textsuperscript{64} The negotiations should establish methods of calling meetings, costs of discussions, and general procedures for informing and consulting employees.\textsuperscript{65}

The undertakings bound by the Directive have four options.\textsuperscript{66} One option would result in a written agreement establishing a works council under article 6(2) of the Directive.\textsuperscript{67} Article 6(2) lists a number of issues that the agreement must cover, ranging from the function of the committee, to the procedure for informing and consulting, to the duration of the agreement and procedure for renegotiation.\textsuperscript{68} Unless provided otherwise, agreements on works councils under article 6(2) are not subject to the subsidiary requirements listed in the Annex.\textsuperscript{69}

The second result would be an agreement on an alternative information and consultation procedure.\textsuperscript{70} The Directive makes very few stipulations as to what the alternative procedure must include.\textsuperscript{71} The Directive does require the establishment of a method by which employee representatives will meet and discuss the information given to them by the undertaking.\textsuperscript{72}

The third result, a decision by the SNB and management to follow the subsidiary requirements, and the fourth result, no agreement is reached within two years, both result in the application of the subsidiary requirements.\textsuperscript{73} The subsidiary requirements consist of minimum

\begin{itemize}
\item \textsuperscript{63} Council Directive, \textit{supra} note 2, art. 5(2). The special negotiating body (SNB) is made up of elected or appointed members, with individual Member States determining the method of electing or appointing members from each country. \textit{Id.} art. 5(2)(a).
\item \textsuperscript{64} \textit{New European, supra} note 1, at 20. It is important to recognize the SNB may also decide by two thirds of the vote to not open negotiations on the subject or to halt negotiations in process. See \textit{id.} If the SNB chooses this option, it may not reconvene negotiation for two years and the company will not be governed by the subsidiary requirements. \textit{Id.}
\item \textsuperscript{65} Council Directive, \textit{supra} note 2, art. 6; \textit{New European, supra} note 1, at 20.
\item \textsuperscript{66} \textit{See id.}
\item \textsuperscript{67} Council Directive, \textit{supra} note 2, art. 6(2); \textit{New European, supra} note 1, at 20.
\item \textsuperscript{68} \textit{New European, supra} note 1, at 20.
\item \textsuperscript{69} \textit{Id.}
\item \textsuperscript{70} Council Directive, \textit{supra} note 2, art. 6(3).
\item \textsuperscript{71} \textit{New European, supra} note 1, at 20.
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} Council Directive, \textit{supra} note 2, art. 7(1); \textit{New European, supra} note 1, at 20.
\end{itemize}
obligations explained in the Annex of the Directive. The Member States must incorporate the requirements into national legislation and apply them to undertakings in the above situations. The minimum requirements grant the works council at least one annual meeting with central management, informing the workers on the progress of the business and its prospects for the future. Similarly, the minimum requirements grant the works council the right to consultation on management decisions affecting the workers. The management bears all costs of the works council.

IV. LEGAL AUTHORITY FOR DIRECTIVE

On September 22, 1994 the Social Affairs Council adopted the Directive. While the Maastricht Treaty added the Social Protocol, it did not explicitly grant the EU legal authority to implement social policy. The legal authority on which the EU has implemented this Directive is, therefore, only sufficient if viewed as a combination of the authority granted from both the Single European Act (SEA) and the Maastricht Treaty.

A. Legal Authority of the EU before the Maastricht Treaty in Relation to Social Policy

Critics of a European social policy center their objections on the EU's lack of judicial authority to promote social objectives. Proponents assert that article 118 provides the EU with the authority for such proposals. Changed by the Single European Act, article 118 now

74 New European, supra note 1, at 21.
75 Id.
77 Id. at Annex (3).
78 Id. at Annex (7).
79 Social Protocol, supra note 9, art. 2. Under the Protocol, the Commission will plan the implementation of the social action program on the basis of full agreement of all Member States. Gold, supra note 9. If the U.K. opposes any proposal, the Commission then has recourse to its second set of procedures laid out under the Social Protocol. Id. Under the Protocol procedures, the Commission resubmits the proposal to the Member States, excluding Britain, and the proposal requires only a qualified majority to become European law. Id.
81 Id. at 7.
82 Id. at 8.
states "the Commission shall have the task of promoting close cooperation between Member States in the social field." This language suggests a limited authority in social policy that centers on mere supervision of the collaboration between Member States on an international level. The actual authority of the EU, therefore, diverges from the stated social justice objectives proclaimed in the SEA preamble. The social objectives stated in the preamble do not, in themselves, grant a legal basis for the adoption of social policies.

Even if the authority to implement social policies within the EU is acceptable, the procedures required have slowed any such progress. Prior to the Maastricht Treaty, the SEA divided labor issues into two categories: issues dealing with the health and safety of workers, and issues affecting the rights and interests of employed persons. Article 118A governed the first category of issues and allowed adoption by qualified majority. The later category, which included proposals for worker information and consultation, fell under article 100a(2) of the EEC Treaty, requiring unanimity. The chances of achieving unanimity for a proposal based on a history of divergent national policies were slim.

The Commission's Directive of 1991 represented the challenge of obtaining unanimity under article 100. The European Parliament (EP) attempted unsuccessfully to avoid the British veto of the proposal by changing the legal basis for worker information and consultation to article 118A, which calls for a qualified majority. The EP interpreted article 118A by broadly defining "work environment." The argument centered on the idea that "work environment" was not lim-
ited to sanitary protection of workers or their safety, but could also include other factors effecting the work environment, including consultation and information.\textsuperscript{95} This argument by the EP failed, leaving adoption by unanimity as the only option for consultation directives prior to the Maastricht Treaty.

B. \textit{Legal Authority after Maastricht for Social Policy}

While the Maastricht Treaty alone did not enhance the legal authority for implementing social policy, it did include the Protocol on Social Policy.\textsuperscript{96} Within the Protocol, article 1 states that the promotion of dialogue between management and labor is one of the Union’s major objectives.\textsuperscript{97} Article 2 provides the means to implement this objective.\textsuperscript{98} Under the Protocol, the Union must support and complement the activities of Member States in the field of information and consultation of workers.\textsuperscript{99} Under article 2(2), the Council must adopt the directives under the cooperation procedure of article 189c of the Treaty on European Union.\textsuperscript{100}

The placement of directives relating to the information and consultation of workers under article 189c ensures ratification based on the cooperation procedure.\textsuperscript{101} This enhances the power of the EP by granting the EP a second reading of the proposal.\textsuperscript{102} In the past, the EP demonstrated a heightened awareness of the necessity for an effective European social policy.\textsuperscript{103} The new decision procedure should enhance the EP’s influence and subsequently enhance the chance of implementing social policy.

The placing of consultation directives under article 189c also allows the adoption of directives by a qualified majority of the Member States, instead of by unanimity.\textsuperscript{104} While a majority has always been considered a more feasible goal to obtain than unanimity, it became even more

\textsuperscript{95} See id.
\textsuperscript{96} See Lo Faro, supra note 80, at 8.
\textsuperscript{97} Social Protocol, supra note 9, art. 1. The text reads “The Community and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labor. . . .” Id.
\textsuperscript{98} Id. art. 2.
\textsuperscript{99} Id.
\textsuperscript{100} Id. Paragraph 2 of the Protocol reads as “The Council shall act in accordance with the procedure referred to in Article 189c of the Treaty after consulting the Economic and Social Committee.” Id.
\textsuperscript{101} See New European, supra note 1, at 18.
\textsuperscript{102} See BERMANN, supra note 8, at 84.
\textsuperscript{103} Lo Faro, supra note 80, at 9.
\textsuperscript{104} Id. at 29.
likely after the British opted out of the Social Protocol. The British opt–out clause forced the EU to determine what constitutes a qualified majority without the British voting presence. For proponents of the Directive, it also ensures that the foremost opponent no longer has a voice in the outcome of works councils.

V. ANALYSIS: FUTURE IMPLICATIONS OF THE DIRECTIVE FOR THE EUROPEAN UNION

The Member States will have until September 1996 to translate the Works Council Directive into national legislation. Under the procedures established in the Directive, undertakings have two years to set up the information and consultation councils before the default subsidiary rules would be triggered. The Directive will affect an estimated 1500 multinational companies operating within the EU. The 1500 undertakings include 200 U.S.–based firms such as IBM, Ford Motor Company, and General Motors. It will also affect close to fifty Japanese firms.

Although the legislation does not directly apply to the U.K. due to their opt–out clause in the Social Protocol, U.K. firms with subsidiaries in continental Europe must comply with the Directive. The Directive, therefore, will also affect one hundred U.K. companies that employ over 1000 workers (not including British workers) outside of Britain. The Directive does not require the inclusion of British employees in the works councils when employed by affected British companies. While not obligated to include the British workers, it is assumed com-

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105 See New European, supra note 1, at 18. This is the first Directive to proceed through the legislative process under the Social Protocol and with the British opt–out. See Jerome Rivet, British government to opt–out of EU directives for first time, AGENCE FRANCE PRESSE, Sept. 22, 1994, available in LEXIS, Nexis Library, Afp File.

106 See New European, supra note 1, at 18. Before January 1995, this meant that with only 11 Member States participating in the voting, 44 out of the 66 votes constituted a majority instead of the 54 needed if Britain participated. Id.

107 See Coopers & Lybrand, Social Affairs, supra note 24, at *10.2.

108 Id.

109 Id.


111 See New European, supra note 1, at 20.

112 Id.

113 See id.

114 Id.

panies will include British workers because they will not gain a competitive advantage from discriminating against them once the works council is already established.\textsuperscript{116}

The unique situation created by the British opt-out clause on social policies creates one possible adverse implication of the Directive. Once large companies adopt works councils, they will incur a competitive disadvantage in relation to large companies in Britain that are not affected by the increased obligations of the Directive.\textsuperscript{117} Consequently, social dumping could increase in Europe.\textsuperscript{118} Social dumping suggests that companies will invest in countries with lower and less restrictive labor standards, in this case, Britain.\textsuperscript{119} This is demonstrated by the recent relocation to the U.K. from France by the Hoover Company.\textsuperscript{120} Britain’s exclusion from EU social policies operates as an invitation for investment by companies, such as Hoover, interested in producing cheaper products at the expense of worker rights.\textsuperscript{121} This invitation could create the two-tiered Europe the Directive aimed to eliminate through the creation of equalized standards.\textsuperscript{122}

The effect on the competitiveness of the EU suggests another adverse implication of the Directive.\textsuperscript{123} Opponents fear that by increasing obligations on companies the Directive decreases the competitiveness of each company.\textsuperscript{124} They fear that the Directive, while not giving employees power to change management decisions, will give them the power to delay decisions.\textsuperscript{125} They fear that the Directive will impose a structure for the works council that will eliminate all flexibility and will ignore the national tradition of labor–management relations that has worked well in the past.\textsuperscript{126}

Studies have shown that during the long legislative process of this Directive, companies have disregarded the potential adverse conse-

\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{119} See id.
\textsuperscript{121} See Schermers, \textit{supra} note 118, at 448.
\textsuperscript{122} See id. at 446.
\textsuperscript{124} Munchau, \textit{supra} note 115.
\textsuperscript{125} See Kolvenbach, \textit{supra} note 17, at 57.
\textsuperscript{126} Bassett, \textit{supra} note 123.
quences of the Directive and have implemented their own works councils. The mere prospect of having the EU establish the works councils motivated many companies including Nestle and Volkswagen, to reach voluntary agreements according to their own standards. The preamble of the Volkswagen agreement asserts the balance most undertakings attempt to strike within a works council by calling for an acceptance of a "social obligation towards its European plants and works councils" while "agree[ing] that a successful social development is dependent on international competitiveness achieved through a high level of productivity and flexibility, making constantly increasing demands in respect of the quality and environmental acceptability of the products." The Volkswagen agreement is a significant example, not only because the consultation provisions include the promise of incorporating the council's opinion into decision-making, but also because of its explicit recognition of the required balance between worker rights and business efficiency.

The Commission, alternatively, has made this Directive into a symbolic attempt at implementing social policies and has pushed social issues into the forefront of Europe. The Commission, therefore, describes the implications of the Directive in a more positive light than the companies and trade unions. The Commission believes the Directive will have the highly beneficial effect of increasing workers' productivity and commitment to the undertakings. The increased productivity and commitment will ultimately directly increase the undertakings' competitiveness and will indirectly increase the EU's competitiveness. The Commission has concluded that on average, the cost of establishing a works council would be approximately twelve dollars per worker, per year. This minor cost would more than be offset by the economic benefits of increased competitiveness and productivity within each undertaking.

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127 Information and Consultation in European Multinationals, supra note 10, at 15.
128 See id. at 15, 18.
129 Id. at 18.
130 See id. at 17–18.
132 New European, supra note 1, at 23.
133 Id.
134 Id.
135 Id.
VI. CONCLUSION

Based on the changes within the political and legal environment of the EU and the changes to the Directive itself, the EU has achieved its objective of implementing a duty to consult and inform employees. The increased flexibility within the Directive, demonstrated primarily through a company’s freedom in establishing the structure and content of works councils, struck the ultimate compromise. While achieving the same end result of increased rights for workers, the EU maintained a degree of both national and corporate level autonomy. Only the future will determine whether this balance between corporate autonomy and the social rights of workers will be implemented union-wide, and more importantly, whether it will effectively maintain the competitiveness of the European Union. One aspect is certain: the successful adoption and implementation of this Directive will undoubtedly affect the other social proposals planned for the European Union.

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