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ADDRESS TO THE INTERNATIONAL LABOR LAW COMMITTEE
OF THE AMERICAN BAR ASSOCIATION BY VICE-PRESIDENT
HENK VREDELING - MARCH 21ST 1980 - BRUSSELS

= SOCIAL POLICY AND LABOR RELATIONS IN THE EUROPEAN COMMUNITIES =

The Treaty setting up the European Economic Community gave it as its task the promotion of "an harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of standard of living ...". The Founding Fathers were resolved "to ensure by common action the economic and social progress of their countries" and they affirmed "as the essential objective of their efforts the constant

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improvement of the living and working conditions of their peoples".

We write Rome, March 25th 1957 and it sounds a bit pompous. But, perhaps in a different wording these objectives are still valid, when one looks to the economic and social problems we are confronted with. Compaired with the Economic Community for Coal and Steel, which was established in 1952, the powers given in 1957 to the institutions of the Economic Community were rather small in the social field. Member States believed that the progressive harmonisation and improvement of the conditions of living and of work and employment for workers would be in a way the automatic result of the functioning of the rest of the Treaty. In so many words they believed the objectives "will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and - from the approximation of provisions laid down by law, regulation or administrative action".

So in 1957 no proper regulatory power was attributed to the institutions

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in the social field. The Treaty provides that the Commission ... "has as its task of promoting close cooperation between Member States in the social field, particularly in matters relating to :

- employment ;
- labour 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. "

That's all : promoting a close collaboration in a vast and difficult area with the possibility for the Commission to make recommendations. In the Economic Treaty of 1957 there are only two exceptions on its global concept of social policy : the European Social Fund and the equality of pay for men and women.

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This last principle has been introduced in order to avoid a distortion of competition and not for reasons of social policy.

Free movement of workers - a basic principle in the Common Market - has been treated as the free movement of a factor of production. The economic philosophy, which is at the base of the integration process, is the optimal allocation of the factors of production. This free-market philosophy had naturally its effect on the provisions in the field of social policy.

Nowadays we know better, but still this concept of social policy reflected in the Treaty - more than twenty years old - carries an element of truth. Social policy is the resultant of a combined action of the legislator and the totality of the decisions taken by the social partners acting within their right and - I would say - according to their duty. Everything in life is a matter of degree. The required balance between legislation and the agreement between social partners laid down in collective agreements is a delicate matter.

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This varies from country to country dependent on differences in political situations as well as economic and social circumstances. For instance, it matters in the United Kingdom if one has to deal with a Conservative or with a Labour government. It matters when the climate of industrial relations is bad or good. This balance cannot be freezed without taking enormous risks at the expense of social peace. The Treaty of 1957, like your Constitution, cannot freeze this balance at least as long as you are convinced the objective "the constant improvement of the living and working conditions " of the people has to be obtained. Our Treaty, our Constitution so to say, which doesnot provide for a classical Federal State, has to be interpreted with this basic concept of balance in mind.

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States of the European Communities still possess the reins

The European Court of Justice showed courage and created possibilities for politicians to use our constitution to the full in order to obtain the objectives. First, for instance, the Court of Justice ruled that provisions in the Treaty, which are clear and can be applied without any further implementation, this means provisions which are self-executing, can be invoked by citizens. This had as a result that the provision on equal pay for men and women has to be applied by national courts. A big step forward. Second, the Court of Justice upheld decisions of the Council of Ministers using an extensive interpretation of Article 235 of the Treaty. This provision gives the possibility to regulate when no explicit power has been given in the Treaty but when action appears to be necessary to achieve the objectives of the Community. This means politicians of the Member States could, if they wish so - on a proposal of the Commission and with the opinion of the directly elected European

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Parliament - strike the balance to achieve the objectives. And they did in the past. But in times of crisis - and after 1973 we are confronted with enormous problems - nationalism and protectionism tends to prevail. Member States are less inclined to transfer power. We have to fight against it, because the problems we are confronted with can seldom be solved on a national scale. Our proposals and concepts in the economic and monetary field, the Economic and monetare Union has been based on Article 235. The Economic and Monetary Union needs to have a social policy added to it. So politicians have also the legal possibilities to try to solve the social problems on an European level.

Against this background structures and policies have to be explained. We have consultative committees composed of representatives of Member Governments and of the social partners in many areas to advise us on ongoing policies and new measures. In several sectors Joint Committees composed of the social

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partners have to be consulted before the Commission send proposals to the Council of Ministers. In the Joint Committee on Social problems affecting Agricultural Workers social partners agreed on a recommendation for 40 hours working week and the annual working time with a lot of technicalities added to it. The recommendation is not binding but quite an achievement.

The existence of a social infrastructure is needed in order to establish whether a consensus is available for future policies. To give an example : I changed my mind on a draft for a directive on night work when I found both sides of industry were opposed to it. For totally different reasons, but nevertheless, it showed me you cannot regulate a single item which is part of a bigger whole. Now we try to tackle night work in relation with shift work in the broader context of worksharing.

In the late sixties, when power clearly shifted to the

Council of Ministers social partners wanted to be associated with the work of this institution. To this end a Tripartite Conference on employment problems was held under chairmanship of the President of Council of Ministers. Under the same chairmanship a Standing Committee on Employment was established to ensure a permanent dialogue between all parties in order to facilitate the coordination of the employment policies of the Member States.

This all may look very complicated and time-consuming to you and I cannot deny you are right.

The problem lies in building a network which is complementary to the existing national networks in a functional way for European matters. The European Council established in 1975 the Tripartite Conference, in which the Ministers of Economic Affairs and Finance, the Ministers of Employment and Social Affairs and social partners take part in discussions on the social and economic problems.

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Its structure has to be improved, but still it is a forum, which cannot easily be used to generate consensus. There is too much publicity around it and too many expectations are raised.

Since Chancelor Brandt took in 1969 the initiative for a Social Europe in the European Council in The Hague this Council discussed the social problems time and again. It enabled the Commission to use the Tripartite Conference, the Standing Committee on Employment to develop a policy. Slow, since all parties have their political responsibilities at home. Planning agenda's in close contact with the parties concerned in order to find suitable subjects and dates for representatives from nine countries looks simple but is politically a very difficult job. Small successes keep the machine going.

As I said a policy on work-sharing is in development. In our fight against unemployment we have to share the amount of work available.

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In the field of labour law we were able to produce binding directives. In 1975 a directive for the harmonisation of national legislation on collective dismissals has been adopted. There were notable differences in the Member States in conditions and procedures as well as in measures to reduce the negative consequences of collective dismissals. Perhaps the most important element of this

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directive which harmonises the different procedures in legislation, is the obligation imposed on the employer to consult the representatives of the workers when he envisages collective dismissal. The employer is also obliged to notify the collective dismissal and the reasons for it to the public authorities beforehand. Minimum requirements, but nevertheless the Commission had to start proceedings against the Italian Government since it had not implemented this directive.

In 1977 a directive safeguarding the acquired rights in case of transfer of companies was adopted. As a rule the continuity of the working-contract is guaranteed now. Only unavoidable dismissals are permitted. Changes in working conditions should be justified. The new employer has to respect, at least for a transitional period, the collective agreement. Here also procedures for information and consultation are provided.

In June of last year, the Council of Ministers approved another directive concerning the protection of employees in the event of the insolvency of their employer. It aims at a harmonisation of the relevant provisions in the Member States with a view to ensuring adequate protection for employees in the event of their employer becoming insolvent. The outstanding claims of worker should be met up to a certain level by institutions which are independent of the financial position of the employer and cannot themselves become insolvent. Such institutions have already been set up under national legislation in several Member States.

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For some Member States big steps for others small steps. To this our efforts in the field of safety and occupational health added as my collaborator told you already and not to forget the directives for non-discrimination between men and women in pay access to work and equal treatment in social security.

In the most explosive field of workers participation the Community is not all that successful. The Statute for "European Company and the proposal for a fifth directive on the harmonisation of company law contain provisions on the participation of workers in the decision-making structure of public companies. Though these proposals date from the early seventies. I still think a political mistake will be made when the fifth directive will not be adopted.

I cannot tell you how important I think it is, workers should have information regarding their situation especially in times of economic difficulty. Employers or governments cannot demand wage-constraints from t em without giving the information on what is happening in a company.

For this reason I will propose to my colleagues to introduce a binding system for the information and consultation of workers in transnational companies taking advantage of what has happened in the OECD, ILO and United Nations. I think these companies contribute to our wealth, but a greater transparency of their action is needed to convince people especially workers there is more to transnationals than only economic wealth and power. This sounds revolutionary but it is a normal step to take. I donot expect to have an easy ride. Transnational companies will claim to have difficulties, but the representatives of workers have to organise themselves in order to fulfill possibilities given to them.

Every Member State stays free to make laws for transnational companies working on their territory. Supplementary norms as regards information and consultation of representatives of workers are needed for the transfrontier operations of those companies. Information on the evolution of the business and investment programs and not only

the shop floor problems should be given. Before decisions are taken consultation should take place when the position of workers is affected. The only new thing is norms shall be binding, also for instance for United States or Swiss based companies. At the same time I take it for granted this step will be discussed with our partners in international frameworks.

Conclusion

In conclusion, the Commission is seeking to develop a legal framework needed for the development of an European social policy. The development of the European idea of democracy is an essential contributory factor to the continued health of our industrial economies which must be equipped with the institutional means to implement change in a manner that is both efficient and humane. At the same time, the Community framework must be sufficiently flexible to allow certain Member States to develop their systems in stages.

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It cannot seek to impose a uniform solution, but must seek to embrace all solutions which achieve equivalent objectives. The necessary degree of convergence is the objective, not uniformity.