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9 The European Community: Between Mandatory Consultation and Voluntary Information

Wolfgang Streeck and Sigurt Vitols

9.1 Introduction

Attempts to develop legal instruments for workforce participation at the European Community level, either to harmonize national industrial relations systems or to extend participation regimes to multinational companies, go back as far as the early 1970s. The period was one of union strength throughout Europe in the wake of the 1968 and 1969 strike wave, and of ascendancy of social democratic parties in EC member states, most notably in West Germany. Industrial democracy at the workplace and in the enterprise had come to be widely perceived as an indispensable condition for social consensus within a union-inclusive bargained economy, with shared responsibility for full employment at acceptable rates of inflation. Also, expectations for the future of the European Community were generally optimistic, based on a widespread belief in growing market integration more or less inevitably requiring and bringing about political and institutional integration.

One consequence of the rise of social democracy in an increasingly international Europe was the agreement among the EC heads of state and governments at their first summit in October 1972 to endow the European Community with the beginnings of a welfare-state-like social policy. Prominent among the objectives of the so-called Social Action Programme were Europe-wide information, consultation, and co-determination rights for workers at the workplace. In subsequent years the Programme slowly worked its way through the EC legislative machinery, with little success, and even less as time passed. With the change in political climate at the end of the decade, EC social policy was effectively abandoned as European integration ground to a halt. Indeed, it had

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contributed heavily to this event in that it had created strong hostility among business against the European Community, most of all for its attempt to impose legally binding obligations on Europe's powerful multinational corporations to inform and consult with their workforces across national borders.

When in the mid-1980s the Single European Act and the Intemal Market project relaunched the integration process, the European Commission tried to attach to it a new, less ambitious version of the Social Action Programme, referred to in EC jargon as the "Social Dimension of the Intemal Market." Very little of this, if any, has yet found its way into EC legislation (Streeck 1995). Mandatory workplace representation was again proposed, and again not achieved. With the Maastricht Treaty and its aftermath, the European Community seems less likely than ever to acquire a meaningful capacity for legislation on social matters.

The difficulties for EC action on worker participation are many. To begin with, European employers have always been firmly opposed to any EC social policy that went beyond the proclamation of nonbinding general principles. European legislation on workplace representation in particular was and is unconditionally rejected. It is important to note that this position is shared even by employers, such as the German ones, who in their own countries have long successfully operated under legally instituted participation regimes.

Publicly, European employers never objected to participation per se. As early as the 1970s, European business associations argued that worker participation was part and parcel of good management and was already being widely practiced on a voluntary basis. Rather than imposing it by legislation, the European Community was urged to let participation grow on its own, arranged spontaneously and voluntarily at the local level between managements and their workforces in line with the specific and diverse business conditions and organizational traditions of individual workplaces. This insistence on voluntarism has remained nonnegotiable up to the present: having no interest in EC social policy other than in preventing it, European employers never had to consider accepting formal participation rights in exchange for union or EC concessions on demands of their own.

European unions, in tum, have a history of unsuccessful attempts to bargain with multinational companies through intemational company committees and sectoral union federations (Levinson 1972; Northrup and Rowan 1979; Grahl and Teague 1991). In the early 1970s, they had come to regard EC legislation on worker participation as welcome and, indeed, indispensable assistance for their intemational organizing activities, in that it promised to force multinational companies to enter into at least some kind of industrial relations at the European level. Getting such legislation enacted was, however, a different matter. EC political institutions are structured in such a way that interests in affirmative supranational govemment lack suitable points of access to its decision-making machinery. For example, EC legislation is passed, not by an elected parliament, but by the Council of Ministers in which each member state has one vote and which on important issues decides only by unanimous vote.

Producing what is in effect domestic legislation through international diplomacy and intergovernmental negotiations is awkward, not only because normally one member government is enough to prevent proposals being enacted. In addition, partly reflecting the European Community's lack of a responsive political system and partly prolonging it, unions suffer from endemically weak organization at the European level, their organizational base having always been and remaining the various national industrial relations systems. It is true that, to some extent, the same conditions affect organized business. The difference is, however, that while labor has a positive interest in European social policy, business has only a negative one. As a consequence, institutional weakness and deadlock at the EC level, while a liability for labor, is an asset for business. Where the institutional cards are stacked toward nondecisions, interests that require decisions are likely to suffer defeat regardless of effort, while interests served by nondecisions can often expect to prevail even though or precisely because they are unwilling or unable to play.

National governments, for their part, came to find European-level workforce participation more and more intractable. Initially, in the years after the strike wave, there seems to have been wide tacit acceptance of a need to harmonize national participation arrangements along the lines of the "German model," which was generally regarded as the most advanced way of achieving labor peace. Subsequently, however, more traditional concerns again became dominant, in particular the preservation of the sovereignty of member states and the integrity of national industrial relations systems, including the role of national governments in mediating the balance of power between capital and labor. Harmonization of national systems through a transfer of legislative authority to the Community thus lost its political appeal.

This left the possibility of supranational legislation applying only to multinational companies. Just as by EC-wide harmonization, the integrity of national industrial relations systems may also be impaired by large firms using their multinational organization to evade national obligations, not least workforce information and consultation requirements. Provided it can be confined to transnational actors that have grown beyond the reach of national systems and threaten to upset the balance of these systems from the outside, supranational regulation, rather than undermining national control, may in fact help restore it, making supranationalism potentially acceptable even and precisely to sovereignty-conscious nation-states.

Increasingly, however, national governments also responded to the decline since the late 1970s of union power and worker militancy and to growing business pressures for restoration of managerial prerogative. The election of a Conservative government in Britain in 1979 provided business interests and their political allies throughout Europe with energetic leadership and vastly reduced the prospects of legislative initiatives on worker participation at the EC level. Also, the emerging new domestic agendas in member states after the end of the social democratic decade found the Community's lack of a supranational domestic policy fortuitously congenial. Bent on deploying the sovereignty of

the nation-state to increase that of managements and "market forces," European governments began to perceive the absence of supranational regulation not as a threat to the stability of national regulation but as helpful for the achievement of national objectives of deregulation—including more "flexibility," "decentralization," and an expanded space for "voluntary" instead of mandated cooperation between capital and labor.

A prominent topic in the European debates of the 1980s and 1990s on worker participation was the diversity of national industrial relations systems within the European Community. British accession to membership in 1976 vastly added to that diversity, but other factors worked in the same direction (Streeck 1992). Short of harmonization of national systems—which itself must become more difficult as national differences increase—growing diversity magnifies the technical problems of designing supranational regimes for transnational actors that fit equally well with all constituent national systems without causing unanticipated changes in them. For example, while mandatory European works councils for multinational companies with rights to codetermination would fit the German system, they may not sit equally well with existing Italian institutions. Not only would they favor German over Italian worker representatives serving on the same multinational works councils, but they would also strengthen forces in Italy, among employers or unions, that would like to move the Italian system closer to the German system. Especially if motivated by a desire to restore the integrity of national regimes, Europe-wide participation statutes for multinational companies must be drafted so as to be simultaneously meaningful for workforces and neutral with respect to the national systems in which companies operate—a task the Commission found increasingly vexing.

As the 1970s passed, the preservation of the diversity of national industrial relations systems slowly achieved the status of a normative objective in its own right. This extended well into the ranks of supporters of EC social policy legislation, qualifying and complicating their position and limiting their mobilizing capacity at critical moments. National diversity was first invoked as a value by the Left as European unions became uneasy about the emerging hegemony of the "German model," both in draft EC legislation and in the internal politics of European union confederations. The relative success at home of the German system in the difficult 1980s, especially from a union perspective, did little to defuse the resistance, which presented itself as deeply committed to nationally distinctive ideas of solidarity and union democracy; to different concepts of the political and economic responsibilities of unions, the role of employers, and the proper relationship between capital and labor; and to alternative views of the state and of the need for unions to remain independent from it. While the ideological debates about such issues as these have receded in recent years, the tendency of European unions to defend their national institutions against supranational interference, including institutions that would seem to have worked comparatively less well for them, appears as strong today as ever.

Institutional nationalism among nationally organized unions is not necessarily irrational, even in an increasingly international economy. Opportunities for political influence at the EC level are untested and weak at best, and developing them requires time and risky investment of scarce political and organizational capital. By comparison, European unions are well established in their respective national welfare states, which they have helped build and together with which they have grown. Externally caused institutional change in national systems is bound to upset the standard operating procedures and vested interests of large numbers of organizations and officials. Reluctance to take this lightly does not preclude recognition of the need for a supranational response to economic externalities that threaten the integrity of national systems as much as, and in the long term more than, institutional externalities. Organizing such a response, however, raises severe collective action problems that are exacerbated by inevitable uncertainty about the costs and benefits of supranationalism for national actors, with respect to both the domestic power balance and the distribution of influence in the new supranational institutions. The result is unstable, oscillating preferences and weak commitments, with unity among national union movements at the European level inversely related to the probability of proposals being passed into law.

The internal inconsistencies in the position of European unions on workplace participation did not escape the attention of the employers, who were often able to show that legislative initiatives had only shallow union support. Early on, European employers, with the full cooperation of their German colleagues, joined European unions in the struggle against the German model identified with any strongly normative European-level legislation on workplace representation. Later employers pledged themselves, just as to voluntarism, decentralization, and local democracy, to Europe-wide preservation of institutional and cultural diversity—in the act championing previously deplored practices like workplace bargaining, state abstention from industrial relations, and multiunionism as "historically grown" elements of "national culture" worth preserving for their own sake, and offering unions coalitions at the national level to defend national institutions against supranational meddling. It is remarkable that such cultural conservationism went together with another, quite different justification for opposition to supranational regulation: that "market forces" should be left free to weed out the less economically competitive national regimes and bring about Europe-wide convergence to market-driven "best practice."

During the 1980s domestic policy making in the Community came under the control of an ever more self-confident *coalition between nationalism and neoliberalism*. For a time, the alliance between the two was personified by Margaret Thatcher and her vigorous simultaneous defense of British national sovereignty against "French multinational bureaucrats," and of the "free market" against "socialism" creeping in through the Brussels back door. But in fact this was far more than a personal or national idiosyncrasy. In the constellation of decision procedures and policy areas that defined the relaunched inte-

gration process, and in the interaction between national politics, international relations, and economic interests inside the developing EC polity, defending a country's sovereignty in the councils of Europe and defending the freedom of "market forces" in the integrated European economy had come to be *one and the same thing*—inextricably intertwining the objectives of liberal nonregulation of the integrated economy and of nationalist defense of state sovereignty, and allowing opponents of an interventionist EC social policy freely and opportunistically to switch from a nationalist to a neoliberal frame of reference and back, in support of identical substantive demands.

With the failure of the Maastricht Treaty to unseat the dominant EC coalition, the second defeat of Europe-wide legislation on workplace participation seems a foregone conclusion. The next section of this paper traces the various attempts of the Community to create mandatory workplace rights for workers and discusses their present status. The paper then looks at the proliferation of voluntarily instituted European works councils in some multinational firms in the late 1980s and early 1990s, at the time when the battle over the "social dimension" was under way. While voluntary councils are sometimes regarded as intermediate steps toward mandatory councils in EC law, it is argued here that what one sees in Europe today may in fact be what one gets: an uneven pattern of weak and unilaterally withdrawable company-specific participation regimes growing in the empty spaces between competing national and supranational jurisdictions.

9.2 EC Legislation on Workforce Participation in European Firms

Beginning in the early 1970s, the Commission of the European Community took a number of legislative initiatives on legal participation rights for workers in European firms. Emerging from different policy contexts and based on a variety of articles of the Treaty of Rome—the de facto EC constitution—none of these were successful. Works councils or similar arrangements figured in some proposals but not in all.

Workforce participation became a concern for the European Community in three contexts: (1) the "harmonization" of national systems of company law, (2) the development of supranational, "European" company law, and (3) the creation of legal rights for workers vis-à-vis management to information and consultation.[1]

1. In the 1970s the European Community regarded differences in national systems of company law as "restrictive conditions on the freedom of establishment within the Community" (article 54 of the Treaty of Rome), deriving from this a mandate to pursue "approximation and harmonization" of such systems. The classical EC instrument for harmonization is a "directive," which once

1. The following draws in particular on various editions of the *European Industrial Relations Report* (*EIRR*), especially no. 207 (April 1991): 23–27; Addison and Siebert (1991); Hall (1992).

enacted obliges member countries to rewrite their laws in accordance with it. In pursuit of harmonization, the Commission drafted a number of directives on company law, one of which—the famous "Fifth Directive"—deals with the governance structure of public limited-liability companies. The original draft was issued in 1972. Inspired by the then Social-Liberal German government, which was preparing legislation to strengthen company-level co-determination in Germany, the draft proposed to prescribe a two-tier board system with an obligatory supervisory board that would include employee representatives.

The 1972 draft directive never got close to enactment. In 1983 the Commission presented a revised version, which raised the minimum size for companies falling under the statute from 500 to 1,000 employees. More important, it offered firms and national legislators a choice among four alternative models of workforce participation in company governance: (1) the two-tier board system of the first draft, with one-third or one-half of supervisory board members coming from among the workforce, (2) a single board with employee representatives as nonexecutive members, (3) a company-level representative body of employees only (something akin to a works council without, however, being so called), and (4) any other participation structure provided it was collectively agreed upon between employer and workforce. The draft tried to ensure that access to information and rights to consultation and co-determination were the same regardless of what model was selected.

2. In addition to harmonizing national company law, the Commission also proposed to create a European Company Statute. Firms would be given the option to incorporate under that statute, as an alternative to incorporation in national company law. A firm incorporated as a "European company," or *Societas Europea*, would have the advantage of being ipso facto considered incorporated in all EC countries, making it unnecessary for it to seek incorporation in different national legal systems. The first draft of the statute was presented in 1975 and required European companies to have a supervisory board that included employee representatives with full rights to information and co-determination, as well as a European works council. This combination of company- and workplace-level co-determination was the closest the European Community came to a wholesale adoption of the German model.

Like the Fifth Directive, the European Company Statute got stuck in the legislative process, and in 1989 a revised draft was presented. The major change was that the draft dropped the German dualism of supervisory board and works council representation and instead offered firms the same menu of alternative arrangements as the 1983 revision of the Fifth Directive. Concerning the rights of worker representatives, while the 1975 draft had emphasized co-management and co-determination, especially via the supervisory board, the 1989 version emphasized information and consultation, again moving closer to the Fifth Directive in its revised form.

3. It was only relatively late that workforce participation came to be dealt with as a matter of labor law in a narrow sense, in competition with EC initia-

tives on company law or, more precisely, in response to their lack of progress. In 1980 the then commissioner for social affairs, Henk Vredeling, issued a broadly written draft directive on information and consultation rights for workforces, which came to be known as the "Vredeling directive." The initiative drew on article 100 of the Treaty of Rome, which requires "approximation" and "harmonization" of legal provisions in member states "as directly affect the establishment or functioning of the common market." Politically, it tried to follow up on two directives that had recently been passed under the Social Action Programme, the Collective Redundancies Directive of 1977 and the Transfer of Undertakings Directive of 1979. Both provided for workforce information and consultation in connection with the specific events they addressed (Addison and Siebert 1991). The Vredeling directive can be seen as an attempt to extend the information and consultation rights enacted for firms undergoing economic restructuring to firms in all economic circumstances—thereby bypassing the legislative deadlock on company law and bringing workforce participation within the ambit of EC social policy proper.

The 1980 Vredeling draft was largely agnostic on structural matters. While it specified in great detail a wide range of *information* on financial, economic, and employment issues to which workforces were to be regularly entitled, and in addition established legal *consultation* rights on any decision likely to have "serious consequences" for employee interests, it followed the example of the Collective Redundancies and Transfer of Undertakings directives by assigning the exercise of the new rights to "existing employee representatives by law or practice." Another defining feature of the draft was that it focused on companies with subsidiaries, and on the access of workforces in branch plants to information held by management at headquarters—and perhaps strategically withheld from local management. In fact, the draft's main thrust was to make it impossible for local management to excuse itself from obligations to inform and consult on the grounds of centralization of information and decision making in the parent company or at company headquarters.

In trying to create legal obligations for firms relative to their workforces in subsidiary plants, the draft directive simultaneously addressed three situations: where both headquarters and subsidiary are located in the same EC country, where the headquarters is based in a different EC country than the subsidiary, and where it is located outside the European Community. While the first situation is relatively easily covered by national legislation (although the directive would have constructed a "harmonizing" common floor for all national systems), the second suggests itself as a classic case for supranational regulation of transnational relations and extemalities, given that the law of the country with the subsidiary is likely to find it difficult to govem the behavior of a headquarters located on foreign territory. The third situation also raises the question of exterritoriality, but in the relation between the European Community and third countries.

The draft Vredeling directive met with unprecedented hostility from business, European and extra-European (DeVos 1989). In part, this may have been because of the high specificity of the information and consultation rights stipulated by the draft. Nonetheless, it is hard to see how the substance of the directive justified the fierce battle that ensued. Very likely, that battle was more over the Social Action Programme as a whole and over the European Community's continued, somewhat time-lagged pursuit of a social democratic agenda, in spite of the accession to power of conservative governments in Germany and Britain and the rising themes of supply-side economics and "Eurosclerosis." It is also possible that business was so profoundly disturbed by the prospect of European labor law acquiring the capacity to regulate the internal affairs of multinational corporations that it felt the threat must be disposed of once and for all. In any case, although the Commission in 1983 watered down its draft significantly—by limiting its jurisdiction to firms with at least 1,000 employees and reducing the range and frequency of the information to which workforces would be entitled—it was unable to save its proposal. Under heavy fire from business and with a British veto certain, the Council of Ministers declined in 1983 to vote on the revised directive and has since failed to take the matter up again.

The defeat of Vredeling marked the end of the Social Action Programme, and indeed of the attempts of the 1970s to endow the European Community with a welfare-state-like social policy. It also documented the exasperation of business with the post-1970s European Community, as well as its new clout in EC politics. When after years of stagnation European integration was relaunched in the mid-1980s, the designated vehicle for this was the Single Market program with its deregulatory thrust. It was only several years later that the Commission returned to social policy in its attempt to add a social dimension to the increasingly integrated European economy. In this context, workforce participation reappeared on the European Community's legislative agenda.

After long preparation, the Commission in 1990 issued a draft Directive on European Works Councils, as a successor or substitute for the Vredeling directive.[2] Like the latter, the 1990 draft is about workforce information and consultation rights, it originated in the Social Affairs directorate, and it invokes article 100 of the Treaty of Rome. It also contains essentially the same rights for workers as the second, weakened version of Vredeling (*EIRR*, no. 207 [April 1991]: 27). However, unlike Vredeling the new directive specifies a structural arrangement, "European works councils," in which workforce information and consultation rights are to be vested.[3] Also, while Vredeling made specified information and consultation arrangements obligatory for firms be-

2. Indeed, the new draft was often referred to in Brussels jargon as the "son of Vredeling." The text can be found in *EIRR*, no. 206 (March 1991): 29–32.

3. But it also gives management and labor at the company level the choice to set up alternative structures by collective bargaining.

yond a certain size, the new draft requires that workers, unions, or management take the initiative in order for a European works council or an equivalent mechanism to come into being; at least in principle, this leaves the possibility of consensual nonapplication of the law.[4] And finally, the 1990 draft is to apply only to "undertakings or groups of undertakings" that have at least 1,000 employees *and* are significantly present, with establishments or group of undertakings employing 100 workers or more, in at least two EC countries.[5]

Works councils, then, have appeared in a number of Commission drafts on workforce participation: as an alternative to board-level representation in the 1983 draft of the Fifth Directive, as a supplement to it in the 1975 draft of the European Company Statute, and again as an alternative in its 1989 version. The presently pending European Works Councils Directive differs from all of these in that, among other things, the works councils it proposes are to exercise information and consultation rights only; are to be formed exclusively at the headquarters of multinational companies; and unlike, for example, the proposed European Company Statute, are not to be elected through a common procedure, but are to consist of delegates from local plants elected by local workforce representatives or workforces in accordance with national law and practice.[6]

9.3 Politics of the 1990 Draft Directive

The draft European Works Councils Directive of 1990 was an attempt to steer clear of the political conflicts and dilemmas that had destroyed Vredeling and stalled the progress of European company law. Particular care was taken to accommodate the desire of national governments and union movements, to protect the integrity and diversity of national industrial relations systems, and to preempt employer complaints about supranational regulations failing to take into account "the variety of information and consultation procedures evolved by companies to suit their particular circumstances" (Hall 1992, 9; see also Tyszkiewicz 1992).

1. While the first European proposals for legislation on workforce participation covered *all firms* above a certain size, the Vredeling draft applied only to *firms with subsidiaries*. However, although its language included both national

4. The requirements for triggering the creation of a European works council or some other information and consultation mechanism are, however, easy to fulfill.

5. According to Sisson et al. (1992), the directive would affect about 880 EC-based firms with a total of 13.5 million employees, and large parts of an additional 280 multinational companies based outside the European Community. Of the EC-based firms, 332 are British, and about one-half of the non-EC companies have a significant British presence. This helps explain the British government's prominent role in the resistance to the legislation.

6. It is not clear, and has hardly been discussed, how the proposed European works councils would fit into the workforce participation provisions of the Fifth Directive and the European Company Statute, and especially how the menus of options the revised drafts are offering will.

and multinational firms, its principal targets were *multinational companies* with their ability to use the exterritoriality of their headquarters to avoid legal obligations in the host countries of their subsidiaries. During the legislative process the Commission proposed to confine the directive to multinational companies only, in an attempt to divide the opposition from business (DeVos 1989). This was countered by the claim that exempting national firms would place a disincentive on internationalization. The 1990 draft disregards this point at its own peril, probably to placate national governments by keeping interference with national industrial relations at a minimum and limiting itself to the management of externalities and transnational relations.

The new draft also remains exposed to objections from non-European multinational companies, especially American and Japanese, that it proposes to make law with exterritorial applicability outside the European Community. At the bottom of this is, again, a problem of competition. To avoid giving non-European multinationals an advantage over European multinationals, the Vredeling directive tried to subject the former to the same obligations vis-à-vis their European subsidiary workforces as the latter. Lacking better means, Vredeling proposed legally to designate a non-European company's largest plant in the European Community as its headquarters for the purposes of compliance with European information and consultation requirements. In addition to forceful opposition from the American Chamber of Commerce in Brussels and a legion of American business lobbyists, this caused diplomatic interventions by the United States and Japan against what was claimed to be an attempt to extend European law to American and Japanese corporate citizens operating in their home countries. It has been argued that this contributed heavily to Vredeling's defeat (DeVos 1989). The present, successor draft takes the same approach to exterritoriality and is therefore likely to generate the same opposition. Excluding non-European multinationals from its ambit offers no solution, however, as it would again raise the issue of fair competition.

2. Under both the Fifth Directive and Vredeling, participation provisions were to be *obligatory* for all firms that fell under the proposed legislation. This is different for the European Company Statute, in that incorporation under European law was always intended to be the voluntary decision of the individual firm. In this sense, the participation provisions under European company law are *optional*. The draft directive of 1990 makes having a European works council, or an alternative information and consultation arrangement, a little less than fully obligatory by requiring triggering activities that must originate inside the company.

3. The first proposals on workforce participation were highly *prescriptive* in that they laid down detailed legal rules that firms were required to follow. Later versions, beginning with the second draft of the Fifth Directive in 1983, offered firms a *menu* of alternative rules and structures among which they were to be free to choose. The 1990 European Works Councils Directive also takes this approach by giving firms the option of selecting alternative mechanisms

for information and consultation, to the extent that they fulfill certain minimum requirements. Like the triggering procedure, this responds to business demands for "flexibility." But it also accommodates reservations among European unions about works councils, whether politically or nationally motivated, and allows national unions without a works council tradition to seek more expedient arrangements with European multinationals based in their countries.

4. While originally EC legislation sought *direct legal regulation* of workforce participation rights and structures, the 1983 draft of the Fifth Directive was the first to include a *collective bargaining option* allowing firms and unions to negotiate their own solutions.[7] This approach was always popular with unions less comfortable than, in particular, German unions with legislated, as distinguished from bargained, rights. The draft European Works Councils Directive assigns bargaining a prominent role in three respects: the triggering of works council formation, the determination of the representative structure that is to exercise workforce information and consultation rights, and the exact definition of those rights. By empowering collective bargaining in this way, the draft directive dissociates itself from a "second-channel" concept of industrial democracy and abandons previous ambitions to reform national industrial relations systems into this mold.

5. Much of EC legislation, proposed or enacted, tried to promote *harmonization* of rules and procedures across countries. The Vredeling directive was partly an exception to this in that it gave (albeit "harmonized") information and consultation rights to a *variety* of national mechanisms of workforce representation. Its 1990 successor diverges even further from harmonization.[8] While it suggests building a unified representative structure at multinational headquarters—the European works council—council members are to be selected according to very different national practices. Moreover, the limitation of the draft to multinationals, leaving national firms untouched; the—remote—possibility of having no information and consultation system at all; the menu character of the directive; the strong role for collective bargaining, making it possible for almost anything in the directive to be rewritten; and the draft's unquestioning acceptance of the legitimacy of existing national representation arrangements together amount to a strong endorsement of national and company variety and document the extreme reluctance on the part of the European Community to interfere with existing arrangements.[9]

7. Analytically, this is different from a menu-type directive that offers a set of alternatives for firms to select from.

8. In this it concurs with the second draft of the European Company Statute, which, while offering firms a menu of choices, also allows countries to limit those choices by national law to two or just one of the models in the directive. Countries may in this way preserve "national diversity" by shielding "their" firms from potentially uncomfortable forms of co-determination or by insulating established national practices from external, supranational pressures for change (Hepple 1990, 313).

9. "Indeed the approach adopted is essentially the *mutual recognition* of the different national systems of employee representation as the appropriate channels for the nomination of members of the European Works Council" (Hall 1992, 8).

The Commission's new strategy in drafting the 1990 directive was only partly successful. More than its predecessors, the draft managed to reassure unions outside Germany that it was not another attempt to export the German model to the rest of the European Community. Moreover, it spared European union confederations the embarrassment of having to choose between nationally and ideologically sacrosanct principles like union-based and second-channel forms of workplace representation, legally mandated co-determination and voluntary collective bargaining, and bargaining at the company and sectoral levels. But while unions remained united behind the proposal, employers continued to be adamantly opposed, insisting that information and consultation in multinational European firms can come about only case by case and voluntarily.[10] Governments, for their part, never even discussed the draft in the Council, neither before the Maastricht Treaty when passage would still have required unanimity and a British veto was certain, nor in the two turbulent years after.

9.4 Defeat of the Social Dimension

The move from harmonization to accommodation of diversity, and from prescriptive to "flexible" forms of legislation, is also visible in the evolution of the other proposals on workplace representation and corresponds to a general change in the late 1980s in the EC approach to social policy that we have elsewhere described as "neovoluntarism" (Streeck 1992, 1995): an emerging commitment to a decentralized regulatory regime with a preference for "soft" over "hard" law, and "private" over "public" order, operating under a "variable geometry" of participants that are protected from central intervention by ample opportunities for "opting out," as well as by a general presumption of precedence of both local traditions and market forces over universal normative regulation.

The ideological underpinning for neovoluntarism was provided by a laissez-faire reinterpretation of the social Catholic principle of "subsidiarity." Initially, subsidiarity was introduced by the embattled Commission in its desperate search for a formula for a mutually acceptable division of powers between the European Community and its member states. Like its original, the EC version asserts the priority of "self-regulation" by "smaller social units" at "lower levels" of political organization and civil society. But traditionally, subsidiarity also implied a capacity, and indeed an obligation, for the central state to ensure that the outcomes of self-regulation were compatible with general norms of social justice. Typically, this involved public "subsidies" to weaker social groups, often in the form of legal and institutional support to enable them to look after their own affairs or to assert themselves in relation to better-endowed

10. A concise summary of the position of UNICE, the European peak association of employers, is given in *EIRR*, no. 207 (April 1991): 27, to the effect that allegedly the draft "takes no account of national legislation, employers' authority, the autonomy of the 'social partners,' and economic necessities."

adversaries. This, in turn, required a state strong enough not to have to take the existing distribution of power and collective action capacity in civil society for granted, and capable of reconstituting private autonomy as a devolved mandate for socially balanced and responsible self-governance.

The defeat of the Commission's federalist welfare-state-building project was reflected in a gradual reinterpretation of subsidiarity in EC discourse. Step by step, subsidiarity came to mean simply that nothing should be regulated by the European Community that could "as well or better" be regulated at lower levels of governance. But what is better or as good may depend entirely on one's interests and objectives. Reduced to a technical formula empty of normative content, subsidiarity was increasingly invoked by the Commission's opponents in their effort to obstruct the development of supranational state capacity as a formula for legitimating whatever either nation-states or the empirical distribution of market power had decided, not decided, or decided not to decide. In this way, subsidiarity turned into yet another version of liberalism.

It was in the early 1990s, before and after the signing of the Maastricht Treaty, that the harsh political realities reflected by the European Community's new subsidiarity formula became visible. In principle, the treaty should have made passage of worker participation legislation easier. The Single European Act of 1986 had introduced "qualified majority voting" among member states on the Council for measures "which have as their object the establishment and functioning of the Internal Market" (article 100a). However, "the rights and interests of employed persons" were excepted from this and could, as before, be decided only unanimously. The exception here, in turn, was "improvements, especially in the working environment, as regards the health and safety of workers" (article 118a), which came under qualified majority voting. In 1990, the Commission rejected suggestions to introduce the European Works Councils Directive as a health and safety measure, or to base it on article 100a on the grounds that information and consultation rights affected competition in the Internal Market (Hall 1992). Passage of the draft at the time of its presentation therefore required unanimity of the Council.

There was, however, hope that this would soon change. The intergovernmental conferences that eventually produced the Maastricht Treaty were expected to agree on a package of institutional reforms that would significantly enhance the political capacities of the European Community. In the social policy area, the Commission's central proposal was to extend qualified majority voting to a range of subjects beyond health and safety, thereby improving the chances of social dimension proposals, including workplace representation, being passed into law.

As it turned out, qualified majority voting could be made to apply only among 11 of the 12 member states, with Britain gaining permission from the others to dissociate itself from EC social policy entirely. Substantively, the social policy agreement signed by the Eleven amended the Treaty of Rome to extend qualified majority voting to five subjects, including "information and

consultation of workers." Another category of issues, however, among them "representation and collective defense of the interests of workers, including co-determination," continued to require unanimous decisions, if only among the Eleven. While Britain can no longer prevent the other countries from acting on them, any one of the others can, if willing to play the "British" part.[11]

Treaty ratification came only at the price of additional formal commitments to laissez-faire subsidiarity. Even apart from these, the treaty as signed made it anything but easy for meaningful social policy legislation to be passed, even among the new "social policy community" of the Eleven. The British "opt-out" raises a host of technical and "constitutional" questions that are so forbiddingly complex that they will likely stall any nontrivial legislative initiative. Not only will the jurisdiction of the European Court of Justice over social policy legislation passed by the Eleven be challenged. More important, to the extent that the Eleven may try to impose participation regimes on firms in their countries, these may appeal to the Court or the Commission against what could be construed as a competitive disadvantage against British firms, as these would remain unaffected while continuing to enjoy unlimited market access throughout the European Community. In particular, if the Eleven were to pass a works councils directive, British multinationals, while in all other respects corporate European citizens, would technically have to be treated as exterritorial in the same way as American or Japanese multinationals—which would re-create inside the European Community the same problems that helped defeat the first Vredeling proposal.[12]

Various observers have expressed the expectation that the "co-decision procedure" instituted by the Maastricht Treaty may make EC legislation on workforce participation easier to achieve. Under the Protocol on Social Policy, EC legislative powers on social policy matters, again only for the Eleven, may be jointly exercised by the European peak associations of business and labor, allowing in principle for a corporatist devolution of law making to organized social groups (Streeck 1994). It is hard to see, however, why European employers, having successfully prevented passage of a works councils directive in the Council, should agree to it being passed through tripartite bargaining. Usually,

11. Company law, such as the Fifth Directive or the European Company Statute, remains entirely outside the scope of the Protocol on Social Policy and thus continues to be subject to unanimity among all 12 EC members.

12. Like American firms, firms with headquarters in Britain that did not want to have a multinational works council or to comply with information and consultation obligations could refuse to obey "foreign" law and ask their government to protect them, and itself, from intrusion by a foreign government. To avoid writing unenforceable and technically illegal law for "foreign" citizens acting in "foreign" countries—i.e., multinationals based and incorporated in Britain—the Eleven would have to designate the largest subsidiary of a British multinational in the Eleven countries as its "headquarters" liable under "Eleven" law. As has been noted above, this problem is far from trivial given the large number of British or British-based firms potentially affected by the draft directive.

constructive participation of employers in corporatist political exchange, far from being a substitute for union strength or interventionist state capacities, presupposes at least one of the two, so employers can accept negotiated settlements as a "lesser evil" compared to industrial conflict or direct state intervention. Where, as in the European Community, both unions and state capacities are weak, institutionalized functional representation is much more likely to be used by employers to prevent regulation—which is exactly what UNICE has announced it will do with its newly formalized participation rights.[13]

Faced with protracted employer opposition, the Commission may ultimately give in and refrain from formal legislation once again. This would certainly not be a break with the trend of the past decade. Quite to the contrary, full adoption of a voluntaristic approach would be in line with the long-term evolution of EC social policy, as signified especially by the nonbinding status of the "Social Charter" and the successive rewriting of proposed participation legislation to conform to an ever more liberally interpreted "subsidiarity" principle. Ultimately, unmitigated reliance on voluntarism would probably be no more than a realistic recognition by the European Community of its vanishing prospects of ever acquiring the capacity to impose binding social obligations on Europe's most powerful corporate citizens, or to assist a nationally fragmented European civil society in organizing a collective response to the spread of transnational markets and organizations.

9.5 Rise of Voluntarism: "European Works Councils" in Multinational Firms

Since the mid-1980s a number of European multinationals and their workforces have agreed to set up supranational workforce information and consultation arrangements, usually referred to as "European works councils." By the end of 1991, 18 of the 100 largest European multinationals in manufacturing had either established a European works council or were planning to do so in

13. After an initial discussion, the Council of Ministers in the fall of 1993 forwarded the draft directive, with minor changes, to the social partners under the co-decision procedure. Hopes are being expressed that the procedure will conclude in the winter of 1994, when under the German presidency there might be an opportunity for council legislation to be passed. Considerable caution is advised, however. This will be the first time the procedure will be used, and since there is as yet no agreement on how it is to operate, all sides will be anxious not to create unfavorable precedents. More important, UNICE insists that deliberations among the social partners must start from a tabula rasa and must not be limited to the Commission draft, as amended by the Council; the unions, to the contrary, want a swift discussion after which the draft is to be returned to the Council. In particular, they reject the view of the employers that the procedure amounts to a mandate to find a "negotiated" solution. Substantively, UNICE offers to accept a works councils directive on the condition that it provides for negotiated solutions on a company-by-company basis, without a statutory fallback option in case no agreement can be reached. In practice, this would make European works councils depend entirely on employer discretion. (Footnote added at the time of the final revision of this manuscript in January 1994.)

the near future.[14] Two companies had two councils each,[15] making for a total of 20 European works councils.

The morphology of the 20 European works councils that were established by 1991[16] reflects their voluntary character and the absence of normative legislation. Voluntary European works councils are highly diverse in their organizational structures; their diversity reflects national differences; at the same time, they all have in common that as European-level bodies, they are union based and terminable at will by either side; and they are strictly limited in their functions, especially with respect to their capacity to interfere with managerial prerogative.

1. Only 8 of the 20 councils rest on a formal agreement between management and labor. In four companies, council operation is based on informal verbal understandings; in another two, meetings are organized and worker representatives invited at management initiative. A number of councils include management, and some are chaired by employer representatives, while the others are worker-only bodies. On 11 councils, workers are represented exclusively by company employees; 2 others consist entirely of full-time union officials; the rest include both (table 9.1).

Diversity extends also to the selection of council members. In two firms, each union organizing workers at a national subsidiary is given one seat. In other cases, seats are allocated to countries according to their percentage in the company's workforce, with delegate selection governed by national practice; if there is multiunionism in a country, the national quota is divided up in proportion to unions' relative strength. There are no simultaneous, companywide,

14. The data used for this study is based on a survey of the experience with European works councils of the 100 largest multinational manufacturing companies in Europe. This makes the present study the one with the highest number of cases under investigation. Other studies include Northrup, Slowinski, and Campbell (1988), which covers three companies; Gold and Hall (1992), which reports on 11 companies with 13 councils; European Trade Union Institute (1991), which looks at 13 councils at 12 companies; and Myrvang (1991), which is concerned only with Scandinavian firms.

15. Two European works council-type bodies went into operation at Thomson in 1986, one involving unions affiliated to the European Metalworkers' Federation (EMF), the other involving employees chosen to represent the different national workforces. Under a recent agreement the two councils will be merged in 1993. BSN set up a European Consultation Committee for its food and drink division in 1987, and a European Information Committee for its glass division in 1990.

16. Information on the companies and on existing or planned European works councils was gathered through a mailed questionnaire. Supplementary data was drawn from reports in the business and industrial relations press, from companies' annual reports, and from previous studies. Particularly useful sources were the studies by Myrvang (1991) and by Gold and Hall (1992). Northrup and Rowan (1979) provided information on international union activities in 39 of the 100 firms during the 1960s and 1970s. In addition, a small number of interviews were conducted with representatives of both labor and industry. (For a description of the method used in selecting firms and respondents, see appendixes A and B). The sample includes a number of companies based in the United States, Sweden, and Switzerland in addition to those based in EC countries. These companies were included because they are large employers within the European Community and would be subject to European works council legislation.

Table 9.1 Composition of European Works Council (EWC) Delegations

Type of Delegation	Number of EWCs
Union officials	2
Employee representatives	11
Union officials and employee representatives	5
Management invitation	2
Total	20

direct elections of European works councils; as a result, members of the same council may have different terms of office and are likely to have been selected in very different ways.

2. Many of the differences between European works councils are related to their companies' country of origin. The very existence of European works councils seems conditioned by a company's national industrial relations system. Of the 18 companies in our sample that have European works councils, no fewer than 17 have their headquarters in countries with some kind of works council or industrial democracy legislation: 6 in France, 5 in Germany, and 4 in Sweden (table 9.2).[17] And while U.S.- or U.K.-based companies make up 41 percent of the sample and include some of the largest European multinationals, none of them have a European works council.

National origin is also reflected in the institutional structure of European works councils. In three of the four Swedish-based multinationals, works councils are essentially meeting sites for shop stewards and union workplace officials, with part of the meetings devoted to a presentation by management on the company's economic situation.[18] This arrangement is in keeping with the union-based construction of workplace representation in Sweden. Similarly, at French companies councils are joint management-labor committees, while at German multinationals they are made up solely of workforce representatives, again mirroring national industrial relations systems.

Furthermore, national factors influence the degree to which multinational information and consultation arrangements are formalized. At least five of the

17. The remaining company is Nestlé, which is based in Switzerland. Nestlé is said, however, to enjoy a close relationship with the French state and French banks, as illustrated by the recent Perrier takeover. It is also reported that the European works council at Nestlé originated in an agreement between the German food workers' union (Gewerkschaft Nahrung-Genuß-Gaststätten) and the president of Nestlé Europe (Gold and Hall 1992, 22).

18. In one case, the council is de facto a world union council organized by the International Metalworkers' Federation. The fourth Swedish-based company has what could be called a second Swedish variant of European works councils, which includes representatives of the white- and blue-collar union federations from each of the Scandinavian countries in which the company has operations. This version, which involves the direct appointment of a limited number of union representatives, first appeared at a small company outside our sample in 1989; Scandinavian unions have seen the case as a precedent for spreading union involvement at the multinational group level throughout Scandinavia (Simonson 1991).

Table 9.2 **Home Countries of Multinational Companies (MNCs) in the Sample**

Country	Number of MNCs with EWCs	Number of MNCs in Sample	MNCs with EWCs (%)
France	7	16	44
Germany	6	22	27
Sweden	4	6	67
Switzerland	1	6	17
United Kingdom	0	29	–
United States	0	12	–
Netherlands	0	4	–
Italy	0	2	–
Belgium	0	2	–
Luxembourg	0	1	–
Total	18	100	18

six German councils have been or will be established under a formal agreement signed by the two sides or by a supervisory board resolution.[19] The European works council at Bayer has been set up under an agreement negotiated between the national chemical workers' union (IG Chemie-Papier-Keramik) and its counterpart employers' association (Bundesarbeitgeberverband Chemie) on the structure and functions of Europe-wide works councils in the chemical industry; the same agreement will govern the councils at BASF and Hoechst. By contrast, in France where collective bargaining is less widely accepted, only four of the nine councils are based on formal agreement; two were established by an exchange of letters; one, by verbal informal agreement; and two, in keeping with the paternalistic traditions of French management, by management invitation to individual employees.

3. Regardless of considerable differences in this respect between national industrial relations systems, all European works councils are exclusively union based, always involving national unions and sometimes, in addition, European union federations. In all firms, with the exception of the two attendance-by-invitation arrangements, the national unions organizing the various subsidiaries control the selection of delegates, and this also applies where delegates are employed by the company and are not full-time union officials. In fact, existing European works councils more resemble international union committees for multinational companies than works councils proper. While they share with the latter that their expenses are paid by the employer, they have no union-independent legal or organizational resources that would enable them to function as a second channel of representation.

The union-based character of European works councils is closely related to the absence of legal intervention and regulation at the EC level, helping make councils acceptable to national union movements that lack positive experience

19. Information on the sixth German European works council is missing.

with legally based workplace representation. But union hegemony also seems welcome to German unions, which in their own system require elaborate legal and organizational provisions to protect their primacy over independently resourced works councils and to prevent these from succumbing to "enterprise patriotism." Present European-level practice ensures that it is unions and not national, or supranational, works councillors that dominate European works councils. In fact, in the German-based companies in our sample, it was because of union efforts that European works councils came into existence, with both the metalworkers' and the chemical workers' unions having to put pressure, not just on management, but also on domestic works council members.[20]

Voluntarism and the union-based status of European works councils imply that councils can be terminated at any time by either side. In practice, of course, termination is less likely to issue from unions than from employers, for whom it constitutes a forceful sanction against councils overstepping their bounds. A widely visible precedent for this was set by the Dutch electronics manufacturer, Philips, one of the pioneers in the voluntary establishment of workforce information arrangements involving union representatives from foreign subsidiaries. Between 1967 and 1972, Philips held four formal meetings on Europe-wide issues with workforce representatives from its European plants. A fifth meeting, however, was canceled by the company, and no further meetings were called, apparently because the unions, under the leadership of the EMF, were planning to demand a multinational collective agreement on reduction of working hours without loss of pay, as well as harmonization of redundancy rules (interview; Northrup and Rowan 1979, 145–50). Today, Philips is among the most vocal opponents of the draft European Works Councils Directive.

4. The high diversity that characterizes the structures of voluntary European works councils is not, however, found in their functions. Only one of the 20 councils in the sample—that at Volkswagen—has rights, not just to information, but also to consultation. With impressive uniformity, the functional domain of voluntary European works councils falls short of the draft directive in that it is limited to the exercise of voluntarily conceded and unilaterally withdrawable information rights. While some firms claim that council meetings do involve two-way communication, with employee representatives having an opportunity to express their views, there are no explicit consultation rights in these cases, and councils are pure information bodies.[21] Topics on the

20. These members may have preferred not to share their influence on company management at headquarters with unionists from foreign countries and officials from international union confederations.

21. In a number of French firms (Bull, Elf Aquitaine, Thomson, and Pechiney), management claims that an ongoing "dialogue" and exchange of viewpoints is occurring, and the BSN European works council in its food and drink division has established a "program of joint work" on a number of industrial relations issues; in none of the French cases, however, do worker representatives have a formal right to consultation (Gold and Hall 1991, 28–29).

agenda of European works council meetings include the company's general financial situation, changes in its organization, rationalization plans, mergers and acquisitions, training and retraining policies, as well as general marketing, production, and investment strategies (table 9.3). Typical border-crossing issues, however, such as employee mobility between countries and allocation of work between plants, are surprisingly infrequent. In even fewer cases are traditional subjects of collective bargaining discussed; for example, wages are mentioned only once, the exception again being Volkswagen, and vacations and working time only twice.[22]

Volkswagen, of course, has long been the privileged site for the powerful German metalworkers' union, IG Metall, seeking and gaining breakthrough industrial agreements. That it today has the most advanced European works council arrangement is therefore not surprising.[23] Nor is it out of the ordinary that IG Metall and the EMF are together using the Volkswagen model to push for extension of consultation rights to all European works councils—as well as for the resources necessary for such rights to be meaningfully exercised (more frequent meetings, the right for unions and worker representatives to initiate meetings, preparatory meetings for workforce representatives, and facilities for these to remain in contact with each other). It is at this point, however, that all other European employers take exception (Gold and Hall 1992). And while in Germany advances made at Volkswagen can in principle be transferred to other employers through subsequent collective bargaining with an industrywide employers' association, no such mechanism exists at the European level, and nothing suggests that it may in the foreseeable future.

It is with respect to formal consultation rights that the emerging reality of voluntary European works councils refuses most conspicuously to fit the proposed EC legislation. *The difference between mandatory and voluntary workplace representation is the difference between information and consultation rights, and information rights only.* Consultation seems available to workforces only as a result of public intervention, even though it involves no more than minimal interference with managerial prerogative.[24] The study of European

22. The agenda of European works council meetings was the most difficult item on which to get complete information. Many of the companies returned their questionnaires incomplete, and press reports on the content of discussions tend to be sketchy.

23. Although the company was less than enthusiastic about having to be the avant garde again. For a time, management at Volkswagen cooperated with what was in effect a European workforce information arrangement, while refusing to call it a European works council or to sign a formal agreement on it. This reflected its experience in Germany, where the company has often come under fire from other employers that had to fall in line with precedents won by Volkswagen's strong union and, especially, works council. Nota bene that even at Volkswagen, the consultation rights of the European works council are limited to cross-border shifts in production and investment (Gester and Bobke 1992, 8).

24. To be sure, even the draft directive never comes close to creating rights to co-determination, i.e., to the—however limited—power sharing at the workplace that has come to be associated with works councils in countries like Germany and the Netherlands. Even more than consultation, co-determination is unlikely to emerge from negotiated agreement under a voluntaristic framework.

Table 9.3 Agenda Items at European Works Council Meetings

Item	Number of Times Mentioned
Company's economic/financial position	7
Rationalization plans	7
Changes in company organization	7
Production and sales	6
Acquisitions and mergers	6
Investment programs	5
Location of new plant	5
Training and retraining	5
Health and safety	5
Marketing strategies	4
Plant cutbacks or closures	4
Employee mobility between countries	3
Manufacturing and work methods	3
Employee benefits	3
Allocation of work between plants	2
Working time	2
Vacations	2
Language training	1
Wages	1

works councils confirms that if workforce participation is to include "voice," that is, is to be more than "ear," it must be based on more than the withdrawable goodwill or volatile sense of expediency of employers, or the conjuncturally sensitive market power of unions. Works councils that are to provide workers with more than information rights very likely require backing by public power.[25]

9.6 Sources of Voluntarism

There are conflicting views on the relationship between the emergence of voluntary European works councils and the legislative proposals of the European Commission. One position, compatible with optimism on the eventual evolution of a federal European social welfare state, sees voluntary councils as preparing the way for mandated councils (Hall 1992). Contrary to this is the belief that voluntary councils may potentially make formal legislation unnecessary or defuse political pressures for it. Both views are present among unions

25. Words are not important—unless they hide important distinctions and obscure crucial issues. Note that many German unionists object to the term. "European works council" since the arrangements to which it refers lack the legally enforceable rights German works councils have. Interestingly, German employers, knowing what real works councils are and how constraining they can be, do not like the term either. Bayer, e.g., insists on calling its council "Bayerforum" or "Euroforum," where "forum" is to emphasize that the council's only function can be the exchange of information.

as well as employers. Interestingly, while a majority of European union leaders hope that voluntary councils will *expedite* future legislation, many employers seem to expect that they will *substitute* for it. The ironic result is a developing convergence between employers and unions on the desirability of voluntary European works councils, for opposite strategic reasons.

It is not hard to see why European unions should today be willing to seek voluntary European works councils. In the 1970s, they had consistently argued that voluntary arrangements for workforce participation in multinational companies were not enough and that binding normative regulation, through either collective bargaining or supranational legislation, was indispensable. Later, however, they found the legislative road to European works councils closed by the apparently invincible coalition of European employers and the British government. Essentially, pressing for voluntary councils in the hope that these would get them closer to mandated ones was all that was left to them. There also was a need for European-level union officials to define a promising project for themselves that they could present to their national constituents. Not least, an important benefit that even voluntary European works councils do deliver is subsidized international communication between unions in multinational companies; for most unions, the costs of travel and translation for meetings at the European company level are prohibitively high.

While unions seem to have little to lose from voluntary European works councils, it is less clear why employers should have agreed to them. Voluntary alternatives to mandatory information and consultation arrangements in multinational firms have always figured prominently in the rhetoric of European employers. In the 1970s, employers argued that they were already voluntarily observing various international codes of good conduct for multinational firms—such as those developed by the ILO and the OECD—that included rules on workforce information; formal EC legislation was therefore unnecessary (DeVos 1989; Teague and Grahl 1991). This position was vulnerable to being periodically discredited by instances of manifest disregard of codes, sometimes found in the firms of the very same national or European employer spokesmen designated to sell voluntary compliance to the public as an alternative to legislative regulation. Later, survey studies showed a high percentage of large European firms, including some based in Britain, claiming that they had on their own introduced procedures for workforce participation or were thinking of doing so because of their expected economic benefits. Still, it was only during the battle over the social dimension that voluntary European works came to be *en vogue*.[26]

Two explanations are commonly offered for this, a political and an economic one. The former considers employer agreement to voluntary European works

26. No fewer than 11 of the 15 companies for which a council founding date is known established their councils after the passage of the Social Charter and the circulation by the European Commission of its proposed European Works Councils Directive.

councils as an attempt to preempt supranational legislation. Circulation of the draft European Works Councils Directive is believed to have given rise to disputes among employers on whether voluntary European works councils could be presented to a potentially prounion European legislator as a superior alternative to mandatory councils or whether they might have the unwelcome side-effect of legitimating legislation in the future, making it more difficult for companies to argue that councils are dangerous to their economic health. Firms that have agreed to European works councils would have done so because they have come to accept the first of the two positions.

If valid, a political explanation of voluntary councils would indicate that the European Community had in the late 1980s developed a credible capacity to threaten international companies with prescriptive legislative intervention unless they complied with EC policy on their own. What is more, the European Community would have succeeded in breaking up the solidarity of European employers, making some of them subject themselves to regulations that future legislation could then spread to all. In this, the European Community would have been able to apply political power to business in a way that in the past was typically associated with advanced nation-states.

An explanation of voluntary councils by anticipatory compliance of employers with potential European legislation would seem to be supported by the timing of council formation.[27] On the other hand, only a very small number of firms actually did set up councils, and all except one refused to allow them rights to consultation, as opposed to just information—in clear defiance of EC policy. Moreover, given the firm lock that employers had established on EC social policies in the 1980s, it is hard to see how the Commission would have been able to get formal legislation passed if companies had closed ranks and refused to introduce councils voluntarily as a lesser evil. Indeed, one might wonder why European employers did not have more confidence in their ability to defeat the 1990 draft as soundly as its predecessor; their political position had certainly not deteriorated since 1984. It is also not clear why European employers, if preempting legislation by voluntary arrangements was such an effective tactic, did not use it earlier to combat the much more threatening Vredeling draft.[28]

Economic explanations regard voluntary council formation as a response to economic efficiency imperatives derive from basically two factors: changes in companies in response to internationalization and new demands on labor relations in "post-Fordist" workplaces. The assumptions that inform such accounts

27. There are also examples of firms explicitly motivating their acceptance of European works councils by the expectation that this may forestall EC legislation. Specifically, this is said to apply to the French companies Rhone-Poulenc and St. Gobain (Gold and Hall 1992). Also, the German chemical industry is reported to have signed its European works councils agreement with the German chemical workers' union primarily to avoid EC legislation (Lamparter 1991, 75).

28. Explaining councils as a device to preempt EC legislation also fails to account for the presence of European works councils in Swedish firms. Sweden is not an EC member and would not be affected by a potential directive.

are summarized by Northrup et al.: "Complex issues pertaining to human resource management, arising in the 1980s and expected to continue into the 1990s, point to the need for labor and management to co-operate in exchanging information and ideas. The introduction of new technology, the restructuring of industry and the efforts to unite Europe provide the framework for extended union-management consultation in the years ahead where the parties desire it and find it helpful" (1988, 540).

Politically, economic-functionalist explanations imply that workplace representation comes about on its own if required by economic conditions and does not need legislation. The fact that voluntarily instituted councils have only information and no consultation or co-determination rights simply means that only the former and not the latter are economically efficient; if the latter were, they too would have been instituted voluntarily.

Assuming that firms undergoing internationalization experience increased needs for multinational communication with their workforces, efficiency explanations seem to be supported by the coincidence of council formation with the wave of cross-border mergers and acquisitions in Europe in the second half of the 1980s that was an intended consequence of the Internal Market program.[29] None of the presently existing councils on which we have a founding date was formed before 1986, the year the program was launched. Also, most of the restructuring was concentrated in a few sectors, with chemicals and food processing alone accounting for half of all intra-EC mergers and acquisitions (Kay 1991, 360), and multinational companies in such sectors appear to be more likely to have European works councils (table 9.4).[30]

There are, however, reasons to question the logic of managerialist accounts for council formation. Again, the number of firms that avail themselves of the presumed economic benefits of European works councils remains small. Perhaps more important, while few employers disagree with the notion that a "modern enterprise" exposed to unpredictable markets and using fast-changing technology requires the "active involvement" of its workforce, to what extent this includes information or consultation rights for workforce representatives at the supranational level is far from obvious. Employer pronouncements on the subject support the impression that workforce involvement, to be justifiable

29. In the industrial sector, the number of national mergers and acquisitions, involving large companies in one EC country, more than doubled (from 101 to 214) between 1984 and 1988. The number of cross-border mergers within the European Community almost quadrupled (from 29 to 111) in the same period (Kay 1991, 360). The process extended beyond the borders of the European Community to neighboring European countries, with companies based in Switzerland and Sweden especially eager to expand their presence inside the European Community.

30. The agreements at BSN and Thomson, in which management is said to have sought union involvement in anticipation of major restructuring programs, are cited as examples of management interest in the efficiency advantages of European works councils (Northrup et al. 1988, 525). More recent interviews indicate that, on the whole, managers seem to hold positive views about their experiences with European works councils and about their efficiency contribution (Gold and Hall 1992).

Table 9.4 Multinational Companies and European Works Councils by Industry

Primary Industrial Branch	Number of MNCs	Number of MNCs with EWCs	MNCs with EWCs (%)
Rubber products	3	1	33
Electronics	7	2	29
Computers	4	1	25
Chemicals	17	4	24
Metals and metal products	15	3	20
Industrial and farm equipment	5	1	20
Petroleum refining	5	1	20
Building materials	5	1	20
Motor vehicles and parts	11	2	18
Food, drink, and tobacco	14	2	14
Forest products	1	0	–
Publishing and printing	2	0	–
Scientific and photographic equipment	1	0	–
Aerospace	3	0	–
Pharmaceutical	5	0	–
Soaps and cosmetics	2	0	–
Total	100	18	18

by managerial efficiency concerns, would above all have to be production or workplace centered. Production-related decisions in multinational firms, however, are often, and perhaps increasingly, made locally. If workforce involvement is to be limited to such decisions, it must not be centralized. Moreover, while local involvement may, if well managed, remain focused on common interests in high productivity and competitiveness, centralization entails the risk of discussions extending to more adversarial subjects, such as finance and investment. From a managerial perspective, not only do workers have no special expertise to contribute in these areas, but involving workers in them is also likely to give rise to conflicts or delay urgent decisions and thereby frustrate the very purposes of "involvement." Not least, centralized information requirements may force a company to keep managerial functions centralized even if economic needs would demand devolution to local decision makers.

9.7 A National Theory of Supranational Works Councils

If neither EC politics nor economic efficiency pressures can account for the spread of voluntary European works councils, a better explanation may be one that takes off from their structural diversity, functional weakness, and uneven national distribution. In this view, voluntary supranational works councils are rooted in diverse national political and institutional conditions, especially the power and access to political and legal resources of national unions and employers. While on the surface "European," they are in reality the products of

nationally different government policies, legal systems, industrial relations practices, union strategies, managerial power structures, and the like.

A national theory of supranational works council formation does not have to claim that supranational politics is without influence. However, rather than explaining the appearance of voluntary European works councils as a preemptive response to European legislation, it emphasizes its simultaneity with the change in European social policy toward voluntarism—a change which reassured employers that there will precisely *not* be an activist European legislator waiting to exploit voluntary councils for legitimation of legislative intervention. That is, employers have agreed to voluntary European works councils, not because these are necessarily economically efficient or provide protection against European-level social policy activism, but because they have become unlikely to precipitate statutory enactment. Given, not the strength but, on the contrary, the weakness of European welfare state federalism, employers felt confident enough by the end of the 1980s to accommodate whatever *other* political pressures there may have been for European works councils, the possible costs of accommodation having become so small as to no longer justify the costs of resistance.

Above all, pressures and incentives for firms to agree to supranational works councils grow out of the politics in and around national industrial relations. While national legislation cannot be used directly to set up supranational councils, bargaining power derived form it can. In countries with strong union and council rights, worker representatives may have enough power to make internationalizing firms extend council arrangements to the multinational level. As multinational management becomes increasingly differentiated from home-country national-level management, access to the former for national-level works councils may depend on the formation of a supranational council. With the growing importance of such access for national interest representation, national works councils may become willing to expend political capital on making management agree to supranational works councils, even though these involve sharing influence with workforce representatives from foreign subsidiary plants. Concerns over this among home-country works councillors should be lower in countries where councils are well established and well resourced, making it unlikely for them to be outcompeted by foreign council members more knowledgeable in council operations. Moreover, subsidiarity and the absence of supranational legislation make it possible for home-country councils to design supranational councils close to their domestic tradition, further cementing their hegemony on the council. Not least, limitation of supranational councils to information functions may reassure home-country councils endowed under national law with consultation or co-determination rights that the influence of foreign councillors will not exceed theirs.

Unions, for their part, should be more comfortable with works councils in countries where they have had time to learn to live with councils and control them. In fact, European works councils, as we have seen, make it possible for

unions in countries with strong national works councils to insert themselves directly in the international industrial relations of large firms, which might otherwise be controlled by management and works councils alone. Management in countries with strong works councils may have their own reasons to find voluntary supranational councils attractive, not least as a means of counterbalancing the national council in the home country with workforce representatives from foreign plants with sometimes different interests.

The spectacular growth of European works councils in large French-based multinationals would seem to require a special, although again nation-specific explanation. While works councils do have some legal rights in France, union confidence in them as a channel of representation is low, and union control over councils is precarious due to multiunionism. Like French industrial relations in general, however, works councils in France are highly politicized. National as well as supranational works councils are often used by management and moderate unions, especially the CFDT, to isolate the largest union, the CGT, which has close links to the Communist party.[31] There also seems to have been pressure from the Socialist government on large companies that were either nationalized or otherwise had close relations with the state, to set up voluntary European works councils. In part, this was in pursuit of an international agenda of support for the European social dimension.[32] But the policy also had a domestic aspect in that the government seems to have hoped for external reinforcement of its less than successful legislative efforts to strengthen workplace representation in France itself.

For a quantitative assessment of the relative contribution of economic and national political and institutional factors to the voluntary establishment of European works councils, the companies in the sample were coded on four independent variables:[33]

1. *Strength of works councils in a company's home country.* Countries in which works councils have strong rights are Germany, the Netherlands, and Sweden; countries with weak legal rights for councils are Belgium, France, Italy, and Luxembourg; and countries without legally mandated councils in-

31. Among the European works councils in the sample, this applies in particular to those at BSN, Thomson, and Pechiney. At the former two companies, the existence of two European works councils instead of just one has its origin in complicated maneuvers to minimize CGT influence. In general, French companies tend to make arrangements for European works councils either with the CFDT or a European union federation to which the CGT is not affiliated, either way excluding the CGT from participation.

32. This is most obvious in the public declaration on the agreement at Elf-Aquitaine, which described the firm's new European works council as the embodiment of the spirit of the proposed EC directive on workforce information and consultation.

33. Since the companies included in the analysis are the universe of the 100 largest manufacturing companies in Europe and not a random sample of a larger universe, generalization of the results would strictly speaking be affected by the problem of sample selection bias (for a discussion see Berk 1983). The pattern of European works councils that we are aware of in service sector firms or in smaller manufacturing companies does not, however, conflict with the main conclusions of this paper.

clude Switzerland, the United Kingdom, and the United States. Two dummy variables were created, CD1 and CD2, which were coded for, respectively, weak and strong works council rights in home countries. Under a national political model of voluntary works council formation, the probability of a company having a European works council should covary with the strength of works council rights in the company's home country. CD1 and CD2 should therefore have positive signs, and CD2 should have a larger coefficient than CD1. Under an economic efficiency model, home-country legislation would not be expected to make a difference.

2. *French Socialist party influence.* Qualitative accounts and interviews with experts and participants offer strong indications that the French government urged state-owned multinational companies in the second half of the 1980s to establish European bodies of workforce representation, in anticipation and support of EC legislation. Companies in the sample were coded according to their country of origin, with French companies receiving a score of 1 on a dummy variable, FRANCE.

3. *Concentration of production.* Multinational companies vary widely with respect to the diversification of their product range. For the purposes of this study, companies are considered to have highly concentrated production if more than 75 percent of their employment is in their main product area, defined at the two-digit SIC level. This is the case with 52 of the 100 companies in the sample. Of the remaining 48, 38 have between 50 and 75 percent of employment in their main product area, and 10 are even more diversified. A variable, CONC, was created on which the 52 highly concentrated companies received a score of 1, and the rest a score of 0.[34]

An economic explanation of voluntary works councils would expect the probability for a company to have a European works council to increase with the concentration of its production, given that concentration is likely to increase the degree to which production is centrally coordinated. Concentration would also appear to increase a company's potential gains from international rationalization, placing a premium on effective mechanisms for information and consultation. A highly diversified company, by comparison, which in the limiting case simply buys up profitable plants without attempting to integrate them into a synergetic production structure, would derive fewer gains from rationalization at European level and may not wish to have worker representatives at multinational level inquire into its buying and selling strategies. Under an economic efficiency explanation, CONC should therefore have a positive sign. Since a firm's degree of productive concentration is not likely to be affected by its home-country's politics and industrial relations system, the alternative model would predict that it has no influence and that CONC will not be significant.

34. Division of the sample into three instead of two groups makes no difference for the statistical results.

4. *Internationalization of employment.* All companies in the sample are multinationals. But some have only marginal international activities while others are highly internationalized and significantly exposed to several countries' laws and practices in setting their industrial relations policies. To determine the impact of internationalization on voluntary works council formation, companies were grouped in three categories: those with more than two-thirds of their employment in their home country (low internationalization); those with between one-third and two-thirds of their workforces in their country of origin (medium internationalization); and those with less than one-third of employment there (high internationalization). The dummies INT1 and INT2 were coded 1 for, respectively, medium and high internationalization.

An economic efficiency model would suggest functional needs for supranational workforce information, consultation, and representation to increase with a firm's internationalization. While companies with limited foreign operations will tend to impose home-country practices on their foreign subsidiaries, companies with a high number of such subsidiaries will have difficulties doing so and will tend to allow them to follow local practices. As a firm's internationalization increases even further, it may need to develop a common "identity" and set of practices that are not reducible to those of any one of the countries in which it operates. A European works council could play an important role in facilitating a supranational, company-specific personnel policy. To the extent that the establishment of European works councils is driven by functional-economic imperatives, therefore, INT1 and INT2 would be expected to have positive and high coefficients, with the coefficient for INT2 larger than for INT1.

A nationally driven political-institutional model, on the other hand, would make the contribution of internationalization to voluntary European works councils dependent on favorable institutional conditions in a company's home country.[35] But as the number of countries involved increases with internationalization, the "reach" of home-country political and institutional resources might decline and unions may face growing collective action problems, reducing their ability to coordinate their interests among themselves. Moreover, the more internationalized a company, the less certainty there is for unions in its home country that they will be the dominant forces on a possible European works council; as a result they may be less willing to spend political capital on bargaining for one. The political model, then, might predict the coefficient for INT2 to be smaller than for INT1.[36]

35. The same conditional effect might be expected for productive concentration. Ideally, this possibility would have to be tested using interaction terms. However, in our sample the correlation between some of the original variables and the interaction terms formed with them is too high to allow results to be significant.

36. Internationalization and concentration may be correlated with company size. A control variable, LSIZE, defined as the natural logarithm of the size of a company's total workforce in thousands, was therefore included in the analysis. LSIZE is not an essential variable for either of the two models, although both would probably expect large size to increase the probability of having a European works council.

Table 9.5 **Expected Results According to the Political and Economic Methods**

Variable	Political Explanation	Economic Explanation
1. Strength of works council	CD1, CD2 > 0; CD2 > CD1	Not significant
2. France	FRANCE > 0	Not significant
3. Concentration	Not significant	CONC > 1
4. Internationalization	INT1, INT2 > 0; INT1 > INT2	INT1, INT2 > 0; INT2 > INT1

Note: Independent variables: CD1, weak works council rights in home country; CD2, strong works council rights in home country; FRANCE, company based in France; CONC, more than 75 percent of employment in main product area; INT1, 33 to 66 percent of employment in home country; INT2, less than 33 percent of employment in home country.

The independent variables and their signs and relationships expected under the modified political model and under the economic model of voluntary works council formation are summarized in table 9.5. Since the dependent variable—absence or presence of a European works council—is categorical in character, logistic regression is ideally suited to measure the impact of the independent variables.

The first model tested (model 1 in table 9.6) includes all independent variables. A striking result is that the coefficient for concentration is not significant. The internationalization variables are significant at the .05 and .01 levels, respectively, and are both positive. The fact that the coefficient for INT2 is slightly larger than that for INT1 would seem to lend some support to the economic as opposed to the political model.

Of further note is the large positive coefficient, significant at the .01 level, of the strong co-determination variable CD2, in line with the expectations of the political model. Neither the weak co-determination variable CD1 nor the French multinational variable FRANCE are significant; however, these two variables have very large estimated coefficients with opposite signs due to the high correlation between them.[37]

Comparison of the χ^2 statistics of models 1 and 2 shows that the concentration variable CONC may be dropped without loss of explanatory power.[38] The significance, order of magnitude, and signs of the other coefficients remain the same as in model 1.

Testing the assumption that French Socialist government influence rather than the presence of weak co-determination rights is behind the growth of European works councils in French multinationals, model 3 drops CD1 from the analysis. Comparison of the χ^2 statistic of model 3 with that of model 2 shows that this may be done without significant loss of explanatory power. As a result,

37. This reflects the large number of French-based companies (16) in this category, compared to companies based in Luxembourg, Belgium, and Italy (5), the other countries with weak works council rights.

38. The difference of 0.722 is below 2.706, the threshold for acceptance at the .10 level of significance for one degree of freedom.

Table 9.6 **Logistic Regression Coefficients for Presence of European Works Council, on Selected Independent Variables**

Independent Variable	Model 1	Model 2	Model 3
CD1	−14.519	−14.731	
	(0.008)	(0.008)	
CD2	3.812	3.652	3.765
	(3.249)***	(3.205)***	(3.294)***
FRANCE	18.600	18.7948	4.317
	(0.010)	(0.010)	(3.543)***
INT1	2.786	2.697	2.695
	(2.441)**	(2.381)**	(2.380)**
INT2	3.348	3.341	3.531
	(2.567)***	(2.592)***	(2.781)***
CONC	0.632		
	(0.868)		
LSIZE	0.741	0.705	0.700
	(1.694)*	(1.621)	(1.600)
Constant	−10.323	−9.700	−9.844
	(3.719)***	(3.716)***	(3.772)***
Log-likelihood	−26.380	−26.766	−27.254
Degrees of freedom	7	6	5
χ^2	41.519	40.747	39.771
N	100	100	100

Note: Numbers in parentheses are *T*-ratios.

*Significant at .10 level.

**Significant at .05 level.

***Significant at .01 level.

both CD2 and FRANCE have significant and positive signs, as predicted by the national political model; the coefficients of the internationalization variables INT1 and INT2 remain significant and positive.[39]

Overall, the results offer evidence for the overriding importance of national political and institutional factors in the formation of European works councils. Concentration of company production, a key variable for any economic model, was found not to contribute to the rise of European works councils. While internationalization does make a contribution to voluntary council formation, and apparently in a linear fashion as predicted under an economic efficiency model, this effect may in reality be conditional on home-country institutions and may thus be fully compatible with the political model.

Nota bene that the impact of national political and institutional conditions

39. Testing the three models with a reduced sample containing only the 45 companies that returned usable answers to the mail survey yields substantially the same results. A possible alternative to model 3, which involves dropping FRANCE instead of CD1, would technically also be acceptable relative to model 2; however, its relative fit was not as good as that of model 3. This is in line with the qualitative evidence that it is state pressure, and not weak domestic works council rights, that drives the developments in French companies.

would be even stronger were it not for the "Dutch anomaly," that is, the absence of European works councils at all four major Dutch manufacturing companies despite the existence of strong national works council legislation. In part, this may be accounted for by the experience at Philips, described above, and by the fact that two of the four firms, Royal Dutch-Shell and Unilever, are in part British. But there is also the possibility that in a small country such as the Netherlands whose large multinational companies inevitably have a very high share of employment abroad, unions are more ambivalent than elsewhere about sharing representation with what would almost inevitably be a majority of foreign representatives.

9.8 Summary and Conclusion

The growth of voluntary European works councils is best accounted for, not by common European factors such as economic integration or the politics of the social dimension, but by national conditions in companies' home countries, especially with respect to the political, institutional, and legal resources of labor. Governed by a logic of national diversity, voluntary European works councils, while on the surface "European," are products of national union strategies, industrial relations practices, legal systems, and government policies. The fundamental fact about them that any theory must accommodate is their highly skewed national distribution, which rules out political or economic explanations that would apply to all large European companies regardless of their national base.[40]

The voluntary adoption of European works councils by large multinational firms is unlikely to signal or precipitate statutory enactment of workforce information, consultation, and co-determination rights in EC law. Nor will voluntary councils contribute to the development of an integrated European industrial relations system with interrelated and coordinated arenas of joint regulation at the supranational, sectoral, and enterprise levels. The analysis in this paper suggests that the functional weakness and structural unevenness of present European works councils are there to stay. Voluntary European works councils are not works councils in a technical sense, but de facto international union committees for large companies, set up by managements and unions as a low-cost response to some of the consequences of the internationalization of the European economy. Far from providing or preparing supranational gover-

40. While not collected systematically, available information on developments since 1991 supports the conclusions offered in this paper. European works councils are reportedly being established at Volvo and at Thyssen AG, i.e., a Swedish-based and a German-based company. Information on companies outside the sample is also consistent with the analysis, in that European works councils exist or are being set up in German-based (Allianz, Tengelmann, Schmalbach-Lubecka, and Grundig) and French-based (AGF) firms. Functionally, all these councils are limited to the exchange of information. For a textbook case study of national political resources accounting for supranational workforce participation arrangements in multinational firms, see the case of Europipe (*EIRR*, no. 213 [October 1991]: 12ff).

nance of employment relations at the European level, European works councils seem to do no more than create interfaces within large companies between national industrial relations systems, which as such remain separate and exposed to the potentially destabilizing effects of regime competition in a border-crossing integrated market.

A theory that accounts for voluntary European works councils by national political and institutional differences can account not just for their skewed distribution and nationally imprinted structures but also for the tensions and conflicts between national unions over and within them. For example, in Britain works councils are usually regarded as instruments of "joint consultation" (Marginson 1992), which is in sharp contrast to the German view of councils as organs of co-determination. Since joint consultation is considered paternalistic by many British unionists, the prospect of European works councils not becoming "real" works councils does not appear threatening to them; British unions see their promise rather in being potential agents of enterprise-based collective bargaining (Hall 1992; Sisson, Waddington, and Whitston 1992). European works council legislation, if ever to come forward, would be expected by them to do no more, but also no less, than provide a form of statutory support for union recognition.[41] German unions, on the other hand, conduct collective bargaining *not* at the company but at the industrial level. For them it is vitally important that company-level industrial relations remain defined as *something other than collective bargaining*, above all in large firms whose presence in industrywide bargaining units is essential for the mobilization of strong bargaining power (Streeck 1991). That is, were European works councils to become collective bargaining agents, German unions would feel threatened; but were they to become co-determination bodies, British unions would find themselves dragged into "joint consultation." As a result, European works councils will likely be neither.

Another implication of voluntarism, and of European works councils coming about as an outgrowth of national conditions in a company's home country, is that supranational representation of workers and unions in foreign subsidiaries depends on the interests and power resources of home-base industrial relations actors. Without legislation, subsidiary unions are deprived of voice if home-country unions prefer not to push for supranational representation, or design it so that their privileged influence is preserved. Due to differences between countries in economic internationalization, industrial organization, and industrial relations, divisions of interest and strategy between home-country and subsidiary unions may come to be reflected in divisions between national union movements. For example, Italian unions are home-country unions for only a small number of large European multinationals (see above, table 9.2); for the vast majority of European multinational companies operating in Italy,

41. The hope apparently is that European legal provisions would then somehow radiate into the British domestic system, restoring conditions that existed there before Thatcher.

they organize subsidiary workforces. Under a voluntarist representation regime, what voice they may have depends largely on the goodwill and bargaining power of unions and works councillors in other countries. But while this should dispose them favorably toward European-level legislation, their own, Italian system of workplace representation is not legally based, and national resistance to legal regulation is strong.

British unions, on the other hand, organize the home base of many European multinationals, potentially enabling them to tailor international representative arrangements to their interests. But British multinationals are often highly internationalized. Even if British unions had the power to make them agree to European works councils, significant influence would therefore be exercised on the councils by unionists from other countries. British unions also have no experience with council-type workplace representation and often lack a workplace-based structure to which a multinational works council could be linked.[42] By comparison, foreign council members, especially from German or French subsidiaries, are likely to be well resourced and skilled. To the extent that this would make British unions reluctant to press for European works councils, the consequence would be disenfranchisement of workforces in the European subsidiaries of British firms.

Generally, the slow and uneven growth of works councils in European multinational companies demonstrates the dependence of council-style workplace representation on union and legal support. Works councils come into existence if demanded by strong unions or made mandatory by an interventionist government. In an international setting like the European Community, where unions are weak and legislation is absent and unlikely to come about, councils grow, if at all, out of constituent national systems, to the extent that national unions and legal regulations manage to extend their reach into the international arena. Even so, as long as they are not directly supported by supranational law, the councils that result remain functionally weak.

Employers' rhetorical recognition of the importance of collective communication with workforces notwithstanding, voluntarily instituted works councils remain limited to the exchange of information and are refused formal consultation rights, let alone rights to co-determination. Resistance to legally binding mandates for supranational workplace representation is offered even by employers that in other settings declare themselves comfortable with mandated works councils entitled to consultation and co-determination. Employer preferences for voluntarism seem resistant to experience, and certainly to theoretical reasoning on the economic efficiency advantages of mandated institutions. Very likely, this is because voluntarism leaves employers an exit option should matters become tough, and because, unlike unions and worker representatives,

42. In nonunionized companies, the present draft directive would require international representatives to be directly elected by the entire workforce—something that may appear to British unions as setting a dangerous precedent for dual-channel representation or even union substitution.

exit from participation regimes increases rather than reduces their control over decisions. Moreover, voluntarism in supranational settings seems to be a political resource even and especially for employers who in their national systems operate under legal regulation: to the extent that they have the possibility of moving subjects out of mandated national into voluntary supranational participation, the balance of power in national industrial relations is shifted in their favor.

Voluntary participation at the supranational level is acceptable to business as long as it remains an alternative to, instead of an intermediary step toward, a replication of national social democracy. Potentially even contributing to a softening of national regimes, supranational voluntarism leaves multinational firms the freedom to do what they want while sparing them the hazards of an anomic absence of all institutions. Under voluntarism, when everything is said and done, it is those in stronger market or hierarchical positions who decide how much symmetry and equity between themselves and others is symmetrical and equitable, and how much participation is reasonable and efficient. This advantage is not easily given up.

Appendix A
Sample and Sources of Information

The sample for this study consists of 100 of the largest European multinational corporations in manufacturing. The goal was to cover the 100 manufacturing firms with the largest number of employees in Europe, including companies based outside of the European Community and Europe. However, since standard lists, as provided by the *Financial Times* or *Fortune,* do not break down employment by country or region, they offer only approximations. A list of the 25 largest European manufacturing employers, compiled by Labour Research, was supplemented by a selection of European-based corporations included in the 1989 Fortune 500 international list. In this list, rank is based on annual sales, and manufacturing companies are defined as companies deriving at least 50 percent of their sales from manufacturing or mining. Companies based in mining as well as companies known to be limited to only one country (such as the large state holdings in Italy and Spain) were excluded from the sample.

From the various national and international business directories, which vary widely in the quantity and quality of the information they provide, a list was compiled of the names and addresses of the directors of the companies' international industrial relations, employee relations, or human relations departments. When this information could not be found, the names and addresses of the chief executive officers were used. Where these were not available either, the generic identification, "personnel director," at the company's European

headquarters was used. A four-page questionnaire was mailed to the 100 addresses, with a request that it be returned within six weeks. A follow-up letter was sent to those that had not responded within that period. Forty-five valid responses were received; an additional 17 companies sent replies declining to participate.

The questionnaire itself, in addition to asking for information on the person who filled it out, requested basic data about any existing arrangement for information, consultation, or negotiation with employee representatives on a multinational basis. If such an arrangement existed, respondents were asked which countries were covered, how many workforce representatives there were and how they were selected, which unions (if any) were involved, how often meetings were held, what subjects were discussed at the meetings, whether meetings were just informational or also involved consultation or negotiation, whether any written agreements had been reached, how many of the company's employees in the European Community were covered, and whether separate provisions had been made for different categories of workers (e.g., white-collar and blue-collar workers). Companies that did not currently have a works-council–like arrangement were asked an open-ended question about whether establishing one was being contemplated or planned for the future, and whether one had been tried in the past and discontinued.

Other sources of information were used to supplement the survey responses. These included publications like the *European Industrial Relations Review*, *Industrial Relations Europe*, and the *Financial Times*, as well as publications from the European Trade Union Institute and two recent studies of multinational information and consultation arrangements in European multinationals (Gold and Hall 1992; Myrvang 1991). In addition, interviews were conducted with union and business representatives and EC officials.

Appendix B
Companies Included in the Sample

ABB Asea Brown Boveri*
Aerospatiale
Akzo
Alcatel Alsthom
Allied-Lyons
Alusuisse
Arbed
Associated British Foods
BASF*
BAT Industries
Bayer*
Bayerische Motoren Werke
Bertelsmann
BICC
BOC Group
Bosch, Robert
British Aerospace
British Steel Corp.
British Petroleum Co.
BSN*
BTR
Bull Group*
Cadbury Schweppes
Caterpillar Overseas
Ciba-Geigy
Cockerill Sambre
Continental*
Courtaulds
Daimler-Benz*
Dalgety
Dow International
Electrolux*
Elf Aquitaine*
Exxon
Feldmuehle Nobel
Fiat

(*continued*)

Ford of Europe, Inc.
General Motors
General Electric Co.
GKN
Glaxo Holdings
Grand Metropolitan
Guinness
Hanson
Henkel
Hoechst*
Hoesch
Hoogovens Groep
Huels
IBM Europe
ICI
Krupp, F. GmbH
l'Air Liquide
l'Oreal
Lafarge Coppee
MAN
Mannesmann
Metallgesellschaft
Michelin & Cie
MMM (3M Europe)
Monsanto Europe
Nestlé*
Nobel Industries
Pechiney*
Peugot
Pfitzer
Philips
Pilkington
Pirelli
Proctor & Gamble
Rank Xerox Ltd.
Reed International
Renault, Regie Nationale des Usines
Rhone-Poulenc*
RMC Group
Roche Group (Hoffman-La Roche)
Rolls-Royce
Royal Dutch/Shell Group
Saint-Gobian*
Salzgitter
Sandoz
Siemens
SKF*
SmithKline Beecham Consumer Brands
Solvay & Cie
STC
Sulzer
Tate & Lyle
Thomson Electronics*
Thorn EMI
Thyssen
Trelleborg*
Unigate
Unilever
United Biscuits
Usinor Sacilor
Veba Oel
VIAG
Volkswagen*
Volvo

Note: An asterisk (*) denotes the presence of a European works council.

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