

CORPORATISM REVISITED

Summary:

In September 1994, the EU adopted a directive on European Works Councils (EWC Directive). The purpose of the article is 1) to analyse the content and scope of this directive in relation to the power position of capital and labour at European level, and 2) to analyse the historical preconditions of the directive in the light of corporatist theory. The author interprets the directive in continuity with main-stream, social democratic reform demands from internationally advanced sectors of the trade union movement in the 1960s, and he argues that the directive itself and successive developments after 1994 can fruitfully be seen as expressions of a peculiar Euro-corporatism.

Key words: Corporatism, European Works Councils, European Union.

Paul Knutsen is dr. philos. and professor of contemporary history at Lillehammer University College. Among his publications are *Korporatisme og klassekamp* (Corporatism and the Class Struggle, doctoral dissertation) (1994); *Penger, stål og politikk. En problemorientert innføring i EUs historie* (Money, steel and politics. A problem-oriented introduction to the history of the European Union) (1998); *Analytisk narrasjon. En innføring i historiefagets vitenskapsfilosofi* (Analytical narration. An introduction to fundamental problems and theories of history) (2002).

Sammendrag:

I september 1994 vedtok EU et direktiv om Europeiske Samarbeidsutvalg (ESU). Formålet med denne artikkelen er 1) å analysere direktivet i forhold til maktposisjonen for kapital og arbeid på europeisk nivå, og 2) å analysere de historiske forutsetningene for direktivet i lys av korporativ teori. Forfatteren finner kontinuitet mellom direktivet og sosialdemokratiske reformkrav fra fagbevegelsens internasjonalt framskredne sektorer allerede fra 1960-tallet, og han hevder at både selve direktivet og utviklingstrekk etter 1994 kan tolkes som uttrykk for en særegen euro-korporatisme.

Nøkkelord: Korporatisme, Europeiske Samarbeidsutvalg, EU.

Paul Knutsen er dr. philos. og professor i samtidshistorie ved Høgskolen i Lillehammer. Han har bl.a. offentliggjort *Korporatisme og klassekamp* (dr. avh 1994), *Penger stål og politikk. En problemorientert innføring i EUs historie* (1998), og *Analytisk narrasjon. En innføring i historiefagets vitenskapsfilosofi* (2002).

Forord

Denne artikkelen tar utgangspunkt i en artikkel jeg publiserte i *Economic and Industrial Democracy. An International Journal* (Vol. 18 No. 2, 1997), med tittelen “Corporatist Tendencies in the Euro-Polity. The EU Directive of 22 September 1994, on European Works Councils”. Jeg kommenterer bl.a. sosiologen Wolfgang Streecks svar til meg (“Neither European nor Works Councils. A Reply to Paul Knutsen”, i samme nr. av *EID*), og framhever tidsdimensjonens betydning for gyldigheten av en gitt tolkning: Hva betyr et annet utsiktspunkt i tiden, i dette tilfelle våren 2002, for relevans og fruktbarhet av tolkninger som ble foretatt for 6-7 år siden? Enkelt formulert: Har utviklingen så langt styrket Streecks betoning av nasjonalisme og neo-liberalisme, eller er det snarere slik at de korporative tendensene på EU-nivå er blitt sterkere?

En noe forkortet versjon av denne artikkelen vil bli trykt som eget kapittel i Ian Fitzgerald & John Stirling (eds.): *European Works Councils in Action* (Routledge, 2003).

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1. THE IMPORTANCE OF HISTORICAL TIME-CONSCIOUSNESS

One difference between political scientists and historians is that the former (or at least some of them) make predictions about the future (*ex ante*), whereas the latter normally limit theirs to the past and make what we can call predictions *ex post*. Historians' *postdictions* therefore amount to what is normally labelled historical explanations. Even if there is a radical difference between explanations modelled on the natural sciences, i.e. a scientism advocated by logical positivists (Hempel 1942), and the hermeneutically oriented understanding presented in a narrative mode (Ricoeur 1984, Knutsen 2002), a historical explanation is always an explanation of something that has already happened and therefore belongs to the past (*res gestae*). Thus, in an article published in 1997 on corporatist tendencies in the Euro-polity, my main aim was to discuss the adoption of the EWC directive of September 1994 in a *historical* perspective. As far as the *future* was concerned, I restricted myself to mentioning the possibility of 1) further development of a peculiar Euro-corporatism, the existence of which was the topic of my article, and 2) the possibility that the EWC directive would turn out to be an expression of a corporatist 'over-stretch' - carefully leaving the conclusions to "historians of future generations" (Knutsen 1997: 316). This self-imposed modesty on behalf of the future is part and parcel of the historian's craft, and the study of history presents continual reminders why this is so. During my research in 1995-1996 on the background of the EWC directive, I came across another reminder of this kind: The prediction, published in spring 1994, to the effect that the adoption of such a directive was extremely unlikely (Streeck 1994), a prediction which was falsified by Clio in autumn of the same year. I was able to register this for the simple reason that what once was the future, had become the past. The future had passed into the past, and thus, in this capacity of *Vergangene Zukunft*, had presented itself as a possible object of *historical* study.¹

Now, writing in April 2002, seven years have passed since I sought out relevant source material and interviewed a central UNICE legal adviser and EWC expert in Brussels (see Knutsen 1997: 301). This seven year privilege provides me with an opportunity to evaluate the relevance of the two diverging predictions which were merely mentioned in my 1997 article. Important developments in the issue areas of information and consultation – with a potential spill-over to "participation"² – point clearly in the direction of giving the first-mentioned prediction the best credentials, i.e. a further development of Euro-corporatism. First, in October 2001, the Council adopted the longstanding (since 1970, in fact) controversial proposal on a *European Company Statute*, which contains information and consultation provisions defined more strongly than in the EWC directive, in addition to board-level employee participation in some circumstances (see *EWC Bulletin*, Issue 36, Nov/Dec 2001). Second, in February 2002, final approval was given to the EU Directive on national information and consultation rules, characterized by the *EWCB* as another "major landmark" in EU social policy, bringing to an end a protracted debate over the desirability of "an EU-wide framework for national-level information and consultation rules" (*EWCB* 38, March/April 2002). Third, there is pressure from both the ETUC and from the European Parliament for a revision of the original EWC directive, with a view to strengthening rules, procedures and sanctions in favour of labour. The outcome of this is not yet known. However, in the light of these recent developments, there is substantial justification for giving the adoption of the EWC directive in 1994 a more prominent place in the historical development of a Euro-corporatism than it was possible to defend on empirical grounds six or seven years ago. This directive has probably and in several ways served as a trigger for new departures in social policy within a tripartite, corporatist institutional structure. However, the aim of this

chapter is not a closer look at these recent developments, but the EWC directive itself and its historical preconditions. First, some clarification is needed on the concept of corporatism.

2. WHAT IS CORPORATISM?

In the vast literature on corporatism in the social sciences, proliferating especially during the 1970s and 1980s, there is no agreement on the precise meaning of the concept. The actual usage of this ism, it seems, continues to be aptly summed up by the characterization given in Philippe Schmitter's seminal article "Still the Century of Corporatism?" nearly thirty years ago: "nominalistic anarchy" (Schmitter 1974: xx). On the other hand, one can also observe an opposite tendency, that is to delineate the concept by linking it exclusively to the organizational practice in fascist regimes. Thus, in the *International Encyclopedia of the Social Sciences* (New York 1972) one will under "Corporatism" find the following instruction: "See fascism". Obviously, if such a concept is to be of any analytical value at all, the analyst has to navigate between the Scylla of conceptual overload, which results in a such a plurality of possible contents as to render a meaningless concept, and the Charybdis of a narrow, backwardlooking identification with fascism. For my purpose here, it is neither necessary nor desirable to seek a degree of precision which is counter-productive to historical understanding. On this point, I find myself at odds with scholastically oriented concept policemen, while I agree with a line of thought represented by, among others, the philosopher Hilary Putnam ("meaning holism") and by the social historian E. P. Thompson in his "explicit and self-conscious *refusal*: refusal of static analytic concepts, of logic inappropriate to history". (Putnam 1988: 9, Thompson 1978: 39).³ So, without going into the wide-ranging controversies and the intriguing subtleties in the theoretical debates on corporatism, which sometimes lead beyond the borderline into a repetitious realm of concept fetishism,⁴ I shall limit myself to indicate what I consider the most central and fruitful dimensions of the concept of corporatism with a view to its application in a historical and materialist analysis of the EU in general and the road to the EWC directive in particular.⁵

For this purpose, we can single out three problem areas of central concern, and thereby characteristic of the corporatist approach. First, the relations between *organized class interests*, in particular relations between labour and capital.⁶ Fundamentally, corporatism is characterized by a transformation process from antagonistic to collaborative class relations. Second, the structure and function of these organized interests, especially with regard to social *representativity*, internal *hierarchisation*, the *authority* of the leadership to commit their members, etc.⁷ Here, attention has been directed towards the crucial position of the leadership in organizations in their intermediate role between demands from the rank and file below on the one hand, and demands from above (e.g. state authorities) or from their organizational *contra-parti* on the other. Schmitter's ideal-typical (and now classical) definition of corporatism as a system of *interest representation* has therefore been replaced by *interest intermediation*.⁸

The third central problem area of the corporatist approach concerns the role of *public authorities*, in particular *the power of the state* at national level. In our context, the growth of state-like competences in supranational institutions like the EU Commission constitutes a vital precondition for corporatism at EU level, as does the existence of peak organizations of labour (ETUC) and of capital (UNICE) in Brussels. It is probably correct to say that a majority of theorists of corporatism consider the participation of the state as a necessary precondition for corporatism.⁹ This participation may partly consist in direct state presence in bodies with interest representation, or it may be of a more indirect nature, justified by *a priori* suppositions, as pointed out by, among others, Trond Nordby (1994). In any case, there is ample evidence in relevant literature to say with Nordby that precisely the tripartite

relationship state-labour-capital constitutes "a corporatist core area" (Nordby, 1994: 135). An important aspect of this tripartite constellation is the possibility of *coalition* between two of the parties against the third in a given context.

In an "expressive" tradition of meaning-holism, both historians and political scientists have profited from a corporatist approach in attempts to synthesize large-scale developments like bourgeois restorations in the 1920s (Maier 1988, Middlemas 1979, Knutsen 1994), relations between the USA and Europe in the Cold War (Hogan 1986, 1991), and even "international relations in the 20th century" (Clark 1998). Focusing on the corporatist core area in its historical evolution, the challenges posed and the various responses given, these authors share the idea of corporatism as a fairly specific political strategy for consensus-building. Likewise, a differentiation proposed by Colin Crouch is obviously informed by historical insight and therefore valuable for further historical research. He has worked out a scale comprising "contestation" - "pluralist bargaining" - "bargained corporatism" - "authoritarian corporatism".¹⁰ As we shall see later, in the tripartite relationship between the peak organizations of labour and capital at European level and the Commission in Brussels, attempts within the paradigm of bargained corporatism broke down at a certain juncture in the Social Dialogue. However, this did not represent a break-down of corporatism at EU level, but a shift within corporatism to what I characterize as a *legal-democratic* corporatism. In order to analyse this development, a suitable point of departure is the EU directive itself.

3. MAIN AIMS AND CENTRAL PREMISSES OF THE DIRECTIVE

The general goal of the directive is to improve the rights of the employees concerning "information and consultation" in transnational enterprises with at least 1000 employees in EU member states, of which at least 150 employees in at least two member states (Article 1.1. and Art. 2.1.(a)). In particular, this information shall concern "transnational questions which significantly affect workers' interests" (Art. 6.3.). For this purpose, European Works Councils shall be set up, alternatively other procedures agreed on by the parties, at the latest by Sept. 22, 1996. If voluntary agreement is not reached, the member states are instructed to adopt and implement statutory regulations in accordance with the intentions in the directive (Art. 7). The whole arrangement is then scheduled for evaluation supervised by the Commission, by September 22, 1999, at the latest. The phrasing of the directive on this point seems to confirm the *Euro-corporatist intention* which generally characterizes the directive, since this evaluation shall be undertaken as a cooperative effort with the member states "and with management and labour at European level" (Art. 15).

The central premisses of the directive are laid down in the introductory remarks, which help to amplify an understanding of it politically and ideologically. First, it is emphasized that since The Single Market promotes the development of big, transnational companies - a desirable development, not least in order to meet competition from the U.S. and Japan - the dialogue between management and employees in these companies should be improved if this development is to take place "in a harmonious fashion". This dream of *harmony* is also laid down explicitly in the text of the directive proper, for example in Article 9, which gives the following instruction: "The central management and the European Works Council shall work in a spirit of cooperation ...". Second, it is pointed out that existing procedures of information are often *inadequate* in the sense that they are directed more towards the national than the transnational level, the consequence of which may be unequal treatment of employees in different countries, in addition to the fact that the development of big companies at European level carries implications of a power-political nature in favour of these companies. A consideration of this description of the state of affairs, together with the specific provisions in the directive, can give reason to conclude that the Commission has been

aiming at influencing the power relations between capital and labour in favour of the latter. Thirdly, the principle of the *autonomy of the parties* is underlined when it comes to specification of what procedures of information and consultation are deemed suitable and expedient. The practical flexibility thus implied is strengthened by explicit reference to the *principle of subsidiarity*, for example when it comes to deciding who is to represent various categories of employees. Decisions of this nature are to be taken, then, with due regard to established local practices, which normally means - in this connection - established *national* practices. The references to autonomy and subsidiarity should, nevertheless, be considered in the light of the general aims drawn up in the directive.

There is, as we can see, a dualism between the encouragement of transnational organizational networks crowned by Euro-institutions like ETUC and UNICE on the one hand, and stressing the autonomy of the parties (or in EU terminology: the social *partners*), based on national traditions, on the other. This dualism can be interpreted in the light of the Commission's position in a field of tension between (partly) contradictory interests. When the Commission, led by Jacques Delors and Lord Cockfield, inaugurated a new, dynamic period in the mid-80s under the banner of "The Single Market" and with "1992" as the seductive symbol,¹¹ this was rightly perceived as unambiguous support for efforts in the direction of extending markets and at the same time developing more powerful units in Western European capitalism. For employer interests, in particular for those among them with extensive transnational ambitions, this was good news. Delors, however, in his capacity of mainstream social democrat, wanted the active participation of the trade union movement in this project by extending to labour more real influence on the modernization of industry. Thus, when he presented the action programme of the new Commission in the European Parliament in January, 1985, he underlined the connection between The Single Market and the social dimension (Olsen, 1994: 39). And at the Congress of the ETUC in Stockholm in May, 1988, he suggested that the social dimension of the EU should be anchored in a declaration of principle. An important stage in this work was the adoption of the Community Charter of Fundamental Social Rights at the Strasbourg summit in December 1989. This Social Charter or Social Pact, which was adopted by the eleven except Great Britain, called for extension of information, consultation and participation by employees, especially in transnational enterprises in the member states.¹²

4. FUNDAMENTAL POSITION OF UNICE

Both prior to the adoption of this declaration of principle, and during the tug of war up to the EWC directive of September 22, 1994, UNICE adopted a critical position, bordering on refusal in principle. In a press release of February 22, 1989, it was pointed out that the fundamental social rights of employees *had already been* guaranteed in the separate member states, by law or by agreement, in accordance with the different historical background and the contemporary level of development in the individual countries. Further provisions at European level were therefore rejected as unrealistic, counter-productive, and detrimental to the ability to compete (UNICE, 1989).¹³ In an important position paper dating from summer 1989, the general secretary of UNICE, Zygmunt *Tyszkiewicz*, demanded that proposals for new statutory regulations with direct consequences for competitive ability should not be made and, at any rate, not be adopted unless an understanding had been reached with persons who knew what "the cold winds of competition" really meant. Ideas about "statutory procedures for information and consultation" under discussion in political circles both in Brussels and in the European Parliament would - if adopted - according to *Tyszkiewicz* "... do irreparable damage to Europe's ability to compete" (*Tyszkiewicz*, 1989). For UNICE, then, the central concerns would consist in striking the right balance between a) workers' demands and given

constraints of an economic nature, b) between managements' prerogatives and workers' demands for influence, and c) between centralising at EU level and decentralising to other levels "according to the principle of subsidiarity". Thus, the principle of subsidiarity was stressed in opposition to "new rigidities and constraints" imposed from Brussels. At the same time, management's prerogatives ("management's need to preserve the right to manage") must not be undermined. This did not mean that employers were opposed in principle to "social dialogue" in the sense of giving employees appropriate information, but it would be up to *management* to decide on procedures and contents of such information. Among relevant elements here, the ability to compete constituted a central criterion: "The "right point of balance", for UNICE, is that point at which no harm is done to the ability of Europe's companies to compete successfully in a free, open and global market." (Tyszkiewicz, 1989). Confronted with new initiatives from the Commission, UNICE persisted in its attitude of refusal. A specific draft proposal for a Council directive from the Commission around the turn of the year 1990/1991, for example, (COM (90) 581 final, Brussels 25.1.91) was characterized by UNICE as "harmful, dangerous and therefore totally unacceptable" (UNICE 1991).¹⁴

In this matter, however, as in many others, employer interests turned out to be complex and partly at odds with themselves. The development in this field in big multinationals from the mid-80s could thus be seen as favouring the approach to the problem represented by the Commission. To be sure, some of these companies were recently nationalised, French-based concerns, partly also with socialist sympathizers in the top management. The electronics group *Thomson Grand Public* and *BSN-Gervais Danone* (foodstuffs and packing) are examples of this. During 1991, however, similar agreements were also concluded in three German-based enterprises. The giant company *Bayer AG* (chemical products) led the way in June 1991 by establishing an "Europa-Forum" consisting of representatives from management and employees in Germany and in five of the biggest European subsidiaries (Belgium, France, Italy, Spain and UK). Similar arrangements were then established in *Continental* (tyres and rubber), and in *Hoechst* (chemicals) (*EIRR*, 228/1993)¹⁵ It goes without saying that such trends in heavyweight, competition-oriented companies could create problems for a continued intransigent stand on the part of UNICE, even though it needs to be emphasized that these arrangements were established on a voluntary basis. In addition, preparations for the Maastricht summit held out prospects that EU measures in this field would no longer be dependent on unanimity in The Council of Ministers, but be decided by majority voting. One important consequence of this was that UNICE could no longer rely on the UK being able to block unwanted proposals in the future. Against this background, a *rapprochement* took place from UNICE toward ETUC, aiming at acceptable *agreements* as an alternative solution to statutory regulation at European level. The fact that UNICE in October 1991 appeared to be ready for collective negotiations with ETUC indicates that the employers' organization found itself in a defensive position. As pointed out, among others, by Michael Gold and Mark Hall, UNICE was "a late convert to the cause of such negotiations, having previously resisted any development of 'European-level collective bargaining'." (Gold and Hall, 1994: 179). The explanation of this change of policy is therefore probably that UNICE feared the intentions of the Commission, and that negotiations with ETUC about voluntary agreements were considered a lesser evil than statutory regulations in the form of a Council directive.

The agreement between UNICE and ETUC of October 31, 1991 - which included also the European interest organization for public enterprises, CEEP¹⁶ - was reproduced without any essential modifications in the Agreement on social policy annexed to the Maastricht Treaty (COM(93) 600 final, Brussels 14.12.1993).¹⁷ In Article 3, the Commission was

authorized to promote "the consultation of management and labour at Community level", and Article 4 allowed for organizational agreements at European level, "Should management and labour so desire". The organizations were also accorded the status of bodies to be consulted by the Commission, concerning "possible direction of Community action" as well as "the content of the envisaged proposal", if the Commission after the first hearing found such action appropriate. During the second hearing, the organizations were empowered to proceed on their own with a view to concluding a voluntary agreement, normally within a period of nine months. The implementation of the agreement could be done either in accordance with previously established practice between the organizations and in the member states, or as a result of a Council decision initiated by the Commission, conditional upon "the joint request of the signatory parties". In the latter case, qualified majority in the Council would normally be sufficient.¹⁸

UNICE expressed its satisfaction with the strengthening of the position of the organizations implied by this annex to the Maastricht Treaty, stressing at the same time, however, that the central principle of subsidiarity in Article 3 b of the treaty proper ought to apply in questions concerning "social legislation" (UNICE, 1992).¹⁹ The emphasis on "subsidiarity" and on "autonomy" for the organizations is characteristic of UNICE's attitude to the Maastricht treaty, often in a context directed against "the European legislator" in Brussels. In a comment on European social policy after Maastricht, "The Point of View of European Employers", general secretary Tyszkiewicz could not see why so much needed to be harmonised: "In our view, relatively few things needed to be harmonised. There is nothing wrong with doing many things differently in the Member States." He further underlined the importance of "strict safeguards" for the organizations, and he continued: "That is another way of saying we don't want *tripartism*, we don't want *corporatism*. Of course we want the social partners to talk to each other, but only when they want to, on their terms and according to their own rules of procedure. We do not want a kind of *Commission-imposed*, tripartite dialogue." (Tyszkiewicz, 1992, italics added). As we can see, Tyszkiewicz did not want any drastic changes in the existing state of affairs, he wanted to protect the autonomy of the parties against political directives from above, and he found it generally best to stick to the maxim *festina lente* as far as possible reforms with implications for labour law were concerned. The same year of 1992, however, gave warnings of a new drive on the part of the Commission in support of preparations for setting up EWCs on a firmer and more permanent basis. With reference to The Single European Act, which (in Article 118 b) empowered the Commission to further "the dialogue between management and labour at European level", the Commission had already provided financial support to trade unions to cover expenses for travel, translation, etc. in connection with international meetings. The Commission's 1992 budget meant that this support was increased considerably, since 14m Ecu was now earmarked for "transnational meetings of employee representatives from undertakings operating on a transfrontier basis in the Community ... until the entry into force of the Commission's proposal (for the European Works Council Directive)" (*EIRR* 229/1993: 20). This did not pass unnoticed in UNICE. And when grants for 1993 were further increased up to 17m Ecu, UNICE contrasted this to the provisions in the Maastricht Treaty that committed the Commission to ensure "balanced support" to the parties. UNICE also hinted at a "hidden agenda" behind this, i.e. an ideologically motivated cooperation between the Commission and ETUC. UNICE's President, Carlos Ferrer, did not leave his audience in any doubt as to his opinion on the Commission's draft directive and the financial support which went with it. In a speech to the social ministers of the EU on May 3, 1993, he warned against what he called "job-destroying Social Policy measures". He characterized the draft EWC directive as "The most important of these", and went on record to say: "Far from being cost-free, this will be an

extremely expensive and damaging measure, imposed "top-down" from Brussels, without consultation, and with not the slightest notice being taken of the views of employers, who must carry the burden." The truth about this draft directive, which it was now time to reveal, consisted according to Ferrer in totally disregarding the principle of subsidiarity, it was imposed from above in an arrogant way, it would not improve, but damage the information systems already there, and it would weaken the ability to compete "by seriously delaying companies' freedom to take vital decisions in good time". (UNICE, 1993)²⁰ This was "the truth". But behind this Ferrer saw an even more dangerous specter looming: "Employers cannot avoid believing that there is a hidden agenda behind all this, more concerned with ideology and the creation of pan-European unions than with genuine worker involvement. This belief is reinforced by the allocation of 17 million Ecu of Community funds to the Unions in the 1993 budget, for the express purpose of training union representatives on European Works Councils - even before the Directive has passed into law. That is more than 4 times the total UNICE budget, and seems far removed from the Maastricht Treaty, which obliges the Commission to ensure "balanced support for the parties"." Ferrer therefore appealed to the ministers to see to it that the present, "very damaging and ill-conceived" draft directive was "withdrawn or suspended" (UNICE, 1993).

UNICE's complaints that the Commission was favouring ETUC financially with relatively substantial amounts may give the impression of a bias directly at odds with The Agreement on social policy in the Maastricht Treaty.²¹ This type of complaint will appear in a different light when combined with information to the effect that UNICE has consistently refused offers of financial support from the Commission. The most obvious consequence to be drawn from UNICE's attitude in this matter, therefore, was not giving UNICE fresh means, but depriving ETUC of theirs. What was at stake here, then, was, quite simply, to preserve an independence one could afford to preserve, as it was expressed by UNICE legal adviser Olivier Richard (Richard, 1995a)²²

5. THE DIRECTIVE IS ADOPTED

The critical comments on the draft directive led to certain adjustments, both during the Danish presidency in the first half of 1993, and again during the Belgian presidency in autumn 1993. As we shall see, UNICE considered these as well as subsequent adjustments of the text as purely cosmetic in nature, and maintained its fundamental criticism until the final end. UNICE's persistent criticism interfered, however, with any result-oriented political process in EU institutions. From July 1990 to September 1993, the Council's Working Group on social questions thus had the Commission's proposal up for discussion in 14 meetings, and the Council proper in such matters (i.e. the social ministers) were deliberating on this matter in 5 meetings during the period May 1991 - October 1993, without being able to find a basis for the agreement required on the existing legal framework, i.e. unanimity. (Blanpain and Windey, 1994: 60).²³ As from November 1, 1993, however, the requirement of unanimity in such matters was formally abolished, as the Maastricht Treaty came into force from this date. The Commission also showed its willingness to take advantage of the new possibilities. The EU Commissioner in the relevant general directorate, Commissioner for Social Affairs Pdraig Flynn,²⁴ made it clear that if UNICE and ETUC showed themselves unable to reach a satisfactory agreement on their own, the EU would decide the matter by means of directive. Addressing the most influential brake block in UNICE, i.e. the Confederation of British Industries (CBI), Mr. Flynn stated the following: "Do not misunderstand me. *If the social partners cannot reach agreement, I am firmly convinced that there will then be legislation.* There is wide agreement between eleven member states on this point."²⁵ The negotiations - or rather the probings about possible negotiations ("talks about talks") - between UNICE and

ETUC on the basis of a proposal from Flynn of February 8, 1994, did not lead to a result, however. For ETUC, the choice presented itself between a diluted agreement with UNICE and a directive which would undoubtedly be closer to ETUC ambitions. The opposition between "the social partners" in this matter would therefore point in the direction of failure. Three days before the deadline for its opinions to the Commission, the CBI published a condemnation of the whole proposal. This was followed up by UNICE, and the ETUC took advantage of this situation to place the responsibility for the breakdown of negotiations with the employers (UNICE, 1994a).²⁶

Pushed on by the Commission, the EU political bodies now saw to it that the case was brought to a close. On April 13, 1994, the Commission decided to present its draft directive to the Council on the basis of Article 2.2 in the Agreement on social policy, i.e. a decision procedure involving qualified majority among the eleven. The alternative, i.e. agreement according to Article 4, had in reality been killed on March 28. After the European Parliament had given its opinions (May 4 and again September 15), and after final adjustments in COREPER,²⁷ the directive passed the Council of Ministers on June 22 ("first reading"), after which it was finally adopted on September 22 (Blanpain and Windey, 1994: 59-62).²⁸

The decision process might well deserve to be the object of a separate examination. One dilemma for the Commission consisted in a balancing act between joint, consensus-oriented solutions on the one hand, and the need for showing dynamism and vigour on the other. The interaction between the Commission, the Council, and the European Parliament offered certain possibilities in this regard. In its "first reading", the Council thus extended the deadline for implementing the directive from two to three years. The Parliament, on the other hand, showed more impatience and demanded 18 months.²⁹ The final result on September 22 was two years, as originally proposed by the Commission. In this way, the Commission had its way, while at the same time giving a moderate, compromise-oriented impression.

For UNICE, however, such subtleties were of minor interest. With a view to public consumption, the employers' organization attracted attention to the Commission's financial support for ETUC. On May 26, 1994, *Financial Times* thus reported from Brussels: "In a move which points to a growing divergence between business and organised labour, UNICE, the European employers' federation, has called into question the principle of subsidising the European trade union movement through the EU budget. Mr. Zygmunt Tyszkiewicz, UNICE secretary general, raised the issue of union funding and called for a shake-up of the European Commission to correct alleged pro-union bias in preparing EU legislation. (...) UNICE has identified Ecu 26.49m (\$ 30.6m) in direct subsidies for the European trade union confederation (ETUC) and closely related bodies in the 1994 EU budget. Though the money represents only a fraction of the annual Ecu 70bn budget, UNICE is pressing for greater transparency in the allocation and use of funds." (quoted in Blanpain and Windey, 1994: 15). Assuming that the figures are fairly correct, then, we may conclude that ETUC "and closely related bodies" had been the beneficiaries of some 26m Ecu in the 1994 budget. Together with the 14m Ecu in 1992 and a further 17m in 1993, the picture emerges of a clear increase in the amounts granted, and a total sum of some 57m Ecu in the three years *before* the directive was adopted. Even though the size of amounts must, of course, be judged relationally, as pointed out by *Financial Times*' reporter, it would not be directly misleading to characterize a cash flow of this magnitude as a substantial amount.

Prior to the Council meeting on June 22, 1994, UNICE repeated its main line of argument against the draft directive. In a letter to the Council, "freedom for companies to set up arrangements in agreement with their employees" was once again called for, "bias" in favour of the trade unions was underlined, together with the threats to the ability to compete

(UNICE, 1994b).³⁰ As we have seen, the discrepancy between UNICE's efforts and the results obtained remained considerable.

One might ask why this opposition was so vehement: Isn't this strongly debated directive in reality a rather innocent measure? One might even be tempted to suppose that the directive in its final version would be in the interest of the employers.³¹ The fact is that the directive deals with information and consultation, the term "participation" in the Social Charter has thus been excluded. The term "trade union" likewise is nonexistent in the directive, and the employers' repeated demands for subsidiarity, flexibility and autonomy (for "the social partners") have, at least to a certain extent, been met, as we have seen. In an interview with Olivier Richard in April 1995 he maintained, however, UNICE's characterization of the directive as "very dangerous and harmful". In answer to a direct question as to what made this directive so dangerous, he pointed at two areas. Partly, he emphasized the "Annex" to the directive, where *minimum standards* are laid down. This obviously gives cause for concern in UNICE, and is, no doubt, central to understand their resistance (Richard, 1995a).³² In our context, however, it seems more fruitful to concentrate upon the other area Richard underlined in the course of our interview. He referred to it variously as "the political setting" and "the wider implications". In this connection, he drew a line back to the so-called *Vredeling directive* of 1980, which was blocked in the Council because of the unanimity procedure then in force. As we shall now see, this directive fits nicely into a historical context of considerable interest to our *problématique*.

6. THE EWC DIRECTIVE IN HISTORICAL PERSPECTIVE

Henk Vredeling had his background in the Dutch labour movement. In his capacity as EU Commissioner for Social Affairs he initiated in 1980, at the end of his period as commissioner, a directive aiming at statutory rights for employees in multinational EU (the then EC) companies, concerning precisely information and consultation. According to Vredeling himself, the draft directive was partly based on existing *voluntary* arrangements on models from The International Labour Organization (ILO) and from OECD (*EIRR*, 82/1980: 5). The aim now was to make these arrangements statutory by means of EU-wide legislation. According to an analysis in *European Industrial Relations Review (EIRR)*, "Mr Vredeling, a Dutch Socialist, is particularly keen to demonstrate to the European trade union movement that his tenure in office has contributed towards greater statutory rights for unions." Prospects were not too bright, however, since UNICE was "totally opposed". On the other hand, ETUC was not fully satisfied with the draft directive either, because it did not in their opinion go far enough, e.g. concerning possible sanctions against employers unwilling to comply. A revised, more moderate draft directive from the Commission was presented in 1983, but never had a chance in the Council of Ministers. The importance of Vredeling's draft directive was given the following assessment by *EIRR*: "'Vredeling" remains, however, a proposal of major significance, since it represents the only attempt to date to introduce an international, legally-binding instrument in this area,..." (*EIRR* 115/1983: 7). The 1980 draft directive therefore points forwards to the Council decision finally made 14 years later, as correctly perceived by Olivier Richard. But *the background to "Vredeling"* is even more interesting. The fact is that the initiating role of the Commission in this matter, from Vredeling to Delors and Flynn, can be interpreted as *a continuation of reform demands from the international trade union movement* dating back to the 50s and 60s. The political scientist Udo Rehfeldt is an eloquent advocate of such an interpretation. In a stimulating analysis (Rehfeldt, 1993), he makes use of Charles Levinson's *Le contre-pouvoir multinational* (Paris 1974, first published in 1972, entitled *International Trade Unionism*) as one of his main sources concerning the unions' reform demands. In the international trade union movement, Levinson has played an

important role, in particular as Assistant general secretary of the International Federation of Metal Workers (IMF), 1956 - 64, and later as General Secretary of the International Federation of Chemical and General Workers Unions (ICF). His broad experience from the international trade union movement dates back to the beginning of the 50s, when he accepted an assignment as assistant director of the American trade union CIO's European office in Paris. He has a PhD in economics from the University of Toronto, and is therefore easily associated with an air of exceptional celebrity when considered as trade union leader. Among his many books, *International Trade Unionism* (1972), offers a good survey of relevant union experiences, together with insight into political-strategic union thinking.

A central aim for Levinson consisted in advancing the power position of the international trade union movement to a level more adequate compared to the position already conquered by the multinational companies (Levinson, 1972).³³ He identified "the phenomenal thrust of the multinational corporation" as perhaps the most dynamic and far-reaching structural change in the history of capitalism: "Impelled by technology and the new mobility of capital and management, the emerging giants are shedding their national identity and are becoming the first, genuinely world institutions with inherently global power and authority. By contrast, the other world institutions are federations of national powers with no real intrinsic authority." (Levinson, 1972: 214) He emphasized the *global* character of the emerging "corporate goliaths" very strongly, probably too strongly, in his polemics against, among others, Jean-Jacques Servan-Schreiber's analysis in *Le Défi Américain*.³⁴ His central point, however, is the imbalance between the advanced, transnational character of capital on the one hand, and the relative backwardness of the trade union movement on the other. The main task for the trade unions, therefore, would be "... to make *the epochal bargaining leap* from an exclusively national to an international position,..." (Levinson, 1972: 107, italics added). Levinson imagined three stages in union efforts to create an "international, global counterforce". The first stage was "companywide support of a single union in one country in a dispute with a foreign subsidiary". The second stage ("the next quantum jump") consisted in coordinated negotiations with an enterprise in several countries at the same time, in order to mobilise more effective international power "to counteract the advantages of the multinational company". The third stage, finally, would mean "integrated negotiations around common demands" (Levinson, 1972: 110-111).³⁵

These ideas should be considered against a background where precisely the metal and the chemical industries were areas in which the degree of internationalisation was particularly advanced. In the car industry, e.g., a number of "world councils" had been established during the 60s, after preparatory union discussions in the latter part of the 50s. The three first (Ford, General Motors and Chrysler) were established in Detroit in June 1966. Then came Volkswagen/Mercedes-Benz in autumn 1966, and Fiat-Citroën in 1968. These "world councils" became according to Levinson "the vehicles for the concrete co-operation between unions of the companies in the different countries" (Levinson, 1972: 123). In 1969, the IMF arranged the first *European* conference for workers in the car industry. At this conference, the principles of common European policies were up for discussion. At an IMF conference in London in 1971, demands were made for meetings between representatives of the councils and representatives from management in the car factories in question. *Information about investment plans* was of particular interest (Levinson, 1972: 124-128). The European Metalworkers' Federation (EMF) took similar initiatives vis-à-vis Philips, the Dutch-based electronics group. Over the years 1967-72, four meetings were held with Philips management, and the representatives of Philips held out prospects for more detailed discussions about demands for "a permanent labour-management liaison committee, a comprehensive labour

policy, and multinational discussions in advance of proposed layoffs and international transfers of employees".

At this time Philips had 150 factories in Europe, employing some 285 000 out of the total work force of 350 000 in the enterprise (Levinson, 1972: 130-131). However, such demands, in addition to demands for collective negotiations at European level, were not seriously discussed, and the planned fifth meeting was never held (*EIRR*, 228/1993: 14). In the chemical industry, the International Federation of Chemical and General Workers Union (ICF) was aiming at an agreement with the French-based multinational glass combine Saint-Gobain. After extensive, international union action in 1969, certain concessions were obtained, and union members in several countries (France, Italy, Germany and USA) were preparing for a future common strategy (Levinson, 1972: 132 and Ch. 1). Levinson considered this an important step on the road from the first to the second stage in his development scheme, i.e. the beginning of "true multinational negotiation for all or several branches of a company". He seems to have had a clear understanding of the considerable obstacles confronting the trade union movement as far as really comprehensive, coordinated international action was concerned.³⁶ He was none the less convinced that his road to the future was the right one, and that it had to be followed: "But despite such difficulties, progress must be made *if the trade union movement is not to be confronted by serious, even mortal, threat to its power and effectiveness.*" (Levinson, 1972: 111, italics added). In a summary of "The trade union answer", he modestly characterised his programme as "perhaps the single most important task of the international movement as a whole in the immediate future" (Levinson, 1972: 141). In his opinion, the "objective" conditions for such a programme were clearly there, whereas the "subjective" conditions, i.e. the national unions' insight into the need for internationalisation, were far weaker. In an interesting diagnosis, predating, incidentally, the thinking behind Alan Milward's main thesis in *The European Rescue of the Nation-State* (Milward, 1992) by 20 years, Levinson writes the following: "Developing a truly international force has become the condition for national trade union survival." (Levinson, 1972: 141).

The plans for the future presented by Levinson remained, however, more dream than actual fact. Udo Rehfeldt writes about an idyllic image quickly at odds with reality (Rehfeldt, 1993: 72).³⁷ The establishment of some fifty "world councils" could seem impressive but, to begin with, this was a small number compared to the number of multinational companies. Secondly, and more important, these councils did not, on the whole, perform effectively. Rehfeldt characterizes their existence as "transient and fictive".³⁸ He also draws attention to the ideological division between the Soviet-dominated union movement in the East and the free union movement in the West, a fact which diminished the possibilities of efficient international union action. An assessment of Levinson's visions also has to take into consideration the fact that he was writing at a time when a protracted boom was approaching its end. The first oil crisis in 1973 was a shock from outside which at the same time, however, contributed to making visible underlying signs of weakness in the capitalist economies, and turned out to be the beginning of a more or less severe recession (see e.g. Williams, 1991: 52-57; Hobsbawm, 1995).³⁹ In periods of increasing unemployment, unions will normally find themselves in a defensive position, as the strategic balance of power will tend to favour the employers. The breakdown in the series of meetings with Philips, in which the establishment of a permanent "labour-management liaison committee" constituted one of the central demands, should be considered in this perspective. During the 70s, an agreement was nonetheless concluded, of some importance partly because it points forward to the future, but partly also because it represents an *exception* to the prevailing developmental tendency in this field. The agreement in question concerned the French-based enterprise BSN-Gervais

Danone, which in some important respects pioneered the development during the 80s, as we have seen. After the take-over of the Belgian glass firm Glaverbel at the beginning of the 70s, BSN signed an agreement with Belgian unions which included a provision to the effect that "a multinational association of unions should be established to meet with management" (*EIRR*, 228/1993: 14). ICF participated in the first meeting in September 1973, but due to disagreement with the BSN management representatives, they were pushed to the side lines, and agreements were concluded directly between BSN and representatives of the unions and other employees in the subsidiaries in Austria, Belgium, France, Germany and the Netherlands. Among the main concerns here were discussions of measures that could contribute to maintaining existing levels of employment. Meetings were held on a regular basis twice yearly between management and employee representatives - but, to be sure, on a *national* level - in bodies denoted by *EIRR* as "permanent employment commissions". The driving force behind this, however, seems to have come from management rather than from employees.⁴⁰

At the beginning of the 1980s, then, practically all initiatives for transnational negotiations on the Levinson model had vanished from the political agenda. It is possible to argue that Levinson's strategy was not only premature, but also "structurally inadequate" (Rehfeldt, 1993: 73).⁴¹ For our analytical purposes here, however, it is sufficient to emphasize two main barriers against Levinson's trade union strategy: The economic recession from about 1973, and the strength of the new economic liberalism in the 80s, with "Reaganomics" in the US and Thatcherism in Great Britain as towering symbols. A new self-consciousness in big business circles was manifest in Europe, represented e.g. by Philips boss Wisse Dekker.⁴² The socialist victory in the French elections in 1981, however, contributed in a decisive way to prevent the new liberalism from running freely all the way. It is true that the orthodox-socialist leftist faction under Bérégovoy and Chevènement suffered defeat when Francois Mitterrand from 1983 onwards gave his support to the more moderate, social democratic main stream, represented, among others, by Jacques Delors. The result of this was partly a break with the idea of "socialism in one country" in its French variant, partly another "relaunch" of Europe. This change of direction in French politics from 1983 gave an important impetus to the new dynamism in the history of EU from the mid-80s (Moravcsik, 1991).⁴³ At the same time, however, the French government confirmed its interest in promoting information and consultation management/employees in big companies, partly by means of legislation. The so-called "Auroux laws" from the beginning of the 80s thus established *comités de groupe*, i.e. joint bodies for management and employees from several firms within the same enterprise. These *comités de groupe* have certain characteristics similar to the "works councils" envisaged in the EU directive of September 22, 1994. The French variant from the beginning of the 80s lays, however, greater emphasis on direct union influence, since the representatives of the employees are to be appointed by the unions among their members on the level of the concern, in *comités d'entreprise*. (*EIRR*, 228/1993: 14). In addition to legislation, the nationalisation of big French-based concerns like Thomson Grand Public and BSN offered new possibilities for experimenting with exchange of information management/employees in a transnational context.⁴⁴

Jacques Delors' initiatives in social policy as President of the EU Commission emerge in a meaningful light when considered against this background. One should be aware that the lack of a common framework in labour law at the European level had been an important obstacle to solutions *à la* Levinson. At the same time, references to the variations in the different national labour law regimes have been important for UNICE's demands for subsidiarity and flexibility, as we have seen. The initiatives from the EU Commission to promote a common juridical framework for European Works Councils (EWCs) therefore

easily lend themselves to an interpretation into the dangerous pattern of "wider implications" that worried UNICE legal adviser Olivier Richard. Given the historical connection to what we may call the trade union movement's social democratic, transnational project, however, the central problem which presented itself was not *whether or not* the capitalist system should be maintained, since a defining feature of social democracy is its acceptance of "the mixed economy". Instead, the central question to be addressed concerned *what kind* of capitalism should be predominant, or, to be more precise: *To what extent should the competition-oriented economic profit motive be balanced against social and democratic ambitions in the new transnational context?* It is not difficult to understand why the initiatives from the Commission were opposed so actively, since these initiatives ran counter to employer efforts to curb the power of the unions. Roger Blanpain and Paul Windey hit the mood of prominent employer circles well in the following words: "So, no wonder that many enterprises, and consequently their organisations, vehemently oppose ... the thought of having trade unions back on their playing fields through the back door of the EWCs. Many, especially in the US based undertakings, don't like that the power the trade unions lost in the market place is conquered back in the political arena's." (Blanpain and Windey, 1994: 107).

But the EU directive also stresses values like cooperation, harmony and modernization of industry. It is interesting to note that this too - if not unconditionally - is in keeping with ideas put forward by Charles Levinson. With reference to "the pervasive and rapidly accelerating rate of change in our social and economic systems", he stressed that the unions had to recognize this and therefore adopt "an adequate new perspective". The basic opposition ("fundamental antagonism") between labour and capital could not be said to have been abolished in the "mixed economies" of the Western world. Still, it was necessary to extend the role of the trade unions "from a predominantly defensive and protective social posture *to an economic and development function within industry*. Unions and management could then *become partners in production as well as competitors for the profits.*" (Levinson, 1972: 6, italics added). This dualism between the harmonious community of production on the one hand, and the conflictual model concerning distribution of the surplus produced on the other hand, constitutes an essential criterion of a social democratic, responsible trade union movement. This is why unions of such mainstream character historically tend to present a Janus-face that employers, periodically at least, have had great difficulties relating to: Is the talk about harmony of interests meant seriously, or does it rather serve as cover for future conflict? The problem is aggravated substantially, since it is never possible to obtain more than temporary answers. One reason for this is that the trade union movement itself normally is unwilling to recognize this as a real problem. Thus it is symptomatic when Levinson nullifies the possible problem in the dualism he has formulated himself, presenting the following exorcising statement: "There is nothing inherently incompatible in such a dual position." (Levinson, 1972: 6). Obviously, Levinson is here demonstrating wishful thinking, since he closes his eyes to the manifold internal contradictions in the labour movement. This is striking, since it contrasts with his openly critical stand on the "subjective" conditions referred to above, i.e. the limitations of a predominantly national perspective in the labour movement.

7. CONCLUSION: LEGAL-DEMOCRATIC CORPORATISM

As we have seen, the development towards the adoption of the directive has taken place in various phases. After the "Eurosclerosis" of the 70s, Delors tried from the mid-80s to stimulate a new drive in "the social dialogue" by means of a Commission-initiated, bureaucratic corporatism based on voluntary acceptance from the parties. These *Val Duchesse-talks*⁴⁵ represented for ETUC an important stepping stone to "joint agreements"

and to legislation at European level. UNICE, on the other hand, wanted more limited commitments, and stressed the informal character of discussions that might, or might not, lead to the publication of "joint opinions", as distinct from "joint agreements" (Olsen, 1994: 41). When UNICE, in spite of this, in fact concluded an agreement with ETUC on October 31, 1991, this should be seen in the light of the new dynamism released by - among other factors - Delors' promotion of this kind of meetings. As a result of this, UNICE was forced out on a downward slope: UNICE felt compelled to conclude an agreement *in order to avoid legislation*, after which this legislation was adopted - a rather depressing turn of events. The process took place within the corporatist core area in the triangle capital-labour-public authority at European level, and the tendency in the political ideology of the provisional end result is largely in accordance with the social-democratic thinking we have identified behind relevant reform demands from international trade unionism dating from the 60s. With reference to Colin Crouch's continuum between "contestation" (i.e. uncontrolled interest politics) on the one hand, and "authoritarian corporatism" on the other, we can identify March 28, 1994, as marking a developmental leap: Up to this point in time, the Commission, ETUC and UNICE were involved in a process best characterized by the ambition of "bargained corporatism". Given the *de facto* breakdown of negotiations from this date, it is no longer adequate to speak of a bargained corporatism between three parties. Nor is it appropriate to talk of an *authoritarian* corporatism - which seems to be implied by UNICE's complaints of a "Commission-imposed dialogue". Judged by the procedures during April-September 1994, as well as by the essential elements of the end result, it seems more to the point if we characterize this phase as an expression of a *legal-democratic corporatism*. The *legal* aspect is evident in the strict adherence to the rules of the game laid down in the Treaties. The *democratic* element lies primarily in opening the road to more influence in economic and industrial matters for an extended demos, and partly in the active use of qualified majority voting in these matters pursuant to the entry into force of the Maastricht Treaty in November 1993. Compared to a classical analysis by the Norwegian sociologist Stein Rokkan, this legal-democratic corporatism combines elements from his well-known dichotomy "numerical democracy" and "corporate pluralism" (Rokkan 1966).⁴⁶ In his famous shorthand expression "Votes Count but Resources Decide" (Rokkan 1966: 105), the parliamentary channel of influence ("votes count") is set against the corporatist channel, where the real decisions are taken by the powerful few, the men and organizations of power ("resources decide"). In the legal-democratic corporatism expressed through the EWC directive, there is a bias in favour of numbers - the millions of rank and file represented by the ETUC - in opposition to the voice of the millions (of ecu) in the hands of UNICE. And at the same time, the real decisions were taken in the corporatist channel of influence.

The dialectical development in the period from 1994 and up till now (April 2002) - i.e. the play of oppositions within the corporatist core area - can be seen as conditioned by the EWC directive itself. Developments and prospects within the three fields of the European Company Statute, the EU-wide framework for national-level information and consultation, and the proposed revision of the EWC directive, do point in the direction of a more well-established EU corporatism, more embedded in the political structure than the corporatist tendencies detectable seven years ago. On the organizational level, it is also probably reasonable to say, with Justin Greenwood, that UNICE through the Social Dialogue mechanism has been to some extent "enmeshed within a structure from which it cannot escape" (Greenwood 1997: 107). This is a somewhat paradoxical situation, bearing in mind that when UNICE was established in 1958 - the year the Treaties of Rome went into effect - it was not primarily in order to promote the customs union, but to seek protection against the Commission (Cowles 1998: 109). We can also observe a tendency in the direction of

mandating the leadership more strongly than before when it comes to bargaining. This tendency, even if weak, has been noted by Greenwood (1997) for UNICE, and seems to be stronger on the ETUC side.⁴⁷ Viewed from the present point in time, the year 2002, there is sufficient empirical evidence to support a conclusion in the opposite direction of what was thought to be the case some ten years ago, when two highly visible theorists wrote the following in an interesting article in which the main thesis was the *absence* of corporatism at European level: “In a nutshell, our point is that in uniting supranational Europe, it was not only the case that labor was, and continues to be, *underorganized* but there also was never a real possibility of a mutually organizing *interaction effect*, a *Wechselwirkung*, between labor and the two other major players in the political economy, capital, and the state.” (Streeck and Schmitter 1991: 139, italics by the authors). These authors are quite right in drawing attention to this interaction effect as characteristic of the corporatist phenomenon *in theory*. Now, we can see that precisely such an interaction effect was instrumental also *in practice*, i.e. in the run-up to the EWC directive. As we have seen, the Commission has been an important initiating body in this respect, from Henk Vredeling, whose attempts were premature and unsuccessful, via the Val Duchesse meetings orchestrated by Delors, and to the process resulting in the EWC directive. I consider it a reasonable working hypothesis that this *Wechselwirkung* has been central and even more important in the period after 1994, including the development leading to extended employee rights exemplified by the European Company Statute. More generally the EU, especially during periods with a politically ambitious Commission, seems to be developing into a regulation regime in this field, distancing itself, in the process, from the unholy alliance characteristic of a thatcherite ambition: nationalism and neo-liberalism.

¹ In his rejoinder to me, Streeck first seems reluctant to accept the EWC directive as a historical fact. Then he radically downplays its importance, accepting, though, that it may be of some consequence in backward areas like the UK. (Streeck 1997).

² See proposals from the European Parliament (EWCB 36: 19) and from ETUC xxx

³ In his devastating critique of the Althusser school's theoretical practice, Thompson emphasized the following: "It is a sealed system within which concepts endlessly circulate, recognize and interrogate each other, and the intensity of its repetitious introversial life is mistaken for a "science"." (Thompson 1978: 12).

⁴ See, among others, Schmitter 1979, Berger (ed) 1981, Schmitter and Lembruch (eds) 1979, Goldthorpe (ed) 1984, Grant (ed) 1985, Cawson 1986, Williamson 1989, Nordby 1994, Knutsen 1994.

⁵ For an introduction to the EU in a historical perspective more generally, see e.g. Knutsen 1998.

⁶ Colin Crouch is among those who emphasize this: "Corporatism in industrial relations is rooted in a relation between capital and labour, normally at nation-state level." Crouch 1985: 86.

⁷ See Philippe C. Schmitter's "ideal-typical" definition, Schmitter 1974: xx

⁸ Schmitter 1979: 63 and footnote 1 *ibid*: 93. See also Crouch 1983: "The crucial characteristic, 'the Don', at the heart of corporatism is that interest organizations constrain and discipline their own members for the sake of some presumed 'general interest' as well as (or even instead of) representing them." Crouch 1983: 452.

⁹ The theorist of corporatism Alan Cawson thus maintains that "the presence of the state is a defining characteristic of corporatism". Cawson 1986: 38.

¹⁰ In addition to the discussion of Crouch in Knutsen (1994), see Crouch (1993), esp. Ch. 2, "A Theory of Exchange in Industrial Relations Systems".

¹¹ Lord Cockfield served as Vice President in the Commission from 1984. His main responsibility was the Internal Market. See Cockfield, 1994; Moravcsik, 1991. Jacques Delors, a close associate of Francois Mitterrand, served as Commission President 1985-1994, in a dynamic period of integration.

¹² Point 17 in the Charter on Fundamental Social Rights reads as follows: "Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States. This shall apply especially in companies or groups of companies having establishments or companies in several Member States of the European Community." Quoted from Charter on Fundamental Social Rights: Draft finalised by the "Social Affairs" Council and report by the Presidency to the Strasbourg summit, *Europe Documents*, No. 1579.

¹³ "Il serait irréaliste et contreproductif d'ignorer les diversités qui existent entre et au sein des Etats membres. C'est pourquoi un nouvel instrument communautaire ... ne serait pas souhaitable." Further, UNICE is in favour of the Single Act, but not in favour of a transfer of responsibility "... dans ce domaine du niveau national au plan communautaire". UNICE Archive, Brussels. UNICE documents referred to are from this archive unless otherwise stated explicitly.

¹⁴ Here, the Commission was also criticized for adopting an approach which was "fundamentally wrong". UNICE wanted to promote "genuine communication" as distinct from the Commission's "mechanical, ritualistic procedures imposed from outside", which would only be suited to damage the companies in question and please their competitors.

¹⁵ European Industrial Relations Review (EIRR) provides good surveys of the development in these fields, esp. in No. 228 (January, 1993) and No. 229 (February, 1993). My information here is from EIRR 228, the article entitled "Information and Consultation in European multinationals - part one".

¹⁶ CEEP is abbreviation for Centre Européen des Entreprises à Participation Publique.

¹⁷ Communication concerning the application of the Agreement on social policy presented by the Commission to the Council and to the European Parliament, Summary, point 5: "Articles 3 and 4 of the Agreement reproduce in almost identical terms, the agreement concluded on 31 October 1991 between UNICE, ETUC and CEEP ...". See also ETUC, 1993: 45.

¹⁸ Quotations from The Agreement on Social Policy, Articles 3 and 4 (annexed to the Maastricht Treaty).

¹⁹ "Although UNICE regrets that this definition of subsidiarity has not explicitly been mentioned in the Social chapter, it expects that the new article 3.b will be fully respected by the Commission when drafting social legislation, and that the Council will test each directive against this guiding principle for future Community action. UNICE notes with satisfaction that the role of the social partners is strengthened considerably and that the joint proposal of ETUC, CEEP and UNICE of 31 October 1991 has to a large extent been accepted."

²⁰ Among other detrimental effects, Ferrer envisaged weakened propensity to invest, especially in countries like Ireland, "which today attract many investors from Japan and USA". He was also worried that the directive might "devalue and demotivate local management and workers' organisations".

²¹ "The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue *by ensuring balanced support for the parties.*" The Agreement, Article 3.1., italics added.

²² In addition to legal adviser, Richard was a member of the secretariat in UNICE's Social Affairs Committee. He was central in the negotiations concerning the EWC directive.

²³ Roger Blanpain is professor of comparative and European labour law at the University of Leuven, Belgium. Paul Windey has a background as legal adviser in the Belgian trade union movement. From 1991 social attaché in the Belgian delegation to the EU. During the Belgian Presidency in autumn 1993, he was leading the negotiations for the EU Social Affairs Council on the EWC directive.

²⁴ The EU Commission was at this time made up of 23 general directorates (DGs). Main tasks of DG V concern "Employment, industrial relations and social affairs". DG V was divided into six under-directorates. Of these, directorate D worked with "Social Dialogue and Freedom of Movement for Workers". Of directorate D's five subdivisions, one had its main tasks in "Relations with Social Partners & Organization of the Social Dialogue", another works with "Industrial Relations & Labour Law".

²⁵ *Europe*, Brussels, 15.10.93, italics in original. Quoted in Gold and Hall, 1994: 180.

²⁶ In spite of certain improvements in the Commission's latest draft, the attitude of UNICE is still the following: "Nevertheless, in its present form, the latest text remains unacceptable to companies for two fundamental reasons: (...) Article 5 requires companies to set up a special, centralised structure to negotiate mechanisms for information and consultation. Companies see this as an unwarranted and unnecessary interference in their relationships with their employees. (...) Article 7 and the Annex ... will bias the outcome in favour of centralised, rigid and bureaucratic structures of the Works Council type, which most companies consider harmful and unsuitable." Further, the following bias was underlined again: "However, UNICE must point to the virtual impossibility of conducting a free and impartial negotiation when the Commission's document has promised in advance, to grant to one side virtually all it has always requested. To quote the Secretary General of ETUC (meeting of 9.3.94):- "We cannot give-up what is already in our pocket". O. Richard said in my interview with him, UNICE 27.4.95: "The ETUC was happy to take the pretext." Richard also emphasized that ETUC was clever in taking advantage of the situation, and that their people did a good job. (Richard, 1995a)

²⁷ COREPER is abbreviation for Comité des Représentants Permanentes, i.e. representatives of the permanent national delegations among the EU countries in Brussels. This body probably wields much more influence on the decision process in the EU than the sparse treatment of it in the literature might indicate. COREPER relates both to the Commission and to the Council, which implies "a system of bureaucratic intermingling", in which "the borderline between the initiating institution and the decisionmaking institution becomes blurred". See Ludlow, 1991: 103.

²⁸ The UK did not participate, Portugal abstained from voting.

²⁹ The opinions of the European Parliament are reproduced in Blanpain and Windey, 1994, Annexes B, 1 and 2.

³⁰ "The current proposal, in fact, appears to allow great flexibility. (...) However, this flexibility is an illusion,... This will inevitably bias any negotiations towards the rigid, centralised and bureaucratic European Committee structure, not because it is the best medium for information and consultation, *but because it meets other, unconnected, long-term objectives of organised labour.* (...) Forcing companies into such a straitjacket against their will would do grave harm as it will upset existing patterns of industrial relations and delay decision-making, thereby reducing European competitiveness. All this would create a strong disincentive to potential investors." (italics added.) The letter ended in the following tone: "In view of the urgency and importance of this matter, UNICE is addressing copies of this letter to COREPER, to relevant Commission officials and, through its member federations, to national governments."

³¹ Here, I am not referring to the employers' "objective" interests, which are normally identical with what they *ought to* think, based on some standard or other, but to their interests as subjectively perceived by themselves and therefore also within the realm of what is possible to verify empirically.

³² See also Richard, 1995b. He writes: "It is no secret to anyone that employers ... have warned unstintingly about the dangers of this directive... (...) Certainly, they do not like the directive and will maintain their dislike. But, because they are law-abiding, they will apply it." (p. 253) "It is well known that employers on many occasions vigorously opposed the annex to the directive, which lays down the minimum prescriptions to be applied in the undertakings and groups that have not managed to reach an agreement." (p. 256).

³³ See especially Ch. 3: The Multinational Corporation, and Ch. 4: The Trade Union Answer. Here it says, e.g.: "... develop a new countervailing union response to the multinational companies,..."

³⁴ J.-J. Servan-Schreiber was an influential political commentator, especially as editor of *L'Express*. The central theme in this book concerned the economic "invasion of Europe", led by American multinationals.

³⁵ Among these "common demands" Levinson mentions "job security, salary systems, pension programmes, training and retraining, industrial democracy and asset formation".

³⁶ These difficulties touch on, *inter alia*, relations between established interests in different countries, different organizational development in different industries, and so on. For an interesting account in a Nordic perspective, see Dølvik, 1995.

³⁷ "Cette image idyllique s'est vite révelu trompeuse."

³⁸ "D'autre part, bien des conseils n'avaient qu'une existence éphémère et fictive."

³⁹ For Eric Hobsbawm, more generally, 1973 marks the end of "the Golden Age" of postwar capitalism and opens another "age of crisis". Hobsbawm, 1995: 286.

⁴⁰ "The BSN experience was perhaps atypical, in that much of the impetus came from the group's managing director, rather than the employees' side." EIRR 228/1993: 14.

⁴¹ "On peut se demander si la stratégie développée par Charles Levinson pour aboutir à des relations conventionnelles au niveau multinationaux n'était pas non seulement prématurée, mais structurellement inadéquate."

⁴² In a speech to the exclusive circle of leaders in the roundtable of European Industrialists, Mr. Dekker presented his vision of a new stage in the history of European integration, a stage that was to be stamped by the interests of big business. (See Moravcsik 1991: 44).

⁴³ See also Delors' *homage* to his leader, in which Delors emphasizes the break with the idea of "socialisme dans un seul pays, formule chère à certains hommes de gauche,..." (Delors, 1996).

⁴⁴ "This experience of group-level information meetings, added to the nationalisation of many major companies, created in some French-based MNCs (i.e. multinational companies, PK) a fertile ground for experiments in multinational-level information exchange. A further contributory factor was the presence at the head of some groups of presidents personally interested in extending employee participation in this way - the well-known Socialist sympathisers Alain Gomez at Thomson Grand Public and Antoine Riboud at BSN, for example." EIRR, 228/1993: 14.

⁴⁵ The talks took place in the castle Val Duchesse outside of Brussels. The first meeting was on January 31, 1985. See Olsen (1994) for a short overview. These talks can be seen, by the way, as an attempt to copy the Swedish "Harpseud democracy".

⁴⁶ The adjective used here, "corporate", is unfortunate and may be misleading. "Corporative" would be better, and "corporatist" the adequate choice, in keeping with my wording in this chapter. The Norwegian translation of Rokkan uses the expression "korporativ pluralisme".

⁴⁷ Thus, article 11 of the ETUC Constitution of 1995 reads: "The Executive Committee shall be the supreme authority of the European Trade Union Confederation between Congresses." Among tasks the following is mentioned explicitly: "The Executive Committee Shall: (...) Draw up the negotiatory mandate to be used by the ETUC in its dealings with European employers' organisations and in its relations with the European institutions, and shall evaluate their outcome;...". ETUC, Constitution, Brussels, 9-12 May 1995, p. 9. See also Dølvik 1997.

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