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The European Works Council before the courts: putting law to work and the producing EU legal norms during the Renault Vilvorde case

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Summary: The competition control exercised by the European Commission is defined by regulations that are immediately imposed on individuals. Consequently, it tends to bypass the bodies set up to represent employees. Prior to the 1994 directive concerning European Works Councils, only specific directives (collective redundancies and company transfers) that were transposed into national laws defined the prerogatives of these bodies regarding information and consultation. The European Works Council comes into play when multinational groups decide to undertake industrial restructuring. It therefore constitutes a new instrument allowing employee representatives to bring proceedings against any company management that attempts to keep the new representative body out of consultation procedures. The mobilizing of the European Works Council of Renault in the face of the plan to close the Renault plant in Vilvorde shows how the initiation of legal proceedings relayed and supported the social struggle that lasted several months in 1997. It also gave new impetus to production of European legal norms on the issues of informing and consulting workers and European limited liability company status. In the end, the production of legal norms should be viewed as a dynamic involving mobilization before the courts and the creation of laws.

The development of EU labour law has been grafted onto EU legislation intended to construct an integrated European market. Hence, competition law organises direct control of operations of economic mergers by the Commission within the scope of the regulations binding upon all citizens of the European Union¹. Alongside the priority given to constructing a broad internal market for the EU, workers were initially guaranteed the right to be informed and consulted by two founding directives, the 1975 directive on information and consultation in the event of collective redundancies and the 1977 directive on maintaining worker rights in the event of transfer to another company, establishment or part of an establishment. Yet, EU action was less clear-cut in this instance: it was reduced to a policy of harmonising national laws, without applying directly to relationships between individuals. It

¹. Particularly the 1989 regulation setting up merger control by the appropriate Directorate General of the European Commission.

was therefore up to the Member States, through their own legislation, to set up procedures for guaranteeing these rights in the form of bodies representing employees defined, at best, at the national level. As a result of this asymmetry between competition law and labour law, EU legislation appeared to have institutionalised the process of determining the future of workers by outside economic choices. The Perrier decision handed down by the Court of First Instance of the European Communities in 1995 leaned in that direction: they mobilised the 1977 directive concerning maintaining the rights of workers transferred to new companies to justify keeping the workers on the sidelines of the control exercised by the Commission's Directorate General for Competition over the Nestlé takeover bid on the mineral water company Perrier. In the face of economic restructuring, which was often supported by the European authorities, the workers' right to be informed and consulted remained subject to the national laws of the Member States, until the 1994 directive that set up the European Works Councils. While it appeared difficult to overcome the national hold over employment relations systems in the short term, the mobilisation of the European Works Council against the closing of the Vilvorde Renault plant revealed new possibilities opened up by this institution for criticising the economic choices made on a Europe-wide scale by company management. Here, the meaning of the word "mobilisation" is twofold: first, the mobilisation of the workers² coordinated by the group-level works council, and secondly, the mobilisation of the group-level works council as a legal institution³ before the courts. In both senses of the term, the mobilisation of the Renault European Works Council was part of a broader process that we have chosen to designate as *the production of legal norms*, understood as making new laws from existing laws⁴. We will begin by examining the limits of EU law in the face of competition law in the Perrier decisions. Then, we will go on present the contribution of the European Works Council as an institution in protesting against management decisions and the new responsibilities that befell European trade union associations as a result. Finally, in the

². On mobilisation as a political dynamic of a social group, see Chazel 1993: the notion of mobilisation applied to the area of labour law brings out the political dimension which the sociology of employment relations tends to obscure, due to its commitment to the assumption of legal pluralism.

³. On mobilising a legal institution, see Trubek (1984).

⁴. Our analysis lies within the scope of an "autopoietic" sociology of law as developed by Luhmann (1989) or Teubner (1996), provided the legal practices include the relationship of the individual to the law. In other words, it seeks to get beyond an "autarchic" conception of law (Teubner 1996, p. 10), by dealing solely with the activities of judges and lawyers and omitting social activities related to law such as those of the legislator and individuals for whom the law is intended. The notion of "production of legal norms" conveys a refusal to view law as a system, in order to see the transformations of law as actions of individuals which are socially, and therefore legally, constructed. Hence, our purpose is not to describe how ultimately *law is adapted* to a decisive economic structure, which it would be up to economists to posit outside the actors involved. On the contrary, the point is to describe how *law is produced* on the basis of economic situations as perceived by the actors themselves.

third part, we will examine the production of legal norms generated by the Renault Vilvorde case with regard to workers' rights to information and consultation and European company status.

1. EU labour law put to the test by competition law

1.1. Two founding directives

The development of EU labour law ran up against De Gaulle's efforts to keep labour law within the bosom of national law until the early 1970s. It was given decisive impetus by the meeting of tripartite conferences that brought EU economic and labour ministers together with labour and management representatives. It was based on an objective expressed in the 1974 Social Action Programme, namely, to organise the "*participation of the workers in company management*", which was urged by the German trade unions who wished to expand the use of the co-management model and the method of harmonising national laws. Thus, EU labour law primarily took the form of *directives* adopted by the governments of the Member States. A directive does not have any "horizontal" effect (Rodière 1999, p. 60, § 58) on relationships between individuals. It requires that Member States transpose it into laws included in the corpus of national law.

Two directives were produced in the wake of the 1974 Social Action Programme: the 1975 directive concerning the approximation of the laws of the Member States pertaining to collective redundancies (75/129/CEE) and the 1977 directive on the approximation of the laws of Member States with regard to maintaining workers' rights in the event of transfer to another company, establishment or part of an establishment (77/187/CEE). These directives encountered the problems raised by transposing often heterogeneous laws. Thus, in French law, the directives were found to correspond to existing rules in the area of collective redundancy: the 1975 law on administrative authorisation of layoffs and article L. 122-12 regulating the issue of maintaining employment contracts in the event of transfer to another firm. The directive concerning collective redundancies was also a safeguard against the free market pressure accompanying the elimination of administrative authorisation of layoffs and the adoption of the Séguin bill on December 31, 1986 concerning layoffs. In Great Britain, on the other hand, the directives ran up against a lack of bodies representing employees to implement the procedures for informing and consulting workers (Laulom 1996).

Insert no. 1: the 1975 and 1977 directives regarding informing and consulting employees

The directive of 1975 (Directive of February 17, 1975, 75/129/CEE) and 1977 (Directive of February 14, 1977, 77/187/CEE), provide for a consultation procedure in the first case and for information and consultation in the second, in both cases, with a view to reaching an agreement.

In the 1975 directive, Section II Article 2 stipulates that a “*consultation procedure*” shall be organised as soon as “*the employer considers the possibility of collective redundancies*” (§1.). The second paragraph specifies the aim of consultation: “*Consultations shall be concerned at least with possible ways of avoiding or reducing collective redundancies as well as possible ways of attenuating the consequences*”. The third paragraph concerns the items of information that the employer must communicate to “*enable the employee representatives to formulate constructive proposals*”. The third section of the directive on “*Collective redundancy procedure*” regulates the employer’s relations with the “*public authorities*”. A copy of the official notification of redundancy from the employer to those authorities, along with the accompanying documents, must be sent to the employee representatives (§2, art. 3). A minimum period of 30 days is required between date of notification to the public authorities and the date on which the planned collective redundancies take effect (Article 4).

The 1977 directive specifies in an initial section entitled “*Definitions and scope of application*” how the term “transfer” is to be understood. The third section “*Information and consultation*” requires that the transferor and the transferee “*inform the representatives of their respective employees concerned by the transfer in the sense of Article 1 Paragraph 1 regarding the following points:*

- the reasons for the transfer,*
- the legal, economic and social consequences of the transfer for the employees,*
- the measures planned for the employees.*” (art. 6 §1). The information must be communicated in a timely fashion. Consultation is required when “*the transferor or the transferee plans to take measures to assist their respective workers*”.

Putting aside for the moment the question of transposing the laws of Member States, the limits of these directives lie especially in the partial right to information and consultation, which is focused on collective redundancies in the 1975 directive and on company transfers in the 1977 directive. The information and consultation procedure is not provided for as a regular practice. It comes into play only after a new situation is created by management decisions made without any consultation. In the case of the 1975 directive, this means the decision to lay off workers made by the management of the company involved; in the case of the 1977 directive, it means the arrival of another company following a takeover or merger decided jointly by the management of the companies involved. The employee representatives are faced with a *fait accompli* before they have even been consulted: in this case, consultation is frequently reduced exclusively to information that leaves no room for consultation.

1.2. Keeping employee representative bodies on the sidelines in the 1995 Perrier decisions

In every instance, the procedure for informing and consulting employees remained within the framework previously established by the company. Restructuring, as in mergers or

spin offs, also tended, by its very nature, to defy control by representative bodies in companies involved in this type of operation. The situation became more problematic as new authority devolved upon the Commission to monitor mergers to ensure compliance with internal market competition regulations in 1989, thereby jeopardising the consistency of the Commission's actions⁶. Indeed, through the Directorate General for Employment and Social Affaires, the Commission was able to bring out regulations that were crucial to the development of EU labour law. At the same time, the Directorate General for Competition performed the a task of checking to ensure that the conditions of competition were compatible with the common market, particularly within the scope of company mergers, focusing on consumer interests.

Regulation//4064/89 made the Commission responsible for verifying the compatibility between merger operations and the preservation of "real" competition: "*The Commission takes into account: a/ the need to preserve and develop real competition within the common market, particularly in view of the structure of all the markets involved and the real and potential competition among companies located inside and outside European Union.*" (Article 2, al 1). The counterpart to this new Commission role was its responsibility in merger operations that were brought to its attention, particularly with regard to competitors concerned by the effects of a merger in their market. Thus, the decisions of the Commission could be brought before the Court of First Instance of the European Communities⁷.

The Commission's assessment was based on the situation of the firms involved in relation to "users", i.e. intermediate and end consumers, with a concern for "*the evolution of technical and economic progress inasmuch as it favours consumers and does not constitute an advantage in competition.*" *Prima facie*, the suppliers and employees were not present during the Commission assessment procedure. In this instance, the Commission's work was essentially guided by the goal of achieving the common market. This objective justified the difference in the treatment meted out to competition law and European labour law, the first made up mainly of regulations, and the second of directives. It also justified as an "*objective in the general interest*", the "*limits to the full exercise of fundamental rights*" (Bonnehère

⁵. Defined in Section I, article 1 "*Definitions and scope of application*".

⁶. Concerning inconsistencies and contradictions as an approach to law, in the view of *Critical Legal Studies*, cf. (Trubek, 1984): "*Moreover, the identification of areas of dissensus should provide a basis for development of alternative visions of social relations, thus realizing the full Critical Legal Studies program.*" (p. 614).

On the "necessary decompartmentalising" of competition law and EU labour law that this situation implies, cf. (Vasquez, 1998).

⁷. See, for example, *Air France c/ Commission*, in the *British Airways TAT merger*, case T.2-93, Rec. II. 323, quoted in Gavalda and Parléani (1999).

1999, p. 394), in this case, with regard to informing and consulting employee representative bodies, which appeared in the case-law of the European Court of Justice of the European Communities.

Such a regulation fell within the scope of European labour law, if only by offering the possibility of abstention, insofar as mergers always have an impact on company activities and the work that is performed within them. Beyond mere abstention, the regulation specifies, in the preamble, that *“it must be determined whether or not the EU-wide merger operations are compatible with the common market as regards the need to preserve and develop real competition in the common market; that, in so doing, the Commission’s assessment must fall within the general scope of achieving the fundamental objectives set forth in Article 2 of the treaty, including the strengthening of EU economic and social cohesiveness, set forth in Article 130 of the treaty.”* It was therefore supposed to lead to taking the interests of employees into account in merger operations, which was supposed to be apparent both in the commitments made to the Commission by the firms involved and in the Commission’s decisions. This requirement was further reinforced by the new importance given to achieving full employment in the European Union, within the scope of the Luxembourg procedure in 1997 and the Treaty revision that took place in Amsterdam in 1998. The practice of the Directorate General for Competition has, however, remained impervious to the social and employment problems directly posed by mergers. The European Parliament was roused to action on this issue in a resolution on February 17, 2000, underlining the fact that the Commission authorised the merger of the ABB and Alstom groups, without taking into account the social and employment impact of the operation⁸. The type of control excluding the social dimension of mergers was strengthened by the limited role granted to the employee representative bodies of the firms involved, in two decisions handed down by the Court of First Instance of the European Communities in 1995.

These two decisions, dated April 25, 1995, declared inadmissible the demands of the employee representative bodies and trade unions of the two companies concerned by the takeover of Société Générale de Grandes Sources Perrier by Nestlé, Perrier and Vittel. The Commission exercised its control insofar as the takeover of 1992 Perrier by Nestlé raised the problem of competition within the French mineral water market. To satisfy concerns about preserving competition in that market, the Swiss multinational firm proposed to the Commission that once it had controlling interest over Perrier, the latter would transfer Volvic

⁸. Source, European Industrial Relations Observatory (EIRO), www.eiro.eurofound.ie/2000/03/inbrief/eu0003233n.html.

to the BSN-Danone group. The Commission was worried about the dominant position held by Nestlé and BSN-Danone, which prompted it to stipulate as a condition to Nestlé that the other mineral water companies under its control, i.e. Vichy, Thonon and Pierlard, be sold to other firms besides BSN-Danone. These subsidiaries were therefore sold to a third group, the Castel group. The case was referred to the Commission on March 23, 1992. The management of Nestlé and of BSN-Danone were given a hearing on May 25, 1992. The requirement to sell Pierlard, a subsidiary of Vittel itself a subsidiary of Nestlé, expanded the circle of companies involved, and hence the number of employees. The employee representatives at Pierlard, the Central Works Council of Vittel and the CFDT, the majority trade union were informed too late to be heard by the Commission. Only the CGT trade union of Perrier workers was allowed a hearing on July 2 by the Commission. The decision to authorise the merger was announced on July 22, 1992, and the operation was declared compatible with the common market. At the same time as the takeover, the new management of Perrier appointed by the future majority stakeholder announced, on the March 23, 1992, the day the case was officially submitted to the Commission, the elimination of 740 jobs out of a total of 5,400 during an extraordinary meeting of the Central Works Council.

An appeal against the Commission's decision was entered before the Court of First Instance of the European Communities by the Central Works Council of Vittel and the company's CFDT trade union, backed by the Perrier Central Works Council of Perrier. The Central Works Council of Sources Perrier entered another appeal. The main argument of the appeal entered by the employee representatives at Vittel was based on the absence of information on the part of the Commission, whose intervention directly concerned them. The appeal was also based on the injury to the workers resulting from the loss of the benefits of the collective agreement in force at Vittel. In this case, the claim of the employee representatives was declared inadmissible on the grounds that the Commission's consultation was carried out in a lawful manner, and the duty to inform the employees was binding upon the Commission but upon the employers. The claim of the Perrier employee representatives was declared inadmissible for the same reason, insofar as the CGT trade union was heard by the Commission, even though the workers' representatives were not allowed access to the documents of the case, which was restricted solely to the firms in competition with Perrier. The impact of the series of restructuring processes on employment did not constitute for the Court a capacity to take legal proceeding, inasmuch as it came within the scope of the directive concerning company transfers. Indeed, in its assessment, the Court admitted that *“following a merger operation, the non-inevitable nature of the elimination of jobs and the*

alteration of the social advantages previously granted to Perrier employees either by their individual contracts or by the collective agreement of March 14, 198, particularly with the Economic and Social Unit of the firms that signed the agreement, to which the claimants clearly refer, clearly emerges in the applicable regulations. Indeed, article 3 of directive 77/187 provides for the transfer to the transferee of the rights and obligations resulting for the transferor from employment contracts and employment relationships existing prior to the date of the company transfer. Moreover, in Article 4, section 1, paragraph 1, the same directive specifies that ‘the transfer of a company... does not, by itself, constitute a reason for layoffs by the transferor or the transferee’.” The 1977 directive on maintaining employment contracts in the event of a company transfer was viewed as a guarantee for employees, which made it possible to exonerate the Commission from any obligation towards the workers in its merger control. The relationship between employees and employers was therefore excluded from the conflicts of interest which the Commission was required to arbitrate, and transferred to the operations of employee representative bodies within the scope of information and consultation procedures provided for by the directives on company transfers in 1975 and 1977 and on collective redundancies in 1992.

There was a danger that labour law at the European and national levels might turn into a sort of legal ghetto even though, in a “euro-optimistic” reading of the decision, some legal experts who showed little concern about Nestlé’s staff downsizing, considered that “*on this occasion, the court emphasised that the social effects⁹ of a merger could, ‘in certain cases’, be examined if and when they violate the social objectives specified in Article 2 of the Treaty*” (Gavalda and Parléani, 1999, p. 337). In the wording of these decisions, the employees and their representatives are merely “third parties” with regard to restructuring, as opposed to the real actors who are the firms operating on an EU-wide scale. They are not excluded from bringing legal proceedings: thus, in November 1994, Perrier was ordered by the Court of Grande Instance de Paris to stop its plan to eliminate jobs and instead undertake a consultation procedure in keeping with Labour Code stipulations regarding collective redundancies. Yet, in its 1995 decisions, the Court of First Instance of the European Communities made a distinction between “*people concerned by*” merger operations and their control, i.e. the companies in competition such as BSN-Danone vs. Nestlé and “*privileged third parties*”, i.e. the employees.

⁹. These authors put “social impact” on the same level as impact on climate and the greenhouse effect from the standpoint of sustainable development.

An institution like the European Works Council did not directly meet the need of employee representatives to intervene in merger control on equal footing with the competing companies concerned by this type of financial operation. However, as we shall see in the Renault Vilvorde situation, the new institution contributed to shaping a “European point of view” among the employees regarding the restructuring of their companies. This body was thus immediately concerned by operations on a European scale, first of all those that were accompanied by headcount reductions. It therefore implied an increase in the number of information and consultation procedures provided for by the directives concerning collective redundancies and company transfers. Implemented within a Europe-wide body, these procedures led employee representatives who sat on the Council to look into areas that fall within the scope of the European Commission, particularly in matters of competition control. Although merger control was not an issue in the Vilvorde case, the question of monitoring EU aid took on special importance due to subsidies paid out to enlarge the Renault plant in Valladolid, Spain, just at the time the Group management decided to close its Belgian plant. The European Commissioner in charge of the Directorate General for Competition, at the time, Karel Van Miert, was therefore led to intervene in the case in his official capacity.

2. Mobilising the European Works Council in the Renault Vilvorde case

2.1. The contractual institution of the European Works Council

It took twenty years for the European Works Council to gain recognition. A draft directive on employee information and consultation in European multinational firms, based on the principle of “*employee participation in company management*” proclaimed by the Social Action of 1974, was presented by the European Commissioner for Employment and Social Affairs, Vredeling, in 1980. This draft directive marked the peak and end of the EU’s most fertile, creative period in social matters extending from 1974 to 1980. The “Vredeling” directive became the anchoring point of a crisis in labour-management dialogue, in which the international employer associations played a decisive role. The protests of the UNICE (Union of Industrial and Employers’ Confederations of Europe) were joined by those of the American Chamber of Commerce and the Kenderen in Japan, based on a threatened strike of investment in Europe¹⁰.

The directive on works councils succeeded in overcoming the obstacles that had brought about the failure of the “Vredeling” draft, due to a new component involving preliminary negotiation of a works council agreement. The directive determined the conditions governing the negotiation of the agreement, by setting up a “special negotiating group” (Article 7¹¹) composed, on the initiative of the company management, of employee representatives selected according to the representation procedures in force in each of the countries involved. The European Works Council or the “*employee information and consultation procedure*” (to use the terms employed in the directive) is an agreement between the central management of the company or the group concerned and the special negotiation group. EU law thus gave rise to the formation of a trans-national worker organisation at the level of European groups, analogous to the effects on collective bargaining of the creation of Social Dialogue sanctioned by the Social Protocol of the Maastricht Treaty (Lo Faro, 2000). Indeed, European Social Dialogue, far from being the result of autonomous action on the part of management and labour, actually defined the scope of their action by the eminently political act of adopting the Treaty in 1992.

10. Interview Carlo Savoini Claude Didry, Brussels, February 2000.

11. "§ 3. The task of the special negotiating group is to set down, by written agreement with the management, the attributions and length of term of the European Works Council(s), or the methods of implementing an information and consultation procedure."

Article 13¹² strengthened the role played by trans-national negotiation by including employee representative bodies that had developed at the EU-wide level within European multinational firms since the beginning of the 1980s (Laulom 1995). Frequent mention was made of the “good” example set by French groups such as BSN Danone, Saint-Gobain or Thomson. In addition, Article 13 had the effect of accelerating the conclusion of agreements prior to the promulgation of the directive¹³, particularly by the management of European groups who thought they would thereby be shielded from the most constraining provisions of the directive. The Renault European Group Works Council, which was set up by the April 5, 1993 agreement, was renegotiated within this framework. Due to their Europe-wide scope, the European Works Councils forced the actors to refer to European standards; through their contractual nature, these Councils became both actors and resources that could be directly mobilised by workers and their representatives before the national courts.

In all, 400 agreements were concluded under the provisions of Article 13. A study of 386 of the agreements¹⁴ reveals that the highest percentage agreements (33%) were concluded in Germany, and in the steel industry (35%). The large portion of steel industry agreements was due not only to mergers in the branch, but also to the initiatives of the European Metallurgy Federation to negotiate such agreements prior to 1994, in order to accelerate the adoption of the directive (Ouazan 1999, p. 31).

2.2. Experience and discovery of the prerogatives of the European Works Council

The Renault European Works Council was set up by an agreement dated April 5, 1993 between the management of Renault and the representatives of majority trade unions in the group’s establishments, with the exception of the CGT¹⁵. By signing “*on behalf of the European Metallurgy Federation*”, the trade union representatives were committing not only

¹². "Article 13: Agreements in force

1. Without prejudice to section 2, EU-wide firms and EU-wide groups of firms in which an agreement has already been implemented in the Member State concerned, either on the date provided for in article 14 section 1, or at an earlier date, providing for transnational information and consultation of workers, shall not be subject to the obligations resulting from the present directive.

2. When the agreements mentioned in section 1 reach expiration, the parties to these agreements may, jointly decide to renew them.” (Directive 94/45/CE, JO n° L 254/64, 30.9.94).

13. “Article 13” agreements could be concluded until September 22, 1996, the deadline for transposing the directive into national laws.

14. Marginson et al, 1999.

15. Keeping the CGT on the sidelines was the result of its long-standing hostility towards the construction of Europe, inherited from the Cold War period, and strengthened by its hegemony within Renault, but which became obsolete with the entry of the CGT into the European Trade Union Federation in 1999. It was also due to the concern on the part of other organisations to join forces against a trade union that receives nearly 49% of the votes in trade union elections in the group’s French plants.

their own organisations but also the European Metallurgy Federation. In the Preamble to the agreement, the European Group Works Council was viewed from the standpoint of the creation of the Single Market on January 1, 1993, where Renault's business activity was mainly located at the time. The agreement was also viewed from the standpoint of the partnership between Renault and Volvo. Moreover, to define the scope of the contract, the parties referred in the Preamble to the fundamental standards of the European Union: "*This negotiation is in keeping with the view of the EU Charter of the Fundamental Social Rights of Workers and the European Union Treaty.*" The agreement defined the Council's attributions as an "*organisation for information and dialogue concerning the strategic directions of the Group at the European level from an economic, financial and social standpoint, as well as major developments of subsidiaries coming within the scope of the EEC insofar as they have repercussions at the European level.*" (Article 1). The notion of consultation, with its attendant meaning of being prior to decision-making, was not explicitly mentioned. This agreement specified the nature of the information to be communicated by the management and decided upon an annual meeting as well as the members who were to attend. Like French works councils, it was made up of a chairman representing the management and the employee representatives who designate a secretary. A new agreement was negotiated in 1995, before the transposition of the directive planned for 1996, to ensure that the Renault Council came under Article 13.

By taking part in the operations of this dialogue and information organisation, labour and management actors got to know each other and learned about the European stakes involved over a period of four years (from 1993 to 1996). Their apprenticeship, which took the form of one or two annual meetings, was not enough to overcome the system of "*Competitive Industrial Relations*" (Hancké 2000, Streeck and Vitols 1996) resulting from an increasingly European market for products made by workers organised on a national basis, which has been on the rise since the end of the 1990s: "*Since 1996, the European motor industry has seen the emergence of a new form of collective agreement, combining concessions from trade unions on issues such as working-time flexibility, work organization and wages, with medium-term Employment guarantees from management*" (Hancké, 2000, p. 41). It appeared difficult to go against the tendency of national trade unions to seek a compromise in order to preserve jobs in their own countries, while refusing to consider the consequences of their strategy for workers in other countries. That explains why the European Group Works Council ran into trouble in taking up the problems raised by the plan to close the Setubal plant presented in 1995: the negotiations on Setubal were conducted by

the Portuguese government. The lost opportunity represented by the Renault Setubal case nevertheless gave the members of the Group Works Council an initial awareness of the role they might play in the face of the social dumping strategy that the European management was attempting to deploy in Europe. In February 1997, the members of the European Group Works Council were ready for new test of strength and they began forming a team capable of standing up to management decisions. Through the channel of the Group Works Council, the representative of the FGTB (a left-wing trade union of Belgian workers) made contacts with representatives of the CGT. In 1996, the trade union leaders of Vilvorde were informed of the threat hanging over the site by a CGT member sitting on the company's Board of Directors. The FGTB representative in the European Group Works Council then asked the Chairman about the future of the Vilvorde plant and was assured, in front of his assembled European colleagues, that the site would stay open 1996.

The prerogatives of the European Works Council were revealed in the reactions of the European Works Council to the plan to close the Renault-Vilvorde plant, presented by the group management during a press conference held in Brussels on February 27, 1997. On March 1, the members of the European Group Works Council met in Vilvorde with the Belgian workers. The extraordinary meeting of March 11, 1997 instructed the secretary of the Group Works Council, Mr. Batt, to take possible legal action against the management on behalf of the Council. At the same time, the European Commission was mobilised at a Commission meeting on March 5, 1997, with Mr. Jacques Santer. The Commissioner of Employment and Social Affaires, Mr. Pdraig Flynn, called for a strengthening of social Europe on March 6, 1997, stressing that Renault had obviously violated EU law. In addition, the Belgian authorities (informed of the Vilvorde closing on February 21, 1997 by the Renault management) were said to have agreed with the European Commissioner on Competition, Mr. Karel Van Miert, a former member of the Belgian Socialist Party, to seek a way of taking legal action against the Renault management¹⁶. Karel Van Miert then publicly questioned the contradictions of EU policy by revealing that Renault had benefited from an ECU 11 million subsidy from the FEDER to enlarge its Valladolid plant.

Legal proceedings were brought by the European Group Works Council towards the middle of March. The case was entrusted to a law firm that had been intervening on behalf of Renault workers in France at every level – representing employees before the industrial tribunal, representing employee and trade union representative bodies, particularly the CFDT

16. Cf. (EIROOnline, March 1997, p. 2).

– for more than fifteen years¹⁷. A petition to summon at a moment's notice was filed by the Renault European Works Council on March 19. The Council asked the urgent applications judge to halt the plant closing inasmuch as the Council had not been consulted prior to implementing the plan. The hearing took place on March 26th. The decision handed down on April 4th by the urgent applications judge of the Court of Nanterre relied on EU law to accept the Council's request, thereby giving priority to consultation of the European Group Works Council, in relation to the other bodies representing the employees, particularly the Renault Vilvorde Works Council. This decision thus enabled European Group Works Councils to be placed at the top of the list of representative bodies to be consulted in exceptional cases, particularly those involving collective redundancies. Moreover, European Group Works Council as provided for by the directive, including the contractual version of Article 13, seem to be entitled to take autonomous legal action.

An appeal lodged by the management ended in a decision by the Court of Versailles on May 5, 1997, confirming the April 4th decision of the Court of Nanterre. The management's decision to start new legal proceedings marked the entry of a new actor in the dispute, the European Metallurgy Federation, which was received by the Court of Versailles as a trade union with an interest in the legitimate operation of the Renault European Works Council. The decision brought out the importance of the "useful effect" of consulting and informing workers, relying for support on the European Charter of the Social Rights of Workers of 1989 (Moreau 1997), as well as on the 1994 directive (decisively in the appeals case). It rejected the liberal interpretation given the group's management, according to which setting up the European Works Council under Article 13 of the directive prior to the transposition of the directive shielded them from the obligations it imposed.

The court decisions concerning the importance of information and consultation in the operating of the European Group Works Council gave the latter institution a vanguard position within the Renault group, compared to the other bodies representing personnel within the group. Paradoxically, in the collective redundancy procedures it had to deal with every year, the Central Works Council ruled out the possibility of further reflection that might have been contributed by the intervention of an economic expert under French regulations. Indeed, to speed up procedures, the Central Works Council gave up the idea of calling on an expert in order to avoid another meeting and the additional time required for the expert to complete the

17. It opened up new avenues of legal action for this firm, as demonstrated by the provisional order obtained on January 7, 1998 before the Court of Nanterre, which decided in favour of the Central Works Council

assignment. The sole required expertise was reduced to a memorandum several pages long produced by a firm of experts close to the leaders of the Council. The aim was to limit the intervention of an expert so that the workers could take advantage of early retirement plans and severance pay as soon as possible in order to leave jobs that were unanimously considered hard. By reasserting the importance of informing and consulting among the operations of employee representative bodies, the decisions obtained by the European Works Council therefore committed the other representative bodies in the group to renovate their own practices. They led, in particular, to giving more information to the Renault Group Works Council in France in greater depth, which in turn was able to inform the other bodies of the important items discussed at its meetings. These decisions and the accompanying struggles to achieve them also contributed to soften the sharp trade union separation in France between the CGT, the leading trade union in the firm, with a history of hegemony, and the other representative trade unions, especially FO and the CFDT.

2.3. From mobilising legal norms to mobilising workers

The unanimous indignation of public opinion, which transcended trade union and political rivalries and even extended to the highest spiritual authorities¹⁸, gave a very strong impetus to the struggle engaged by the Renault Vilvorde workers. Beyond popular sentiment, the mobilisation of the European Works Council played a major role in providing the Vilvorde workers with a medium-term goal of halting the plant closing. Mobilising the European Works Council meant, first of all, mobilising Council members, who arrived at Vilvorde the day after the plant closing was announced. It also corresponded to the active role played by the Council in initiating proceedings against the management. Finally, it involved mobilising the legal norms defined by the contract that set up the European Works Council. Moreover, in Belgium, the legal work undertaken by the members of the European Works Council was accompanied by the initiative of an executive who summoned Renault Belgium (RIB) to appear before the Commercial Court of Brussels, with the backing of affiliated groups of Belgian trade unions. This initiative came before, and in addition to, the criminal prosecution of Mr. Louis Schweitzer by the Belgian State Counsel's Office. Hence, legal norms were mobilised to a significant degree during the conflict, alongside the

of the OTIS group, which was asking for prior consultation of the European body. See (Brihi, 2000 and Bonnechère, 2000).

mobilisation of the workers. This process even outlasted the conflict itself, with the sentencing of Mr. Louis Schweitzer by the Brussels Criminal Court in 1998.

In early 1997, however, there was no assurance that Vilvorde workers could be mobilised in the “struggle for work”¹⁹. In addition to the workers’ feeling of betrayal at the hands of trade union organisations after the concessions on work time flexibility in 1993, the closing of the Delacre plant in Vilvorde in 1996 had set a precedent. The decision to close the famous Belgian biscuit manufacturing plant met with worker resistance, and in the face of the employees’ refusal to negotiate a settlement, the management had closed the factory without giving them any compensation. Throughout the conflict at Renault from March to July 1997, a large segment of the workers favoured swift negotiation of hardship allowances and “early-retirement pensions” within the scope of the redundancy plan, rather than join in a long strike movement involving occupying the factory. The movement was punctuated by legal proceedings, which regularly infused it with new energy and helped block negotiations concerning possible financial compensation for eliminated jobs. They provided a driving force that helped turn the employment issue into a “cause”²⁰ justifying the mobilisation of the workers as a whole.

In the beginning, the strike got underway without any problems, by occupying the parking lot where the Clio and Mégane cars were stocked. After five weeks of conflict, marked by worker protests in Belgium and at various Renault sites in France, as well as “Eurostrikes” and “Eurodemonstrations”, trade union leaders, particularly those in Belgium, realised they had a long-term conflict on their hands. Five weeks after the plant closing was announced, the workers voted to go back to work, while continuing to occupy the parking lot and keeping production down to a third of the normal level. In early April, the decision of the Regional Court of Nanterre came in addition to a decision a day earlier by the Brussels labour court. On the grounds that the plant closing was announced by the Chairman to the press, prior to a meeting of the Vilvorde plant Works Council, the Belgian judge ordered the management to go back and start the consultation procedure from the beginning. The next day, the Regional Court of Nanterre specified that the European Group Works Council should be placed in charge of the information and consultation procedure. The Renault management

18. During March 1997, the conference of bishops of Belgium and France officially declared “*it is a sign of basic respect for people to inform them and involve them in decisions that have such great impact on their lives.*” (Source, EIROnline, March 1997).

¹⁹. The “struggle for work” is the name given to the monument commemorating the struggle of Renault workers, which the Christian-Democrat municipality had erected in the centre of the industrial park of Vilvorde.

appealed the decision of the Nanterre court, resulting in postponement of the implementation of a new information and consultation procedure in Vilvorde. It was still impossible for the Vilvorde workers and their representatives to negotiate a redundancy plan to accompany the elimination of jobs insofar as the management's plan had been blocked by the courts, at least temporarily. The parliamentary campaign that ensued after the French National Assembly was dissolved in April, also boosted the hopes of the Belgian workers, inasmuch as the representative of the winning party in the election, Mr. Lionel Jospin, was committed to reopening the case in the event of a victory of the Left. The decision to set aside the closing and redundancy procedures in Belgium and France and the victory of the Left in the French elections strengthened the position of those in favour of a "struggle for employment" against the factory closing.

At the time, the "struggle for work" took two different, yet complementary, forms. The first was a refusal to close the site, together with a struggle to maintain the jobs defined by Renault's contractual commitment in 1993, at the time the Vilvorde site was modernised in response to concessions granted by the trade unions in the area of work time flexibility. The second form of struggle was the search for an alternative to the elimination of jobs inside the group by implementing a workweek reduction. From this standpoint, the agreements signed at Volkswagen set a standard. These factors formed the core of the report by Mrs. Danièle Kaisergruber of the firm Bernard Bruhnes, the expert appointed at the government's initiative in July 1997. The report was drawn up in an emergency situation, at a time when it was no longer possible to mobilise the workers against the plan to close the factory. The economic arguments presented in the report were those of the management, adopted without discussion by the expert: the group's aim in closing the Vilvorde site was to continue a plan to concentrate the manufacturing of each car model at a limited number of plants. Such an argument ruled out the proposal originally supported by the CFDT for a group-wide workweek reduction. On the other hand, the report presented itself as a form of arbitration "minutes" insofar as it included the FGTB demand to maintain 400 jobs on the site as well as employment contracts for all employees for two years, in order to plan substantial training actions²¹. The final agreement negotiated by the Belgian trade unions included these two

²⁰. On the concept of "cause" justifying collective mobilisation, see Boltanski (1985). We have developed the idea of "cause of employment" by analysing the mobilisation aroused by protests against redundancy plans in France in the early 1990s (Didry et Tessier, 1996).

²¹. Maintaining jobs on the site was a strategy tried ten years earlier by the Belgian metallurgists of the region in their struggle against the closing of the Philips plant in Louvain-la-Neuve. Ten years later, it led to starting up activity again on the site. The idea of maintaining employment contracts for two years was also inspired by the

items, which represented a significant victory for them compared to simply closing the site. In addition to maintaining employment contracts for two years, Renault assumed the cost of training sought by the workers. With a permanent staff of 400 people ensured by Renault until July 2001, the trade unions left open the possibility of at least a partial return to work in the event of an automobile market recovery.

The elimination of jobs was a moment of truth for a works council like Renault's European Group Works Council. To date, the strong mobilisation of this body at Renault, supported by a series of legal proceedings, remains a unique event. It was not repeated, for example, in the initiatives of the European Employee Representative Body of Lafarge Coppée which, when faced with the closing of a site, merely called a meeting of a select committee of that body to handle the situation (Ouazan 1999, p. 149). The mobilisation of workers was not effectively relayed by European Works Councils when the management of the brand new ABB Alstom group announced the elimination of a quarter of its employees in 1999. The action of the European Group Works Council at Renault did, however, give rise to new thinking regarding the issue of informing and consulting personnel at the EU level. The closing of sites and collective redundancies announced after the Vilvorde case, particularly at Lafarge, Michelin and Goodyear, as well as the closing of the Latina plant in Italy, were also regular reminders of the appropriateness of initiatives coming from European institutions, even if the European Works Councils have not always proved to be effective.

3. From Vilvorde to European legislative work

In this context, producing European legal norms meant setting standards for European bodies, particularly the Commission and the Council, governing management and labour relations in the social field. A situation like the plan to close the Renault Vilvorde plant was only one specific event in nearly two decades of work. Through its legal repercussions, the case has nevertheless weighed upon the production of European legal norms by generating new interest in the cause of employment and the issue of informing and consulting employees among European political bodies and trade union organisations.

closing of Billancourt. "We had in mind the closing of *Renault Billancourt*, which was spread out over five years." (interview with Karel Gacoms, secretary of the FGTB federation of metallurgists of Brabant).

3.1. The Vilvorde case in the production of European legal norms

The decision to close the Renault plant in Vilvorde, located on the outskirts of Brussels, aroused an immediate reaction from European institutions. As soon as the decision was announced, the Commission met on March 5, 1997. The Commissioner for Social Affairs and Employment, Mr. Pádraig Flynn, issued a press release on February 28, and on March 6, he publicly came out against the decision to close the site under such conditions, at the same time as the Commissioner for Competition, Mr. Karel Van Miert. Pádraig Flynn met with the European Parliament on March 11 and called for effective punishment of such violations of EU law. The European Trade Union Confederation announced its opposition to the closing on March 6, and its Secretary General, Mr. Emilio Gabaglio, went to the Council of Ministers in Rotterdam on March 14. The European Metallurgy Federation adopted a more qualified position, emphasising the Renault management's violation of the obligations stipulated in the 1993, yet restating the problem of overproduction capability in the automotive sector, which it viewed as a real issue.

Next, the Commission invited the European actors involved to re-examine the stakes involved in the decision for EU labour law. The meeting of the Council of Labour and Social Affairs ministers held on April 15, 1997 to discuss the Renault case underscored the current social consequences of industrial restructuring on a European, and more broadly, an international scale. It also required European management and labour to come up with a joint statement on this issue, within the scope of Social Dialogue. The meeting of the Social Dialogue Committee on May 6, 1997 brought out diverging points of view, with the employers organisation refusing to follow the European Trade Union Federation in condemning Renault and focusing instead on the more general issue of restructuring. Beyond that divergence of opinion, however, neither management and nor labour questioned the conclusion that the practices employed by Renault were wrong.

The Renault case also contributed to accelerating long-term work being conducted under the aegis of the Commission. These long-term efforts were punctuated by rewriting the directive on collective redundancies in 1992 and renewed discussion on the topic of worker participation within the framework of European company status. The Group of High Level Experts under the direction of Mr. Etienne Davignon submitted a report on May 7, 1997 concerning employee participation within the framework of European company status. The Vilvorde case had its greatest impact, however, on the issue of informing and consulting employees. Before the 1997 crisis, the Commission had made an announcement, dated November 14, 1995, encouraging management and labour to put the issue of employee

information and consultation on their “agenda”. The announcement was in keeping with the principle of employee information and consultation stated in the Charter of the Fundamental Social Rights of Workers of 1989 and established by the 1975 and 1977 directives, as well as the 1992 directive that took up the 1975 directive and the 1994 directive on the European Works Council. In the wake of the Vilvorde crisis, in November 1997, the Commission started up a second phase management and labour consultation, emphasising the need for EU initiative in this area. During the second phase, the Union of Industrial and Employers’ Confederations of Europe, under pressure from British employers, decided not to enter into negotiations with its labour partners, given the existing national legal framework. At the same time as this consultation, the Commission formed a Group of High Level Experts, under the direction of Mr. Peer Gyldenhamar, including Mr. Bernard Bruhnes, the head of the consulting firm appointed by the Jospin government to arbitrate the issue of closing the Vilvorde site in July 1997, Mr. Jacques Chérèque, the manager in charge of redeployment in Lorraine after steel industry shutdown in 1984, and Mr. Bruno Trentin, the former secretary general of the European Committee for the Coordination of Fishermen’s Trade Unions. This led the Commission to take a further step in the form of a draft directive in November 1998. The draft proposal coincided with the publication of the Gyldenhamar report, *Managing Change*.

The Gyldenhamar report and the Commission’s draft directive were both based on the observation that the construction of Europe had entered a new phase²². As the Commission emphasised in the Draft Directive on Employee Information and Consultation, “*European competitiveness has been strengthened by two factors which have assumed increasing importance in recent years: the completion of the internal market and the Economic and Monetary Union.*” Economic competitiveness had broken free of the traditional limits of national economic policies²³ to become a European concern. From this angle, the search for a competitive edge based on employee innovation and spirit of initiative²⁴ was the focal point of the Commission’s reflection. From that angle, it was hard to see how innovation and a spirit of initiative could be stimulated by a rapid succession of redundancy plans, even if they were

22. The Commission suggested that it was a “*third phase of the Economic and Monetary Union, which will supplement the transformation of European markets into a transparent single market.*” (Commission 1998, p. 3).

23. Along with the French policy, since the early 1960s, of building national conglomerates aiming at becoming the *champions* of the French economy in the economic struggle against other national economies generated by European integration.

24. In accordance with the “spirit of initiative” pillar of European employment policy, initiated at the Luxembourg summit in 1997, no doubt in contradiction with another pillar, “adaptability”: indeed, it is hard to see how innovation can accommodate conformism.

intended to reassure shareholders. The Commission developed the conclusions of the Gyllenhamar report on this point: the “*society of knowledge*” towards which the EU should be working, in the words of the Lisbon summit meeting in March 2000, cannot be reduced to disseminating information and communication techniques. It must create the conditions for work that protect the creative abilities of workers from restructuring operations mainly based on a desire to satisfy the financial markets, as in the Renault Vilvorde case or the ABB Alstom merger.

The draft directive laid down the operating principles for employee representative bodies of current and future European companies. Among these principles, the “*spirit of cooperation*” has a unique place in EU labour law²⁵. Indeed, the first article provides that: “*When defining or implementing information and consultation procedures, the employer and the representatives of the workers shall work together in a spirit of cooperation in accordance with their mutual rights and obligations, taking into account both the interests of the company and those of the employees.*” (Commission, 1998, section 12, paragraph 2 of Article 1). Article 2 insists on “*ensuring the useful effect of the information and consultation approach*”, the procedures for which are outlined in Article 4. Giving a more concrete form to the “*spirit of cooperation*” which must prevail in the operations of bodies representing employees, Article 3 considers the possibility that the Member States might authorise labour and management to “*define freely and at any time by mutual agreement, procedures for implementing the mechanisms for informing and consulting workers mentioned in Articles 1, 2 and 4 of the present directive.*” Negotiations are understood to encompass the concern for giving substance to the “*confidence*” manifested in the spirit of cooperation, while ensuring both parties the right to take legal action accompanying the contractual stipulations. Article 5 lays down a duty of discretion on the part of employee representatives and the experts who assist them, thereby making it possible to overcome the obstacles linked to the confidential nature of certain information.

Finally, drawing the lessons from case law regarding collective redundancy procedures both in France²⁶ and the international opening introduced by the Vilvorde crisis, an article was devoted to the “*Defence of rights*” providing for judicial or administrative control of the information and consultation process. It states that the ensuing penalty for failing to comply with these rights shall be that the decisions made by the company management will not have any legal effect, since they violate existing procedures : “*The*

²⁵. The directive concerning the Works Council mentions only a “spirit of cooperation” (art. 6, §1)

²⁶. Concerning the contribution of this case law relating to a 1993 law in France, cf. (Didry 1998).

Member States provide that, in the event of a serious violation on the part of the employer of the obligation to inform and consult employees regarding the decisions covered by Article 4 section 1 point c/ which would have direct, immediate consequences in terms of a substantial modification or breach of contract or work relationships, these decisions shall not have any legal effect on the employment contracts or employment relationships of the workers affected thereby.” (Article 7, al 3). The Commission’s draft directive was thus presented as the culmination of the triptych of directives concerning collective redundancies, company transfers and European Works Councils. The new document, made up by combining the three existing directives together with the future directive, formed the basis for a European Code governing employee representative bodies. Transcending the level of collective bodies, the draft directive also mentions the “*employer’s obligation to inform the worker of the conditions applicable to the employment contract or the employment relationship*” (Directive 91/533, of October 14, 1991). The requirement to inform the worker may indeed be viewed as extending beyond hiring procedure to become an ongoing obligation.

3.2. The Holy Alliance against the draft directive on information and consultation

During the next phase, the legislative work completed by Commission had to pass through the mysteries of European diplomacy. As soon as the draft directive was presented by the Commission in November 1998, it elicited a hostile reaction from Tony Blair’s government. This position also revealed that the neo-Labour government was aligned with the British employers’ association, the Confederation of British Industry (CBI). The British government also suggested in the *Financial Times* that it had the support of the German Social-Democrat government. Indeed, the draft directive was not put on the agenda of the Council during the German presidency in 1999. Inter-governmental negotiations on the subject did not start up again until the presidency shifted, first to Portugal and then to France. At the same time, it seems that counterpart to the Anglo-German alliance against the draft was to start up negotiations again concerning the status of a *European* limited liability company (*societas europeae*). Negotiations on the issue met with opposition from Spain during the Portuguese presidency. The governments of the Member States, both left and right, thus seem to have assigned roles to each other to ensure that the status quo would be preserved, in response to the demands of employers.

The French presidency finally revived both draft directives with a view to the Nice summit meeting in December 2000. The negotiations were preceded by a joint press release

of the German, Irish, Spanish and British trade unions denouncing these secret negotiations between governments to block the adoption of directives that the workers considered essential²⁷.

The Nice summit meeting led to adopting a bill on European limited liability companies, with rules governing their commercial aspects and a directive concerning employee participation. The regulations laid down the procedures for forming, operating and liquidating European companies and imposed the obligation to comply with the directive on employee participation. The directive provides for compulsory negotiations aimed at defining the terms of participation of employee representatives in the management bodies of European companies, when their head offices are located in countries that provide for employee participation or when, following a merger, more than 25% of the employees are subject to a system of participation (article 7, §2). The provisions of the directive are not applicable to European companies that come under the scope of the directive concerning European Works Councils (94/45/CE).

No agreement was reached at the Nice summit meeting regarding the directive on information and consultation, following a last minute procedural argument raised by Great Britain. The issue has, however, merely been postponed. The groundwork of the directive on employee information and consultation lays the foundation for what we can expect from any body representing employees in Europe. It plays a role similar to that of Book IV of the French Labour Code, such that there can be no public justification for its deferral. The paralysis of European legislative work, which has resulted in delaying tactics on the part of the British government, must not overshadow the long-term process that will undermine the credibility of the European social model if it does not lead to concrete measures in the near future. Chancellor Schröder is in the front line on this issue: the promotion of European federalism initiated by the Green Party minister Joscha Fischer is hardly compatible with secret compromises reached with the British "neo-Labour" Party, particularly in the field of the regulations governing employee representative bodies. Like building nation states in the early 20th century, building a European federation will indeed require the construction of federal labour law capable of counterbalancing the federalism of the market.

²⁷. Source, EIRO, www.eiro.eurofound.ie/2000/10/features/DE0010288F.html

Conclusion

In thinking about the construction of EU labour law, it is essential to get beyond the inherent restrictions of labour law conceived as “social law”. Labour law, understood as social law, is said to be the spontaneous product of trade union action, capable of turning the rules of behaviour into commonly accepted legal norms. At the EU level, the weaknesses of this neo-corporatist view has plunged writers on the topic (Streeck et Schmitter 1991, Streeck 1995) into unjustified perplexity regarding the process of European construction. This view is too limited: progress in EU law does indeed result from trade union action, but it is also due to mobilising EU law itself. The existence of trans-national norms such as EU law makes it possible to tighten the legal network of employment relationships. It provides tools, which are still rudimentary in the case of the European Union, allowing the development of a trans-national point of view and forms of action on the part of economic actors, particularly workers, with regard to international economic merger processes (Trubek, Mosher and Rothstein 2000). To contemplate the scope of these norms, one must transcend mere labour law and view EU law as a whole. By introducing business law, which is essential to a common market, EU law can open the way to collective employee action before the courts. Theoretically, as the decisions made in 1995 by the Court of First Instance of the European Communities regarding Perrier and Vittel demonstrated, the competition control exercised by the Commission leads to keeping national employee representative bodies on the sidelines, or at least limiting their role to mere information concerning processes over which the workers have no control.

An institution such as the European Works Council changes the outlook for consultation of employee representatives because it is situated at the level at which the Commission exercises its merger control and restructuring is carried out by European groups. The mobilisation of the Renault European Group Works Council before the French courts testifies to new possibilities for taking legal action to protest against Europe-wide restructuring. The legislative work resulting from the Renault Vilvorde case mainly involved a draft directive concerning informing and consulting worker representatives. It also concerned setting up European companies, leading to the adoption of draft regulations and directives by the Governments of the Member States. Obviously, the difficulty of reaching an agreement regarding employee information and consultation, as well as the attempting to keep employee representative bodies on the sidelines during Europe-wide mergers, indicates the problems European institutions encounter in prying labour law loose from the grip of national laws. The development of labour law should therefore be seen as a cumulative process: the

development of labour law which can be mobilised before the courts will in turn generate legal actions and produce case-law, which will ultimately help pave the way to legislative intervention.

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