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# The Vredeling Proposal: Cooperation Versus Confrontation in European Labor Relations

by  
Richard P. Walker\*

Multinational corporations (MNCs),<sup>1</sup> companies that maintain operations in one or more countries outside their home base, have been described as capable of influencing the fortunes not only of those who work in the companies they control, but also of entire nations.<sup>2</sup> Since World War II, the dramatic increase in size and diversity of MNCs has cast them into the role of a major institution of the modern, world economic order.<sup>3</sup> Between a quarter and a third of all world production is controlled by MNCs, as well as over half of world trade.<sup>4</sup>

That MNCs possess enormous economic power is unquestioned. That this power should be controlled is also conceded; even the international business community has generally agreed to support codes of

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1. The term "multinational corporation" (MNC) is used interchangeably with other common terms describing international business operations. The United Nations refers to these entities as "transnational corporations," the Organization for Economic Cooperation and Development (OECD) uses the term "multinational enterprise," and the Department of State uses the term "transnational enterprise." In this article, "multinational corporation" will be used.

2. See generally Stanley, *International Codes of Conduct for MNCs: A Skeptical View of the Process*, 30 AM. U.L. REV. 973 (1981).

3. Resource industries, trading corporations and banking operations have long been carried on across national frontiers. In the last few decades, however, the expanding area of multinational operations has been the manufacturing industries. See Galbraith, *The Defense of the Multinational Company*, HARV. BUS. REV., Mar.-Apr. 1978, at 83, 84-87. This rapid growth is attributed to the development of two new technologies: (1) the technology for conquering distance (transportation and communication), and (2) the technology for fragmenting the production process into component operations which can be performed at different locations and integrated into a final product (standardized production engineering and management). See Barnett, *The World's Resources — Human Energy*, NEW YORKER, Apr. 7, 1980, at 46, 46-50.

4. INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH-SOUTH: A PROGRAM FOR SURVIVAL, REPORT OF THE INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES 187 (1980). See also Baade, *Codes of Conduct for Multinational Enterprises: An Introductory Survey*, in LEGAL PROBLEMS OF CODES OF CONDUCT FOR MULTINATIONAL ENTERPRISES 407, 409 (N. Horn ed. 1980) [hereinafter LEGAL PROBLEMS OF CODES OF CONDUCT].

conduct and to abide by national desires implicit in those codes.<sup>5</sup> Whether labor should have a right to share in the exercise of this economic power, or at the very least a right to be informed or consulted when a decision affecting its interests is about to be made, is a point of divergence leading to widespread disagreement. It is also the focal question underlying a recent effort in the European Economic Community (EEC) to require such disclosure by MNCs, through a controversial proposal known as the Vredeling Directive.<sup>6</sup>

The Vredeling Proposal aims to give workers in multinational companies with operations in the EEC the right to information on company policy which is likely to affect their well-being or livelihood. It is argued that, as a parallel to their rising influence and power, MNCs must assume new responsibilities, notably to local work forces who are caught up in this process of change.<sup>7</sup> However, corporate managers require a wide margin of freedom to make the decisions necessary to operate in today's competitive markets. In an era of escalating unemployment in Europe, the EEC needs to provide an attractive investment climate for multinationals, while maintaining some degree of control over the power wielded by MNCs. The Vredeling Proposal represents a balancing of these interests, an effort to meet the legitimate concerns of both sides of industry through a legally-binding instrument promoting cooperation and transparency in the operation of business enterprises. Unfortunately, firmly-entrenched beliefs concerning the "irreconcilable differences" between labor and management prevent widespread acceptance of the principles underlying the proposal. Efforts to reach a sensible conclusion have been defeated by obstructive, uncompromising activities by both sides of industry.<sup>8</sup> The bitter debate over the Vredeling Proposal perpetuates the "irreconcilable differences" between labor and management. This Article seeks to evaluate the dialogue between workers and management, and to add perspective to the role of the Vredeling Proposal in the development of European industrial relations legislation.

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5. See Trowbridge, *Anxiety in the Boardroom*, EUROPE, Nov.-Dec. 1982, at 9. See also Guertin, *A Business View on the Implementation of Codes of Conduct*, in LEGAL PROBLEMS OF CODES OF CONDUCT, *supra* note 4, at 295, 298.

6. Commission of the European Communities, Proposal for a 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) [hereinafter cited as Vredeling Proposal].

7. Statement of EEC Commissioner Ivor Richard to U.S. Chamber of Commerce in Washington, D.C. (Mar. 31, 1982), reprinted in EUROPEAN COMMUNITY NEWS, No. 7/1982, Apr. 1, 1982, at 2 [hereinafter cited as Richard's Statement to U.S. Chamber of Commerce].

8. *Boardroom Brouhaha*, EUROPE, May-June 1982, at 16-17.

I  
NATIONAL LABOR LEGISLATION AND MULTINATIONAL  
CORPORATIONS

A multinational corporation can be defined as a company that extends its business operations to two or more countries but which guides and influences those activities from one decision-making center.<sup>9</sup> The important characteristics are: (1) a central management in one country and (2) significant business activity in another country.<sup>10</sup> The result is a natural hiatus in industrial relations for international business. Labor's contribution to the production process occurs at the local level, while many MNC decisions are made outside the countries affected by such decisions. It is argued that this disrupts the "power" balance between workers and management, because the decision-makers are isolated from any local display of power by employees.<sup>11</sup>

The transnational dimension can defeat labor union bargaining strategy. National regulations controlling the bargaining relationship are likely to be ineffective, due to the MNC's ability to make decisions outside a particular country.<sup>12</sup> Labor's key bargaining weapon, the strike, is also likely to be blunted by transnational tactics. An MNC can minimize disruptions by temporarily shifting production to other locations, thereby maintaining a constant delivery of products and services to the areas affected by the labor dispute.<sup>13</sup> This improves the company's capacity to hold out during a strike. Although an MNC's freedom of action is limited by a significant capital investment in a country, it may still avoid a dispute entirely through a tactic known as the "runaway shop,"<sup>14</sup> closing operations in one country and reopening in another.<sup>15</sup> This position of strength conveys the message to workers that decisions are based on international considerations with little attention given to local needs.<sup>16</sup> By thereby reducing the confidence of

9. See generally Pultz, *Multinational Regulation of MNE Labor Relations*, 4 B.C. INT'L & COMP. L. REV. 409, 427 (1981).

10. *Id.* at 428; Baade, *supra* note 4, at 407, 408.

11. R. BLANPAIN, *THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES AND LABOUR RELATIONS: 1976-1979*, at 17 (1979).

12. Van Langendonck, *Procedures for Informing and Consulting Workers in Multinational Undertakings — Legal and Practical Aspects in the EEC Member States Together with Greece and Switzerland*, EEC MONOGRAPH V/770/80/EN, 2, 3 (1980).

13. See Blake, *Trade Unions and the Challenge of the Multinational Corporation*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 34, 37 (1972).

14. [1972] 2 LAB. L. REP. (CCH) ¶ 3795: "Removal of an existing business operation to another locality or a threat of removal may interfere with the free exercise of employees' rights. . . . This anti-union tactic is known in labor parlance as the "runaway shop."

15. See generally Pultz, *supra* note 9, at 441-446. "The multinational nature of the MNC puts it outside the reach of national laws designed to prevent undesirable tactics like the runaway plant." *Id.* at 442.

16. *Id.* at 422. See also Blake, *supra* note 13, at 36-37.

workers in their ability to influence decisions, MNCs are able to undermine both the union and the bargaining position it represents.<sup>17</sup>

## II THE DEVELOPMENT OF EUROPEAN COMMUNITY LABOR LAW

The European Economic Community has considered the unique problems faced by employees of the modern MNC. Efforts to integrate a multinational corporation's freedom to make decisions with a commensurate degree of responsibility to its workforce have resulted in several proposals in recent years for the harmonization of existing national legislation in the field of industrial democracy. Harmonization of national legislation to create a Common Market with a single industrial base is a primary objective of the Treaty of Rome,<sup>18</sup> establishing the EEC. Differing social, economic, and legal traditions of the Member States has resulted in the development of widely variant regulations, impeding economic integration. Article 100 and article 101 of the Treaty deal with the harmonization of legislation, with the twin objectives of abolishing obstacles to the free flow of goods and of creating the same competitive environment in all Member States. The legal authority for EEC industrial democracy legislation is also based on articles 8 and 9, in which the EEC social action program calls for greater involvement of the Community, and of workers, in the life of business enterprises.<sup>19</sup>

The development of EEC labor law has emphasized the importance of information disclosure and consultation between workers and management with a view toward reaching agreements. Trade unions maintain that meaningful negotiations require informed participants. If both parties negotiate on an informed basis, they can often avoid unnecessary conflict and dispute. Consultation provides both labor and management a forum to express their viewpoints, as well as an opportunity to better understand each other's position. Advantages include better job security, a sense of worker participation, less industrial strife, and a more informed perspective on all sides.<sup>20</sup> Further, in times

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17. See generally Vagts, *The Multinational Enterprise: A New Challenge for Transnational Law*, 83 HARV. L. REV. 739, 774 (1970). The effect of this reduction in union strength may be critical indeed; the relative positions of workers and employers is one of the factors that determines wage structures.

18. Treaty Establishing the European Economic Communities, Mar. 25, 1957, 295 U.N.T.S. 2 (German). The official English version is reprinted in 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II).

19. The social action program aims to promote "progress towards participation by both sides of industry in the decision-making process." *Preliminary Guidelines for a Community Social Policy Program*, 4 BULL. EUR. COMM. (Supp. 2/71), at 48 (1971).

20. See Pultz, *supra* note 9, at 435-439.

of high unemployment, a major cause of industrial unrest is uncertainty among employees about their future. Consultation helps workers to better understand the motives behind decisions and benefits management by preventing serious repercussions that may follow unilateral decisions.<sup>21</sup> In addition, it is often argued that managerial theory and practical experience point to increased productivity among workers who have an intimate knowledge of their workplace.<sup>22</sup>

As part of its social action program, the EEC Council of Ministers (Council) adopted a directive<sup>23</sup> in February, 1975 to safeguard employees' rights in the event of collective dismissals.<sup>24</sup> Workers' representatives must be fully informed of the circumstances surrounding the dismissals, and must be given a timely opportunity to discuss possibilities of avoiding or reducing lay-offs and mitigating their consequences. The employer must notify authorities of any dismissals planned, and may not put the dismissals into effect for a period of thirty days.

This legislation was followed by the 1977 Directive on Acquired Rights, protecting employee rights in the event of mergers and takeovers.<sup>25</sup> Before a merger takes place, the merging companies are required to inform the representatives of the workers of the reasons for the merger, the consequences it will have on the employees and the measures to be taken on their behalf.

### III

#### THE VREDELING PROPOSAL

The ambitious Vredeling Proposal, named for its original proponent, former Commissioner of Social Affairs Henk Vredeling, is intended to supplement the requirements of the Collective Redundancies

21. *Keeping Workers Informed May Help to Quell Unrest*, EUROFORUM, Nov. 7, 1980, at 6. See also Richard's Statement to U.S. Chamber of Commerce, *supra* note 7, at 2: "No one would deny that workers have at least the right to be informed about matters which are often literally a matter of economic life or death to them. . . . We are not simply a Common Market of goods and services, but also a Community of Peoples."

22. Lowin, *Participative Decision Making: A Model, Literature Critique and Prescriptions for Research*, 3 ORG. BEHAVIOR & HUMAN PERFORMANCE 68, 75-76 (1968).

23. In the EEC, binding legislation is created through the enactment of a directive which the Member States must implement into national law within prescribed time periods.

24. Council Directive of Feb. 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). "Collective Redundancies" is another term for mass lay-offs.

25. Council Directive of Feb. 14, 1977, on the Approximation of the Laws of the Member States Relating to the Safeguarding of Employees' Rights in the event of Transfers of Undertakings, Businesses, or Parts of Businesses, 20 O.J. EUR. COMM. (No. L 61) 26 (1977). See Bartlett, *Employees' Rights in Mergers and Takeovers — EEC Proposals and the American Approach*, 25 INT'L & COMP. L.Q. 621 (1976).

and Acquired Rights directives.<sup>26</sup> The Proposal asserts that in “complex” undertakings, most existing consultation and information procedures are inadequate and outdated. “Complex” undertakings are defined as firms with domestic subsidiaries, as well as MNCs.<sup>27</sup> In both of these situations, decisions which may have serious repercussions for employees at the local level are often considered and taken at a much higher level, while disclosure of information and consultation of workers is still confined to the affairs of the local entity where they are employed, i.e., the shop, area of activity, or factory. Even local management may be ignorant of the motives behind many corporate decisions. The information gap results in workers obtaining only a fragmentary, incomplete, and perhaps even erroneous understanding of the true business situation of the firm as a whole.

This problem is particularly acute for employees of MNCs, since labor legislation — especially laws relating to employees’ representative bodies — is generally limited to the jurisdiction of a single country.<sup>28</sup> The powers of employees’ representative bodies are also confined within national boundaries. Thus, a given country’s information and consultation procedures only have effect within the legal framework of that country, and generally only concern activities carried out within the country’s jurisdiction.<sup>29</sup>

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26. Vredeling Proposal, *supra* note 6. This proposal also supplements the First Directive on Company Law, O.J. EUR. COMM. (No. L 65), Mar. 14, 1968; the Second Directive on Company Law, O.J. EUR. COMM. (No. L 26), Jan. 31, 1977; the Third Directive on Company Law, O.J. EUR. COMM. (No. L 295), Oct. 20, 1978; the Fourth Directive on Company Law, O.J. EUR. COMM. (No. L 222), Aug. 14, 1978; and the Directive Coordinating the Requirements for the Drawing Up, Scrutiny, and Distribution of the Listing Particulars to be Published for the Admission of Securities to Official Stock Exchange Listing, O.J. EUR. COMM. (No. L 100), Apr. 17, 1980, all of which require publication of information concerning the business affairs of companies established under the laws of a Member State of the EEC. It also supplements the Modified Proposal for a Seventh Directive on Group Accounts, O.J. EUR. COMM. (No. C 14), Jan. 17, 1979, and the Proposal for a Directive on Periodic Information, O.J. EUR. COMM. (No. C 29), Feb. 1, 1979. Finally, the Vredeling Proposal supplements the Fifth Directive, which provides for worker participation and involvement in the business of EEC corporations. Proposal for a Fifth Directive on the Structure of Sociétés Anonymes and the Powers and Obligations of their Organs, O.J. EUR. COMM. (No. C 131), Dec. 13, 1972.

27. Explanatory Memorandum, Proposal for a Directive on Procedures for Informing and Consulting the Employees of Undertakings with Complex Structures, in Particular Transnational Undertakings, § I art. 1, n.7, *reprinted in* 13 BULL. EUR. COMM. (Supp. 3/80) 5, 6-7 (1980) [hereinafter cited as Explanatory Memorandum].

28. See Van Langendonck, *supra* note 12, at 3.

29. Similar problems can arise in companies operating solely within a particular nation, when systems for informing and consulting employees do not coincide with the structure of the firm. For example, an expanding company with establishments or subsidiaries throughout a country will face consultation problems if its workers continue to be represented only at the local level, with no representation at the level of the concern as a whole. The Vredeling Proposal addresses both of these forms of “complex structure.”

The Vredeling Proposal, therefore, requires that additional information be supplied by employers in each Member State concerning their company's transnational operations so that employees can have "a clear and complete picture of the activities and performance of the concern as a whole in the various countries in which it is established."<sup>30</sup> At present, national legislation on information and consultation obligations varies widely.<sup>31</sup> As part of the EEC's harmonization efforts, given the risk of competitive distortions due to differences in consultation and disclosure requirements, the proposal seeks to establish identical legal rights and obligations for all enterprises with a sizeable workforce and a relatively complex structure.<sup>32</sup> The Commission of the European Communities (Commission)<sup>33</sup> believes a legal framework for informing and consulting employees will lead to a uniform operating environment for all undertakings in the EEC.<sup>34</sup> A legal structure in the form of a mandatory instrument is deemed necessary to provide both sides of industry with legally enforceable sanctions. Existing disclosure guidelines set forth by the Organization for Economic Cooperation and Development (OECD)<sup>35</sup> and the International Labor Organization (ILO)<sup>36</sup> are in the form of voluntary codes; the Commission considers these standards inadequate because a company is free to disregard them entirely.<sup>37</sup>

Under the draft proposal, the management of the parent company is required to disclose at least every six months to the management of its Community subsidiaries certain information that will give a clear

30. Explanatory Memorandum, *supra* note 27, at 5.

31. Report of the Committee on Social Affairs and Employment on the Proposal from the Commission of the European Communities to the Council for a Directive on Procedures for Informing and Consulting the Employees of Undertakings, 1982-1983 EUR. PARL. DOC. (No. 1-324-82-B) 6 (1982) [hereinafter cited as Report of Committee on Social Affairs and Employment].

32. To prevent any discrimination in practice between Community-based and non-Community-based enterprises, the proposal imposes similar obligations on both.

33. The Commission is the executive branch of the EEC. It provides the general staff of the communities (the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community, here referred to collectively as "the EEC") and supervises and organizes the working of the Treaties through coordination of national policies, formulation of proposals for new community policy, and administration of existing policies. The Commission drafted the Vredeling Proposal.

34. See Kolvenbach, *The Evolving Concept of European Labor Relations Legislation*, 3 Nw. J. INT'L L. & BUS. 535, 556 (1981).

35. Annex to the Declaration of 21st June, 1976 by Governments of OECD: Member Countries on International Investment and Multinational Enterprises, O.E.C.D. Doc. 21 (76) 04/1, 75 DEP'T STATE BULL. 83-88 (1976), *reprinted in* 15 I.L.M. 967, 969 (1976).

36. The International Labor Organization: Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of November 16, 1977, *reprinted in* 17 I.L.M. 422 (1978).

37. *But cf.* the Badger case, where public opinion proved to be an effective sanction. See Stanley, *supra* note 2, at 1003. See also Smith, *Badger Revisited: Implications for the Implementation of the Transfer of Technology Code*, 1 INT'L TAX & BUS. LAW. 117 (1983).

picture of the activities of the entire concern. Management must convey information regarding the company's financial situation, manpower needs, investment programs and, in general, all procedures and plans liable to have a substantial effect on the workers' interests. The management of each subsidiary employing at least one hundred workers is required to communicate this information in a timely fashion to the employees' representatives. If the management of a subsidiary is unable to supply the required information, then it is the duty of the parent company's management to comply.<sup>38</sup> Employee representatives are under a duty to take into account the interests of the enterprise when communicating information to third parties, and to refrain from divulging secrets regarding the enterprise or its business.<sup>39</sup>

If the parent company contemplates a decision concerning the dominant enterprise or one of its subsidiaries which is likely to have a substantial effect on the interests of the workers, the draft proposal requires the parent company to forward precise information to the management of each of the subsidiaries within the Community at least forty days before adopting the decision. This information must provide details of the basis for the proposed decision, the legal, economic, and social consequences of the decision on the employees concerned, and the measures planned on their behalf.<sup>40</sup> Decisions falling under this provision include all those relating to (1) the closure or relocation of the enterprise, (2) restrictions or expansions, (3) substantial organizational changes, and (4) the establishment or termination of a long-term cooperation agreement with another enterprise.

The subsidiary management must communicate this information to the representatives of its employees and must ask for their opinion within thirty days. If the employees' representatives believe the proposed decision is likely to have a direct effect on terms of employment or working conditions, then the management of the subsidiary is required to hold consultations with them in an effort to reach agreement on the measures planned. If the subsidiary's management fails to arrange these consultations, the representatives of the workers have the right to initiate them, through their delegates, with the management of the parent company (the so-called "by-pass" clause).<sup>41</sup> When the management of an MNC whose decision-making center is located outside the EEC fails to ensure the presence within the Community of at least one person able to fulfill the information disclosure and consultation

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38. Vredeling Proposal, *supra* note 6, at art. 5, paras. 3, 4; art. 11, paras. 3, 4.

39. *Id.* at art. 15. Art. 15, para. 2 provides that "the Member States shall empower a tribunal . . . to settle disputes concerning the confidentiality of certain information."

40. *Id.* at art. 6, para. 1; art. 12, para. 1.

41. *Id.* at art. 6, paras. 3-5; art. 12, paras. 3-5.

requirements, the obligations devolve upon the management of the subsidiary employing the largest number of workers within the Community.<sup>42</sup>

The Member States are free under the draft proposal to choose the procedure for designating the workers' representatives. The nature of the representative body also is left to their discretion.<sup>43</sup> However, should a body representing employees exist at a level higher than that of the individual subsidiary or establishment (for example, at the level of the concern as a whole), the employees concerned must be informed and consulted at this level.<sup>44</sup>

#### IV REACTIONS TO THE VREDELING PROPOSAL

The Vredeling Proposal has attracted a torrent of controversy. Opponents of the directive question the need for a binding directive. As has been explained, the OECD Guidelines for Multinationals and the ILO Tripartite Declaration have already set forth voluntary information disclosure and consultation standards to be followed by MNCs. The Union of Industries of the European Community (UNICE), the European organization of national employer associations, pointed out that management assisted in establishing these voluntary guidelines and that they represent a large measure of consensus and employer support.<sup>45</sup> Mandatory rules would be imposed without the consensus of either labor or management, rendering harmonious cooperation unlikely and a successful result impossible. The success of the voluntary programs,<sup>46</sup> it is claimed, proves that industrial relations should be handled in a non-binding, discretionary manner. Therefore, according to UNICE, no case has been made for the introduction of obligatory rules.

The American Chamber of Commerce (AMCHAM) in Belgium contributed to this position by expressing the firm commitment of American business to the principle of "good corporate citizenship."<sup>47</sup> American business supports voluntary guidelines concerning various

42. *Id.* at art. 8.

43. Representative bodies in addition to the unions include local works councils and shop stewards committees. See generally INT'L LABOUR OFFICE, COLLECTIVE BARGAINING IN INDUSTRIALIZED MARKET ECONOMIES (1973).

44. Vredeling Proposal, *supra* note 6, at art. 7 and art. 13.

45. Kolvenbach, *supra* note 34, at 558.

46. As an indication of the success of the OECD Guidelines, UNICE pointed to the small number of complaints made and to their resolution by the Investment and Multinational Enterprises Committee of the OECD. See Report of the Committee on Social Affairs and Employment, *supra* note 31, at 5.

47. See Battaille, *The European Commission's Proposals on Worker Participation in the European Economic Community*, 3 NW. J. INT'L L. & BUS. 517, 527 (1981).

areas of corporate activity in order to foster mutual confidence between enterprises and other interests, and to determine a framework for business activities. The Vredeling Proposal's mandatory standards would only conflict with the goals of the existing voluntary guidelines, and thus would jeopardize the success of these "promising programs."

American corporations with operations in the EEC have also expressed concern about the prospect of overlapping legislation. AMCHAM stated that unnecessary duplication of legislation may adversely affect business operations and should therefore be avoided.<sup>48</sup> The inconsistency of duties imposed by the various guidelines confuses management about what actions are acceptable and what response to these actions can be expected from the various governmental bodies.<sup>49</sup> Changes in corporate activity having the greatest significance to employees have already been the subject of EEC legislation. The Directives on Collective Dismissals and Transfers of Undertakings<sup>50</sup> compel information disclosure and consultation in situations of particular importance to workers. Added to these requirements is the legislation in virtually all EEC Member States requiring disclosure of certain additional information to workers. Similarly, many American companies are required under U.S. law to file public reports with the United States Securities and Exchange Commission, disclosing substantial information regarding their international operations. This information is public, and is available to workers. Periodic reports to shareholders, also available to workers, contain similar information to that required by the Securities and Exchange Commission. The Vredeling Proposal therefore requires MNCs to disclose information "already available in a different form."<sup>51</sup> This will entail a substantial cost of compliance<sup>52</sup> but will result in little benefit to workers.

In spite of these strong arguments against a binding code,<sup>53</sup> business has had little success in its efforts to convince the Commission to abandon the proposal. The Commission has countered these arguments by pointing to evidence offered by employee representatives,

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48. *Id.* at 527-31.

49. R. HELLMAN, *TRANSNATIONAL CONTROL OF MULTINATIONAL CORPORATIONS* 2 (M. Freidberg, trans. 1977).

50. *Supra* notes 24 and 25.

51. Battaille, *supra* note 47, at 529.

52. Because of the amount of information required, the frequency with which it must be provided, and the translation which has to be provided to make this information accessible to local worker representatives, many companies claim they will have to establish large administrative units to comply with these standards. Kolvenbach, *supra* note 34, at 558-559.

53. Note also the more general debate questioning the enforceability of mandatory codes against foreign enterprises which is beyond the scope of this Article. See generally Stanley, *supra* note 2. See also Plaine, *International Regulation of Restrictive Business Practices*, PVT. INVESTORS ABROAD 1 (1979).

such as the European Trade Union Confederation (ETUC), that purely voluntary procedures have not proved adequate.<sup>54</sup> A 1979 review of the OECD Guidelines conducted by the OECD Committee on International Investment and Multinational Enterprises stated that "significant further efforts" are needed to foster compliance with the recommended standards.<sup>55</sup> In the United Kingdom, a survey of trade union views conducted by the Department of Employment found "almost unanimous agreement that the OECD Guidelines had no impact to date on the conduct of the foreign multinationals in the UK."<sup>56</sup> The report expressed the "widespread view" that additional codes were needed.

The House of Lords Select Committee on the European Communities found that the Vredeling Proposal is in principle timely and necessary.<sup>57</sup> An investigation by the Select Committee concluded that the existing, purely voluntary disclosure system is inadequate, and must be replaced by a system with legal sanctions. "The current practices of at least half the organizations covered by the proposed Vredeling Directive are inadequate. Employees are dissatisfied with the information they receive and consultative arrangements in a large number of undertakings either are absent or function perfunctorily. . . . [It] may therefore be necessary to put forward clear legally backed minimum standards supported by a code of practice embodying guidelines to assist in applying them within the spirit of Article 189 of the Treaty."<sup>58</sup>

The European Parliament in its debates on the Vredeling Proposal agreed that the existing voluntary codes are inadequate. Some members of Parliament found industry's strong resistance to the Vredeling Proposal particularly indicative of the weakness of the voluntary guidelines. "We are all the more at a loss to understand why employer organizations are digging in their heels on measures whose sole aim is that of giving a legal foundation to that which has been, they freely admit, functioning smoothly up to now on a voluntary basis."<sup>59</sup> As a result, the Vredeling Proposal has passed through the EEC legislative process unchanged in its basic framework, supported by legal sanctions in the case of non-observance.

54. See 37TH REPORT OF THE HOUSE OF LORDS SELECT COMMITTEE ON THE EUROPEAN COMMUNITIES [hereinafter cited as HOUSE OF LORDS REPORT], TUC *ev.* Q36, 37; Lord Scanlon's *ev.* Q114; ETUC Memorandum Report 133. See also evidence cited in Report of Committee on Social Affairs and Employment, *supra* note 31, at 5, 6.

55. Quoted in McMullen, *Undertakings with Complex Structures and the Consultation of Employees*, 3 COMPANY LAW, 78, 79 (Mar. 1982).

56. *Id.* at 79.

57. *Id.*

58. HOUSE OF LORDS REPORT, *supra* note 54, para. 69. Article 189 of the Treaty of Rome provides the legal basis for the issuance of directives.

59. Statement by Member Eisma (NL), O.J. EUR. COMM. (No. 1-288) 37 (Sept. 14, 1982) (Debates of European Parliament).

It is incongruous that American MNCs operating in Europe have so strongly opposed mandatory consultation and disclosure requirements, when similar obligations are well-established and accepted principles of American labor law. The National Labor Relations Act<sup>60</sup> imposes upon both employers and unions the legally-binding duty to bargain collectively in good faith.<sup>61</sup> Decisions of the National Labor Relations Board (NLRB) and the courts have developed a distinction between "compulsory" and "permissive" subjects of bargaining.<sup>62</sup> If a subject is "compulsory," then an employer or a union must, upon request, bargain collectively on that subject to the point of agreement or impasse. Refusal to do so is a violation of the Act. If a subject is "permissive," an employer or a union may bargain collectively on that subject, but refusal to do so is not a violation of the Act. A subject is mandatory if the NLRB and the courts consider it to be covered by the terms "wages" or "conditions of employment."<sup>63</sup> American labor law stresses voluntary collective bargaining,<sup>64</sup> but recognizes that the parties need legal protection for the exercise of their rights. "Perhaps the most distinctive feature of modern labor relations statutes is that they not only state that employees have certain rights but also grant effective protection of those rights."<sup>65</sup>

Analogously, the Vredeling Proposal seeks to recognize certain rights for employees in the EEC, and "also grant effective protection of those rights." Consultation, in effect, provides employee representatives an opportunity to negotiate with employers concerning conditions of employment. By establishing "compulsory subjects" of consultation and disclosure, the EEC is providing its workers protection for the exercise of rights American law has long recognized.

Assuming a binding MNC directive is indeed necessary, the question arises whether the draft proposal is capable of producing the desired results. The general agreement among those who have considered the proposal is that in its original form, the provisions are too cumbersome, too vague, and too complex.<sup>66</sup> Thirty-five amendments have

60. National Labor Relations Act, 29 U.S.C.A. § 151 (1935), as amended by the Labor-Management Relations (Taft-Hartley) Act, 29 U.S.C.A. § 141 (1947), and by the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act, 29 U.S.C.A. § 401 (1959).

61. To bargain collectively is the "performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Section 8(d) of the Labor-Management Relations Act.

62. See, e.g., *N.L.R.B. v. Borg-Warner Corporation*, 356 U.S. 342 (1958); *Fibreboard Paper Products Corporation v. N.L.R.B.*, 379 U.S. 203 (1974).

63. See generally, *Subjects of Collective Bargaining*, [1976] 2 LAB. L. REP. (CCH) ¶ 3020.

64. [1976] 2 LAB. L. REP. (CCH) ¶ 3010.

65. *Id.* at ¶ 2201.

66. See, e.g., Report of Committee on Social Affairs and Employment, *supra* note 31, at 7.

been adopted by the European Parliament, fundamentally changing the nature of the document. Some of the supporters of the Vredeling Proposal claim the amendments have undermined the purposes of the directive.<sup>67</sup> Others acclaim the amended version as a coherent piece of legislation. The directive is currently before the Council of Ministers, which has final decision-making authority over the formulation of EEC policy. An analysis of the amended Vredeling Proposal follows.

Business managers profess not to oppose disclosure obligations in principle.<sup>68</sup> They assert that disclosure of information and consultation contributes to a healthy investment climate by resolving many of the labor and social problems associated with MNCs.<sup>69</sup> However, management desires flexibility in fulfilling disclosure and consultation standards in order to meet the varying requirements and circumstances of each particular situation. UNICE pointed out that at a time of serious economic difficulties, rigid, complex procedural requirements can only further inhibit potential investment.<sup>70</sup> In a time of rapidly changing economic conditions, the inflexible provisions of the original proposal would have made it difficult for management to make the timely decisions necessary for the effectiveness and sometimes even the survival of the corporation. This would have created barriers to the timely and efficient allocation of MNC resources in Europe and abroad.<sup>71</sup> In these ways, the draft proposal would have increased the cost of doing business in Europe. This would have made the EEC Member States less attractive to foreign capital, thus exacerbating Europe's painful problems of unemployment and economic decline.<sup>72</sup>

Social Affairs Commissioner Ivor Richard countered these investment fears by citing the experience of Germany, Denmark, and the Netherlands, all of which have consultation standards similar to the draft proposal. In these countries, foreign investment has not been ad-

67. Comments by European Trade Union Confederation, quoted in *Europe's Unions are no Match for America's Multinationals*, *ECONOMIST*, Oct. 16, 1982, at 79.

68. Union des Industries de la Communauté Européenne, Proposal for a Directive on Employee Information and Consultation Procedures in Enterprises with a Complex Structure, and in Particular Transnational Enterprises: UNICE Position, paras. 1-4 (Feb. 19, 1981) [hereinafter cited as UNICE Position]. See also *supra* notes 5, 22, 45 and 47 and accompanying text.

69. See Pultz, *supra* note 9, at 447. See also R. BLANPAIN, *supra* note 11, at 21.

70. Newspaper comments have underlined the investment risks. See, e.g., *Workers Have a Right to Know More . . . How Much More?*, *N.Y. Times*, Oct. 3, 1982, § 3, at 2; *Diese Informationspflicht geht zu weit*, *Frankfurter Allgemeine Zeitung* No. 231, Oct. 4, 1980, at 13; *Why You May Have to Bare Your Soul to the Workers*, *Fin. Times*, Oct. 10, 1980, at 27; *Ein neyes Mitbestimmungskapitel in der EG?*, *Neue Zürcher Zeitung*, Nov. 11, 1980.

71. Some members of the American business community fear that the Vredeling Proposal will be used "to obstruct the establishment of production facilities to exploit new market opportunities outside of Europe, or even the expansion of production facilities by American-based MNCs in hard-pressed regions in our own country." Trowbridge, *supra* note 5, at 10.

72. UNICE Position, *supra* note 68, at para. 24.

versely affected by the imposition of strict consultation requirements, despite threats of disinvestment similar to those voiced during the current debate.<sup>73</sup> The stability created by close contacts between labor and management may even attract foreign investment. Commissioner Richard stressed that the consultation burden has an insignificant impact on corporate profits, and therefore does not seriously alter the investment plans of enterprises.<sup>74</sup>

Nevertheless, the European Parliament's center-right majority (made up of Christian Democrats, Conservatives, Liberals and Gaullists) has accommodated business concerns by narrowing and clarifying the scope of the Vredeling Proposal's application. Rather than containing the original proposal's general obligation to disclose "all procedures and plans liable to have a substantial effect on employees' interests,"<sup>75</sup> the amended version provides a more specific description of what is to be disclosed. Some of the provisions of the draft considered to be most inflexible and restrictive were eliminated. Thus, under the amended version management is not required to consult employee representatives prior to establishing or cancelling a long-term cooperation agreement.<sup>76</sup> The obligation to consult with a view toward reaching agreement prior to planned shutdowns, production cutbacks, or other important decisions was weakened so as to make it "desirable" to reach agreement.<sup>77</sup> The consultation requirement was further limited so as only to require information disclosure and consultation with each subsidiary directly affected by a given decision, rather than with all subsidiaries in the Community, as originally proposed.<sup>78</sup>

These amendments seem to satisfy the goal of fashioning a more coherent, workable directive. Other amendments, however, with the same purported goal, seem intended to emasculate the document. The draft proposal applied to subsidiaries employing at least one hundred workers. The revised version retains this threshold, but adds another

73. Statement by Social Affairs Commissioner Richard, O.J. EUR. COMM. (No. 1-288) 80 (Sept. 14, 1982) (Debates of European Parliament). See also comments by former Social Affairs Commissioner Henk Vredeling, reported in *Keeping Workers Informed May Help to Quell Unrest*, *supra* note 21, at 7.

74. Richard, *supra* note 73, at 80. If Commissioner Richard means that the cost of the consultation process is insignificant, he is entirely correct. If, however, he is referring to the overall economic impact of restricting management's freedom of operation through the consultation obligation, then his point may be misstated.

75. Vredeling Proposal, *supra* note 6, at art. 5(h); art. 11, para. 2(h).

76. But note Statement of Social Affairs Commissioner Richard, O.J. EUR. COM. (No. 1-291) 134 (Nov. 17, 1982) (Debates of European Parliament), requesting retention of this provision in the final version of the Vredeling Proposal.

77. *Community: EP Dilutes Proposals on Multinationals' Disclosure*, [1982] 460 COMMON MKT. REP. (CCH) (719 EUROMARKET NEWS) 1, 2.

78. Art. 6(3) and art. 8 of Text Amended by the European Parliament, O.J. EUR. COMM. (No. C 292) 36-37 (Oct. 12, 1982) [hereinafter cited as Text Amended by European Parliament].

limitation that the parent company must employ at least 1,000 workers.<sup>79</sup> The exclusion of small and medium-sized enterprises weakens the impact of the proposal by reducing the scope of its coverage.

A similar effect results from amendments involving frequency and timing of information disclosure. The amended version requires the transmission of information annually instead of every six months, thereby reducing the labor-management interaction that was a primary goal of the initiative.<sup>80</sup> There is also concern under the amended version that employers need only consult employee representatives forty days prior to "implementing" a proposed decision,<sup>81</sup> rather than forty days prior to "adopting" a decision, as in the original text.<sup>82</sup> The amendment seems to indicate that management need not consult its workers until after a decision has been made. This would defeat the purposes and goals of consultation, goals that management freely admits are laudable.<sup>83</sup>

These amendments call into question management's motive in requesting changes to the draft proposal and in mounting the most expensive lobbying campaign in the European Parliament's history.<sup>84</sup> Was management's motive to promote openness and cooperation between both sides of industrial relations within the framework of a clear and consistent set of rights and obligations, or was it merely trying to weaken the proposal so as to retain its current position in the corporate decision-making structure? Perhaps management's motives were mixed, and unquestionably there are many MNCs who are excellent employers and good corporate citizens, and who genuinely see the value of cooperation in industrial relations rather than confrontation. However, it is a disappointment to many of the supporters of the draft Vredeling Proposal that the few uncooperative corporations, those whose unwillingness to follow voluntary guidelines gave rise to the need for a binding directive in the first place,<sup>85</sup> will now, if the amended proposal passes, be governed by a skeletal directive with few substantive obligations. The consultation provision of the Vredeling

79. *Id.* at 34, art. 4.

80. However, any information that is genuinely urgent could still become a matter for consultation. See Report of Committee on Social Affairs and Employment, *supra* note 31, at 10.

81. Text Amended by European Parliament, *supra* note 78, at 36, art. 6.1.

82. Again, Commissioner Richard has requested the Council of Ministers, in considering the Proposal as revised by Parliament, to carefully evaluate the wisdom of this particular amendment. Commissioner Richard's Statement to Parliament, *supra* note 76, at 135.

83. See *supra* notes 5, 22, 45, 47, 68, and 69 and accompanying text.

84. *Europe's Unions are no Match for America's Multinationals*, *supra* note 67, at 79.

85. The few MNCs that are not good corporate citizens have "massively undermined public confidence in transnational business activity as a whole. It is to restore public faith in a key part of modern business that the community must take some action within its own jurisdiction." Report of Committee on Social Affairs and Employment, *supra* note 31, at 8.

Proposal will be converted from a legally-binding obligation designed to promote cooperation to an elaborate notice requirement.<sup>86</sup>

Opposition to the draft proposal may not have been entirely due to its complexity, but at least in part to a fear that the directive would be "a decisive step toward the internationalization of collective bargaining. Until now, the unions have not had the legal rights to deal with employers beyond the national level."<sup>87</sup> American MNCs considered the prospect of the internationalization of collective bargaining a challenge to the way their business operations are conducted.<sup>88</sup> As a response to this and other considerations, several bills were introduced in Congress to prohibit U.S. firms from providing information they are not required to disclose under U.S. law.<sup>89</sup> One bill would permit the President to retaliate against foreign investment in the U.S. in the event of restrictions placed on American companies abroad.<sup>90</sup> Another bill would subject MNCs to inconsistent legal obligations: the U.S. government would be empowered to fine American corporations that comply with EEC and other disclosure laws.<sup>91</sup> If any of these bills pass, legal sanctions will be applied to discourage consultation and information disclosure.

There are other reasons to question management's basis for opposing the directive. On one hand, MNCs claim the draft proposal is unacceptable because it would entail "a substantial cost of compliance,"<sup>92</sup> requiring the establishment of large administrative units to comply with the disclosure standards. On the other hand, however, the Vredeling Proposal is criticized as unnecessary because the information is "al-

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86. Recent literature sometimes takes for granted that the purpose of the Vredeling Proposal is to impose a notice requirement on companies. See, e.g., *Europe's Unions are no Match for America's Multinationals*, *supra* note 67, at 79.

87. Heinz Kröger, an official with UNICE, quoted in *A Call for Multinationals to tell Labor their Plans*, *BUS. WK.*, Jan. 12, 1981, at 40.

88. *Bad News Brewing in Brussels*, *FORTUNE*, Dec. 14, 1981, at 142, 146.

89. *A U.S. Ploy to Head Off an 'Attack on Business'*, *BUS. WK.*, Nov. 23, 1981, at 56.

90. H.R. 4407, 97th Cong., 1st Sess. (1981). When the 97th Congress ended in December, no action had been taken on this bill. However, the provisions have been incorporated in legislation introduced in the current session by Representative Jones (D-Okla.), the Reciprocal Trade and Investment Act of 1983, H.R. 1571, 98th Cong., 1st Sess. (1983).

91. S. 1592, 97th Cong., 1st Sess. (1981) (introduced by Senator Symms (R-Idaho)). Again, no action had been taken on this legislation when the 97th Congress ended, and Senator Symms has not yet decided whether to reintroduce the bill. However, a similar bill has been introduced by Representative Luken (D-Ohio), the Protection of Confidential Business Information Act of 1983, H.R. 1532, 98th Cong., 1st Sess., 129 CONG. REC. 16, E541 (1983). The bill would enable American MNCs to seek protection from the Securities Exchange Commission when required to disclose confidential business information under the Vredeling Proposal or other foreign legislation. H.R. 1532 is now before the House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection and Finance.

92. Kolvenbach, *supra* note 34, at 558-559. See also UNICE Position, *supra* note 68, at para. 22.

ready available (to workers) in a different form."<sup>93</sup> Detached persons might entertain a degree of skepticism about the claim of extensive costs; a transfer of available information from one form to another is not likely to entail significant expense.

Another controversial amendment involves the secrecy provision. Under the original proposal, managers were concerned about the lack of protection for confidential information. Although the draft proposal recognized the need to protect company secrets by imposing a duty on employee representatives not to divulge confidential information,<sup>94</sup> the proposal lacked an adequate guarantee that these secrets would be effectively protected.<sup>95</sup> Trade secrets are highly marketable and difficult to protect in a competitive market, and corporations legitimately feared their competitive positions would be seriously jeopardized.<sup>96</sup>

The European Parliament agreed that the confidentiality provisions were insufficient as drafted. An amendment was passed to tighten the secrecy requirement by giving managers broad discretion to declare information confidential.<sup>97</sup> This change permits management to withhold any information whose disclosure could substantially harm a company's prospects or interests, thus reducing the scope of business secrets that would have to be divulged. The amendment evoked a bitter response from European trade unions. "The unions will not accept secrecy provisions which allow the multinationals to control the information flow."<sup>98</sup> Labor's concern is that Parliament's version of the proposal does not provide any criteria for judging whether or not a given piece of information is indeed a company or trade secret.

In reviewing Parliament's amendments, the Commission agreed that stricter control over company secrets is necessary, but felt strongly that management should not be the sole judge of the confidentiality of information. "It is important that we should repeat here the caveat that the non-provision of information must not be likely to mislead the workforce with regard to facts and circumstances essential for assessing the company's situation."<sup>99</sup> The Commission insisted on retaining the tribunal procedure it had proposed in the draft directive.<sup>100</sup> The tribunal would review disputes concerning the confidentiality of certain in-

93. Battaille, *supra* note 47, at 529. See also UNICE Position, *supra* note 68, at paras. 7-9, and *A Call for Multinationals to tell Labor their Plans*, *supra* note 87, at 40.

94. Vredeling Proposal, *supra* note 6, at art. 15, para. 1.

95. *Multinationals: EEC Industries Opposed*, EUROPE No. 2931, June 18, 1980, at 15.

96. UNICE Position, *supra* note 68, at para. 23.

97. Text Amended by European Parliament, *supra* note 78, at 35, art. 5.3.

98. Warns Ernst Piehl, political officer of the ETUC, *quoted in Slapping Down Labor's Demand for Disclosure*, BUS. WK., Nov. 1, 1982, at 48.

99. Commissioner Richard's Statement to Parliament, *supra* note 76, at 136.

100. See *supra* note 39.

formation and establish over time "a body of case law which would do more than either of our two institutions can do at this stage to establish exactly where the dividing line between disclosure and confidentiality should rest."<sup>101</sup> Considering the conflicts between the legitimate interests of both parties that will inevitably arise over the secrecy provision, this appears to be a fair resolution.

An important amendment concerning the extra-territorial effect of the proposal has commanded general support. Parliament decided that the legal obligation to inform and consult employees should be imposed on the Common Market subsidiary concerned and not on the parent company established outside the EEC or on the subsidiary employing the largest number of employees within the Community, as originally proposed. Parliament's amendment removes the controversial right to "by-pass" the management of the subsidiary and approach the parent company in cases where disclosure of information or consultation has not taken place. The by-pass procedure had attracted a great deal of criticism and questions of enforceability because of its potential extraterritorial application of EEC law.<sup>102</sup> The amended version still provides access to the management of the parent company, but only in writing and after a period of thirty days.<sup>103</sup> The parent company would then be obliged to give the relevant information, but through the management of the subsidiary concerned or through an authorized agent of the corporation. Compliance is ensured by a new provision giving workers' representatives the right to apply for a court ruling requiring the parent company or subsidiary to fulfill its obligations.<sup>104</sup> Thus, management could ignore its consultation duties only at a risk of being subjected to court proceedings. The Commission agreed with the Parliament that this provision is clearer and will adequately compel management's compliance.<sup>105</sup>

However, the Commission did not accept Parliament's amendment regarding the selection of employee representatives.<sup>106</sup> Under the original proposal, each Member State was free to choose the procedure for designating employee representatives. Parliament was concerned that there was no provision ensuring that workers' representatives have workers' interests foremost in mind.<sup>107</sup> Accordingly, it passed an

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101. Commissioner Richard's Statement to Parliament, *supra* note 76, at 136.

102. Report of Committee on Social Affairs and Employment, *supra* note 31, at 11. *See also* Todd, *Parliament Softens the Blow*, EUROPE, Nov.-Dec. 1982, at 11.

103. Text Amended by European Parliament, *supra* note 78, at 35, art. 5.4 and at 39, art. 11.4.

104. *Id.* at 35, art. 5.5 and at 39, art. 11.5.

105. Commissioner Richard's Statement to Parliament, *supra* note 76, at 135.

106. The Council of Ministers is given the opportunity to consider Parliament's amendments as well as the Commission's recommendations.

107. *See Workers Have a Right to Know More . . . How Much More?*, *supra* note 70, at 2.

amendment recommended by the Legal Affairs Committee<sup>108</sup> requiring that representatives be elected according to democratic principles.<sup>109</sup> Moreover, the amendment excludes from employees' representative bodies anyone engaged in management, as well as appointed trade union representatives from outside the company. "Those who represent working men must be elected by secret ballot by those working men and from those working men."<sup>110</sup>

The Commission considered this point too harsh because it precluded lower level managers from participation, even though they have the same need to be informed as do other workers.<sup>111</sup> The Commission was even more emphatic in its opposition to the provision requiring secret ballot elections. In Commissioner Richard's Statement to Parliament, he stated that EEC directives must be flexible instruments, susceptible of incorporation by each of the ten Member States without requiring substantial alterations of existing systems, traditions and practices.<sup>112</sup> Richard noted that it is difficult to change systems of industrial relations which have been established over a number of years, and Community law must progress step by step. Each Member State should be allowed to maintain its preferred system of selecting workers' representatives. In no way would this flexibility preclude the use of direct elections.<sup>113</sup>

Parliament's amendment requiring secret ballot elections recognizes the problems inherent in a non-democratic representation system. There is always the danger that unaccountable representatives may be willing to sacrifice the interests of a particular group of employees for a larger national, perhaps political, goal. The EEC has noted the desirability of democratic principles, and has prescribed this system of secret ballot elections in its recent worker participation initiatives.<sup>114</sup> As part of the "step by step" progression of Community law, it would be a step backwards if the Vredeling Proposal were to ignore the merits of making employee representatives accountable to the workforce.

The text of the amended Vredeling Proposal is now before the EEC Council of Ministers awaiting final decision. In all likelihood, the amended version will pass, as there is little reason for companies to

108. Report of the Committee on Social Affairs and Employment, Opinion of the Legal Affairs Committee, 1982-1983 Eur. Parl. Doc. (No. 1-324/82/A) 27 n.10 (June 14, 1982).

109. Text Amended by European Parliament, *supra* note 78, at 34, art. 2.

110. Statement by Member Patterson, O.J. EUR. COMM. (No. 1-288) 33 (Sept. 14, 1982) (Debates of European Parliament).

111. Commissioner Richard's Statement to Parliament, *supra* note 76, at 137.

112. *Id.* at 136.

113. *Id.*

114. See, e.g., the Fifth Directive on Company Law, Proposal for a Fifth Directive on the Structure of *Sociétés Anonymes* and the Powers and Obligations of their Organs, O.J. EUR. COMM. (No. C 131), Dec. 13, 1972.

avoid complying with the consultation procedures as amended by Parliament.<sup>115</sup> Supporters of the directive, disappointed by the diluted proposal, can take solace in the fact that the original version most likely would never have been accepted by the more conservative governments on the Council.<sup>116</sup> The amended document does not impose many significant new obligations on MNCs, but does promote and publicize cooperative management. Rather than signalling a roadblock to EEC industrial relations legislation, it contributes to the development of information disclosure and consultation obligations begun in 1975 with the Directive on Collective Dismissals. Public opinion in most countries seems to be gathering momentum in support of more disclosure by business enterprises.<sup>117</sup> Although implementation of the idea embodied in the Vredeling Proposal may have been delayed, it will continue to shape European labor relations legislation.

## V

### CONCLUSION

The aim of the Vredeling Proposal is to develop a sense of cooperation between workers and management by attempting to remove any mistrust that might otherwise exist. It seeks to promote openness in the decision-making process through the mechanisms of information disclosure and consultation on matters of mutual interest. It is in the interest of both sides of industry to attain this goal. However, it can only be achieved through good faith cooperative efforts, not through the confrontational approach that has characterized the Vredeling debate and pervades most of industrial relations. It is difficult to reconcile by legislative action the opposing strategies of cooperation and confrontation. The respective parties seem determined to maintain their current level of power and, given the opportunity, to wrestle away what power they can. These tactics run counter to the cooperation principles of the Vredeling Proposal, principles that both sides of industry agree are in their best interest to promote. This basic level of agreement on the merits of cooperation can be the starting point for future efforts to build an authentic sense of partnership between management and workers.

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115. See *A Shadow of Vredeling*, N.Y. Times, Dec. 26, 1982, at 1F.

116. Great Britain was the only Member State that was a declared opponent of the original Vredeling Proposal. The new conservative West German government is likely to be of similar opinion. See *Europe's Unions are no Match for America's Multinationals*, *supra* note 67, at 79.

117. R. BLANPAIN, *supra* note 11, at 214.