Market and Social Justice in the EC – the Other Side of the Internal Market

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Foreword

The issue of the social dimension of the Internal Market is demanding more and more attention. It features among the problems recently encountered in translating the objectives laid down in the Single European Act into practical policy. Initially it was not contained in the catalog of measures drawn up by the EC Commission.

In view of the increasingly dynamic development of Community policies following the Brussels special summit of February 1988 and of the growing credibility of the Internal Market as a worthwhile objective, more and more thought has been given to the social consequences of this new situation: in the bodies of the Community, in labor relations and in the general public a vigorous debate has been initiated on the need for social policy action as a consequence of the Internal Market. The multifaceted nature of the controversy reflects both the differences of social systems across the European Community and the specific quality of the dispute between the two sides of industry in the individual member states. New positions taken up in the conflict are making the task of finding solutions even more complex: the traditional triangular pattern of employer and employee interests as well as the regulatory functions of state institutions seem to have been broken in many instances in the European context. On the Community level none of the three sides puts up a common front. There is a clash of different objectives, priorities and strategies and historically grown systems of labor relations are beginning to compete with one another.

It is beyond dispute today that the necessary social backing has been accepted as part and parcel of the program to establish the full freedom of movement of goods and services, capital and people in a Common Market of the Twelve. What continues to be debated is the quality and the extent of social policy measures on the European level. While some consider a binding and enforceable enactment of fundamental social rights on the EC level to be indispensable, others come out in favor of a regulatory minimalism that maintains the dif-

ferences in the density and extent of the social security networks within the Community and relies on cooperative adjustment. A number of gradations are conceivable between these two extreme positions. Finally, the political decision-making process is also made more difficult by the repercussions it is expected to have on the political system of the Community.

Against this background, the Bertelsmann Foundation wants to contribute to the current discussion. The thoughts presented in this volume have been developed within the context of the "Strategies and Options for the Future of Europe" project initiated by the Bertelsmann Foundation and implemented in cooperation with the Research Group on European Affairs at the University of Mainz with the objective of developing rational decision-making aids to solve political problems on the European level.

The project partners do not claim to be presenting panaceas requiring no further discussion. On the contrary, this working paper is designed to give a snapshot view of the current state of the debate. This volume therefore focuses on a concrete proposal, specifically a proposed "European Fundamental Rights Act," which Professor Wolfgang Däubler, an expert on labor law at the University of Bremen, drew up on behalf of the Research Group on European Affairs. The first contributions in this volume introduce the subject, outline the problems involved and sketch out the experience gained so far. Subsequently, Wolfgang Däubler explains the rationale of his proposal by highlighting the need for action in the field of social policy. The actual text of the "European Fundamental Rights Act" is then followed by a critical assessment of the solution which Däubler has proposed. The texts have been completed in the summer of 1989 and thus do not include the decisions of the Strasbourg summit and the respective declarations of the Twelve. The issues raised by Wolfgang Däubler's concept are nonetheless up-to-date – they are bound to reappear in the debates on the EC-Commission's proposals for action.

In the spirit of the project "Strategies and Options for the Future of Europe," the alternatives discussed here are thus designed to initiate a broadly based, critical debate to help us progress from a non-committal controversy about fundamental positions in social policy to a concrete debate on the substance and the shape of European social policy in the Internal Market.

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Introduction: the Social Dimension of the Internal Market as a Task for European Policy

Werner Weidenfeld

1. The starting point

The issue of the social dimension of the Internal Market puts an old problem of European unity into a new and sharper focus. Since the fifties the social construction of the Common Market has provided a field of action for integration policy in the negotiations on the establishment of the European Coal and Steel Community and on the Treaties of Rome to build the European Economic Community. The Treaties provided the basis for supplementary social competence and appropriate institutions but left the basic responsibility quite deliberately in the hands of the Member States. European policy began by developing specific measures to promote structural change in the mining industry and to provide social security for migrant workers as a Community task. In Articles 48 through 51, the Treaties of Rome lay down measures to bring about freedom of movement, especially banning discrimination on the basis of nationality (Article 48) and they also make provisions to coordinate the social orders (Articles 117, 118), to improve vocational training (Article 128) and to eliminate differences in remuneration specific to the sexes (Article 119). At a later point in time, i. e. in 1960 and 1975, respectively, the Social and Regional Funds were added, through which the differences in social development in the regions of the Community were to be compensated for.

The development of this system repeatedly became the subject of reform considerations in the European Community: in addition to the plans to establish economic and monetary union, mention must be made in this context primarily of the initiative of the German Federal Government to implement a European social and societal policy submitted by Willy Brandt to the heads of state and government of the EC at the Paris Summit on 19 October 1972[1], the Tindemans Report of October 1975 and the mandate report by the Commission dating from June 1981.[2] The draft of the treaty to form the European Union, approved by the European Parliament in February of 1984, and the Single European Act that came into force in July of 1987 also allude to the expansion of the social policy mission of the European Community.[3]

[1] Document, from which excerpts were printed in: Jürgen Schwarz (Ed.), Der Aufbau Europas. Pläne und Dokumente 1945–1980, pp. 479–484.

[2] For more extensive coverage, see Bruno Bengel et al., Nur verpaßte Chancen? Die Reformberichte der Europäischen Gemeinschaft (Mainzer Beiträge zur Europäischen Einigung, ed. by Werner Weidenfeld, vol. 2), Bonn 1983, here mainly pp. 107 et seq.

[3] Cf. Werner Weidenfeld and Wolfgang Wessels (Ed.), Wege zur Europäischen Union, Vom Vertrag zur Verfassung? Bonn 1986.

2. The new situation: on the way to the Internal Market

The European Community program for the completion of the Internal Market by 31 December 1992 brings to a head the social policy debates of the past. Both the far-reaching nature of the decisions to be taken and the dynamics of the process so severely limited in time bring the need for social policy action into sharp focus. Two levels need to be distinguished at this juncture:

a. The level of regulatory policy
   The Internal Market program changes the general framework conditions of economic action and breaks up the structures of the equalization of interests between the two sides of industry in a number of fields that have so far not been managed on the EC level either structurally or materially. On the political level the Community gains a say in the decision on the economic and social policy core of the social question as a result of the steps taken towards completion of the Internal Market; by the same token, it has to decide on the corrections necessary to protect the economically weak and disadvantaged.
b. The level of integration policy
   The Internal Market program shifts the structure of powers between the Community institutions and the Member States, thus bringing into sharper focus the disagreement of the governments on the extent of the process of integration. This applies all the more urgently to the social support of the Internal Market, since this area has so far been one of the central fields of action of national policy within the responsibility of the Member States.

These social policy repercussions are hardly reflected in the 279 individual steps towards the Internal Market spelled out in the Commission's White Paper.[4] Since the Brussels special summit in February of 1988, whose financial resolutions gave the program the necessary credibility, a sensitive perception of the social issues and a rapidly growing demand for information and analyses have developed not only in the Federal Republic of Germany – although they have been particularly widespread here – which were initially triggered by fears and anxieties about the consequences of the Internal Market and further exacerbated by the fact that such social policy issues were not firmly embedded in the program. European policy is confronted with a whole host of demands; in European policy terms, the completion of the Internal Market can no longer be pursued as if it was totally divorced of its social consequences.

[4] Commission of the European Communities, Completion of the Internal Market. Commission White Paper to the European Council, Luxembourg 1985.

3. Social consequences of the Internal Market

Up to now the expected social benefits of the Internal Market have only been determined by way of an approximation if anything. The growth expectations expressed in the Cecchini Report have not gone unchallenged: other model calculations assume that instead of an increase of 1.8 million in the number of jobs (as many as 5 million over the long term)[5] the actual number of new jobs created will only be 300,000.[6] The effects of structural adjustment processes or regional cyclical fluctuations are as difficult to quantify as the extent of social policy gains made possible by the Internal Market. The Common Market of the Europe of the Twelve shows strongly diverging levels of social wealth and social benefits, ranging from ancillary pay and working conditions to infrastructure facilities.[7] This diversity is mirrored by the diversity of the socio-cultural development of the Member States. While the image of industrial and administrative work in the states of the Community characterized by Kenneth Galbraith as "technostructure," shows more and more overlaps, traditional values, attitudes and relationship patterns persist in some of the modern structures.[8] This non-simultaneity of social change will articulate itself all the more dramatically the higher the rate of modernization.

The fundamental thinking of the Brandt initiative dating from October 1972 "to avoid maldevelopments in the implementation of economic and monetary union by including the social dimension," to "focus more strongly on and coordinate in the European framework" the "social substance and repercussions" of the policy of the members, as well as "to integrate the citizens in the Community" more intensively, describe a program to control social change against this background. In the seventies, the Community only found a minimal-

[5] Cf. for this and a general social assessment, Patrick Venturini, Ein Europäischer Sozialraum für 1992, ed. by the Commission of the European Communities, Luxembourg 1989, here mainly pp. 31 et seq.

[6] According to the calculations of DRI, Brussels; cf. Klaus Methfessel, Brüsseler Spitzen, Capital, 7/1988, pp. 10–12.

[7] For basic data see Commission of the European Communities, Regionen der erweiterten Gemeinschaft. Dritter periodischer Bericht über die sozio-ökonomische Lage und Entwicklung der Regionen der Gemeinschaft, Luxemburg 1987. For differences in detail see also Europäisches Gewerkschaftsinstitut, Die soziale Dimension des Binnenmarktes, Teil I: Beschäftigung, Teil II: Arbeitnehmerrechte in den europäischen Unternehmen, Info 25 u. 26, Brussels 1988; very informative also the comparison made by the Institut der Deutschen Wirtschaft (Ed.), Sozialraum Europa. EWDossier 7, Cologne 1989.

[8] Cf. the treatment of this aspect by Norbert Kohlhase, Einheit in der Vielfalt–Essays zur europäischen Geschichte, Kultur und Gesellschaft, Baden-Baden 1988, here pp. 63 et seq.

ist answer to this challenge: with the establishment of the Structural Fund, European policy initially only operationalized the problem of regional differences without allowing for the economic buoyancy caused by the Common Market and by the harmonization of social conditions in its wake.[9]

To this extent, the doubling of the Structural Fund approved by the Brussels special summit runs parallel to the implementation of the Internal Market and falls into the normal pattern. However, a closer look at the current debate raises doubts as to whether this approach is sufficient because the doubling of these funds will not be enough to lastingly reduce the developmental differences within the Community. Furthermore, the explosiveness of the social policy issue is only partly a consequence of relative regional underdevelopment. Numerous important questions do not emerge in this context but are the new, direct results of measures to implement the Internal Market program.

The social policy problems newly raised by the Internal Market program can be reduced to eight groups of questions:

a. In the course of the completion of the Internal Market there will be structural change in the economies of the Member States. New distribution struggles seem to be unavoidable; long established, vested rights begin to crumble.
   What sort of consequences emanate from this as far as labor relations are concerned? What is the future of such social collective bargaining settlements that often supplement or replace wage increases?
   How will the various forms of participation and co-determination be able to stand their ground or further develop in the Internal Market?
b. The Internal Market will also demand far-reaching adjustment processes in public administration, which will be required to assume the functions of organizing, control and handling trade (e. g. in the customs and border service). The structures and tasks of individual public service sectors will change, applicants from other Member States will seek admission to public service in Germany. What will be the social consequences?
c. The repercussions of the Internal Market will also trigger indirect social effects. The increasing speed of innovation will lend greater weight to the question of basic and advanced training of staff in the context of collective bargaining settlements. The increasing

[9] Cf. in this context the critical remarks in the appropriate chapters on regional and social policy by: Werner Weidenfeld and Wolfgang Wessels (Ed.), Jahrbuch der Europäischen Integration 1980 et seq., Bonn 1981 et seq.

mobility of employees will require the provision of appropriate transport infrastructures.

d. The structural change will not unilaterally favor the regions located on the periphery of the EC that have more favorable wage and payroll costs. One must, on the contrary, work on the assumption that, on balance, developmental differences may indeed become even more pronounced.
   What new social policy consequences will result from this – also with a view to a European merger control or the further development of co-determination?
   How can we make sure that the Internal Market is not going to be turned into a pretext for the abolition of existing rights?

e. In some of the regions with weaker economic development, industrial growth is already concentrating on specific branches of industry.
   How are we to assess and control the options resulting from this development in social policy terms?

f. Unemployment in the EC currently amounts to 10.5 per cent on average (just over 16 million people); unemployment among young people is depressingly high as a Community-wide phenomenon.
   Are the Cecchini Report's growth forecasts realistic or will the predictions of the Padoa-Schioppa Report come true which assume a growth in real terms of about 0.5 per cent spread over several years?[10]
   Will the Internal Market generate sufficient momentum to create new jobs?
   Will its completion generate fresh funds to invest in attaining social policy objectives?

g. The Internal Market will involve a competition of regulatory systems. It is true that the areas of safety and health enjoy special protection in the Single European Act, but because of the principle of non-discrimination the national standards are coming under pressure. In practice, many different ways of directly or indirectly circumventing existing protection provisions – which are, after all, usually also cost factors – are conceivable (for example in the area of public procurement).
   What does this mean for the rules and regulations applying in the area of health protection and protection against occupational hazards?

[10] Cf. Tommaso Padoa-Schioppa, Effizienz, Stabilität und Verteilungsgerechtigkeit, Wiesbaden 1988.

h. One of the consequences of the removal of production and trade barriers will be that other cost factors will become more important. This will mean that the differently structured systems of social security, of health insurance, old age pension and unemployment insurance will practically enter into competition with one another in the marketplace. There will be a tightening of the controls of subsidies.
Which social questions will re-emerge in this context?
How can greater transparency be achieved in view of the somewhat confusing data situation in the different social systems?

The different aspects of the problems just sketched out have repeatedly been taken up in the debates on the social dimension of the Internal Market since 1988 without any consensus of opinion having been achieved to date on the social risks involved in the completion of the Internal Market.[11] The institutions of the Community are involved in a difficult process of opinion-forming whose cornerstones are the Gomes Report to the European Parliament[12], the comments by the Economic and Social Committee[13], the proposal by the Commission[14] and the deliberations of the European Council.[15] Among the governments of the Member States, whose decision will have to open the way for the social design of the Internal Market, there is controversy on the areas to be regulated, the extent of social regulations on the Community level, as well as their bindingness.

4. Approach and structure of this volume

The following contributions in this volume tackle precisely these problems and tasks of European policy. The object of these investigations is to analyze systematically the situation and the social policy

[11] Cf. the most recent formulation of the open questions in the declarations of the two sides of industry in the Federal Republic of Germany dated 26 July 1989 (DGB/BDA) and 31 July 1989 (DGB/BDI), respectively.

[12] Report on the social dimension of the Internal Market, General Rapporteur: Fernando Gomes, PE-DOK A2-399/88 of 23 February 1989.

[13] "Die sozialen Grundrechte der Europäischen Gemeinschaften." Comments by the Economic and Social Committee, Document, CES 270/89 of 22 February 1989; cf. also Hans-Günther Brüske, Der Wirtschafts- und Sozialausschuß, in: Werner Weidenfeld and Wolfgang Wessels (Ed.), Jahrbuch der Europäischen Integration 1987/88, Bonn 1988, pp. 93–97.

[14] Commission of the European Communities, draft of a European Social Charter, in: Agence Europe, Documents, No. 1558 of 12 June 1989.

[15] For details see conclusions of the Chairman of the European Council at the Madrid Conference on 26/27 June 1989, printed in the supplement to the EC Magazine, 8/1989.

problems resulting from the completion of the Internal Market, to define the objectives of political regulation and to reflect on a concrete proposal for the design of the social dimension of the Internal Market.

This approach is in line with that of the research project "Strategies and Options for the Future of Europe" in the context of which this volume has been prepared.[16]

The central question posed by the project is: how can the political problems of European policy be solved rationally?

Based on the preliminary work done by the Research Group on European Affairs and the deliberations of the scientific advisory council to the project, the results presented in the following are the outcome of a series of working steps: the starting point was a specialist conference of social experts from science and politics whose task it was to define the social problems in the Internal Market. The results of this stock-taking operation are reflected in the contribution by Ulrich Weinstock as well as the first part of the study by Wolfgang Däubler.

In a second step the project partners, in cooperation with the expert on labor law at the University of Bremen, Professor Wolfgang Däubler, worked out the concept of a study to investigate the initial situation in terms of social policy and the specific requirements for regulatory action which were then to be integrated into the text of a proposed regulation. The results of the study and Wolfgang Däubler's proposed "European Fundamental Rights Act" form the main part of this volume.

In a third working step the proposal was subjected to a critical examination. The contributions by Gerhard Fels and Meinhard Hilf at the end of this volume list objections and corrections from an economic policy perspective and from the point of view of European law.

The project partners, the Bertelsmann Foundation and the Research Group on European Affairs, do not claim to have presented a panacea for the solution of the social problems consequent upon the completion of the Internal Market. There is no doubt that the "European Fundamental Rights Act" developed by Wolfgang Däubler will be challenged, either because of its comprehensive regulatory approach or its far-reaching degree of bindingness, or indeed because of individual provisions contained in it. The author himself perceives

[16] For details of the project approach see Werner Weidenfeld, Die Zukunft Europas: Strategien und Optionen, in: Forschungsgruppe Europa, Europäische Defizite, Europäische Perspektiven – eine Bestandsaufnahme für morgen, Grundlagen 1, Gütersloh 1988, pp. 11–23.

his proposal as a "concrete utopia" whose implementation will have to be measured against the political responsibilities and the economic framework conditions. In this sense, the text may be read in several different ways: firstly, it may be seen as defining a maximum of social provisions in the Internal Market. Secondly, it can be viewed as a catalog of social policy subjects to be debated on the European level. And thirdly, by outlining a whole host of concrete individual decisions it opens the way to move from a somewhat blurred exchange on fundamental positions to a factual debate on the substance and structure of European social policy.

The intention of this volume is to promote this factual debate without, however, neglecting the critical objections that may be raised from the European policy, economic policy and legal points of view.

European Social Union–Historical Experience and Future Perspectives*

Ulrich Weinstock

* The manuscript was completed on 17 January 1989.

1. Barriers inherent in the first approach

In 1956 a group of experts appointed by the International Labour Office dealt with the social aspects of European economic cooperation in a comprehensive study.[1] This economic policy study was to determine the direction of the social policy provisions contained in the EC Treaty. Its central message runs as follows: "The differences that exist between individual countries in the general level of remuneration by no means interfere with international trade: as long as productivity differences continue to exist, these discrepancies are indispensable even though not in themselves adequate to channel labor and capital in each country into those industries in which they can be applied with the greatest advantage or the least disadvantage as a result of which the highest possible production and the highest possible income can be guaranteed in all participating countries."[2]

The minority vote of the French economist Maurice Byé, on the other hand, was a lot more demanding. "The true social objective of the policy determined at Messina should therefore be the avoidance of any – even only transient – decline in any country."[3] Against the background of the fact that at the time France had "the most advanced social system"[4] in the EEC with the highest labor and social costs and therefore did not feel it was competitive, it merely reflected French interests in the sense of demanding progressive convergence in the social field.

However, the predominantly market-oriented philosophy did indeed dominate in the concept of the EEC Treaty and it was to be confirmed "that with relatively realistic exchange rates such differences do not distort competition."[5] With the economic reforms introduced in France in 1958 the arguments of existing competitive disadvantages resulting from higher social costs, but also from higher taxes and wages, had been dropped.

This development was to become the determining factor for the next three decades. Thus, it must be said in retrospect that – in spite of all its undoubted individual achievements – social policy in the Community never played an independent, truly dominating role. All

[1] International Labour Office (Ed.), Report of a Group of Experts/Social Aspects of European Economic Cooperation, Geneva 1956. The German representative in the group was Professor Helmut Meinhold.
[2] Ibid. p. 133.
[3] Ibid. p. 168
[4] Hans-Jürgen Küsters, Die Gründung der Europäischen Wirtschaftsgemeinschaft, Baden-Baden 1982, p. 299.
[5] Hans von der Groeben, Aufbaujahre der Europäischen Gemeinschaft, Baden-Baden 1982, p. 94.

the same, it should not go unheeded that one of the first regulations issued by the European Economic Community related to the social security of migrant workers. Political interests, however, never focused more than transiently on this particular field. National responsibility – and by no means only for the core areas of social policy like social provisions against illness, accident, old age, unemployment – remained completely intact. Thus, the Community has been suffering from its congenital defect to this very day.

The Treaty provisions relating to social policy therefore constitute a poor compromise. Because the implementation of the objectives listed in the preamble is to "ensue not only from the functioning of the Common Market which will favor the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action" (Article 117). Without encroaching upon the responsibility of the Member States the Commission is called upon "to promote close cooperation between the Member States in the social field" (Article 118). It is consistent with the absence of a clear apportioning of competence that, after France had virtually gone back to toeing the line adopted by the other five Member States as early as 1958, no member state really pushed for rapid progress. Against this background it does not come as a surprise that the Commission operated somewhat haplessly and failed to generate any major momentum.

From the outset, therefore, confusion and contradictions have formed the backdrop to only hesitant progress. For a long time questions of principle or ideological debates, some of them needlessly exaggerated, were very much in the foreground. Should harmonization in the social field be a more or less automatic consequence of the process of integration or should it be an active and influential part of this development? Is the rationale for social harmonization that different social benefits influence the cost and thus the competitive situation of the economy or is it motivated by social considerations? Do social benefits constitute natural competitive advantages or disadvantages or are they artificial distortions of competition that need to be harmonized?[6]

There were some important vested interests behind these questions. Neither the Member States nor the two sides of industry clamored for a social policy breakthrough. The national frame of reference continued to be given priority. Cogent factual arguments were

[6] Cf. Ulrich Weinstock, Auf dem Wege zur Sozialunion, in: Ulrich Weinstock (Ed.), Neun für Europa. Die EWG als Motor europäischer Integration, Düsseldorf-Köln 1973, p. 164.

not available. Everyone was able to detect many more advantages in the preservation of the largely unmitigated national autonomy than in the need to accept compromises within the Community and to see one's own national autonomy being whittled away.

At the European Conference on Social Security in December of 1962, at which the Federal Government was not even represented politically, these issues were again discussed with great vehemence. The President of the EEC Commission, Walter Hallstein, argued in his opening speech that "economic and social policy form a closely knit fabric that cannot be unraveled."[7] If the Treaty had as its objective a common market or even economic union, then the important field of social policy could not be left out in the long run. Accordingly, the objective should therefore be to allow the process of harmonization of living and working conditions to take place in a "progressive convergence" in the spirit of Article 117.

In view of this constellation it was therefore not surprising that wherever the Treaty has failed to issue clear instructions no major progress could be achieved in the first phase of integration. The congenital defect that "social policy began as cost policy"[8] could not be overcome on this narrow basis. The achievements in the social policy field which must, in the final analysis, be described as modest, were therefore limited in the initial phase essentially to the precise missions spelled out in the Treaty, i.e. the creation of freedom of movement and the establishment of a social fund. All the same, the Community was also used as a discussion forum. This may seem to be a harsh judgement. Yet, in retrospect it is probably a fair assessment – especially since it is based on a comparison with the relative progress made in other fields. Incidentally, this view is also shared by eyewitnesses of these developments. They, too, pillory the "non-committal and conflicting nature of the Treaty's provisions."[9] What could this seed produce other than a weak plant? Where was the powerful will to correct things?

So, in the final analysis, there was not just a lack of champions of

[7] Walter Hallstein, Europäische Reden, Erich Oppermann (Ed.), Stuttgart 1979, p. 396.

[8] Heinz Kuby and Erich Kitzmüller, Transnationale Wirtschaftspolitik. Zur politischen Oekonomie Europas, Hanover 1968, p. 60.

[9] Rudolf Miller, Stiefkind Sozialpolitik: 25 Jahre Römische Verträge, in: Bundesarbeitsblatt, vol. 1982, p. 7. "25 Years ago the opponents could not make up their minds whether to be in favor of a social policy activity on the part of the Community or not. Dialectic was put in the place of logic." (p. 8) See also Wolfgang Däubler, Europäischer Binnenmarkt und Gewerkschaftspolitik, in: Gewerkschaftliche Monatshefte, vol. 1988, p. 463.

rapid progress in this field. The logic of integration itself did not exactly constitute an irrefutable incentive to clear these hurdles. Customs union, free movement of goods and internal-market-type conditions were, during that period of economic expansion, simply not seen as being directly connected with Community efforts in the field of social policy, at least as soon as these went beyond the creation of the freedom of movement of labor as well as a certain financial compensation mechanism provided by the Social Fund. What is more, until 1971 (!) the latter gave the wealthy Federal Republic of Germany the windfall of higher net payments before Italy, for which it had primarily been designed, was able to eliminate administrative deficiencies and itself began to benefit. Europe, the Community, was perceived by nobody as the social policy frame of reference. After all, national economic growth provided plenty of latitude for the distribution of wealth.[10]

2. New approach and rapid stalemate

The European policy relaunch[11] initiated at the Summit Conference in The Hague and involving the triple objectives of completion, intensification and expansion the door to economic and monetary union was pushed wide open – irrespective of any Treaty provisions. In the WERNER plan on the step-by-step implementation of economic and monetary union the social policy component was admittedly given short shrift. However, at the Paris Summit Conference in October of 1972 the rekindled political discussion on the ultimate integration policy objective of a European Union then also brought social and societal policy as an element of such a union into sharper political focus. "The heads of state and government emphasized that in their estimation determined action in the social policy field was of the same importance as the realization of economic and monetary union."[12] The political and substantive impetus provided mainly by the German[13] but also by the French[14] Government, led to the formu-

[10] Cf. Bernard Cassen, Le "social" à la remorque de l'Acte unique, in: Le Monde Diplomatique du décembre 1988, p. 6.

[11] Cf. Final communique of the conference of the heads of state and government of the EEC Member States, in: Bulletin der Bundesregierung No. 148 of 4 December 1969.

[12] Declaration of the Paris Summit Conference, in: Bulletin der Bundesregierung No. 148 of 24 October 1972, figure 8.

[13] Deutsche Initiative für eine europäische Sozial- und Gesellschaftspolitik, in: Europa-Archiv, vol. 27 (1972), pp. D585 et seq.

[14] Cf. the French proposals for the EEC's social policy, in: Le Monde, 21 October 1972.

lation of a social policy action program[15] that suggested a new approach for the seventies even though it was conspicuous by its lack of vigor.

As far back as in the spring of 1970 Federal Chancellor Brandt had stated at the SPD Party Congress in Saarbrücken: "A 'Europe of the Businesses' cannot be enough... The object must be to turn the European Community into the socially most progressive major region of the world within this very decade." The most decisive motivation for the sharpening of social policy awareness was, however, economic and monetary union. Without bringing about a certain consensus on social and societal policy, the achievement of an overall European control mechanism and promising efforts to attain stability, full employment and growth accompanied by social justice seem inconceivable. The advance of multinational companies also plays an important role. Movement on the entire front of the integration scenario, as intended by the Paris Summit, could not only not exclude social policy. It had to be based on it. Thus, it was of fundamental importance that "The process of integration will gain in attractiveness if and when it is taken out of the phase of technicalities by focusing attention on the combination of integration and reform-oriented social policy."[16]

The implementation of economic and monetary union would automatically curtail national sovereignty by way of social and societal policy reforms. This is why efforts were being stepped up to increasingly introduce national reform considerations on the European level in terms of both their fundamental approach and also their consequences. Only in this way did their conceptual implementation seem to be guaranteed in the long run. "Isolationist national aspirations run the risk of failing sooner or later because of existing factual interdependencies or proposed developments and ramifications in the European field. The national sovereignty for reforms is limited by the Community. The pooling of interests – even irrespective of any treaty commitments – has long since been so close that it can no longer be lifted between Scotland and Sicily, between Berlin and Brittany."[17] This is why the Paris Summit Conference emphasized that economic and social integration were on an equal footing. At the same time, the initiators of this idea were aware of the fact that one has to proceed extremely cautiously. The object was by no means to unhinge the his-

[15] Resolution of the Council of 21 January 1974 on a social policy action program, in: Official Gazette of the European Communities, No. C13 of 12 February 1974.

[16] Thomas Jansen and Werner Weidenfeld, Die künftige Rolle Europas in der Welt, in: Außenpolitik, 7/1972, p. 407.

[17] Ulrich Weinstock, loc. cit., pp. 173 et seq.

torically grown national systems of social security in a sort of European euphoria. If at all, this core substance could only be modified in the medium or even long-term from a European point of view. And even then one had to proceed extremely cautiously casting things into new bandwidths.[18] The latitude emerging in the course of social change and as a result of social progress did, however, have to be utilized in the spirit of progressive convergence on the European level. In the process the decisive objective was to exert an active and forward-looking influence on the European development in the social field and not, as was the case in the common farm price policy, to merely accept passively its undeniable social effects.

The focus of the Community's social action program was to fight unemployment, to improve living and working conditions as well as to establish the rights of participation of the two sides of industry. With the best will in the world on the parts of all parties involved, the result cannot be described as the great breakthrough. And yet, the program's rapid and consistent implementation might have made considerable progress possible. Ironically however, the post-war economic upswing came to an abrupt end with the first oil price explosion in November of 1973, i. e. almost simultaneously with the approval of the action program, and was replaced by a recession and European mass unemployment, a phenomenon that had been unknown for a long period of time. The economic fundamentals changed dramatically. National egoism proliferated. The relatively mild commitment to act within the Community was easily ignored. Every state adopted a go-it-alone strategy to escape from the surprising and unexpected change. In spite of this, a whole host of individual measures could be implemented on the basis of the action program. Even though some fairly spectacular results could be achieved, as for example in the context of equal treatment for men and women, the profile of the measures instituted must, on the whole, be described as fairly low. There were some useful approaches, but no real breakthroughs. At the same time, any latitude that still existed dwindled away so that towards the end of the seventies real progress could no longer be achieved. The momentum had died down and ended in stalemate. As a result, the issue of social integration again disappeared from the European agenda for almost half a generation.

But quite apart from the change in circumstances, the approach itself also got bogged down in terms of its substance and its concept. The actual objectives were somewhat blurred, ranging from big the-

[18] Cf. Werner Tegtmeier and Ulrich Weinstock, Sozial- und Gesellschaftspolitik als Element einer Europäischen Union. Perspektiven für ein Aktionsprogramm der Europäischen Gemeinschaft, in: Europa-Archiv, vol. 27 (1972), pp. 804 et seq.

ories to small practical steps. There was no clear-cut distribution of competences. Careful tactical manoeuvering was rife. A fundamental debate on the objectives, possibilities and limitations of social integration never came about. There were clear deficits in coming to grips with the problem intellectually. Thus, the dialectic of the concept of subsidiarity, which is so immensely important particularly in this field both on the national and the Community level, was never injected into the discussion. Furthermore, the assessment of the importance of European social policy ranged from problem child, alibi or figleaf on the one hand to catalyst, pacemaker and engine on the other hand. Words spoke louder than deeds: the declarations of principles made by the heads of state and government remained more important than their implementation by the ministers of labor or social affairs while the ministers of economics and finance viewed the approach with scepticism anyway.

The bandwidths that existed between the Member States and inevitably increased dramatically with the Community growing from its six founder members to today's twelve members became starkly visible and could not be bridged in any way during the phase of recession accompanied by a rapidly dwindling commitment to Europe. Traditions, structures and interests were too divergent and the aspiration to preserve latitudes for national action on as unlimited a scale as possible turned out to be too powerful on the whole. In the final analysis, the Community was totally helpless in the face of the phenomenon of rampant mass unemployment in spite of all its financial efforts to refinance national measures particularly in the area of vocational training. The Community institutions did not even make any vigorous attempts to turn unemployment into a political Community task of the first order in a spirit of solidarity. In this sense, an opportunity for consistent political mobilization had apparently not existed – but had not been sought, either. And the discussion about shorter working hours that re-emerged in its wake completely bypassed the European level. Since, however, the concepts of fighting unemployment showed and still show quite a considerable spread the Community procrastination does not come as a surprise. The number of resolutions that were passed, but always remained noncommittal, is inversely proportional to the efforts made.

3. New bases lacking major perspectives

The Single European Act (SEA) dating from February 1986 with its central concern of creating a uniform European Internal Market by

1992 has also triggered new activities[19] in the field of social policy. To begin with, however, it has to be emphasized that no fundamental changes have been made to the basic Treaty provisions. Articles 117 and 118, no matter how controversial their phrasing may be, have remained unchanged in terms of their substance. Now as before the Commission merely has the task "to promote close cooperation between the Member States on social issues." A Community policy in this field is not envisaged. Neither has a clear-cut and comprehensive overall competence been assigned to the Community. In this regard, therefore, the status quo of the Treaty continues to persist even on the threshold to the large Internal Market and on the way towards greater economic and monetary policy cooperation – with no change after more than thirty years of painful integration experience.

The new provision of Article 118a does, after all, contain a new regulation for the working world. The improvement especially of the working environment, i. e. occupational safety at the place of work, has been elevated to the status of a Community objective. This is to assure harmonization and progress at the same time. Council decisions are now also possible with a qualified majority. It is, however, made plain in this context that fundamentally the responsibility of the Member States will remain unimpaired while the Community decrees minimum standards within the framework of the creation of the Internal Market. Yet, stricter national standards will be possible. Article 118b merely lays down in writing what has become the established norm in the field of the dialog between the two sides of industry on the European level anyway and does not, therefore, constitute an innovation in the strict sense of the word. What does deserve attention, however, is the more specific provision that this dialog "may lead to contractual relationships if and when the two sides of industry so desire."

The creation of the Internal Market, i. e. the economic area without borders, continues to be the objective that the Community set itself the task of attaining more than three decades ago. The realization of the four basic freedoms is again at the center of activities, this time in the stage up to 1992. The Commissions' White Paper of 1985[20] on the completion of the Internal Market does not contain any social policy section, if one ignores the creation of the freedom of movement for workers. By the same token, the social policy efforts made within the framework of the Single European Act are hardly more than window

[19] Cf. Otto Schulz, Schrittweise errichten: Europäischer Sozialraum, in: Bundesarbeitsblatt, vol. 1986, p. 16.

[20] Cf. White Paper of the Commission to the European Council, Completion of the Internal Market, Luxembourg 1985.

dressing. The modified regulation on the harmonization of legislation already exempts free movement of persons in Article 100a, but also the rights and interests of employees. Other, additional social policy regulations are not envisaged anyway.

The title "Economic and Social Cohesion" introduced into the Treaties by the Single European Act is essentially geared to harmonizing regional development. The decision of doubling the Structural Fund by 1993 taken within the framework of the approval of the Delors package was an important step in the right direction. Naturally, the assessment of its importance must be seen against the background of the expansion of the Community by the addition of the three less wealthy Mediterranean states Greece, Spain and Portugal and with regard to assuring the necessary economic, social and political cohesion of the Community. To this extent, the above step constitutes only a modest expansion of the Community's framework of action.

If the so valuable "Jahrbücher der Europäischen Integration"[21] (annuals of European integration) published since 1980 display one surprisingly blind spot as far as our subject is concerned – as is incidentally also the case with the so-called "Bielefelder Berichte"[22], since both works deal with social policy under the heading of structural policy, and do so in a very cursory manner – this must probably be viewed as being symptomatic of the situation. Scientific investigations, down to earth analyses of national social policies within the Community framework, even design of social policy action programs or only catalogs of social demands – they are all conspicuous by their absence.

In the very recent past the need for social policy blueprints, visions and action programs has clearly manifested itself without this unexpected demand being only remotely satisfied. Virtually in the form of a categorical imperative the President of the Federal Republic of Germany demanded: "The social substance of the Community must become recognizable."[23] Similarly clear comments or more especially some practical support has not – yet – been forthcoming from the German Minister of Labor. The Commission is apparently finding it difficult to support President Delors' noteworthy fundamental

[21] Werner Weidenfeld and Wolfgang Wessels (Ed.), Jahrbuch der Europäischen Integration, 1980 et seq., Bonn 1981 et seq.

[22] Reports by a working group at the University of Bielefeld on "Ziele und Methoden der Europäischen Integration," continued in the series "Möglichkeiten und Grenzen einer Europäischen Union," edited by Hans von der Groeben and Hans Möller.

[23] Richard von Weizsäcker, Laudatio anläßlich des Festaktes zur Verleihung des Internationalen Karlspreises, in: Bulletin der Bundesregierung No. 143 of 3 November 1988.

speeches[24] with a clear strategy and a program of action. In contrast to this, there is almost an inflation of "social" terminology: There is talk of the social area, the social dimension, social coherence, the social platform or the social denominator. Other expressions bandied about are a social Charta or even the "Europeanization of social policy"[25]. However, it always remains unclear what these terms mean, require or entail. Thus, the very blurring of the terms reflects the lack of substance and political commitment.

All this taken together fails to instill in the critical observer any social policy optimism or even confidence in a social policy breakthrough. All the standard comments and pontifications by politicians like Delors and Kohl, Papandreaou, Gonzáles and Mitterrand, cannot remove the perplexity that prevails in view of the current state of affairs. Historical experience alone suggests that reticence is required. It merely needs to be pointed out that the British Head of Government has come out fairly and squarely in favor of deregulation[26] – and that applies particularly to the social policy dimension. It does not come as a surprise, therefore, that the comments by the European Council at Hanover on the social aspects[27] also lack clarity and fail to point to new horizons.

4. Lines of argument

Against the background of this description of historical experience, today's starting situation is marked by appalling deficits in our sensitive area:

1. What is lacking is a clear legal basis for a common social policy and its creation is not on the agenda in the foreseeable future.
2. It is not discernible so far that there is sufficient political agreement between the Member States on the objectives and methods as well as on a common strategy.
3. For individual measures there is no concept in substance that might attract a consensus.

[24] Cf. among others Jacques Delors, Für ein soziales Europa, in: Bundesarbeitsblatt, vol. 1988, p. 5 et seq. and by the same author, Die Einigung Europas und ihre sozialen Voraussetzungen, in: Hearings of the Parliamentary Group of the SPD on 2 May 1988, "Europäischer Binnenmarkt–Europäischer Sozialraum," edited by Arbeitskreis Außenpolitik der SPD-Bundestagsfraktion, pp. 6 et seq.

[25] Quoted from Klaus-Dieter Frankenberger, Die Europäisierung Europas, in: Frankfurter Allgemeine Zeitung of 14 November 1988.

[26] Cf. Werner Cassen loc. cit.

[27] Conclusions of the Chairman on the occasion of the European Council meeting in Hanover on 27/28 June 1988.

Fundamentally, there are several alternative strategies to cope with this situation:

- *Strategy 1:* In view of the vast difficulties in finding a consensus one simply accepts a minimum compromise on the basis of point-by-point solutions. This is to say, that on the basis of the existing treaties one will respond to the inevitable pressure coming from the employee organizations in the Community in all those cases where the two sides of industry reach a sustainable agreement and where, additionally, all governments of the Member States recognize a need for Community action to correct the status quo. Such an approach can also be described as "muddling through" and will largely do without a defined "active" policy.
- *Strategy 2:* In the context of the social dialog the employers' and the employees' organizations of the twelve member countries, together with the Commission, negotiate a mutually agreed platform which will then become the reference of action for all parties concerned. Additions to the Treaty would again not be necessary in this case.
- *Strategy 3:* The governments of the twelve Member States come to the conclusion that a social component in a substantive form is a politically indispensable prerequisite for the completion of the Internal Market in the sense that existing Treaty provisions are not sufficient but need not be modified straight away. It may be the attempt at a grand design meaning an all-encompassing action program. It may, on the other hand, be the determination of the substance of only the first stage of such a program to be implemented until the end of 1992 with the subject matter of the following stages to be left open. What should be laid down unequivocally at this stage, however, is the objective of creating a socially progressive area.

It remains to be examined whether and to what extent it is factually conceivable and politically possible that in the event of one or more Member States not joining Community action, the concept of two-tier integration[28] might be employed for fairly long transition periods in order to create the social dimension. This includes first of all the joint determination of the targets of integration whose implementation will take place in some Member States only, while the others are granted the right to lag behind these targets or not to participate in this common policy for an indefinite period of time – but not permanently. Secondly, it implies the removal, by national and/or Com-

[28] For details see Eberhard Grabitz (Ed.), Abgestufte Integration. Eine Alternative zum herkömmlichen Integrationskonzept? Kehl/Strasbourg 1984.

munity action, of the socio-economic and structural differences or any other objective obstacles that required the staggered approach in the first place.

This is to indicate at the same time that in addition to the model of a uniform Community regulation which has so far dominated the discussion, a number of other varieties of both complete integration, i. e. differentiations, and incomplete integration are available to the European legislator. In that sense, therefore, it is frequently the case that targets are set too high when it comes to thinking about the design of future policies. The interests and the future perspectives of governments as well as the two sides of industry would also have to be analyzed individually under these aspects.

The following considerations obviously focus on Strategy 3 with the choice of the specific option being left open. The first phase until 1992 is of fundamental importance. Time pressure, scarce political resources, but not least the lack of consensus among the twelve Member States suggest that a concentration on the problems "hic et nunc" is indicated. The deficit remains, however, that the Single European Act failed to remedy the situation; because if the heads of state and governments had wanted to implement this three years ago they could have done so. A relatively good opportunity was missed. A rather likely explanation must be that in view of the somewhat less developed problem awareness regarding the implications of the Internal Market in general that prevailed at the time, such a course of action would have overtaxed the Community's decision-making capacities. Today one can hardly expect that after such a short period of time the appropriate treaty basis can be provided to make up for the deficits of the past. Thus, the only alternative left – as a sort of replacement for a treaty basis – is a politically binding declaration by the heads of state and government. But even that will be difficult enough to achieve. The French Presidency in the second half of 1989 offered favorable prerequisites to this end. The object must be to make determined use of them.

Even in view of these highly uncertain prospects of success, the demand for social policy progress, couched in such general or even blurred terms, is quite considerable: there are no answers to the questions posed. A contribution therefore needs to be made towards a settlement of these deficits. But more important still: it has to be brought to everyone's attention, to begin with, that these questions have to be answered with methodological accuracy and with all due modesty, but also with the necessary determination, before new political hopes are raised in this field. The public discussion – which can be described as diffuse at best – requires a powerful impetus from the

field of policy consulting. The same, incidentally, applies to the European institutions.

Otherwise there will be the very real threat of economic integration promoting social erosion in the larger Internal Market. From this concern emanates the general interest taken in social policy in the framework of the Community. If employees perceive greater competition as a threat to their laboriously acquired rights, the large Internal Market will not be a success. Such a development would then be bound to impair the credibility and with it the development potential of the Community. At the end of the German Presidency, Chancellor Kohl stated in the European Parliament: "This Europe will not have a human dimension, it will – and I deliberately say this almost pathetically – not be a Europe with a human face unless it has a social dimension and unless the individual groups find themselves reflected in Europe."[29] The political challenge is there. We must now rise to the occasion and meet this challenge. There cannot be any progress in economic integration if it were achieved at the expense of social progress. This by no means "creates an artificial contrast between the Internal Market and social policy."[30] The old problems from the very beginnings of the Community that were papered over at the time are now becoming relevant again and, as a result of fiercer competition, do indeed emerge in a more poignant form than ever.

5. Constituents of a European social policy

The range of subjects that we choose to define as coming under the heading of the social dimension will eventually determine the direction of the approach to be selected. The following six subject areas deserve to be focused on as priorities for factual investigation and political decision-making. They seem to be the constituent parts of any social policy concept based on the creation of the Internal Market both in theory and in reality. These elements are, incidentally, also mutually interdependent.

Societal policy dimension

Even though a European societal policy will not take shape for a longer time to come failure to discuss societal policy targets would in-

[29] Helmut Kohl, Speech to the European Parliament on 6 July 1988, in: Amtsblatt der Europäischen Gemeinschaften, Verhandlungen des Europäischen Parlaments, No. 2-367, p. 173.

[30] Karl-Heinz Narjes, Eine Flurbereinigung ist unvermeidbar, Spiegel-Gespräch, in: Der Spiegel, vol. 43 (1988) issue of 2 January 1988, p. 35.

admissibly reduce Europe's social dimension to a somewhat instrumental problem. Without a debate on the societal model[31], or perhaps less ambitiously: on model ideas, the Community will remain on a technocratic level. An analysis of the trends within the European industrial societies[32] and the answers that can and should be given, is an absolute must. The Community is based on the market economy principle. However, its social and societal policy dimension has so far only been discussed as a side issue.

Having a substantive discussion on the scale of values within the Community is not an end in itself. If we fail to bring about a minimum of agreement or at least some convergence, social actions will never progress beyond incoherent and in some cases even contradictory individual elements. With increasing width and depth of the process of integration a discussion on the societal policy aspects will become an indispensable priority.

Macro-economic dimension

The removal of internal borders and the growing together of the market has both prerequisites and repercussions in social policy terms. A discussion of the measure of social harmonization needed for reasons of free competition is necessary to define the limitations of this competition policy argument at the same time. The approach taken by the Padoa-Schioppa Report according to which "in line with the principle of subsidiarity a minimal responsibility of the Community is required in many aspects of social policy" must also be discussed and possibly revised against this background. The strategy of this report relies on "decentralized (national) action" because "where national policies turn out to be successful" convergence can be expected to occur.[33]

The creation of the Internal Market is bound to have social conse-

[31] Cf. in this context above all Heinrich Schneider, Gesellschaftspolitische Dimension der europäischen Integration, in: Europa-Archiv, vol. 27 (1972), pp. 169 et seq.; Hans von der Groeben, Europäische Integration und sozialer Wandel, in: Kyklos, 1975, pp. 45 et seq.; Norbert Kohlhase, Gesellschaftspolitische Aspekte der Gemeinschaft, in: Eine Ordnungspolitik für Europa, Festschrift für Hans von der Groeben, edited by Ernst Mestmäcker, Hans Möller and Hans-Peter Schwarz, Baden-Baden 1987, pp. 201 et seq., reprinted in: Norbert Kohlhase, Einheit in der Vielfalt–Essays zur Europäischen Geschichte, Kultur und Gesellschaft, Baden-Baden 1988, pp. 53 et seq.

[32] Cf. most recently Peter Glotz, Ausbruch aus der Wagenburg. Die Zukunft der Gewerkschaften, in: Die Neue Gesellschaft, 35th vol. (1988), pp. 1034 et seq.

[33] Effizienz, Stabilität und Verteilungsgerechtigkeit. Eine Entwicklungsstrategie für das Wirtschaftssystem der Europäischen Gemeinschaft. Bericht einer von der Kommission der EG eingesetzten Studiengruppe unter der Leitung von Tommaso Padoa-Schioppa, Brussels 1987, p. 54 et seq.

quences. It is generally felt that the Cecchini Report[34] somewhat overestimated the job creating factors while at the same time the job killing component of the process of increased division of labor tended to be neglected. At any rate, the massive structural change with its extraordinarily important consequences for the labor market is hardly taken account of. An economic analysis of the creation of a European social area and a discussion of its consequences are therefore necessary. The fears concerning social dumping associated with the Internal Market have to be reduced to their core substance. Appropriate Community initiatives to correct them have to be developed.

Within this framework a discussion of the policies initiated by the Community in favor of the economically weak regions in the form of regional policy and other structural policy instruments seems to be called for in order to assess their efficiency and possibly investigate further ways and means of bringing about additional income transfers. The buzz word in this context is "the economic and social cohesion of the Community" (Single European Act, Article 130e et seq.)

Labor market policy implications

For the foreseeable future the labor market policy situation in the Member States will remain a heavy burden. The demographic development may bring about a certain amount of relief while the influx of women into the labor market will tend to increase. A world-wide as well as European intensification of competition in conjunction with an expected trend towards an acceleration of technical progress will have additional lasting repercussions on the situation in the labor market. The freedom of movement, a fundamental right and an elementary requirement of the process of integration, will have a greater effect on the highly qualified professions while it will hardly cause any change for the traditional groups of migrant workers. Even though national responsibility of the Member States for labor market policy may be expected to be maintained in the foreseeable future it is safe to assume that Community co-responsibility will increasingly develop beyond merely providing the money for the European Social Fund and for the efforts in the area of vocational training. What is the unique contribution that the Community can make in this respect? Is a "cooperative growth strategy for more employment," as propagated by the Commission, a promising proposition?

[34] Cf. Paulo Cecchini, Europa '92–Der Vorteil des Binnenmarktes, Baden-Baden 1988. On this see also Fritz Franzmeyer, Gesamtwirtschaftliche und strukturelle Aspekte, in: Hearing of the Parliamentary Group of the SPD "Europäischer Binnenmarkt–Europäischer Sozialraum," edited by Arbeitskreis Außenpolitik der SPD-Bundestagsfraktion, pp. 37 et seq.

The introduction of shorter and more flexible working hours must continue to be discussed and cast into concrete proposals in the Community framework in order to maintain the social and economic cohesion and find the most effective ways and means of doing so in economic and social terms.

Company law dimension

In addition to the intensification of competition, one of the prerequisites to reaping the full benefits from the dynamism associated with the creation of the Internal Market is an adjustment of the forms of incorporation and corporate units to the market of 320 million consumers. This is limited on the one hand by the active competition policy pursued by the Community but does require, on the other hand, the existence of adequate forms of company law[35] on the Community level.

Harmonization has so far failed because of the diverse traditions and notions concerning the corporate constitution, but especially because of the divergences relating to employees' rights of participation. Consequences that result from such a blocking of this central question must be discussed and, more especially, it has to be demonstrated by way of case studies what potential repercussions this may have regarding the erosion of existing rights of co-determination. Constructive possibilities of solving the issue of employees' participation rights must be shown up.

Possibilities and limitations of social harmonization

It seems to be necessary to discuss which areas will remain, as a matter of principle, the national responsibility of the Member States for the foreseeable future and to what extent it seems to be a necessity to facilitate their later harmonization through information and consultation. As far as the systems of general social security are concerned it is certainly safe to assume that for the foreseeable future national Member State responsibility will continue to apply. All the same, the introduction of general principles should help to promote later, inevitable convergence and avoid renewed warping of the system.

Vocational training and the harmonization of working conditions, especially occupational health protection, are areas in which Community cooperation has proved to be successful. What can be intensified and extended respectively in this field? But another question also is: in which other fields can a practical exchange of experience be initiated or intensified? What impetus emanates from the Single

[35] Cf. the contribution by Wolfgang Däubler in this volume.

European Act in this regard? How can a common platform of employees' social rights be defined?

Based on the pertinent Commission papers a medium-term action program should be developed. Its time horizon should certainly be beyond the year 1992 because its point of reference is not exclusively the creation of the Internal Market.

Social dialog

The requirement of maintaining a social dialog has acquired Treaty status in the Community as a result of the introduction of the Single European Act. Quite rightly, the Commission attaches great importance to it. And yet, it must be stated that this dialog has not progressed beyond non-committal joint statements because of the current balance of power between the two sides of industry and their European organization structures (especially that of the employers). The point needs to be made at this juncture that it was possible to set this dialog in motion pragmatically and flexibly on a sectoral level[36] in the sixties. In the seventies, the concerted action had lacked the stamina to snatch success from the jaws of established habits and old-fashioned ways.[37]

What are the procedural, substantive and political prerequisites in order to render this dialog effective? Are the structures of the two sides of industry sufficient to be able to guarantee this? Do the ministers of labor and social affairs have the competences to make the effectiveness of this dialog possible? Is it conceivable that elements of the collective bargaining agreement become the subject of the social dialog?

Also on the basis of the approaches discussed, these six fields of investigation seem to be the constituent parts of a social policy in the Community. They are sophisticated even though they are by no means as all-encompassing as to cover every conceivable European social policy initiative. Their references to the Internal Market are evident. However, their basic thrust goes well beyond it.

Such an overall strategy can of course also be broken down into different phases. The key words quoted can be made to cover different substances and, building on success in small steps, can add up to larger stages.

[36] Der soziale Dialog in Europa auf sektoraler Ebene, in: Soziales Europa, ed. by the EC Commission, No. 2/85, pp. 9 et seq.

[37] Cf. Eberhard Rhein, Europäische konzertierte Aktion, in: Europa-Archiv, vol. 31 (1976), pp. 497 et seq and Beate Kohler-Koch and Hans-Wolfgang Platzer, Tripartismus–Bedingungen und Perspektiven des sozialen Dialogs, in: Integration, 9th vol. (1986), p. 166.

6. The 1992 perspective

The need for action with which the Community will be faced until 1992 demands that major efforts be made: the Internal Market, tax harmonization and progress in terms of monetary policy are undoubtedly the central issues. Yet, in contrast to these three subjects the issue of European social union has not even been prepared properly in terms of the underlying questions. Answers do not exist anyway. Aporia, that is to say profound helplessness in view of what is factually required and at the same time politically desirable but seems to be in contradiction to what is feasible today, is the inevitable reaction. Therefore, defeatism is undoubtedly spreading – a type of defeatism that might discredit European integration as a whole. It remains to be hoped that the politicians and industrial leaders who are still hesitant on the way towards social union will accept this line of argument because they truly recognize it to be correct. Only then will the efforts that need to be made by all parties concerned lead to substantial progress. In addition, people must increasingly recognize that with the advent of the Internal Market, national sovereignty to effect major reforms will diminish. Thus, the objective must be to constructively sacrifice these declining latitudes for action to the Community for them to generate positive effects on this level. Since the rate of change triggered by the Internal Market will clearly accelerate in all areas, the Community must rise to this challenge. The path to a White Paper on "Social Union" and thus to a renunciation of a national veto is a long and arduous one. Jacques Delors is right: we are all faced "by a phantastic challenge"[38]. The political efforts to be made must of necessity live up to this challenge.

[38] Jacques Delors, Für ein soziales Europa, in: Bundesarbeitsblatt, 11/1988, p. 5.

Market and Social Justice in the EC. The Rationale and Substance of a European Fundamental Rights Act

Wolfgang Däubler

EUROPEAN FUNDAMENTAL RIGHTS ACT

I. The Social Dimension of the Internal Market

1. The White Paper on the Internal Market

Social policy got off to a bad start in the framework of the "Internal Market Project." The EC Commission excluded it a priori in its White Paper[1], leaving it to future deliberations.[2] This meant more than just a delay: In its subsequent activities, the Community has been concentrating on the proposals made in the White Paper; the completion of the Internal Market is linked to the measures and the schedule specified therein. This is also underlined in the Final Act of the Single European Act, which in the statement by the Heads of Government on Art. 8a of the EEC Treaty specifies[3]:

"The Conference wishes by means of the provisions in Article 8 A to express its firm political will to take before 1 January 1993 the decisions necessary to complete the Internal Market defined in those provisions, and more particularly the decisions necessary to implement the Commission's programme described in the White Paper on the Internal Market."

Hardly any other Commission document has ever been upgraded in a similar way.

[1] Completing the Internal Market. White Paper from the Commission to the European Council, COM (85) 310 fin., published in the "Document" series of the Commission of the European Communities. Short outline in EC Bulletin 6/1985, pp. 19 et seq.
[2] White Paper, clause 20.
[3] Printed *inter alia* in Grabitz, Kommentar zum EWG-Vertrag, p. 75.

2. Council decisions

There was also no fully differentiated concept that might have compensated for the decoupling of the social domain from the momentum of Internal Market developments. Although the Council of Ministers made a clear statement in 1984 saying that social policy was as important as economic, monetary and industrial policies[4], there was a lack of concrete suggestions for practical implementation.[5]

Up until today, there have been some shifts in emphasis, but there has been no fundamental change. It was at the meeting of the European Council of Heads of State and Government in Hanover (June 1988) that "social aspects" were included in the meeting's official "Conclusions" for the first time.[6]

The statements made in this context suggest that the Heads of Government no longer look upon social progress as an automatic sequel to an opening of the markets; instead, they feel that separate measures are required in order to improve working conditions, increase the standard of living and augment industrial safety.[7]

During the second half of 1988, the Greek Council Presidency continued to support this decision which had been taken during the German Presidency. In his programmatic speech, Mr. Papoulias, the Greek Foreign Minister, declared the "single social area" would be a

[4] Cf. the decision by the Council of Ministers of Labor and Social Affairs dated 22 June 1984 (Off. Gaz. of 3/4 July 1984, No. C 175/1), which says: "The Community will only be able to cement its economic cohesion vis-à-vis international competitors if it, at the same time, consolidates its cohesion in the social field. Social policy must, hence, be promoted at Community level as much as economic, monetary and industrial policies."

[5] Cf. Hinterscheid, in: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, p. 45.

[6] Printed in EA 1988, p. D 443, more specifically: pp. D 444/445. Inter alia, the following statements are made in this context: "The European Council emphasizes the importance of the social aspects of progress on the way towards implementing the objectives for 1992. It states that by removing growth obstacles the large single market offers the best prospects for promoting employment and increasing the general prosperity of the Community to the benefit of all its citizens. The European Council feels that the Internal Market should be designed in such a way as to benefit the entire population of the Community. For this purpose, it is necessary not only to improve the working conditions and the standard of living for workers but also to improve occupational hygiene and industrial safety. It emphasizes that the measures to be adopted will not reduce the level of protection already achieved in Member States. It welcomes the initiatives which have already been taken on the basis of Treaty provisions, in particular Art. 118a, and calls upon the Commission and the Council to continue to advance on this road..."

[7] The importance of the Hanover Summit in this context is also underlined by Hirsch, RMC 1988, p. 371.

major focus of the efforts to be made. A "bundle of measures" would be adopted, not only in order to involve the workers and the industrial partners in the process of the completion of the Internal Market, but also to allow them to benefit from the advantages arising from the single market. This was part of the more comprehensive efforts designed to strengthen the cohesion of the Community.[8] At the Rhodes Summit on December 2 and 3, 1988, a section on the "Social Dimension" was included in the final document under the heading of "The Implementation of the Single Act: A Status Report."[9]

In this section, the Heads of State and Government emphatically express their wish that the industrial partners be involved in the completion of the "big market" by means of a constructive dialog. Reference is also made to the study, currently in progress, on the Member States' labor and social law provisions. Furthermore, the European Council expresses its expectation that the Commission will submit appropriate proposals on the "application of social rights." In addition, the Council advocates "better utilization of existing human resources," placing particular emphasis on the crucial role which will be played by the reform of the educational systems including further vocational education. Finally, the Council of Ministers is requested to examine corresponding proposals "so that it will be possible in 1989 to take the major decisions intended to point the way for the social policies to be adopted by the Member States in connection with the 'big market'."

During the first half of 1989, the Spanish Presidency intended to pursue the same course. According to press reports, Mr. Ordoñez, the Spanish Foreign Minister, emphasized in a speech delivered to the European Parliament that he wanted to concentrate, among other

[8] Printed in EA 1988, p. D 450.

[9] Printed in EA 1989, pp. D 2 et seq. It says there inter alia: "The European Council feels that progress in implementing the Single European Act for the completion of the Internal Market must go hand in hand with corresponding progress in implementing social policy provisions (in particular Art. 118a and 118b) and the provisions on strengthening the economic and social cohesion. . . .The completion of the Internal Market must not be seen as an end in itself; instead it is aimed at a more comprehensive objective, i.e. to achieve greatest possible prosperity for all, in keeping with the tradition of social progress which is characteristic of European history. This tradition of social progress must guarantee that all citizens, irrespective of their occupations, will actually benefit from the immediate advantages expected from the Internal Market as a factor of economic growth and an effective means to combat unemployment . . . The European Council welcomes the progress achieved with regard to the Framework Directive on occupational hygiene and industrial safety and calls upon the Council to see to it that the introduction of this important part of the Community's social action will be quickly completed."

things, on the Europe of the citizens and the European social area.[10]

At its Madrid meeting in June 1989, however, the European Council was not in a position to take any immediate decision on that matter and postponed it until the end of the year.

Against the background of this position, it is fair to say that social policy has made some progress as compared to 1985. Specific measures, however, such as the adoption of directives in the field of industrial health protection, are still the exception to the rule, while the measures outlined in the White Paper have already been implemented to a considerable extent.[11] All the same, the declarations of Hanover have made it clear that social policy is an integral part of the Internal Market concept. It may still be lagging behind – but it looks as if it is already part of the convoy.

3. Other community institutions

Some of the Community institutions with less decision-making power than the Council have much more clear-cut ideas about how to achieve full freedom of movement and about the social policy adjustments needed in the market mechanism. In this context, it is striking that the less decision-making powers an institution has, the stronger its social policy commitment is reflected in its declarations and drafts.[12]

The EC Commission has kept a low profile so far. Although the "Marin Paper" of 14 September 1988[13] emphasized in its preface that the social dimension of the Internal Market was a "fundamental component" of this project, it developed only relatively few specific proposals designed to put this value judgement into practice. In addition to mentioning measures aimed at promoting general and vocational education (clause 76) and directives on industrial safety and hygiene (clause 77), there is a list of "potential" proposals, which in-

[10] Handelsblatt, dated 18 January 1989, p. 9.

[11] An instructive overview is offered by "Handelsblatt," dated 19 January 1989, p. 8. However, although the quantitative assessment may be positive, one should not forget that there are a number of politically particularly difficult projects which have not yet been tackled seriously, e.g. tax harmonization or the European public limited company.

[12] Such observations can also be made, by the way, in other international organizations such as the United Nations whose General Assembly decisions on disarmament go very far because they do not imply any specific legal obligations. Cf. Däubler, WSI-Mitt. 1987, pp. 186, 196 et seq. for examples in the field of international labor law.

[13] Commission of the European Communities, Die soziale Dimension des Binnenmarktes, Working Document of the Commission, SEC (88) 1148 final.

clude, among other things, the right to be given a written contract of employment, minimum requirements for non-typical employment conditions and the duty to consult and inform workers in the event of major changes in the plant or enterprise in which they are employed (clause 78). The rules dealing with equal rights for men and women at the place of work could also be revised. Clause 97 contains a reference to building a social platform in order to demonstrate "that the social dimension of the Internal Market is as important as its economic dimension." In an interview with the "Gewerkschaftliche Monatshefte," a monthly labor union publication, the Commission's President Mr. Delors made a very clear statement[14]:

"I consider it to be my task to ensure a fair balance between economic and social matters. It is not my job to fight for a strong economy on social ruins."

Under the chairmanship of Mr. Degimbe, an interdirectoral group of EC civil servants examined the "social dimension of the Internal Market," analyzing very thoroughly conceivable risks[15]; however, the views developed by this group cannot be ascribed to the Commission as such.

On the other hand, the Economic and Social Committee expressed a relatively precise opinion on that matter as early as on 19 November 1987.[16] The following programmatic statement is found in clause 1.1: "Since economic and social policies... mutually complement each other, the Committee feels that the objectives of the Internal Market can be attained only if – in parallel to the measures adopted in the fields of industry, trade, finance and taxation – corresponding measures are implemented in the social field in order to preserve and improve current balances."

The Committee went on to argue that it was highly important for the completion of the single market, therefore, to introduce Community rules "which guarantee the fundamental social rights, i. e. rights which must not be infringed upon – neither for reasons of competitive pressure nor for the sake of achieving competitiveness" (clause 1.6). A framework directive was to establish the inalienable nature of these fundamental social rights. This was followed by a list of desiderata including, among other things, that all workers should be

[14] GMH 1988, p. 28; see also the interview in: Mitb. 1988, pp. 612 et seq.

[15] Interim Report by the Interdirectoral Working Group, Die soziale Dimension des Binnenmarktes, Soziales Europa, special issue, Luxembourg (Office for Official Publications) 1988.

[16] Off. Gaz., 31 December 1987, p. C 356/31.

covered by social security, that they should be informed and consulted, and that the most underprivileged groups outside the labor market should be supported (clause 2).

4. The German Federal Ministry of Economics

With regard to discussions in West Germany, there is a paper, drafted jointly by the Federal Ministry of Economics and the Federal Ministry of Labor and Social Affairs, which is intended to serve as a basis and a point of reference for further discussions.[17] Clause II of this paper emphasizes that the social dimension is "an integral part of the completion of the Internal Market"; however, it states that the shaping of the social area should not be reduced to the harmonization of social and labor law provisions, and to problems of redistribution. Instead, priority should be given to enabling the weaker Member States to develop their full economic potential. Unless a "moderation" was applied when harmonizing the social systems, problems would arise which would be hard to solve.

5. The current situation

If one attempts to summarize the current state of affairs, one realizes that, as statements become more abstract, there is an increasing level of agreement. Nobody would seriously suggest today that a European social policy is superfluous, and that the market's own mechanisms will put things right, bringing advantages for each citizen of the Community. What is remarkable, however, is that – unlike controversies about domestic policy issues – hardly anyone has ever expressed a clear-cut rejection: it is more in keeping with diplomatic customs simply to omit things that are not wanted – or, at least, not yet – in the wordings of decisions and resolutions. It would be somewhat superficial, therefore, if one were to interpret specific proposals on the implementation of the "social area" merely as extensions of the thesis of the social policy being equally important: there must be important political or economic reasons to seriously tackle the uphill struggle from the abstract to the concrete. This means that it would be an illusion to believe that this could be achieved in a single giant step.

[17] Der Bundesminister für Wirtschaft, Soziale Dimension der Europäischen Gemeinschaft, Study Series No. 60, no year quoted (end of 1988).

Instead, one must first of all define relatively general objectives that will be relevant for the future behavior of the Community and its Member States. What is currently being considered seriously is not a European Labor Code, but guidelines for future conduct. The observations made above suggest that it may be helpful to take a closer look at the views developed so far at EC level with regard to "social rights." Could this offer some useful prospects for the EC's legal policy?

II. Guaranteeing social rights: a cornerstone of social policy

1. The social platform thesis

Outside the Community organs and governments, the key word that characterized the discussion on the "social dimension" – not only in West Germany but also in other countries – was the threat of "social dumping."[18] The lower wage costs prevailing in certain Member States[19] are considered to be the reason why market shares might be lost – in particular in labor-intensive technologies – or why companies might decide to settle in these "cheap-labor countries." On the other hand, it has been suggested that there may be a risk "that the Internal Market will turn out to be disadvantageous, particularly for those regions which are less developed or characterized by industrial decline." We will deal with the question as to whether or not these fears are justified at a later point.[20] However, what is important to know is that the notion of indispensable minimum rights – of a "social platform" – was developed in the following context: if all the workers in the Community are entitled to the same minimum annual leave, and if they enjoy the same protection against wrongful dismissal, labor cost competition will soon come up against its limits.

At the official Community level, the "social platform" was first introduced into the discussion during the Belgian Presidency in 1987. The wording used in the declaration of the Rhodes Summit is some-

[18] Cf. inter alia Däubler, GMH 1988, pp. 459 et seq.; Hirsch, RMC 1988, p. 371; Interim Report by the Interdirectoral Working Group, p. 66. For Spain, see inter alia the statements made by the UGT chairman Redondo at the Friedrich-Ebert-Foundation's conference: El Espacio Social Europeo, 40e Encuentro empresarios, sindicalistos y laboralistos, on 18 November 1988 in Madrid (Report to be published soon).

[19] See comparative data by O. Vogel, in: EG-Binnenmarkt '92. Chancen und Risiken für Betriebe, pp. 25 et seq.

[20] Cf. Sect. 2 below.

what sibylline[21]: "With regard to the application of social rights, the European Council expects the Commission, guided by the Social Charter of the Council of Europe, to submit proposals which it deems adequate."

2. The opinion of the Economic and Social Committee requested by the Commission

In the "Marin Paper," the Commission suggested that it might be a viable proposal to include the principles and major features of a social platform in a "Community Charter of Social Rights."[22] In its letter of 9 November 1988, however, the Economic and Social Committee was asked to give thorough consideration to the possible contents of an "EC Charter of Fundamental Social Rights."[23] The Opinion was expected to give "a clear signal for the future of the Community and for the fundamental values it intends to foster."[24] This declaration, which was drafted by an ECOSOC sub-committee, contains the most concrete statements made in this area so far. Clause III.1 offers a comprehensive catalog of social rights, based in particular on numerous international conventions of the ILO, the UN and the Council of Europe. This catalog includes the right of social protection for all population groups as well as the right of equal opportunity and the elimination of any form of discrimination; it encompasses the freedom of association as well as the right to education and the right to protect the working environment. In one particular section, which is devoted to the "employment and working conditions", reference is made, inter alia, to the right to participate in the definition of working conditions, the right to freely negotiated remuneration, the right of part-time and temporary workers to enjoy "corresponding" protection, and the right to a weekly rest period. However, these rights were not defined in the form of articles or paragraphs, and there is no intention to do so. This Opinion by the Economic and Social Committee was adopted on 22 February 1989.[25]

[21] EA 1989, p. D 3.
[22] n. 13, clause 104.
[23] Communication in ECOSOC, Sub-Committee "EC Charter of Fundamental Social Rights," revised draft of an Opinion, 25 January 1989, CES 1405/88 rev., p. 1.
[24] See n. 23.
[25] Opinion by the Economic and Social Committee on "The Fundamental Social Rights of the European Communities" of 22 February 1989, CES 270/89 (F).

3. The draft of the European Parliament

Irrespective of these specific social policy activities, the European Parliament adopted a "Declaration of Fundamental Rights and Freedoms" on 12 April 1989, which comprised not only traditional fundamental "classical" rights, but also fundamental social rights.[25a] This declaration went beyond the ECOSOC Opinion insofar as the rights were worded in the form of concrete articles; on the other hand, however, the object of "social matters" was defined more narrowly and the notions involved did not go as far. Specific mention should be made, however, of the declared belief in the inviolability of human dignity (Art.1), the differentiated approach to the principle of equality, prohibiting discrimination in particular for reasons of national origin or sex (Art. 3), and the freedom of movement granted to all citizens of the Community under Art. 8, para. 1. Fundamental social rights in a narrower sense are dealt with in Art. 12, which does not guarantee a right to work, but does recognize the right to appropriate vocational training for everyone in accordance with their abilities, and the right to choose freely an occupation and a place of work, without being discriminated against for arbitrary reasons. While Art. 13 contains minimum requirements for "just working conditions," Art. 14 guarantees a system of collective bargaining and the "right to take collective action, including the right to strike." In addition, workers shall also be granted the right to be informed and consulted on the economic and financial situation of their undertaking (Art. 14, para. 3). While the right to health protection and social security (Art. 15) and the right to education (Art. 16) are part of the traditional set of fundamental social rights, Arts. 18 and 24 go above and beyond this: the former guarantees the right of access to information, and the latter refers to environment and consumer protection.

This declaration of the European Parliament is binding for the Parliament itself, but not for the Community's other institutions or for the Member States.[25b]

4. The proposal from the Commission to the Council

Because of ECOSOC's Opinion, the Commission presented its "preliminary draft of a Social Charter" to the press on 17 May 1989.[25c] The

[25a] EuGRZ 1989, pp. 204 et seq.
[25b] Cf. Beutler, EuGRZ 1989, pp. 185 et seq.
[25c] Handelsblatt, 18 May 1989, p. 1. For an overview of the Commission's views, see Lörcher, AiB 1989, pp. 237 et seq.

Charter, it explained, was to be adopted by the European Council as a "legally binding" declaration and complemented by an action program to be submitted by June 1990.

According to currently available information, the draft covers many, though not all, of the areas addressed by ECOSOC. It is envisaged to include, for instance, a guarantee of the freedom of movement, which will also involve a ban on any discrimination for reasons of national origin, and the right to be paid the remuneration which is customary at the place of work. The right to choose freely an occupation is to be complemented by the right to just pay and the right to free-of-charge job placement. Progressive improvement in working conditions is considered to be necessary in particular for non-typical employment conditions. The Charter is to guarantee the freedom of association, a collective bargaining system and the right to strike; workers – particularly those employed by multinational corporations – are to be granted information, consultation and participation rights. Special provisions will address problem groups, i. e. "adolescents," "elderly workers" and "handicapped persons"; consumer protection will also be included.

5. Opinions expressed by labor unions and employers

The labor unions by and large welcome these efforts. As a follow-up to, and a specification of, its European Social Program of 11 and 12 February 1988[26], the executive committee of the ETUC adopted an Opinion in December 1988 in which it emphatically supported the establishment of an EC Charter of Fundamental Social Rights.[27]

[26] Gestaltung des Europäischen Sozialraumes im Binnenmarkt, Europäisches Sozialprogramm des Europäischen Gewerkschaftsbundes vom 11. und 12. Februar 1988, printed, inter alia, in: Breit (Ed.), Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum?, pp. 135 et seq., and as an insert in the magazine "Mitbestimmung", issue No. 11/1988.

[27] This is explained as follows in clause 2.2.1.: "Considering the challenges, risks and opportunities involved in the Internal Market, it is obvious that current international social norms are not sufficient and that the Community must live up to its responsibility by adopting a Community-wide legal basis which will make it possible in all European countries to achieve a convergent, step-by-step development towards reaching the best possible social standard, consolidating industrial democracy, granting workers participation rights in all decisions affecting them, and establishing a legal framework for social security; and which will make it possible to avoid unfair competition in the large Internal Market, competition which would be based on losses of social rights and achievements gained in the past." European Trade Union Confederation, EC Charter of Fundamental Social Rights, final version of 16 December 1988, typewritten and photocopied.

Although there is no reference to a specific catalog of rights in this Opinion, clause 2.2.2. of the paper does give some indications to that effect. It reads: "With regard to the freedom of movement for persons and goods, and with regard to industrial democracy, the creation of a common area for negotiations, and social cohesion, the Community must recognize specific rights in its social platform in connection with the completion of the Internal Market. These independent European social laws must encompass the recognition of classical fundamental rights such as the freedom of association and the right to strike including solidarity strikes, equal treatment, protection against wrongful dismissal, etc., as well as completely new types of norms such as the right of self-determination with regard to information, and the right to influence the introduction and application of new technologies. In addition, the right to receive basic education as well as initial and further vocational training, and parental leave, must also be recognized. Furthermore, steps must be taken to ensure that the completion of the Internal Market will not lead to a deterioration of national social legislation."

The employers are not fundamentally opposed to such ideas. The majority of their representatives in ECOSOC supported the latter's Opinion; only the representatives of British and Spanish employers voted against the adoption of this Opinion.[28] Employers can be expected to support these rights in particular in those countries where this will not spell any additional costs for companies.

A detailed review of current drafts and proposals would be incomplete if it ignored earlier efforts aimed at comparable objectives. In this context, it should be remembered that there are two areas of discussion which converge in the "Charter of Social Rights": on the one hand, traditional labor and social policy, as reflected, for instance, in proposals to define non-typical employment conditions, or to broaden the scope of social security in order to cover all persons in dependent employment; on the other hand, what is also at stake is fundamental rights: "the right to receive education" or "the right to work" are concepts which have more of a constitutional connotation. Up to now, the EC has pursued a two-pronged approach: in the field of social policy, it is mainly its 1974 action program that comes to mind, while the preservation of fundamental social rights has been a key issue in the discussion on the constitution of the European Union, but also in the context of the commitment of the Community's institutions to fundamental rights (cf. IV below).

[28] The remainder of the 22 votes against the ECOSOC's Opinion of 22February 1989 came from the French union CGT and from the representatives of the Third Group (consumers, farmers, craftsmen).

III. The Social Action Program of 1974

With its decision on a Social Action Program, dated 21 January 1974, the Council took a far-reaching social policy initiative.[29] It was based on the assumption that "vigorous action" in the field of social policy was as important as the completion of the economic and monetary union. Furthermore, it assumed, social policy was not to be seen in isolation; instead, the other Community policies should also be geared towards social policy objectives; and conversely, social policy would have to take into account what happened in the other policy areas. The following "major objectives" were specified[30]: "to achieve full employment and better employment at Community, national and regional level as major prerequisites to an effective social policy; to improve living and working conditions, and thus to harmonize the latter in the course of progress; to grant industrial partners an increasing say in the Community's economic and social policy decisions, and to grant workers an increasing say in the life of the enterprises and plants in which they are employed."

The program comprises three sections. The first of its objectives is to achieve "full employment and better employment"; in this context, the program demands that the employment policies of the Member States be coordinated, that a common policy be pursued in the field of vocational education, that men and women should have equal access to employment, and that an action program be established to aid migrant workers and their family members.[31] The second major objective is "to improve living and working conditions in order to facilitate their harmonization in the course of progress." This will require a step-by-step expansion, in particular of the social security systems, to include groups of persons which, up to now, have not been covered at all, or only insufficiently. In addition, there is also reference to preserving the workers' rights and privileges during "mergers, concentrations and rationalization measures." Furthermore, an action program shall be established, designed to create more humane working and living conditions for workers. More specifically, this program provides for "improving industrial safety and health protection; step by step eliminating physical and psychological stress factors at the place of work, in particular by improving environmental conditions and by searching for ways to introduce a greater diversity of work; reforming the organization of work so as to offer workers greater opportunities, in particular to work more inde-

[29] Off. Gaz. C 13/1, 12 February 1974.
[30] Off. Gaz. C 13/2, 12 February 1974.
[31] Off. Gaz. C 13/2, 12 February 1974.

pendently, to take over responsibility and to upgrade their skills."

Finally, the third major objective is "to grant industrial partners an increasing say in the Community's economic and social policy decisions, and to grant workers an increasing say in the life of the enterprises and plants in which they are employed." This will require, inter alia, supporting the labor unions in establishing training institutions and information centres for European issues; "step by step promoting the participation of workers or their representatives in the life of Community-based enterprises and plants"; facilitating the conclusion of Europe-wide collective agreements in suitable areas; and involving the industrial partners to a greater extent in the Community's economic and social policy decisions.[32]

This program was to be implemented by 1976; its text finishes with a list of priorities, which also includes fostering the participation of workers and a greater involvement of the industrial partners at Community level.[33]

From a purely formal perspective, the Social Action Program bears a certain resemblance to the "Internal Market White Paper"; if some people emphasize that the latter lacks a "social counterpart"[34], this is only correct if one draws a line through Community policies in 1985 and practically considers those projects that did not materialize until that time to be part of the Community's legal history. Such an attitude may by all means be regarded as being realistic; even under these circumstances, however, the action program may still provide some food for thought for the current discussion.

IV. Fundamental social rights in the EC?

For about 25 years, the European Parliament has repeatedly tried to turn the EC into a "Community of fundamental rights." The first attempt to this effect was made in a resolution of May 1963[35], in which the Member States were called upon to ratify, as comprehensively as possible, the "European Social Charter of the Council of Europe."[36] Ten years later, this demand was reiterated and expanded to include major conventions of the International Labor Organization[37]; the resolution went on to say that the Community's institu-

[32] Off. Gaz. C 13/3, 12 February 1974.

[33] Off. Gaz. C 13/4, 12 February 1974. Lyon-Caen/Lyon-Caen p. 211 (No 197) refer to the Social Action Program as "une véritable charte de politique sociale."

[34] ETUC, EC Charter, see n. 27, clause 1.6.

[35] Off. Gaz., 4 June 1963, p. 1577.

[36] Text im BGBl (German Federal Law Gazette) 1964, II, p. 1261.

[37] Resolution of 4 April 1973, Off. Gaz. C, 30 April 1973.

tions were obliged to defend the fundamental rights that were recognized in its Member States.[38] In connection with the plans to establish a European Union, the European Parliament decided on 10 July 1975[39] that a civil rights charter of the "European Community" should be drawn up "in order to convey to the citizens of the Community the feeling that they share a common destiny." In two subsequent resolutions adopted in 1976, the European Parliament emphasized the commitment of the Community's institutions to those principles on which the fundamental rights in the Member States were based.[40] The Parliament's efforts reached their preliminary peak in a declaration adopted jointly with the Commission and the Council on 5 April 1977.[41]

During the following period, the Parliament's efforts were mainly geared towards the accession of the EC to the European Human Rights Convention[42] – an intention shared by the Commission[43] which, however, has not materialized so far because of legalistic and political difficulties.[44]

Another attempt at establishing a catalog of fundamental rights was made during the drafting of the constitution for a European Union in 1983–84. However, the plenary could not make up its mind to design a fundamental rights catalog of its own; a corresponding proposal for a resolution submitted by Mssrs. Luster, Pfennig and other members of the EPP was rejected.[45] Nevertheless, the fundamental rights provision contained in the proposal of 14 February 1984[46] is worth mentioning in this context. Art. 4 of the future European constitution was intended to read:

"(1) The Union protects the dignity of the individual and grants to each person under its jurisdiction the fundamental rights and free-

[38] See n. 37.

[39] Off. Gaz. C 179/28, 6 August 1975.

[40] Resolution of 15 June 1976 (Off. Gaz. C 159/13, 12 July 1976); resolution of 12 October 1976 (Off. Gaz. C 259/17, 4 November 1976).

[41] Off. Gaz. C 103/1, 27 April 1977. The key statements are: "The European Parliament, the Council and the Commission underline the preeminent importance which they attach to the respect of fundamental rights, in particular those specified in the constitutions of Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms. They are observing these rights while they exercise their powers and pursue the objectives of the European Communities, and they will continue to do so in the future."

[42] Resolution of 27 April 1979 (Off. Gaz. C 127/69, 21 May 1979); and resolution of 29 October 1982 (Off. Gaz. C 304/253, 30 November 1982).

[43] See Ehlermann/Noël, in: Gedächtnisschrift Sasse, pp. 685 et seq.

[44] A plausible explanation of the reasons opposing an accession is given by Capotorti, in: Gedächtnisschrift Sasse, pp. 703 et seq.

[45] Communicat. by Rengeling-Jakobs, DVBl 1984, p. 775.

[46] Off. Gaz. 77/33 et seq., 19 March 1984.

doms which are derived in particular from the common principles of the constitutions of its Member States and of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(2) The Union undertakes to preserve and develop – within the limits of its jurisdiction – the economic, social and cultural rights arising from the constitutions of its Member States and from the European Social Charter.

(3) Within a period of 5 years, the Union shall decide on its accession to the international conventions mentioned above, as well as to United Nations' agreements on civil and political rights, and on economic, social and cultural rights. Within the same period of time, the Union shall adopt its own declaration of fundamental rights in accordance with the amendment procedure specified under Art. 84 of this Treaty.

(4) In the event of major and consistent violations of democratic principles or fundamental rights by one of the Member States, sanctions may be imposed in accordance with Art. 44 of this Treaty."

The fact that, instead of dealing with the draft constitution, the Community adopted the Single European Act and tackled the "Internal Market Growth Project"[47], meant a setback for the discussion on fundamental rights. After a longer period of preparation, Mr. De Gucht, a member of the so-called Institutional Committee, submitted the "White Paper on the Contribution of the European Community towards the Promotion and Preservation of the European Citizens' Fundamental Rights and Freedoms"[48], which was largely limited to recording the status quo of fundamental rights applying in the Community. Mr. Luster, as well as other members of the EPP group, once again submitted their proposal for a catalog of fundamental rights in September 1988.[49] In the social arena, it contained references not only to a property guarantee and to the right of inheritance, which had practically literally been taken from the "Grundgesetz" (the Basic Law), but in Art. 7 it also specified "collective workers rights," including the right of association, autonomy in collective bargaining, as well as the workers' right to strike and the employers' right to lock workers out. In para. 1, Art. 12 (which is entitled "Social Rights") guarantees every citizen of the Union the right "to receive school edu-

[47] This is the term used in: Interim Report by the Interdirectoral Working Group, p. 37.

[48] PE 115.274/final. The Institutional Committee approved of the "White Paper" by consensus at its meeting on 14 March 1988.

[49] EP Session Documents 1988–89, Document B 2-330/88/Annex (PE 123.680/Annex).

cation on a socially secure basis." Para. 2 takes into account the Community's particularities insofar as it grants all citizens of the Union the right to be integrated into the working life in their country of residence, irrespective of their national origin. For this purpose, the diplomas recognized in any one of the Union States (i.e. Member States) shall be sufficient for all Union States. Under Sec. 3, finally, every citizen of the Union shall be granted the right to settle in any of the Member States for the purpose of pursuing an independent economic activity. Compared with the ECOSOC catalog[50], for instance, the authors are much more cautious in their demands.

In its declaration of 12 April 1989[50a], the European Parliament introduced new elements, going far beyond these earlier considerations.

V. Other issues

The overview presented above might suggest that, in a nutshell, European social and fundamental rights policies can be described as "much ado about nothing." Obviously, there is a wide discrepancy between the number of ideas put forward and the volume of paper printed, on the one hand, and the visible results to date.

Such an assessment is by all means justified for the period up to 1985. At that time, the Community was stagnating not only in the field of social policy[51]; developments in the Community's core area, the free movement of goods, also tended to regress. In retrospect, there was flood-like growth of "non-tariff trade barriers"[52]; as early as in 1978, it was observed that developments were clearly diverging in the various Member States.[53]

This situation cannot continue on linearly into the future. The "Internal Market Growth Project"[53a] has already started changing the rules of the game considerably. The European unification process

[50] See n. 25.

[50a] EuGRZ 1989, p. 204.

[51] There had been no major innovations since 1980, except for the ruling of the Court of Justice of the European Communities on the equality of men and women as far as work is concerned; cf. Hepple, The Industrial Law Journal, 2/1987, pp. 77 et seq.; Salisch, Mitb. 1988, p. 679.

[52] Braun, in: Späth/Dräger (Ed.), p. 139; and Holeschovsky/Janning/Stoll/Weidenfeld (Ed.), in: Forschungsgruppe Europa, Europäische Defizite, Europäische Perspektiven, p. 57.

[53] Lahnstein, EA 1978, p. 263.

[53a] This is the term used in: Interim Report by the Interdirectoral Working Group, p. 37.

has gained new momentum, reflected not only in the discussions going on everywhere in the Community, but also in tangible legislative action by the Council.[54] In itself, this is certainly no guarantee for the success of social policy initiatives; but it does largely undermine arguments which are exclusively based on past developments. To put it in a more pointed manner: the fact that the 1974 action program has not achieved much to date does not preclude same or similar concepts having much better chances of being implemented under today's new circumstances.

[54] For an overview, see Handelsblatt, 19 January 1989, p. 8.

Section 2: The Internal Market and its social repercussions

It will take more than just a climate of open-mindedness for the political discussion on the social repercussions of the Internal Market to have an impact. Instead, it will be crucial to make allowance for the foreseeable consequences of the Internal Market. In the final analysis, they are the basis for the need to take action. For this reason, the following chapter will deal with the question as to what social effects the completion of the Internal Market will presumably have. There is considerable uncertainty in this field, which is illustrated by a labor union publication which, in the same edition, predicts that there will be both a substantial reduction in social standards[55] and relatively few problems with regard to growth.[56]

If more clarity can be established in this respect, this will raise the question as to what specific action should be taken. Should new protective standards be adopted, or should existing ones be secured by support measures? Would the Community lose some of its legitimacy if it remained inactive in this field?

And if it turns out that it will be necessary to adopt an effective EC social policy, will not the legal foundations that already exist be sufficient for this purpose? Are primary and secondary Community law, as well as the rulings of the Court of Justice of the European Communities binding the Community institutions to observe the fundamental rights, not adequate guarantees? Will it be necessary to create a new social network? What might be the design of this network?

[55] Jacobi, Mitb. 1988, pp. 609 et seq.
[56] Busch, Mitb. 1988, pp. 646 et seq.

I. The program

On 52 pages of its "White Paper on the Internal Market"[57], the Commission describes the close to 300 measures to be initiated by 31 December 1992. These measures include in particular[58]:

- full implementation of the free movement of goods involving, in particular, the elimination of so-called technical trade barriers, i. e. the removal of differences in automotive traffic safety standards, the nature of toys, or the dimensions of electrical sockets, so that "foreign" competitors will save on conversion costs, which in some cases are unacceptably high;
- full implementation of the free movement of services, i.e. foreign transport companies or travel agencies will be able to offer their services in other countries under the same general conditions as locally based competitors; the same will apply to banks and insurance companies, which is expected to cause a major restructuring of the markets, particularly in the financial services sector;[59]
- national qualification certificates and diplomas will be recognized in all countries of the Community, which will make it considerably easier for workers or professionals to take up employment in other countries of the EC; it will not be possible then for German school authorities, for instance, to reject job applications by teachers simply on the grounds that they received their training in France; likewise, it will not be allowed to put Italian engineers into lower pay groups than their German colleagues;
- deregulation of capital movement, making it possible for all citizens, for instance, to open bank accounts in other Member States of the EC; at present, there are discussions about whether this should lead to the introduction of a common currency;
- deregulation of public procurements, i. e. if a public authority calls for bids for a major construction project, foreign bidders will also be allowed to participate; and if their bids are lower because of their different cost structure, the German administration will be held – because of national budgetary provisions – to opt for such bids;
- business enterprises will have the possibility to choose the legal form of a European Stock Company which will be primarily sub-

[57] see n. 1.

[58] For a short outline, see EC Bulletin, 6/1985 pp. 19 et seq., and Braun, in: Späth/Dräger (Ed.), Die EG in der Weltwirtschaft, pp. 140 et seq.; Bieber/Dehousse et al., in: ibid. (Ed.), 1992: One European Market?, pp. 13 et seq.

[59] Interim Report submitted by the Interdirectoral Working Group, p. 45.

ject to European law[60] and which will be allowed to have branches in all Member States of the EC; in the field of taxation, such companies will be entitled to "transboundary loss compensation"; at the same time, they can choose among various models for worker participation;

- indirect taxes, in particular the value-added tax, are to be harmonized; however, it is extremely doubtful whether this will be possible;
- finally, all border checks will be abolished by 1992 because there will be no longer any (economic) need for such checks in the Internal Market; police actions (including control of immigration from third countries) will still be possible domestically in the countries concerned.

According to the EEC Treaty's Art. 8a, which was added in 1987, the common objective of all these measures is to establish "an area without internal borders in which the free movement of goods, persons, services and capital, as defined by the provisions of this Treaty, will be guaranteed." In other words, the economic differences between the various Member States of the Community should be no greater than the differences that currently exist between the two German federal states of Lower Saxony and Baden-Württemberg, or between the two Spanish provinces of Andalucia and the Basque country.

II. Opportunities offered by the Internal Market: a global economic perspective

The vast majority of companies are optimistic with regard to the completion of the Internal Market. This is true not only in West Germany[61] but across Europe, as confirmed by the results of an opinion poll among 11,000 industrial companies.[62] The "proof" normally cited in this context is the Cecchini Report which was drawn up on behalf of the EC Commission and whose results were made available

[60] Memorandum by the Commission: The Internal Market and Industrial Cooperation: Statute for the European Stock Company, 15 July 1988, COM (88) 320 fin.; see comment by Köstler, Mitb. 1988, p. 632.

[61] Korn, in: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, pp. 51 et seq., based on a survey by the DIHT (German Confederation of Chambers of Trade and Commerce).

[62] Interim Report submitted by the Interdirectoral Working Group, p. 39.

in early 1988.[63] This report deals with the predictable macroeconomic effects of the Internal Market, specifying four factors which are believed to generate more growth and employment[64]:

(1) The elimination of border formalities will reduce production and marketing costs.
(2) The deregulation of public procurements will bring relief to public budgets, enabling governments to cut taxes or generate more employment.
(3) The deregulation of the financial services sector will make loans and insurance contracts cheaper. This will make it easier for companies to invest and for consumers to spend on consumption.
(4) The larger market which will be created, primarily by the elimination of technical trade barriers, will enable companies to produce higher volumes and thus to produce more cost-effectively because of economies of scale. This will increase the competitiveness of EC-based companies in the world market; and because of its sheer size, the EC Internal Market will become an attractive location for U.S., Japanese and Scandinavian companies.

According to the calculations made in the Cecchini Report, this will lead to an increase in the Member States' gross domestic product by an average of 4.5 percent, and it will create 1.8 million jobs. If this development is assisted by supporting governmental measures, the GDP may grow by as much as 7 percent, and 5 million new jobs may be created. All the figures quoted are estimates which, according to the Report itself, have an error margin of 30 percent. In the present context, a comprehensive discussion of these analyses is neither possible nor necessary. Instead, it should suffice to make some comments.

In the Cecchini Report, it is assumed that the program contained in the Commission's White Paper will be implemented completely and as scheduled.[65] Whether this assumption is correct cannot be assessed yet for the time being; at any rate, political decisions on major issues such as tax harmonization are still pending.[66] It is also tacitly assumed in the Report that the subsidy provisions as specified in Community law (EEC Treaty, Art. 92 et seq.) will be consistently enforced[67]; illegal or semi-legal promotion of domestic industries, on

[63] Cf. Paolo Cecchini, Europa '92. Der Vorteil des Binnenmarkts, Baden-Baden 1988.
[64] See the summary of the findings of the reports in: Cecchini, loc. cit., p. 133.
[65] Holeschovsky, in: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, p. 30.
[66] Korn, loc. cit., (n. 61), p. 51.
[67] Cf. Padoa-Schioppa, p. 8.

the other hand, might considerably impair competition and once again lead to national markets being sealed off.[68]

There is no conclusive evidence of an interdependence between growth and employment. The more cost-effective production facilitated by the Big Market will not necessarily mean that the resulting economic leeway will be used to create jobs. Instead, it is also conceivable that it will be used for rationalization investments which would have the opposite effect; but it is also possible that the funds released will be channelled to foreign capital markets where lower-risk returns may be offered.[69] In this context it is pointed out that, between 1960 and 1980 during the times of the Europe of the Nine, the number of jobs increased by only 5 percent, while employment growth in the United States amounted to about 25 percent between 1970 and 1984.[70]

The Cecchini Report describes itself as a macro-economic study, so that even if all its assumptions and predictions were correct, it cannot say anything about how growth and employment will be distributed in detail: even if regional differences become more pronounced, this would not in any way prove the Report "wrong," because it is very well conceivable that, while some industries enjoy rapid growth, others may be crisis-ridden. It is also unclear, for instance, what the future will hold in stock for the small and medium-sized enterprises that are not yet export-oriented.[71]

Furthermore, recent studies have put the statements made in the Cecchini Report into perspective, without questioning the predicted growth as such. A Prognos study, published in February 1989, suggested that there will be a "slight upward trend" during the periods from 1987 to 1993 and from 1993 to the year 2000. The assumption of 5 percent "additional growth" after the completion of the Internal Market was described as "too optimistic," especially since it could not be expected that all the measures envisaged in the White Paper

[68] The Padoa-Schioppa Study, for instance, proposes that subsidies should be effectively prohibited only if they have major effects on cross-frontier trade. This may be reasonable and realistic, but at the same time it undermines the notion of a "market without borders" on which the above-mentioned models are based.

[69] Cf. the criticism expressed by the EGI, in: EGI, Die soziale Dimension des Binnenmarkts, Teil I: Beschäftigung, Info 25, Brussels 1988 (short summary in: Handelsblatt, 23/24 December 1988, p. 3); and Franzmeyer, in: Bieber/Dehousse/Pinder/Weiler (Ed.), 1992: One European Market?, p. 55.

[70] McLaughlin, RMC 1987, p. 320.

[71] This is emphasized by Korn, loc. cit. (n. 61); Stoll, in: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, p. 12; Interim Report submitted by the Interdirectoral Working Group, p. 49.

would be implemented by the end of 1992.[71a] The party executive of West Germany's Social Democratic Party (SPD) commissioned a study on "the economic effects of the 1992 Internal Market on sectors and regions in the Federal Republic of Germany," which was completed in January 1989. According to this study, there will merely be a "chance" for employment to grow by between 200,000 and 600,000 jobs in West Germany.[71b]

Against this background, one cannot seriously suggest that the predictions made in the Cecchini Report – providing they are reliable – would make social policy superfluous. On the contrary: if things develop as predicted, there will be more economic possibilities for compensatory measures.

III. Risks involved in the Internal Market: the location-of-industry debate

According to the Interim Report submitted by the Interdirectoral Working Group of the EC Commission[72], there are fears in socially progressive countries that the much lower wage levels in other Member States might lead to labor cost competition, if not social dumping. The Padoa-Schioppa study[73], for instance, points out explicitly that the per-capita income in Denmark – based on purchasing power – was 1.8 times higher than in Ireland and 2.8 times higher than in Portugal. According to a survey published by the "Institut der deutschen Wirtschaft," West Germany worldwide is second only to Switzerland with regard to hourly labor costs. While German workers cost DM 32.67 per hour including ancillary labor costs, their colleagues in Belgium, for instance, cost only DM 26.26, in Japan DM 25.12, in the United States DM 24.57, and in Ireland DM 17.70. The lowest hourly wages are paid in Ireland (DM 16.66), Greece (DM 8.17), and Poland (DM 5.32).[74] The same is true for differences in terms of annual working hours: West German workers total 1,582 hours, while their col-

[71a] Prognos, Europäisches Zentrum für Angewandte Wirtschaftsforschung: Ergebnisse des neuesten Prognos-Euroreports 89 "Industrieländer 2000," Information für die Presse, Basle, 7 February 1989.

[71b] empirica, Binnenmarktstudie, short version, Bonn, January 1989.

[72] Loc. cit., p. 65.

[73] See p. 125.

[74] All figures taken from Vogel, loc. cit. (n. 19), p. 32.

leagues in Italy and Japan work 1,655 and 2,166 hours, respectively, i.e. in the case of Japan, 584 hours more than in West Germany.[75]

The assumption that this will lead to labor cost competition and that it will enable low-wage countries to increase their market shares and/or induce industries to settle elsewhere[76], reflects a very simplistic view of things. Labor costs represent only *one* factor in the overall cost structure. In addition, there are many other factors such as labor productivity, infrastructure, stable industrial relations, and predictable behavior by governmental authorities. This becomes apparent if one looks at unit labor costs in industry. According to the studies conducted by the EC Commission's Interdirectoral Working Group, the top positions in this respect are held by Denmark, southern Germany, southern Italy and Greece.[77] It should be pointed out, however, that the only factor taken into account in this context was differences in labor productivity (which, of course, also includes the presence of a qualified workforce), while all the other factors mentioned above were not taken into consideration. In addition, experience at national level has shown that, despite considerable differences in regional wages[78], investments have not been channelled into the regions with the lowest labor costs.

Some of the past discussions overlooked the fact that the same discussion is being conducted in the less developed countries and regions, however from the opposite perspective: isn't there a risk that these countries and regions will fall hopelessly behind in their competition with the technologically most advanced nations?[79] In fact, the latest publication on this topic suggests that the Internal Market might further aggravate current regional imbalances.[80] A major point of criticism is the fact that the less developed countries of

[75] Vogel, loc. cit., p. 36 (again calculations made by the "Institut der deutschen Wirtschaft"). However, see also data supplied by McLaughlin, RMC 1987, p. 320, according to which reductions in working hours in the past ten years have been considerably lower in West Germany than in most other EC Member States.

[76] This is basically what is suggested by Jacobi, Mitb. 1988, pp. 609 et seq. Competition based on labor cost is also predicted by Hort, FAZ, 14 January 1989, p. 1.

[77] Interim Report, loc. cit., p. 93; cf. data on specific industries on p. 85.

[78] See Koller, MittAB 1/1987, pp. 30 et seq. Average incomes in Wolfsburg and Düsseldorf, for instance, are 65 percent above those in Cham or Pirmasens.

[79] Cf. Delors, Mitb. 1988, p. 613: "... some are afraid that the companies will settle where labor costs are lower. It has been my observation, by the way, that the labor unions in the more backward regions are afraid of the opposite: they assume that companies will be established in the more affluent regions where the markets are more stimulating."

[80] Padoa-Schioppa, p. 4.

the Community will not be able to benefit from their comparative cost advantages in agriculture, steel-making, as well as in the textile and fishery industries, because of the quotas imposed on those industries (a question, by the way, to which the White Paper on the Internal Market practically devotes no attention at all).[81] For this reason, the structural funds will be used for the purpose of reducing the regional gap – which also suggests that, according to common belief, the less developed regions or those affected by industrial decline can not at all hope to benefit from a boom. There is also criticism of the fact that it will not be sufficient to double the funds earmarked for this purpose by the year 1993. This criticism is at times cautiously worded[82], and at times it is expressed in no uncertain terms.[83] Under these circumstances, location will tend to be a major issue for the southern Member States and the Republic of Ireland.[84]

IV. Risks involved in the Internal Market: changes within specific industries

Neither the statements made above on the expected macro-economic development, nor those made on regional policy, preclude that, in specific industries, plants may have to be closed down and companies may collapse because of the opening of the market.[85] This may

[81] Holeschovsky/Janning/Stoll/Weidenfeld, in: Forschungsgruppe Europa (Ed.), Europäische Defizite, Europäische Perspektiven, p. 62; cf. also Franzmeyer in: Bieber/Dehousse/Pinder/Weiler (Ed.), 1992: One European Market?, p. 59; Padoa-Schioppa, p. 127.

[82] Cf. Der Bundesminister für Wirtschaft, loc. cit. (n. 17), p. 3, where the diplomatic wording is that this would "considerably improve the prerequisites" to supporting the Member States' own efforts for increasing employment and enabling the economically weaker regions to catch up – there is no reference, however, to anything that would come close to a guarantee of success, that would be in keeping with the objectives of the Treaty.

[83] DGB opinion "Für ein soziales Europa," in: Breit (Ed.), Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? p. 160: "Die von der Kommission vorgeschlagene Verdoppelung des Fonds ist nicht zuletzt im Hinblick auf die Erweiterung der Gemeinschaft und die zunehmenden Probleme in alten Industriegebieten (Kohle, Stahl, Werften) als völlig unzureichend einzuschätzen." [The Commission's proposal of doubling the fund is completely inadequate against the background of both the enlargement of the Community and growing problems in old industrial areas (coal, steel, ship-building)].

[84] Cf. also Delors, Mitb. 1988, p. 614: The social dimension will mainly affect the less well off countries.

[85] Holeschovsky, in: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, p. 27.

lead to higher unemployment rates.[86] Whether or not this will actually happen depends on the effects that the measures adopted with a view to completing the Internal Market will have on the industries concerned.

In the manufacturing sector, there will be no problems in those industries in which there are very few non-tariff trade barriers, or none at all. In these industries, very little will change as regards production and distribution conditions.[87] The Internal Market will also have limited effects on those industries which may suffer from technical trade barriers but which at the same time are highly involved in cross-frontier trade: in fact, production costs will come down because it will no longer be necessary to adapt products to national standards (e. g. PAL/SECAM for television sets); however, all companies involved in foreign trade will equally benefit from this advantage.[88]

"Sensitive" industries, on the other hand, are those which mainly supply products to the public sector and whose domestic manufacturers are protected by substantial non-tariff trade barriers. The industries listed in the Interim Report of the Interdirectoral Working Group of the EC Commission include not only manufacturers of turbine generators and train engines but also makers of mainframe computers, telecommunication and telephone systems, and of laser equipment.[89] If the markets are opened in these sectors by removing technical trade barriers – either by harmonizing or mutually recognizing national regulations – and if contract awarding procedures are liberalized, this will bring about profound changes in the structure of these industries. This is additionally confirmed by the fact that in the larger U.S. market, the number of manufacturers operating in these industries is much smaller than (currently) in the EC.[90] For this reason, current differences in prices and productivity will in the foreseeable future lead to the disappearance of some companies from the market, either because they become insolvent or because they are taken over by foreign competitors. The pharmaceutical industry is also likely to undergo some changes because of the very large price differentials in this industry.[91] In the services sector, considerable

[86] Maillet, RMC 1988, p. 10.
[87] Interim Report submitted by the Interdirectoral Working Group, p. 41, which also distinguishes between industries with a low level of international involvement (e.g. baked goods) and those that are extensively involved in cross-frontier trade.
[88] Ibid., loc. cit., p. 41.
[89] Ibid., loc. cit., p. 43.
[90] Ibid., loc. cit., p. 43.
[91] Cf. Busch, Mitb. 1988, p. 648.

adaptative action can be expected in particular for banks and insurance companies.[92]

In some of the industries affected by the Internal Market, the labor costs may also be a key factor in competition. In this context, the Interim Report submitted by the Interdirectoral Working Group of the EC Commission refers to "labor-intensive, fairly ordinary areas such as certain segments of the food industry, the transport sector (in particular road and sea transport), the construction industry (in the wake of liberalizing public purchasing) etc.," adding that one could not rule out completely that this may give rise to social dumping.[93] There is striking agreement between this assessment and the results of a DIHT survey published by Korn[94]: more than 20 percent of the construction companies interviewed assumed that competition would get tougher for them in the larger EC market; similarly great concern was expressed by companies operating in the food, beverages and tobacco industries. However, the greatest problems by far are expected to arise in the transport sector. More than 90 percent of the companies interviewed feel that they will face considerable difficulties. Portuguese construction teams replacing German subcontractors, or Greek forwarding agents transporting goods from Hamburg to Munich, are no fantasies. If labor costs are a key factor in costing, and if the labor costs of foreign competitors are between 30 and 50 percent of German labor costs, it is not difficult at all for foreign competitors to make bids that are substantially lower than those of German companies. The social consequences of such a constellation would be devastating. German companies would either lose market shares and eventually disappear from the market, or they would open foreign branches in low-wage countries in order to cater to the German market with their foreign employees. In either case, German workers would lose their jobs.

The risk of social dumping is thus not just a figment of someone's imagination. The only thing that has proved to be wrong is the lump sum assumption that this would happen in all sectors at the expense of Member States with more advanced social security systems. Macro-economically speaking, the sectors concerned will be relatively small. However, this does not suggest that there is no need for action.

[92] Interim Report, loc. cit., p. 44; cf. also Korn, loc. cit. (n. 61), as to the expectations of the industries concerned.
[93] Interim Report, loc. cit., pp. 65–66.
[94] Loc. cit. (n. 62), p. 54.

V. Risks involved in the Internal Market: the risk of a legal flight

As soon as companies can decide freely where they want to settle in the Internal Market, they will be able – as a matter of principle – to evade not only unfavorable corporate and (maybe) fiscal legislation, but also a number of labor law provisions.

In addition, German companies which emigrate to Luxembourg, Ireland or Portugal will no longer be subject to German co-determination rules, even if they keep up their German production sites. If these companies leave their respective employers' associations – as most of them will – the collective agreements concluded by their associations will cease to apply to them at the beginning of the following negotiation round at the latest.[95] The unions concerned would have to get involved in cross-frontier collective bargaining in order to introduce company agreements. Most of the unions would not be able to do this, strictly for organizational reasons; apart from this, it would be unclear which legal regime such company agreements would be subject to.[96] Since the German operations of such companies would become nothing more than branches of foreign companies, it would also be possible under Art. 17 of the European Convention on Jurisdiction and Execution[97] to specify in the contract of employment that Luxembourg, Irish or Greek labor courts shall be the competent courts.[98]

Under the current conditions (which still apply), it is also theoretically possible to transfer the seat of a company to another country, but in practice most companies refrain from using this possibility because of the substantial tax drawbacks involved (e. g. the need to pay taxes for hidden reserves). In addition, it is at least doubtful whether it is legally at all permissible under current company law for a company to transfer its seat to a foreign location while maintaining its identity[99], or whether the only legal option in this case would be to liquidate the domestic company or to establish a new company abroad. However, in the event that a foreign company merely takes

[95] Art. 3, para. 3, TVG (German Collective Bargaining Act).

[96] Cf. Walz, Multinationale Unternehmen und internationaler Tarifvertrag, pp. 137 et seq., as regards the legal problems arising in this context.

[97] Convention on Court Jurisdiction and the Execution of Court Decisions in Civil and Commercial Matters in Dispute, of 27 September 1968, as amended on 9 October 1978.

[98] Cf. Birk, RdA 1983, p. 143, p. 149, for a critical view of this option against the background of protection of workers' rights.

[99] Cf. Behrens, RIW 1986, pp. 590 et seq., who describes the special case of a Luxembourg company "moving" to the Federal Republic of Germany.

over the equity interests of a domestic company, this has no labor law relevance because the domestic employer is preserved. The only adverse effect that this may have in practice is that co-determination rights within the company concerned may be curtailed because of the limited independence of controlled enterprises.

In the framework of the Internal Market, the rules for this game may change drastically. If the "Statute of a European Stock Company",[100] as proposed by the Commission, is adopted, any domestic company is generally entitled to adopt this legal status. As entities that are subject to European law, such companies are, of course, allowed to transfer their seat to any place they choose within the Community, without having to accept any major fiscal or other drawbacks. The transnational loss compensation proposed by the Commission in its memorandum[101] is obviously based on the notion that European stock companies should be treated as fiscal entities, which would mean that not even their taxable income would change, if they transfer their seat to another country. A similar effect in terms of "employer mobility" would be achieved if the draft of the "Tenth Directive on Company Law"[102] was adopted by the Council of Ministers. The purpose of this directive is to permit transnational mergers of stock companies, which would make it possible for the merged company to settle abroad. This would even apply if a subsidiary was established with this plan in mind.[103]

In one specific area, European company law structures were introduced as early as on 1 July 1989. Both the EC Regulation No. 2137/85 on the establishment of a "European Confederation of Economic Interests" (ECEI)[104] and the German implementing act[105] became effective on this date. Under Art. 3, para. 1 of this regulation, one of the tasks of the ECEI is to provide support for the economic activities of its members; it is not allowed to make a profit for itself. Under Art. 4, not only commercial enterprises but also public law bodies and natural persons are eligible to apply for membership. Under Art. 3, para. 2c of the regulation, the ECEI shall not employ more

[100] Memorandum, loc. cit. (n. 60); cf. Däubler, in: EG-Binnenmarkt '92. Chancen und Risiken für Betriebe, pp. 193 et seq.; Köstler, Mitb. 1988, p. 632.

[101] Cf. n. 100.

[102] Off. Gaz. C 23/11 et seq., of 25 January 1985, also published as insert 3/1985 in the Bulletin of the European Communities.

[103] For more detailed information, see Däubler, DB 1988, p. 1850; Köstler, Mitb. 1988, p. 632; Vetter, in: Breit (Ed.), Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? pp. 111 et seq.

[104] Off. Gaz. L 199/1, of 31 July 1985.

[105] Act of 14 April 1988, Fed. Gaz. I, p. 514.

than 500 workers, i.e. it will not be subject to compulsory co-determination. Under Art. 3, para. 2e of the regulation, the ECEI must not exercise any management or control functions with regard to the activities of one of its member companies or any other enterprise. The purpose of this provision is to prevent the co-determination practice of affiliated German companies from being undermined. As long as the ECEI remains within this legal framework, i.e. if it only provides support in fields such as research and development or distribution, it enjoys full freedom of movement. In accordance with Art. 12 et seq. of the regulation, the ECEI can move its seat to any other Member State of the Community.[106] Against this background, it is conceivable that the problems described above may occur today already.

Compensatory action is hardly in sight. The Statute on the European Stock Company will provide for three models of workers' participation at company level; however, it will not make any statement on issues relating to collective bargaining, industrial constitution or contracts of employment. The same applies to the draft of the Tenth Directive, which merely provides for the preservation of some of the achievements in the field of company-level co-determination.[107] In the legal provisions governing the ECEI, there is hardly any mention of these issues either.[108] If a company is prepared to transfer its effective administrative seat to another Member State, it can thereby evade a considerable part of German labor code provisions. As long as this is limited to the special case of the ECEI, there will be no dramatic consequences. However, if the European stock company becomes reality, there would be a very real risk that companies will try to evade labor legislation.

VI. Conclusions

All the above clearly shows that the Internal Market will give rise to a number of additional social questions even if the optimistic growth projections prove to be correct. In quite a few industries, there will be

[106] For procedural details, see Ganske, Das Recht der europäischen wirtschaftlichen Interessenvereinigung, pp. 62 et seq. With regard to the legal provisions governing the ECEI and other possibilities to circumvent German co-determination, cf. Scriba, Die europäische wirtschaftliche Interessenvereinigung, pp. 65 et seq.

[107] For more detailed information, see Däubler, DB 1988, p. 1850.

[108] Cf. Ganske, loc. cit., p. 80; this author's discussion is not quite satisfactory, because although he mentions Directive 77/187/EC of 17 February 1977, he does so only with regard to the (uncontested) assumption that the institution of the work's council will continue to exist.

structural changes, while certain other, narrowly defined industries will be subject to social dumping. In addition, there is a risk that companies may try to evade some of their current obligations under German labor law by moving their seat to another country.

For the parties concerned, these events would be part of normal market economy life. Instead, these developments would be immediately associated with the Internal Market. Because of greater public awareness of European issues and very pronounced thinking in terms of risk categories, the public will tend to associate more difficulties and drawbacks with the Internal Market than actually exist. Considering that the fundamental problem of mass unemployment will persist in future (according to even the most positive "development path" described in the Cecchini Report, Community-wide unemployment would decrease only from 12 to 7 million), the need for action in the field of social policy is more urgent than ever before.

Section 3: Social justice in Europe – a much needed perspective

I. Legitimation problems of the Community

European unification can be compared to the wish of owning one's own home or reaching a high-ranking position at work. As long as both are in the future, they are desirable, almost like a "Golden Age." However, once the objective has been achieved, it will soon be back to business as usual, and one will have to tackle new problems – without necessarily being in high spirits because of one's achievement. In fact, the basically irrational consequence of taking for granted what one has achieved is that one's "frustration tolerance" tends to diminish. Although one could actually celebrate the status quo as major progress, one begins measuring success and failure against the newly defined objectives. What this means in the case of Europe is that people do not look back with satisfaction at the "modernization achievements" of the past 30 years, nor do they see the mobility for travelers or the open cultural exchanges achieved; instead, they expect further advances. Since such advances have been few and far between since the mid-seventies, there is growing skepticism. For many people, European unification is no longer a value in itself.[109]

The Community will have to try to gain the support of the large majority of its citizens. If it does not succeed in doing this, it will be doomed to fail in the medium or long term. However, its starting position is much worse than that of a nation-state. In terms of its powers, it is only a "fragment of a state" for large parts of the economy; however, for legal and/or political reasons, it cannot become active in many other fields. This means that the Community supplies less "public goods" than traditional nation-states: it can do nothing, or only very little, for instance, in the fields of external and internal security; it has very little say on the distribution of incomes, wealth

[109] Cf. Weidenfeld, Europa 2000, pp. 9 et seq.

and educational opportunities; nor does it have a common culture or a common language with which its citizens could identify.[110] So economic drawbacks suffered, for example, by farmers or inhabitants of less developed regions, cannot be compensated for by a "yes, but even so."

The second disadvantage of the European Community is its obvious and much lamented democratic deficit. The European Parliament, which is directly elected, has no legislative decision-making power; its position is much weaker than that of the German Reichstag under its constitution of 1871. The actual decision-making center is the Council of Ministers. Although this body may have an indirect democratic legitimation, it often escapes effective control by national parliaments.[111] The "feedback" from citizens depends on coincidences and fundamentally democratic attitudes of leading office-bearers.[112]

Thirdly, the lack of democratic structures is aggravated by the lack of transparency in decision-making mechanisms; there is only limited control by the media and the public. Decisions are made by means of a complicated procedure, often behind closed doors. No critical observers are allowed to attend, not even the deliberations of the Council of Ministers. The individual's level of information depends on his or her social or political proximity to certain people in key positions. It is true that legal acts and corresponding proposals that are produced are accessible in the "Official Gazette," but there is such an overwhelming plethora that the individual is less in a position to know where to look for relevant information in a given context. In addition, the perceptive horizon of many European citizens is still limited to their nation-states and their national policies. To them, what happens at the EC in Brussels, at the Council of Europe in Strasbourg or at the United Nations in New York is basically a second-class reality. And even courts scandalously ignore or lightly push aside international agreements, as they traditionally do not enjoy the same "dignity" as laws adopted by, for instance, the German Parliament.[113] Because of both these factors – the well-shielded decision-making processes in Brussels and the dispositions of individual citizens – what happens at the EC level is for most Europeans a "book with seven seals."

[110] Cf. Padoa-Schioppa, p. 118.

[111] Weidenfeld, in: Forschungsgruppe Europa (Ed.), Europäische Defizite, europäische Perspektiven, p. 18.

[112] On the democratic deficit, cf. also Dicke, p. 137; Läufer, EA 1988, pp. 682 et seq.

[113] For examples from the field of international labor law, see Däubler, WSI-Mitt. 1987, pp. 192 et seq.

All three "peculiarities" of the EC are relatively harmless if there are no major conflicts, and if the two main objectives are to stimulate growth and to distribute wealth. However, as soon as the fair weather period is over – and it has been over since at least 1974 – things are quite different. Where it is a matter of managing shortages, no holds are barred – even behind closed doors. The Community is losing credit not only because it has to "hurt" certain population groups such as the farmers; it is also losing some of its legitimacy because it is becoming apparent that its decision-making processes are slow and cumbersome and that there are new manifestations of national egotism which, in turn, are used by others to justify their egotist responses. The Council of Ministers is no monarch. If anything, it is more a council of 12 prince-electors who have great problems agreeing among themselves on the basis of the smallest common denominator.

The "Internal Market Project," if anything, has aggravated the Community's legitimation problems. The national publics in the various Member States are now also beginning to perceive the Brussels institutions much more clearly as independent decision-making bodies with whose behavior they associate certain hopes and fears. This means that – more so than in the past – disappointments and economic disadvantages may tend to increase the public's "listlessness regarding Europe." If the unemployment rate were to increase by 2 or 3 percent because of the definitive opening of the borders, protests against the Community as such would be likely; in this case, many people would begin to share the views currently held already by a large proportion of German farmers. On the other hand, the Internal Market Project is also a great opportunity: if the Community succeeds not only in generating growth, but also in avoiding social detriment and mismanagement, then Europe may become a natural object of identification. The stake is therefore considerable.

II. The need for social action

The legitimation problems outlined above can be tackled in various ways. One possibility would be to try and eliminate the prevailing deficits. In fact, this has been (and still is) the objective of those who want to establish a political union – which would have more powers, a democratically elected parliament and transparent structures similar to a nation-state.[114] For the time being, however, the prospects for

[114] For more details, see Bieber/Schwarze, loc. cit. and Weidenfeld/Wessels, loc. cit.

implementing this plan appear to be dim. For this reason, the Single European Act is limited to relatively modest increases in powers and improvements in decision-making processes. Against this background, there is practically no other option than to make the Internal Market an (economic) success for all the parties involved. This means that serious efforts will have to be made to tackle the various social problems described above.[115] Under these conditions, it is in the interest of European unification that social policy not be regarded as a more or less secondary "supporting measure" whose omission would not entail any major disadvantages. Instead, social policy is a matter of utmost importance; it is a necessary foundation for supporting the entire process. If large sections of the population were to become disappointed, to resign or oppose the Internal Market instead of supporting it, this would have incalculable adverse effects for the Community as a whole. Taking concrete steps at present, therefore, does not mean implementing – at long last – well-meant programs but it is part of an urgently required policy.

By and large, the view expressed above is based on a broad consensus. Without discussing the legitimation problems in greater detail, groups as different as the Padoa-Schioppa Group[116] and the European Trade Union Confederation[117] have come to the same conclusion: without "fair distribution" or "social cohesion," the Community system will probably fail. The decisions taken by the European Council at its meetings in Hanover[118] and Rhodes[119] are clear evidence that the latter has recognized the mood of the times.

III. Problems involved in implementation

Neither the need to protect individuals or groups nor the need to find acceptance for the Community and its order can by themselves ini-

[115] Section 2, IV and V.
[116] Loc. cit., p. 5.
[117] Loc. cit. (n. 27), para. 1.4.
[118] Cf. n. 6.
[119] Cf. n. 9; see also the Interim Report by the Interdirectoral Working Group, p. 61, and: Bundesminister für Wirtschaft, loc. cit. (n. 17), p. 1; for a vivid description, see Salisch, Mitb. 1988, p. 679: "Die Schaffung des Europäischen Binnenmarktes... wird... mit vielen kleinen ›Neins‹ begleitet, es wäre verhängnisvoll, würden sie zu einem großen ›Nein‹ zusammenwachsen." [The creation of the Single European Market is accompanied by many small "nos"; it would be disastrous if they merged to form one big "no."]. Cf. also von der Groeben, loc. cit., p. 139, who feels that the current integration system is "unstable and vulnerable". On the need for an effective social policy, see also Narjes, in: von Maydell/Kannengießer (Ed.), Handbuch Sozialpolitik, pp. 376–385.

tiate political action. Instead, there are other conditions which must also be fulfilled.

One obvious idea is to draw a parallel to other protective policies of the Community. Is it not true that consumer protection has received much positive support although it has never been mentioned in any treaty? Could the Community's environmental protection policy not serve as another example, which in legal terms was also in no man's land up to 1987 and which is so far-reaching now that the Federal Republic of Germany has recently been accused in a number of cases of failing to comply with Community-wide targets? Would it not be possible to do what has been done in defense of "diffuse" consumer and citizen interests now to defend the much more effectively organized interests of workers?

Such ideas are convincing only at first glance. The attention paid to consumer interests and environmental protection is mainly due to the fact that both have a direct impact on the markets for goods and services: differences in national rules on the nature of products or the safety standards to be observed are obvious technical trade barriers as defined in Art. 30 of the EEC Treaty, and the removal of these barriers is a key objective of the Community.[120] By comparison, the situation prevailing in the fields of labor and social law, as well as in almost all the other areas of social policy, is quite different: differences in protective standards will at best increase the costs; however, they will in no way interfere with the functioning of the markets for goods and services. The only area where there is some overlapping is industrial safety, which is why the Community is relatively active in setting standards in this particular field.[121] Under these conditions, social policy cannot rely on the momentum generated by the Internal Market.

Against this background, practical progress in the implementation of general projects can only be achieved by political means. It is up to the governments and the two sides of industry to develop appropriate activities. Public discussions and the submission of proposals can be very helpful in this context because this would at least prevent the decision-making bodies from simply remaining inactive. If certain proposals meet with the approval of relevant groups in society, this may also help to generate the pressure required to translate declarations into reality. Hopes to that effect will primarily concentrate on

[120] Cf. Reich, pp. 25 et seq., with regard to the "productivistic" approach of the EEC Treaty and the resulting need for common protective policies.

[121] Cf. the large number of current projects by the Commission as listed in the so-called Marin Paper (n. 13), para. 77; and Philip, pp. 181 et seq., annex IV for a summary of the Directives adopted to date.

labor unions and political parties. It should be borne in mind, however, that effective social policies by no means run counter to the best interests of companies. Even if such policies may have the short-term effect of an additional cost burden, in the long term they will help to preserve industrial peace and thereby keep the production process running smoothly.[122] This certainly applies in the concrete European context, since corporate planning would be considerably hampered if the European Community no longer enjoyed the (full) support of its population.

However, before any concrete proposals can be envisaged, it is important first of all to define the legal framework that applies to the Community's institutions. Is there perhaps already an adequate "social network"?

[122] Cf. Interim Report by the Interdirectoral Working Group, p.52: Social Factors Favor Economic Success; as well as the DGB's statement entitled "Für ein soziales Europa," in: Breit (Ed.), Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum?, p. 163: "A well developed social security system will not only ensure solidarity with the most underprivileged groups, but it is also a major prerequisite to making sure that the economic system will lead to acceptable results and that it can rely on a high level of qualifications and performance by its workers." Similar statements have been made by French employers; see Philip, pp. 191 et seq.

Section 4: Social security under current community law

I. Introduction

The social objectives of European integration have been expressed in various ways. In treaties such as the Single European Act, there are programmatic statements at various levels of abstraction; in addition, there are a number of detailed provisions which grant the Community powers of implementation or which make (relatively) clear-cut decisions in specific areas. Furthermore, there is the commitment to fundamental rights developed by the Court of Justice of the European Communities, which may also be applicable to fundamental social rights.

II. Social policy provisions contained in the treaties

1. Social policy as a basis for the Community

According to the second and third statements of intent of the EEC Treaty's preamble, the Community wants to ensure not only economic but also social progress, which should be reflected in a constant improvement of living and working conditions.
The precise wording is as follows:

> "RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe, AFFIRMING as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples."

Reference to this objective is also made in Art. 2, which is devoted to the tasks of the Community. Art. 2 reads: "The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote

throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the Member States belonging to it."

Similarly, according to Art. 2, para. 1 of the ECSC Treaty, it is the task of the European Coal and Steel Community "to contribute to economic expansion, growth of employment and a rising standard of living in the Member States." Likewise, according to Art. 1, para. 2 of the Euratom Treaty, it is the task of the European Atomic Energy Community to contribute to the "raising of the standard of living in the Member States." In the Single European Act, this is supplemented by mentioning the objective of "social justice" in its preamble and by putting it into the context of the constitutions of the Member States and of human rights guaranteed by international law. The precise wording of the third statement of intent in the preamble reads as follows: "DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice."

Mention should also be made in this context of the fifth statement of intent, in which the governments of the Member States undertake to display "compliance with the law and with human rights to which they are attached."

These global statements lead to only very few concrete conclusions. Basically, their only effect is that they prevent the development of a Community that exclusively pursues economic objectives such as higher profits, more growth, etc. What is needed instead is social corrections from the very beginning. What is not wanted is a policy which ignores the effects of economic development on certain parts of the population and which does nothing to alleviate "deficiencies" such as mass unemployment or deteriorating health conditions. This alone does not yet determine how social objectives should be pursued. In fact, there are various options: social matters integrated in general economic policy; an independent social policy; or a combination of both.[123] The other provisions of the Treaty provide some information on this point.

[123] For a strong plea in favor of an independent social policy, cf. Bleckmann, Europarecht, p. 479; Schnorr, p. 5. The wording is as follows: "RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe, AFFIRMING as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples, . . ."

2. Concrete policy objectives

In Art. 117 – one level of abstraction lower, as it were – the EEC Treaty advocates an independent social policy which is basically entrusted to the Member States.
This Article reads:

> "Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained.
>
> They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation and administrative action."

Despite its cautious wording, Art. 117, para. 1, is not just a political declaration of intent, but it is a legally binding commitment; this becomes clearer in the French version of this Article in which the word "conviennent" is used (which calls to mind "convention").[124] In terms of substance, the general objectives of the Treaty are specified not only by the fact that an independent social policy is stipulated under Art. 117, para. 1, but also by the provision that there should be no simple harmonization or approximation of living and working conditions; instead, this harmonization should be achieved "while the improvement is being maintained."[125] This also means that the Community will have to intervene not only in order to compensate for potential distortions of competition due to differences in social costs, but it also has a mandate for social evolution even if this precondition is not fulfilled.[126] The fact that the wording of Art. 117 was based on a compromise[127] is not yet relevant in this context; it becomes clearer, however, if one takes a look at the assignment of powers and specific provisions discussed in the following section.

[124] Troclet, in: Ganshof van der Meersch, p. 946 (No 2351); supported by Bleckmann, Europarecht, p. 479. Cf. also Schnorr, p. 17, and commentaries by other authors.

[125] Pipkorn, in: von der Groeben/von Boeckh/Thiesing/Ehlermann, preliminary remarks on Articles 117–122, marg. note 1. The precise wording of Art. 117 is as follows: "Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained. They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation and administrative action."

[126] Bleckmann, Europarecht, p. 480.

[127] Cf. Küsters, p. 375; Pipkorn, loc. cit., marg. note 19 et seq.; Weinstock, p. 2.

The Euratom and ECSC Treaties do not contain any additional objectives; however, Art. 3 e of the ECSC Treaty largely corresponds to Art. 117 para. 1 of the EEC Treaty.
It reads:

> "The institutions of the Community shall, within the limits of their respective powers, in the common interest: . . .
> (e) promote improved working conditions and an improved standard of living for the workers in each of the industries for which it is responsible, so as to make possible their harmonization while the improvement is maintained."

However, social aspects will have to be taken into account not only in the framework of an independent social policy, but also in the context of economic policy actions. The Community's policy on current trends, for instance, referred to in Art. 103 of the EEC Treaty, might also be applied to income policy measures[131], although this is not explicitly mentioned in the text of the Treaty and although it is not very likely that this power will be utilized in practice. However, in accordance with Art. 104, which deals with the general economic policy to be pursued by each Member State, this policy is to ensure the equilibrium of each Member State's overall balance of payments and maintain confidence in its currency "whilst taking care to ensure a high level of employment and the stability of price levels." This means that in all economic actions the social component has to be taken into due account, which is comparable to the provisions of the Stability Act in force in the Federal Republic of Germany.[132] This has also been confirmed by the Court of Justice of the European Communities in its ruling on a case from the ECSC sector.[133] The social aspect also plays a role in connection with the conditions under which it is permissible for Member States to grant aid; in this context, there are two provisions that come to mind: not only Art. 92, para. 2 (a), which deals with "aid having a social character, granted to individual consumers"; but also – and more importantly – Art. 92, para. 3 (a), according to which aid is compatible with the common market if it is intended to promote the economic development of regions "where the standard of living is abnormally low or where there is serious underemployment."

The provisions of Arts. 130a et seq. of the EEC Treaty, which were added by means of the Single European Act, are also highly relevant in this context. According to these provisions, the Community will

[128–130] These footnotes have been deleted.
[131] Pipkorn, loc. cit., marg. note 13.
[132] Narjes, p. 378.
[133] Court of Justic of the European Communities, Coll. 1968, 1 (case 28/66).

continue to develop and pursue its "policy of strengthening its economic and social cohesion in order to promote a harmonious development of the Community as a whole." When pursuing the specific objective to promote economically less developed regions or regions suffering from industrial decline, attention will therefore also have to be paid to the social component.[134] Any use of the structural fund under Art. 130 d of the EEC Treaty will therefore have to be aimed at promoting not only the economic but also the social "cohesion" of the Community.

Finally, reference to social matters is also made in the context of transport and agricultural policies. Under Art. 75 para. 1 of the EEC Treaty, the Council is entitled to lay down any appropriate provisions for a common transport policy, which also includes, inter alia, social provisions.[135] Art. 75 para. 3 provides for a derogation from the regular decision-making procedure where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on "the standard of living and on employment in certain areas," as well as on the operation of transport facilities. And the relevant provisions in the field of agricultural policy are those of Art. 39 para. 2 (a) of the EEC Treaty, under which the Community is obliged to take account of "the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions."

Under Art. 193 of the EEC Treaty, integrating the "social component" into the Community's decision-making process is, among other things, one of the tasks of the Economic and Social Committee, which is composed of representatives of various categories of economic and social activity. Although it only has an advisory status, the opinions expressed by the Committee may make it difficult to completely brush aside the social aspects of specific actions.

3. Implementation mechanisms designed to facilitate an independent social policy

Apart from the involvement of the Economic and Social Committee, no other institutional platform has been created to take account of

[134] Cf. De Ruyt, p. 195.

[135] Cf. (EC) Council Reg. No. 3820/85 of 20 December 1985, on the harmonization of certain social provisions in traffic (Off. Gaz. L 370/1 et seq.; 31 December 1985); and (EC) Council Reg. No. 3821/85 of 20 December1985, on traffic control instruments (Off. Gaz. L 370/8 et seq.; 31 December 1985).

the social component in the framework of general economic policy decisions. The Treaties are based on the assumption that their objectives will be abided by. In cases of non-compliance, it would be possible as a matter of principle to make corrections by means of the Court of Justice of the European Communities. It must be borne in mind, however, that this option will probably only be considered in extreme cases, since the Commission and the Council of Ministers have much leeway in establishing the actual priority of social problems and in determining which means should be used to tackle them.

The situation is different with regard to social policy in a narrower sense, as specified in particular in Art. 117 of the EEC Treaty: in this context, the Treaty contains a number of other provisions designed to operationalize this policy.

Clear-cut powers: freedom of movement for workers and the European Social Fund

The freedom of movement for workers laid down in Arts. 48–51 of the EEC Treaty is one of the "fundamental freedoms" of the Common Market: a single economic area necessarily implies labor mobility. The corresponding provisions in the Treaty were designed to be part of the Community's employment policy, since it was expected, when the Treaty was drawn up, that workers would move from (high) unemployment regions to regions with full employment or overemployment.[136] Because of the practical implementation of this freedom of movement by means of regulations and directives, one now refers to freedom of movement and equal treatment for workers and their families as their "fundamental right."[137] In 1970, Art. 48 of the EEC Treaty became directly applicable law in all Member States[138]; compliance with the provisions of this Article (as in the case of secondary Community law) can therefore be enforced by national courts of justice which, where necessary, will request the Court of Justice of the European Communities to give preliminary rulings under Art. 177 of the EEC Treaty.

A second, relatively precise group of provisions refers to the European Social Fund, whose task it is under Art. 123 "to increase employment facilities and the geographical and occupational mobility of workers within the Community". According to the provisions of the Single European Act, it is one of the so-called structural funds

[136] For more information on the employment dimension of Arts. 48 et seq. of the EEC Treaty, see Lyon-Caen/Lyon-Caen, p. 186 (No 171).

[137] For more information, see Lichtenberg, in: Ibid. (Ed.), Sozialpolitik in der EG, p. 117, pp. 146 et seq., where the legal position is described in greater detail.

[138] Court of Justice of the European Communities, Coll. 1974, pp. 359 and 1337.

which grants subsidies to promote in particular governmental interventions in regions with particularly high unemployment or in favor of problem groups.[139]

Other areas of social policy

Art. 117 of the EEC Treaty does not establish any specific independent powers for the Community, neither in its first nor in its second paragraph.[140] As the wording already suggests, social policy remains within the responsibility of Member States – although they are legally bound by Community law. Unlike the transport or agricultural sector, for instance, the Community has not been explicitly empowered to establish a "labor market organization," let alone define the internal structure of enterprises and companies.[141]

Certain powers have been granted to the Commission under Art. 118 of the EEC Treaty. In keeping with the general objectives of the Treaty, it is the task of the Commission under this Article to promote close collaboration between Member States in the social field, "particularly" in matters relating to employment, basic and advanced vocational training, occupational hygiene, labor law and working conditions.[142] However, the Commission is not entitled by virtue of this provision to make binding decisions on problems of substance. Instead, the wording of the provision limits the Commission's activity to "making studies, delivering opinions and arranging consultations"; in practice, it is also possible (and customary) for the Commission – on the basis of the general provisions of Art. 155 of the EEC Treaty – to make "recommendations."[143]

Art. 119 of the EEC Treaty contains the principle that men and women should receive equal pay for "equal work," while Art. 120 expresses the desire of Member States "to maintain the existing equivalence of paid holiday schemes." So both the provisions go beyond the other provisions discussed above, in that they deal with detailed labor law issues and lay down substantive rules which are binding both for the Community and for each Member State.

[139] For more information, see Grabitz-Stabenow, commentary on Art. 130d; for the complicated details, see Gabriel-Menzel, WSI-Mitteilungen 1989, pp. 584 et seq.

[140] Narjes, p. 379.

[141] To what extent such powers can be derived from the general provisions of Arts. 100, 100a and 235 of the EEC Treaty, will be investigated below.

[142] The fact that Art. 118 grants specific powers to the Commission is uncontested, as far as can be seen; see for instance Miller, BABl 3/1982, p. 8, and Troclet, in: Ganshof van der Meersch, p. 947 (No 2353).

[143] Pipkorn, in: von der Groeben/von Boeckh/Thiesing/Ehlermann, Preliminary remarks on Arts. 117–122, margin. note 16.

This is due to the genesis of this Treaty. During the negotiations, the French Government was concerned that the equal pay for men and women (allegedly) practised in France and the relatively advanced national rules on annual leave might constitute considerable competitive disadvantages in a common market. Similar fears were also harbored with regard to the overtime rules in force in France at the time and the funding of the social security system; if the latter was paid mainly from funds of the national budgets, this would have the effect of subsidies.[144] The position adopted by the French Government at the time, which was supported both by the French employers and by the unions, reflected the very fears which are currently discussed in the context of the Single European Market under the catchword of "social dumping."[145] The advocates of the opposite standpoint – mainly the German Government – argued that there was no need to harmonize specific cost factors; higher labor costs, they suggested, were usually associated with higher productivity, which was also expressed in the exchange rates.[146] The result was a political compromise which was reflected in Arts. 119 and 120 and in a "Protocol on Certain Provisions Affecting France"[147] in which France was authorized to adopt special protective measures if overtime premiums were not approximated to the French level.[148] No statements were made with regard to the funding of the social security system.

What was much more important, however, was the fact that – above and beyond these specific points – no social policy decisions were taken, neither by laying down certain substantial standards of protection, nor by establishing certain procedures.[149] What is lacking in the field of social policy – unlike many other fields – is an overall plan and provisions on binding deadlines.[150] It has also been pointed out, and rightly so, that due to the French initiative, social policy was only discussed as an economic problem, as a potential cost factor[151]; the fact that social policy has a value in its own right is only reflected in the Community's fundamental programmatic objectives, but not in specific provisions.

[144] For a detailed discussion, see Pipkorn, loc. cit., margin. note 19; for more comprehensive information on the genesis of the EEC Treaty as a whole, see Küsters, loc. cit.

[145] Cf. Sec. 2 IV.

[146] For more information, see Pipkorn, loc. cit., margin. note 20.

[147] Dating 25 March 1957, BGBl II, p. 986.

[148] This provision has become irrelevant: Lyon-Caen/Lyon-Caen, p. 194 (No 180).

[149] For more information on both options, see Beutler/Bieber/Pipkorn/Streil, p. 436.

[150] For a correct assessment, see Philip, p. 191.

[151] Pipkorn, loc. cit., margin. note 18; Schnorr, p. 9; Weinstock, p. 2 ("Fauler Kompromiß").

Recourse to general provisions of the treaty

For subsequent Community initiatives in the field of social policy (including labor and social security matters) a crucial criterion was whether and under what conditions it had been possible in the past to have recourse to the provision on the approximation of laws, as specified in Art. 100 of the EEC Treaty, or to the general clause of Art. 235 of the EEC Treaty. At any rate such recourse is not precluded by the letter and the spirit of Arts. 117 et seq. of the EEC Treaty. According to its wording, Art. 118 is quite obviously not meant to be final, since it applies "without prejudice to the other provisions of this Treaty."[152] Likewise, Art. 117 para. 2 of the EEC Treaty may not have been meant to be final, either.[153] More importantly, however, this Article involves an explicit opening to all the provisions of the Treaty. More specifically "harmonization while the improvement is being maintained" can be achieved via three different routes:

- In accordance with the strong influence of neo-liberal thinking in the drafting of the Treaty, it is firstly the "functioning of the common market" that is expected to bring about a "harmonization of the social systems." This reflects hopes that the very creation of a large market will generate social progress, from which everybody stands to gain to a lesser or greater extent. In this respect, there would be no need for the Community or its Member States to take any action.
- Secondly, there is mention of the "procedures provided for in this Treaty." This refers in particular to Arts. 48–51, 118 and 123–128 of the EEC Treaty. This shows that the parties negotiating the Treaty did feel that they could not rely exclusively on market forces and that, where necessary, social policy corrections would have to be implemented.
- Thirdly, mention is also made of the Member States' "approximation of provisions laid down by law, regulation or administrative action." This is also seen as a means to achieve harmonization "while the improvement is being maintained." This refers in particular to Art. 100 of the EEC Treaty.

The only doubt remaining under these circumstances is whether the conditions (as specified in Art. 100 para. 1) according to which the provisions to be approximated would have to "directly affect the setting up and functioning of the common market" would also have to be met in the social policy context. In literature, some authors argue that the objectives of Art. 117 para. 1 of the EEC Treaty, alone, al-

[152] Lyon-Caen/Lyon-Caen, p. 192 (No 177).
[153] See Bleckmann, Europarecht, p. 480.

ready justify measures designed to approximate provisions laid down by law, regulation or administrative action.[154] Others point out that, according to the currently prevailing view, the only prerequisite to Art. 100 is that the envisaged measure should help to facilitate the free movement of goods and persons, and to establish conditions resembling those of a domestic market.[155] Others, finally, emphasize that Art. 100 at any rate leaves the Community institutions much leeway.[156] In connection with the 1975 directive on equal pay, the Court of Justice of the European Communities explicitly approved of the recourse to Art. 100.[157] So there are no objections in this respect. Many labor law directives submitted by the Commission and adopted by the Council have been based on this provision; this applies not only to the Equal Pay Directive[158], but also to the Working Materials Directive[159] of 27 November 1980, the Mass Dismissals Directive[160], the Acquired Rights Directive[161] and the Insolvency Directive.[162]

Where Art. 100 of the EEC Treaty is not applicable (e.g. in cases where it is not a matter of "approximating" provisions but of establishing new ones), it is possible to have recourse to the "Treaty amendment provision" specified in Art. 235 of the EEC Treaty. The condition for the applicability of this provision is that the envisaged action of the Community is necessary to achieve one of its objectives, and that the Treaty has not provided for the necessary powers of action. This provision can also be "activated" in the field of social policy. This is emphasized not only in the preamble of the Social Policy

[154] Lyon-Caen/Lyon-Caen, p. 191 (No 176).

[155] Beutler/Bieber/Pipkorn/Streil, p. 438.

[156] Pipkorn, loc. cit., margin. note 25.

[157] Court of Justice of the European Communities, Coll. 1976, 455, 479 NJW 1976, p. 2068, p. 2070.

[158] Council Directive of 10 February 1975 on the approximation of legal provisions of Member States on the application of the principle of equal remuneration for men and women (75/117/EEC), Off. Gaz. L 45/19, 19 February 1975.

[159] Council Directive of 27 November 1980 on the protection of workers from hazards due to chemical, physical and biological materials at work (80/1107/EEC), Off. Gaz. L 227/8, 3 December 1980.

[160] Council Directive of 17 February 1975 on the approximation of legal provisions of Member States on mass dismissals (75/129/EEC), Off. Gaz. L 48/29, 22 February 1975.

[161] Council Directive of 14 February 1977 on the approximation of legal provisions of Member States regarding the preservation of entitlements of workers when companies, enterprises or parts of enterprises change ownership (77/287/EEC), Off. Gaz. L 61/26, 5 March 1977.

[162] Council Directive of 20 October 1980 on the approximation of legal provisions of Member States on the protection of workers in the event of insolvency of the employer (80/987/EEC), Off. Gaz. L 283/23, 28 October 1980.

Action Program of 1974[163], but also by the Court of Justice of the European Communities.[164] By and large, there is agreement with this view in literature.[165] In practice, both the Equality Directive of 9 February 1976[166] and the Social Security Equality Directive[167] were based on this provision; another directive that refers to the achievement of equality in in-company social security systems, was based both on Art. 100 and on Art. 235.[168] In this context, mention should also be made of the "European Center for Vocational Education"[169] and the "European Foundation for the Improvement of Living and Working Conditions"[170], both of which were established on the basis of Art. 235.

The only drawback involved in having recourse to Art. 100 or Art. 235 of the EEC Treaty is that binding legal acts can only come about by unanimous decision of the Council. If one Member State has any objections, therefore, this may block all further progress.

The Single European Act has not brought about any major changes in this field, unlike many other Community sectors. The new Art. 100a enables the Council to act by a qualified majority on approximation proposals designed to establish the Internal Market; however, not only fiscal provisions but also those "relating to the free movement of persons... (and)... to the rights and interests of employed persons" have been explicitly excluded in para. 2 of this Article. The only change that has been introduced refers to Art. 118a of the EEC Treaty where a special provision is made with regard to the "working environment," according to which "minimum requirements" can be adopted on the basis of a qualified majority; however, this does not prevent Member States from maintaining or introducing more stringent measures. What the scope of the "working environment" is, has not been finally decided yet; the only thing that is certain is that it encompasses not only the traditional concept of oc-

[163] See n. 29.

[164] See n. 157.

[165] Beutler/Bieber/Pipkorn/Streil, p. 439; Miller, BABl 3/1987, p. 8.

[166] Council Directive of 9 February 1976 on the implementation of the principle of equality for men and women with regard to access to employment, vocational training and career opportunities, as well as with regard to working conditions (76/207/EEC), Off. Gaz. L 39/40, 14 February 1976.

[167] Council Directive of 19 December 1978 on the progressive implementation of the principle of equality of men and women in the field of social security (79/7/EEC), Off. Gaz. L 6/24, 10 January 1979.

[168] Council Directive of 24 July 1986 on the implementation of the principle of equality of men and women in in-company social security systems (86/378/EEC), Off. Gaz. L 225/40, 12 August 1986.

[169] Council Reg. No. 337/75 of 10 February 1975, Off. Gaz. L 39/1.

[170] Council Reg. No. 1365/675 of 26 May 1975, Off. Gaz. L 139/1.

cupational hygiene but also projects aimed at humanizing the working life and at granting participation rights to workers.[171] However, past initiatives of the Commission have been limited to the field of occupational hygiene.

Dialog between management and labor

Community practice has for a long time been based on the assumption that social policy requires the involvement of both the employers and the labor unions. The purpose of talks held at European level was to support certain initiatives of the Commission or to settle conflicts independently. Art. 118b, which was introduced with the Single European Act, is based on this practice and makes it the task of the Commission "to develop the dialog between management and labor at European level which could, if the two sides consider it desirable, lead to relations based on agreement." Although one must welcome the explicit recognition of binding agreements at European level[172], it is not very likely that there will be any European collective agreements, except for the sector of farm workers.[173] This is not the fault of the European institutions, but it is due to the fact that the European apex confederations (UNICE and ETUC) do not have any mandate from their member organizations enabling them to negotiate binding agreements. Even if the dialog between management and labor was increasingly held on an industry-wide scale (which would make sense, considering the highly differing extent to which industries are affected by the Single European Market[174]), this would not change anything because, de facto, the national labor unions and employer federations would continue to retain their collective bargaining authority. Binding agreements at European level are only conceivable for companies with Europe-wide operations.[175]

Special provisions for Euratom and the ECSC

Apart from Art. 30 et seq. with its detailed provisons on occupational hygiene, the Euratom Treaty does not contain any other specific provisions on social policy. In the ECSC Treaty, on the other hand, there are a number of provisions that are worth mentioning. Although the

[171] Interim Report of the Interdirectoral Working Group, p.69 ("maximum working hours"); Salisch, Mitb. 1988, pp. 679 et seq.
[172] For more information on European collective agreements, see Walz, loc. cit. (n. 96), pp. 137 et seq.
[173] For more information on collective agreements in this sector, see Philip, p. 182.
[174] See above, Sect. 2 IV.
[175] Cf. Däubler, AiB 1989, p. 44.

ECSC Treaty is not based on any consistent social policy concept either, it does make important additions in two areas. First of all, Art. 68 para. 2[176] explicitly provides for measures to be taken against wage dumping.

The restriction of this provision to wages in the same area does not apply in Art. 68 para. 3 of the ECSC Treaty[177] which also provides for countermeasures, although this paragraph is diluted by significant exceptions.

It appears, however, that these provisions have never been made use of[178]; nevertheless, they can be regarded as the expression of a general principle of law.[179]

Secondly, mention should also be made that under Art. 56 para. 2 of the ECSC Treaty it is permissible to grant aids. At a time when the term "social plan" probably did not even exist yet (1951), this Article provided for financial compensation for workers affected by restructuring measures, plant close-downs, etc. This is one of the reasons why the concept of the social plan was introduced first in the German mining industry and then in the steel industry, even before the introduction of the Works Constitution Act in 1972.

[176] This paragraph reads as follows: "If the High Authority finds that one or more undertakings are charging abnormally low prices because they are paying abnormally low wages compared with the wage level in the same area, it shall, after consulting the Consultative Committee, make appropriate recommendations to them. If the abnormally low wages are the result of governmental decisions, the High Authority shall confer with the Government concerned, and failing agreement it may, after consulting the Consultative Committee, make a recommendation to that Government."

[177] This paragraph reads as follows: "If the High Authority finds that wage reduction entails a lowering of the standard of living of workers and at the same time is being used as a means for the permanent economic adjustment of undertakings or as a means of competition between them, it shall, after consulting the Consultative Committee, make a recommendation to the undertaking or Government concerned with a view to securing, at the expense of the undertakings, benefits for the workers in order to compensate for the reductions. This provision shall not apply
a) to an overall measure taken by a member state to restore its foreign trade balance, not precluding the possible application of Art. 67 to this case;
b) to wage reductions resulting from the application of the legally stipulated or contractually agreed-upon sliding scale;
c) to wage reductions triggered by a reduction of the cost-of-living index;
d) to wage reductions correcting exceptional increases that resulted in the past from unusual circumstances which have by now ceased to be effective."

[178] The provision of Art. 68 para. 2 of the ECSC Treaty is mentioned without any further comment by Beutler/Bieber/Pipkorn/Streil, p. 437, and by Schnorr, p. 11.

[179] Cf. Däubler, Das zweite Schiffsregister, pp. 30 et seq.; with regard to a general ban on social retrogression, see Bleckmann, Europarecht, p. 480.

4. Deficits

As opposed to first appearances, there is ample scope for social policy action in many areas in the Community. To say that there is no other area in which the Community's powers are as limited is only true if one concentrates exclusively on Arts. 117 et seq. of the EEC Treaty, while completely ignoring Arts. 100 and 235 of the EEC Treaty. Apart from this, the lack of specific powers to act has not been an obstacle preventing the Community from becoming active in other, even "less generously" endowed areas such as environmental and consumer protection.

In reality, the deficits are not due to a "lack of legal provisions" but to insufficient utilization of available powers.[180a] Apart from the provisions on freedom of movement for workers, the Community's record in the field of social policy activities is generally considered to be "poor."[181] The relatively large number of directives[182] should not hide the fact that it is only in very few cases that these directives have brought about effective improvements in standards of protection.[183] In addition, most of these directives refer to marginal areas of applicable law.[184]

There are various obstacles that prevent existing possibilities from being utilized more effectively. Politically, a crucial factor is the unanimity required in all matters other than Art. 118a of the EEC Treaty. A legal impediment is the fact that the norms laid down in the Treaty are not very concrete in terms of their substance. Up to now, nobody has contemplated taking the Council of Ministers to the Court of Justice of the European Communities, for instance, for not sufficiently abiding by its mandate under Art. 117 of the EEC Treaty: what can be practiced without any problem in deregulating transport powers under Art. 75 of the EEC Treaty[185], has (so far) not been a subject of discussion with regard to dependent employment. For this reason, the Court of Justice of the European Communities can probably not be expected to act as an "engine of integration." So if unemployment rises in certain industries due to the Internal Market, or if the

[180a] Cf. Ipsen, Art. 51/3: Whether social policy can play an independent role will depend on the use of existing instruments.

[181] Lyon-Caen/Lyon-Caen, p. 335 (No 304): "Le bilan est mince." Similar assessments are found in German literature, cf. Däubler, GMH 1988, pp. 459 et seq.; Miller, BABl 3/1982, 7; Weinstock, loc. cit.

[182] See above, n. 158–162, 166–168.

[183] Cf. the overview offered by Birk, RIW 1989, pp. 6 et seq.

[184] Miller, BABl 3/1982, p. 7.

[185] Court of Justice of the European Communities, NJW 1985, p. 2080.

Internal Market enables companies to evade national labor provisions to a certain extent, the legal grounds for suing the Community to remedy the situation are at least very shaky. The only area where this may be different is social dumping.[186] It is also against this background that the question about the Community's commitment to fundamental (social) rights must be raised.

III. The problem of fundamental rights in the context of Community law

1. The current status

Like the two other Community Treaties, the EEC Treaty does not include a separate catalog of fundamental rights. There is also no general reference to fundamental rights such as had been incorporated in the EDC Treaty (e.g. in Art. 3) which, however, failed to be adopted in the fifties.[187] The reason given for this lack of reference to fundamental rights is that, unlike political organizations, a merely economic community does not perform any acts for which fundamental rights would be relevant – which reflects a peculiarly narrow understanding of fundamental rights, if these are limited to defence and participation rights in the political arena.

The "freedoms" covered by the Treaty are basically limited to national treatment, and they are primarily designed to be principles of a market constitution against which, where necessary, the interests of the individual will have to yield.[188] However, this does not mean that they do not grant freedoms to the individual Common Market citizen; but they do not bear much resemblance to traditional fundamental rights, so that it is advisable to make a terminological distinction and to talk about "freedoms" or "fundamental freedoms" instead of "fundamental rights."

Subsequent legal developments have not had much of a positive impact on this situation either. The fact that all Member States of the Community have ratified the European Human Rights Convention (EHRC) does not mean that the Convention is now an integral part of

[186] See n. 179.

[187] For more information on this point and on what follows, cf. Pescatore, EuR 1979, p. 2.

[188] For another view not supporting the assumption of fundamental rights, cf. Everling, in: Mosler/Bernhardt/Hilf (Ed.), Grundrechtsschutz in Europa, p. 86; Beutler, Grundrechtsschutz, in: von der Groeben/von Boeckh/Thiesing/Ehlermann, margin. notes 41 et seq.; for a different view, cf. Feger, RdA 1987, p. 16.

Community law. This would presuppose that the Member States would agree to being "succeeded" in their legal status by the Community; however, the structure of the EHRC, which limits membership to states, does not corroborate this assumption.[189] Likewise, the Joint Declaration on Fundamental Rights – which was adopted by the European Parliament, the Council and the Commission – does not have any legal consequences either, according to common belief.[190] The preamble of the Single European Act quoted above[191] is generally not interpreted as having integrated the European Human Rights Convention and the European Social Charter (ESC) into Community law.[192] We will not discuss at this point whether this is right or wrong; suffice it to say that the need for action defined in Section 3 will not become irrelevant if a minority puts forward reasonable arguments to establish a commitment of the Community to the EHRC and the ESC.

2. Rulings of the Court of Justice of the European Communities

In keeping with the EC Treaties' "blindness to fundamental rights," the Court of Justice of the European Communities first refused to check Community measures for their compatibility with fundamental rights.[193] It was only in 1969 in the context of the Stauder case that the Court ruled that the provision at issue did not contain any elements that would "jeopardize the fundamental rights of individuals guaranteed in the general principles of the Community law system whose observation has to be ensured by the Court of Justice."[194] In its 1970 "International Commercial Company" decision, the Court of Justice emphasized once again that it was its task to ensure the observation of fundamental rights because this was part of the general principles of law.[195] How these fundamental rights could be determined was paraphrased as follows: they would have to be carried by "common

[189] For an overview of the current state of discussion, see Beutler, loc. cit., margin. note 48.
[190] For evidence of the current state of discussion, see Beutler, loc. cit., note 186.
[191] See above, chapter II,1.
[192] Cf. EP White Paper on fundamental rights, p. 15.
[193] Court of Justice of the European Communities Coll. 1959, p. 43 (Stork); 1960, p. 885 (Ruhrkohle); 1965, p. 295 (Sgarlata). This does not preclude that at the same time, rule-of-law principles were developed to monitor Community actions; cf. Burkhardt, EuGRZ 1988, p. 309, with regard to the concept of confidence protection and its further development.
[194] Court of Justice of the European Communities Coll. 1969, pp. 419–425.
[195] Court of Justice of the European Communities Coll. 1970, p. 1130.

constitutional traditions of Member States" but they would also have to fit in with the structure and the objectives of the Community.[196] In the 1974 Nold case this was once again underlined, based on the following reasoning:[197] "Accordingly, it (i.e. the Court of Justice-W.D.) cannot approve of a measure as being lawful if this measure is incompatible with fundamental rights recognized and protected by the constitutions of these States. International conventions for the protection of human rights whose conclusion involved the participation of Member States, or to which Member States have acceded, may also give indications which have to be taken into account in the framework of Community law."

This reference to international conventions was specified in subsequent decisions, in particular with regard to the European Human Rights Convention (EHRC). In the Rutili case[198], for instance, measures taken by alien-registration authorities were assessed on the basis of Arts. 8–11 of the ECHR; and in the Hauer case[199], the Court made detailed statements on the protection of property under Art. 1 of the First Supplementary Protocol to the ECHR. In this context, it is also interesting that the Court ruled that interventions in fundamental rights were only admissible if these served the purpose of defending public welfare objectives of the Community, whereas the nature of the fundamental rights was untouchable. There has also been a reference to the European Social Charter[200], while there has not been any reference yet to fundamental social rights in the narrower sense.

3. Deficits of protection

By and large, the decisions handed down by the Court of Justice of the European Communities deserve commendation, but this in itself does not provide sufficient protection for the fundamental rights of the individual. The "praetorial" character of fundamental rights involves the disadvantage that the development of individual rights depends on the coincidence of whether the Court of Justice of the European Communities has to deal with a "suitable" case.[201] Therefore, even after 30 years of Court rulings, there may still be numerous "blank spots."

[196] Court of Justice of the European Communities Coll. 1970, p. 1130.
[197] Court of Justice of the European Communities Coll. 1974, p. 507.
[198] Court of Justice of the European Communities Coll. 1975, p. 1219.
[199] Court of Justice of the European Communities Coll. 1979, p. 3727.
[200] Case 24/86, Blaizot et al. versus Belgium, not yet published.
[201] Ehlermann-Noël, Gedächtnisschrift Sasse, p. 689.

In addition, the criteria applied by the Court of Justice of the European Communities do not permit any clear conclusions on the specific rights that are actually protected and on the scope of this protection. International conventions are only guidelines in this matter, from which one may deviate, to a greater or lesser extent, in actual practice. It is also doubtful whether there are any "common constitutional traditions" at all; if one concentrates on the core of common convictions, one finds that they cover only violations of elementary human rights of which there is no real risk with regard to the Community's behavior anyway. It is also unclear under what conditions rights fit in with the structure and objectives of the Community. Finally, the wording used by the Court of Justice in the Nold case[202] might suggest that there is something like a universal principle of opportunity. This would mean that measures would only be admissible if they simultaneously meet the requirements of the constitutions of all Member States. However, such a maximal solution is hardly realistic.[203] The legal uncertainty involved in such a situation is obvious.[204]

Another difficulty is that a number of important issues have not yet been addressed at all, or only to a very limited extent. This applies, for instance, to competition between fundamental rights[205], but also to the question as to whether one can also claim fundamental rights vis-à-vis social powers; the statement made in the Defrenne II decision – to the effect that the equal pay principle is also binding for the parties to employment contracts[206] – cannot easily be applied to the unwritten fundamental rights of Community law.[207] Finally, no satisfactory answer has been given yet to the question as to whether individuals can invoke fundamental rights of Community law vis-à-vis Member States.[208]

In addition to these "immanent" points of criticism, there is also a fundamental objection. Problems related to fundamental rights have so far mainly arisen in the context of atypical Community actions. There were problems, for instance, with respect to bans on agricul-

[202] See n. 197.

[203] For a detailed, critical assessment of the criteria applied by the Court of Justice of the European Communities, see Betten, pp. 45 et seq.

[204] For a convincing commentary, see Sasse, in: Mosler/Bernhardt/Hilf (Ed.), Grundrechtsschutz in Europa, p. 57; for a more conservative appraisal, see Pescatore, EuR 1979, 2, giving a rough overview.

[205] Cf. Beutler, loc. cit., margin. note 34.

[206] Court of Justice of the European Communities, NJW 1976, p. 2068.

[207] Cf. Beutler, loc. cit., 189, margin. note 39.

[208] For an analysis of current judicial practice, see Weiler, in: Liber amicorum Pierre Pescatore, pp. 821 et seq.

tural crops; Member State decrees – based on Community law – with regard to migrant workers; as well as concrete decisions taken by the Community vis-à-vis specific companies or their employees. Other cases may be conceivable, such as violations of fundamental procedural rights or an approximation of laws that is incompatible with fundamental rights.[209] However, this does not cover typical Community behavior, i.e. the opening of markets. If construction and transport companies are exposed to cut-throat competition, for instance, it is not possible – according to the conventional interpretation of fundamental rights – to define the opening of markets as such as an infringement on fundamental rights. For this reason, the risks described in Section 2 in connection with the possible consequences of the Internal Market would not be reduced in any way if the Community were to be very unequivocally bound by the EHRC and the ESC. This applies all the more so to the Treaties establishing the European Communities since they provide for the adoption of specific measures to counteract "distortions of competition." In this context, mention should be made of Art. 68 para. 2 of the ECSC Treaty and also of Art. 130a of the EEC Treaty which establishes the duty to promote the economic and social cohesion of the Community and which provides for the use of the structural fund to prevent regional differences from growing larger. It will not be possible to cope with the real problems caused by the Internal Market on the basis of a traditional catalog of fundamental rights. Instead, certain social and economic minimum standards need to be set – both at Community level and in Member States – in order to prevent labor cost competition, social dumping, evasion of legal provisions and hardships due to restructuring processes.

In summary, one can therefore say that the commitment to fundamental rights developed by the Court of Justice of the European Communities cannot satisfy the need for action identified in Section 3. In fact, it fails to provide sufficient protection for the individual, and it certainly cannot fulfil the legitimation function which is generally associated with fundamental rights.[210]

[209] For examples of potential violations of fundamental rights, see Ehlermann/Noël, Gedächtnisschrift Sasse, pp. 693 et seq.; Pescatore EuR 1979, 9; Sasse, in: Mosler/Bernhardt/Hilf (Ed.), Grundrechtsschutz in Europa, p. 55.

[210] For a correct assessment, see Sasse, loc. cit., pp. 58 et seq.

Section 5: A preliminary solution: guaranteeing fundamental social rights

I. Fundamental rights or selected interventions?

In abstract terms, the need for action identified above might be satisfied in two different ways. One option would be to adopt a variety of social policy provisions and to use funds specifically to remedy problems that have occurred or that are emerging. In other words, the Community would only intervene if it became clear, for instance, that the restructuring processes required would create major domestic upheavals in specific Member States. The second option which is based primarily on the Opinion of the Economic and Social Committee of 22 February 1989[211], would be to guarantee fundamental social rights under Community law.

The current debate has rightly focused on the second option. Considering its decision-making mechanisms, the Community's ability to act as a "fire-brigade" is limited, i. e. its ability to offer necessary remedies where these are most urgently needed within an adequate period of time. There would be too high a risk that, despite the majority principle that has been introduced, the decision-making process would take too long for many issues, and it would probably tend to lead to half-hearted actions. A case in point is what happened to the Vredeling Directive[212] and to the drafts on part-time work[213] and on temporary employment[214]. Although there are major problems in all countries of the Community, particularly in the latter two areas, no

[211] See above (Sect. 1, II and n. 25).

[212] Off. Gaz. C 297/3 of 15 November 1980, revised version of Off. Gaz. C 217/3 of 12 August 1983.

[213] Proposal for a Directive of the Council to regulate voluntary part-time work, of 4 January 1982 (Off. Gaz. C 62/7 of 12 March 1982), revised version of 5 January 1983 (Off. Gaz. C 18/5 of 22 January 1983).

[214] Proposal for a Directive of the Council to regulate temporary employment, of 7 May 1982 (Off. Gaz. C 128/2 of 19 May 1982, revised version of 6 April 1984, Off. Gaz. C 133/1 of 21 May 1984).

decision has been taken yet. On the other hand, the Community managed in 1986 to adopt as far-reaching a reform as the Single European Act. It should not be denied that there have been difficulties – which in Denmark and Ireland, for instance, led to referendums. Nevertheless, whenever fundamental decisions have to be taken on the Community's future development, the pressure to act is proving to be much greater so that Member States are more willing to cooperate with each other.

Apart from this more pragmatic political assessment, the adoption of a catalog of fundamental rights would have the major advantage of generating acceptance for the Community in order to remove some of the current deficits with regard to its legitimation.[215] Fundamental rights are "constitutional norms"[216], an important "element of orientation"[217] for the European unification process, and even a key element of European identity.[218] Europe's citizens can identify with a Community which pursues social progress not only in an abstract form, but also with concrete guarantees for the individual. This indicates to the citizens that they will have to be prepared to put up with difficulties and upheavals, because what is at stake is a blueprint for the future from which they will also derive material and immaterial benefits. A catalog of fundamental rights would also enhance the credibility of Community law[219], making the Community once again a source of hope.[220] This is particularly relevant against the background of the discussion on the social dimension which has been going on for about two years now. If this discussion fails to lead to the introduction of a high-level norm, this would create the lasting impression that the European Community is "biased", i.e. that it promotes the development of companies without really being interested in social consequences or their correction. The concept of an economic *and* social area will only enjoy credibility in the long term if it is also reflected in the Community's fundamental constitutional provisions.

II. Prerequisites to finding a consensus

There is an a priori risk that any draft which will be presented may be brushed aside as being Utopian. It is hardly realistic to assume that

[215] See above (Sect. 3).
[216] Cf. Sasse, in: Mosler/Bernhard/Hilf (Ed.), Grundrechtsschutz in Europa, p. 54.
[217] Cf. Weidenfeld, Europa 2000, p. 53.
[218] Cf. EP White Paper on fundamental rights, p. 16.
[219] Cf. Pescatore, EuR 1979, 2; cf. also Bieber/Schwarze, p. 50.
[220] Cf. Genscher, EA 1988, p. D 154.

social policy innovations will meet with approval from all Governments. However, without a consensus nothing can be achieved in this field. If such a position were rigorously adopted, every single Community project would automatically be reduced to the smallest common denominator. In the field of social policy, this would currently mean that changes would only be conceivable – if at all – in the area of occupational hygiene. The future effect of such an approach would be that the standards for European development would be set by Governments strongly favoring neoliberal options. Due to this, there would be asymmetry to the effect that the very expectation of a given Government that relatively low social costs might give its industry a competitive edge, would block social development. However, the Community has proven – in particular in connection with the Single European Act – that other forms of decision-making are by all means possible.[221] So the content of proposals does not have to be limited from the very beginning to positions for which it is more or less safe to assume that they will find the consensus of all twelve Governments.

On the other hand, there is no point in putting forward ideas that completely ignore the general setting that currently prevails. A catalog of social rights cannot be drawn up assuming that one can start from scratch in European law, with a constituent assembly taking all the decisions that it deems to be appropriate. The point of the exercise is not to create something fundamentally new, but to supplement Community law and to progress in national social systems. Therefore, one question that arises is which parts of established law can provide inputs and ideas for shaping the future. Furthermore, it will be necessary to make allowance for the position of Member States which are obviously not prepared to delegate all social powers to the Community.

1. Points of reference: international conventions or national constitutions?

In its Opinion on fundamental social rights in the European Communities, submitted on 22 February 1989, the Economic and Social Committee[222] exclusively referred to international conventions which had been ratified by Member States or which had been drawn up

[221] The intergovernmental conference which drew up the Single European Act was convened against the votes of the United Kingdom, Denmark and Greece; see Grabitz, Kommentar zum EWG-Vertrag, EEA, margin. note 6.

[222] See above (n. 25).

with the involvement of individual Member States. This is by all means a defendable approach, especially since decisions on the protection of fundamental rights under Community law handed down by the Court of Justice of the European Communities have also been based on "references" from this source.[223] On the other hand, there are also a number of serious objections to using this "stock" of legal norms – either exclusively or predominantly – as a reference.

However, the fact that only a minor proportion of the international conventions has been ratified by all Member States is not a powerful objection. If this was used as a key criterion, it would again mean asking for the immediate consensus of all Member States, thereby making the smallest common denominator the yardstick. An objection that is far more serious, however, is the fact that fundamental social rights would become an oversized patchwork if the ECOSOC's opinion was cast into legal norms, thus remaining faithful to the approach chosen. The various conventions differ greatly in terms of their terminology and their level of detail. Therefore, they would be bound to lead to a heterogenous legal text. If, instead, a new text was drawn up, this would mean abandoning – at least to some extent – the chosen approach, and it would no longer be possible then to use the argument that the new provisions to be incorporated in Community law are to a large extent already applicable anyway. In addition, various conventions have often been referred to for one and the same matter at issue. So in the final analysis, it is unclear which of the various provisions should actually be adopted.

This can be illustrated by means of the following example: in its Opinion, the Economic and Social Committee primarily mentions "the freedom of association including the right to take collective action" in the context of "regulations in the field of labor relations, the labor market and working conditions". In doing so, the ECOSOC refers to the ILO conventions No. 87 and No. 135, as well as Art. 5 and Art. 6 (4) of the European Social Charter, Art. 11 of the Human Rights Convention and Art. 8 of the United Nations Covenant on Economic, Social and Cultural Rights. With regard to strikes as a "collective action", for example, one finds widely varying guarantees: ILO Convention No. 87 offers no clues at all in its wording.[224] However, the competent committee of experts has defined fairly pre-

[223] See above (Sect. 4, III, 2).

[224] Cf. Art. 3 (1) of ILO Convention No. 87 (German Federal Law Gazette 1956, II, 2074): "The organizations of employers and workers have the right to adopt statutes and rules of procedure, to choose their representatives in free elections, to adopt rules for their management and their activities, and to draw up their programs."

cise rules with regard to the admissibility of industrial stoppages, based on the relevant provisions.[225]

While Art. 6 (4) of the European Social Charter explicitly mentions the right to strike[226], this is not true for Art. 11 of the Human Rights Convention[227]; the European Court of Human Rights is also very reserved in this respect.[228] On the other hand, Art. 8 of the United Nations Covenant contains an explicit strike guarantee, although this guarantee is subject to a comprehensive legal proviso.[229] Which of these provisions should apply? If the latter provision was adopted with regard to strikes, for instance, it would hardly harmonize with the very short provisions of the Human Rights Convention which might be given preference for other matters.

Another disadvantage involved in having recourse to international conventions is that their concrete content is often of debatable value. In many cases, compromises have led to typical wordings designed to take into account the diverging interests of the countries involved by resorting to abstractions. On the other hand, there is a vast amount of "rulings" by expert committees and other control bodies which draw very concrete conclusions from the wordings of relevant treaties. What would the incorporation into Community law – which the Economic and Social Committee wants without any doubt[230] – refer to?

[225] For an overview, cf. Däubler, in: Ibid. (Ed.), Arbeitskampfrecht, 2nd ed., Baden-Baden 1987, margin. note 104a.

[226] Art. 6 (4) of the Social Charter reads as follows: "In order to ensure that the right to collective negotiations can be effectively exercised, the two signatory parties undertake... and recognize (4) the right of workers and of employers to take collective action, including the right to strike in the event of conflicting interests, subject to any obligations from general contracts of employment."

[227] Art. 11 para. 1 of the Human Rights Convention reads as follows: "All persons shall have the right to assemble peacefully and to associate with one another freely, including the right to form and to join labor unions to defend their interests."

[228] For an overview, cf. Däubler, loc. cit., margin. note 103.

[229] Art. 8 para. 1 reads as follows: "The Signatory States undertake to guarantee the following rights:
(a)...
(d) the right to strike, providing that it is exercised in keeping with the national system of law."

[230] See Opinion (n. 25 above) p. 11:
"The Committee feels that the instruments and procedures provided for in the EEC Treaty should be used in order to ensure observation of the fundamental social rights in the Member States' systems of law, and to adopt the social measures that are indispensable to a smooth functioning of the Internal Market. This action should be carried out in close cooperation with the representatives from the two sides of industry. The instrument to be used to ensure the protection of the fundamental social rights should be adopted by the end of 1989, and the social measures that are indispensable to a smooth functioning of the Internal Market should be initiated in accordance with a fixed schedule which should take into account the deadlines envisaged for the completion of the Internal Market."

Would the European institutions, including the Court of Justice, develop their own interpretations, or would they by and large follow what has been said so far in the framework of other international organizations?

There is no hiding the fact that the international conventions referred to have so far at best played a minor role in the Member States' practice.[231] It cannot be denied that there is a risk that a Community Regulation or a Community Directive which refers to these normative texts or uses their wording might also be turned into an instrument – by way of interpretation – which contains nothing more than non-committal programmatic statements. Nobody can say that this is bound to happen, but one cannot deny a certain "risk of trivialization."

All that has been said above goes to show that it will hardly be possible to attain the objectives of a guarantee of social rights in the EC by simply compiling rules from international conventions: it is doubtful whether such a compilation can offer effective protection (on the other hand, such protection may also be extremely effective, if the Court of Justice of the European Communities assumes that the past expert committee decisions are fully binding). It does not seem possible to achieve the legitimation desired in this way, because this would require a minimum of actual effectiveness. In addition, the potential text of the "Charter" would be so voluminous and heterogenous that it would hardly qualify as something with which Europe's citizens can identify.

In addition to these structural problems, there are also some difficulties with regard to substance: the time that elapses between the emergence of genuine problems and their processing in international conventions is usually quite long, so that it is possible that more recent developments are either inadequately dealt with or completely ignored. This applies, for instance, to the specific problems involved in atypical employment, and even more so, to the hazards resulting from the use of new technologies. Even if all the other doubts were irrelevant, there would be an a priori need to supplement the "Charter" to a certain extent in this area.[231a]

The approach adopted below is fundamentally different. The basis for the establishment of European norms will be the fundamental

[231] Cf. Jaspers/Betten, 25 Years European Social Charter, Deventer, 1988, who have demonstrated this in a convincing manner.

[231a] This critical assessment does not preclude that specific provisions of international conventions may be used as a source of ideas. Where there is a consensus in terms of substance and language, it is by all means possible to integrate specific rules in EC law.

rights which are included in the constitutions of Member States. In other words, it is proposed that rules that already apply in a fairly large part of the Community should be incorporated into European law.

First of all, this will avoid the drawbacks identified above in connection with the Opinion of the Economic and Social Committee. Although national constitutional norms are also subject to the interpretation sovereignty of certain bodies (usually courts of justice), they are usually embedded in the overall context of the system of law of a given EC Member State. It is not likely that there will be extensive interpretations which are often typical of international monitoring institutions because the parties concerned are aware of the fact that this is not legally binding.[232] On the other hand, national constitutional norms are usually not at risk of being ignored and, hence, trivialized. The traditions of national "legal cultures" and the behavior of European institutions have shown that fundamental rights and other constitutional provisions are given high priority in the application of law. In addition, the terminology of constitutions is usually more comprehensible for citizens, not least due to the fact that constitutions are designed to meet with acceptance, i. e. they are seen as means to obtain and consolidate the citizen's support of the State.

Secondly, there is a large amount of concurring rules in Member States, in particular in the field of fundamental social rights, which facilitates the introduction of appropriate norms at Community law level. Another important point is that the constitutions of Greece (1975), Portugal (1976), Spain (1978) and the Netherlands (1983) were established at a time when many of the current problems already prevailed, so that these constitutions include provisions on environmental protection and on the protection of personal data.

Thirdly, such an approach is based not only on the rulings of the Court of Justice of the European Communities (which predominantly refer to established fundamental rights in Member States)[233] but also on the Joint Declaration on Fundamental Rights of the Council, the Commission and the European Parliament of 5 April 1977[234], which primarily emphasizes the respect of fundamental rights such as have emanated "in particular from the constitutions of Member States." The fact that the rights in question are not guaranteed or recognized in any other way in the constitutions of *all* Member States is irrelevant. A solution will have to be found that meets

[232] For more information on this point and on the category of the "symbolic right," see Däubler, WSI-Mitt. 1987, pp. 195 et seq.
[233] See above (Sect. 4, III, 2).
[234] Off. Gaz. C 103/1, 27 April 1977.

the social policy requirements of Community law[235] and that, at the same time, is a response to the problems arising in the Internal Market.[236]

2. General constraints

The fact that the Community is obliged to respect the rights and interests of the Member States also has an impact on the fundamental social rights context. More specifically, the restriction of European law in favor of national provisions affects four areas:

National room for maneuver

Member States want to retain their room for maneuver in the field of social policy, not least in order to be able to respond quickly or to try out new initiatives.[237] This means from the outset that it will not be possible to introduce a very comprehensive set of rules, e.g. in the form of a European Labor and Social Code. Europe may be able to define the direction and perhaps set the pace of development, but it will not be able to impose exclusive rules. For this reason, the approach to social policy issues will have to be the same as in the field of economic policy. Ideally – although this will be difficult to achieve – the system adopted to deal with social issues should be as supranational as the one practiced for economic issues. Whenever the Community opens a new market, it would simultaneously have to see to the introduction of new social policy rules; the same way that the Community takes action against restrictions of competition, it should also be able to become active against social dumping.

Diverging regulatory interests

Differences between Member States in terms of their need for independence are probably particularly pronounced in the field of fundamental social rights. While certain areas – such as equal pay for men and women – are obviously suitable for the introduction of relatively "unitary" rules, this is not true for all those rules that affect the way in which the workers' interests are defended. It will not be possible, for instance, to apply the British system of shop stewards in Continental Europe, and attempts at importing the German system of co-determination into the United Kingdom would not meet with a very positive

[235] See above (Sect. 4, II).
[236] See above (Sect. 2, VI).
[237] For more information on the latter, cf. Padoa/Schioppa, p. 55.

response there either. Industrial relations are quite obviously marked by national traditions which have become deeply rooted in the minds of the workers – in spite of the internationalistic aspirations of the labor union movement. Any catalog of fundamental social rights will have to take this into account.

Economic capacity

Even in the (quite likely) event that the Community were to contemplate introducing common rules, allowances will have to be made for differences in the economic capacity of Member States. Setting specific minimum standards in terms of concrete amounts would have the effect of eliminating a competitive edge that the poorer regions currently enjoy.[238] Four weeks of paid annual leave for all workers actually leaves much national leeway and does not touch upon traditional structures in industrial relations between management and labor. Nevertheless, any attempt at introducing such a rule would meet with vehement resistance if it was given an absolutely binding status. The concept of creating a "social platform" is not very effective because such a platform would necessarily have to use the least productive national economies as its yardstick, thus staying far below the standards achieved in other Member States. If the protection and legitimation objectives pursued by a guarantee of fundamental social rights are taken seriously, the "platform" will have to be complemented by a dynamic component: the Member States must be obliged within the bounds of their possibilities to constantly improve the minimum standard prescribed by the Community. In this context, the rules to be adopted will have to provide for adequate procedures. However, what this will boil down to is a model which has elsewhere been referred to as "Europe of two speeds" or "integration in stages."[239] But there is no other alternative in the field of social policy, unless the current "uncontrolled proliferation" of exclusively national social policies is regarded as an alternative.

Autonomy in collective bargaining

Any draft of fundamental social rights will also have to take due account of the principle of autonomy in collective bargaining which is recognized in all the Member States of the Community. No Community rule can go as far as imposing major restrictions on the bargaining leeway of labor or management – either by specifying both maximum and minimum standards for certain areas, or by raising the

[238] German Ministry of Economics, loc. cit., p. 7.
[239] For more information, cf. Langeheine/Weinstock, EA 1984, p. 262.

minimum standard to such a high level that there is practically no room for improvement by bargaining.

3. Conclusions

Against the background of these restrictive general conditions, a number of conclusions can be drawn with regard to the potential contents of fundamental rights.

Where the rights involved are defensive – this also includes the freedom of association because it protects the individual from governmental interventions – the traditional system of rules can actually be maintained. However, one would fall short of a guarantee of European fundamental rights if only a minimum was guaranteed (e.g. in the context of the freedom of association: the freedom to join an association); instead, the Community should act as a pioneer in this particular area.

Where it is a matter of ensuring "participation rights" in the broadest sense (i.e. labor participation), the Community would be well advised to keep a very low profile because it will hardly be possible to incorporate institutionalized co-determination rights in European law.

True problems arise with regard to fundamental rights that entitle citizens to receive certain State benefits or that oblige the State to bring about a given state of affairs. An example of the former type is the right to receive welfare benefits, while an example of the latter is the right to work, which cannot be enforceable by legal action; instead it can only lead to an appropriate orientation in employment policy. If too many rules are introduced in this field, this may impose excessive restrictions on the Member States' room for maneuver, and it may not take due account of their economic capacity.

Given this situation, one might be tempted to follow the example set by many international agreements and resort to abstraction by making statements which will hardly ever lead to any concrete action. However, the reasons for ruling out such an approach are similar to those that were put forward against a general recourse to international conventions: if the rules continue to be abstract and non-committal after their incorporation into the law of the European Communities, the actual point of the codification exercise will have been missed. Conversely, if highly abstract provisions are translated into concrete action guidelines by means of court rulings, in particular those of the Court of Justice of the European Communities, a gap may develop in the long run between the law and the political con-

sensus, which would also mean that the point of European codification would have been missed. Although the former alternative is more likely than the latter, this would still create a considerable amount of legal uncertainty, which would be disadvantageous for all the parties involved. It would therefore be preferable to introduce a system of rules which, to the extent possible, draws a clear line between the Community's well-defined provisions and the Member States' room for maneuver in implementing and updating these rules. Coming back to the examples mentioned above, this means that what would be laid down would not be the ECU amounts of Community-wide welfare benefits, but the institution of "welfare benefits" and the key criteria to be observed for determining the amounts. Something similar applies to the objective of full employment which is the purpose of the "right to work." While it is very well possible to lay down its relative importance as compared to other economic objectives, it is not possible to specify concrete employment programs. Something that is important and that in the past has not been standard practice in dealing with fundamental social rights is that compliance with prescribed policies will have to be effectively monitored, without exclusively relying on the legal protection afforded by courts of justice. In the relevant area, this protection will be limited to monitoring passiveness and arbitrariness, political mechanisms such as monitoring by the Commission and accountability vis-à-vis the citizens may be of much greater practical importance. Without such an effective dynamic element, fundamental social rights will always be at risk of being reduced to a mere declaration.[240] Especially if the Community decides not to adopt too comprehensive a set of rules, the remaining area of major issues should have a much better chance of being accepted.[241]

III. The problem involved in establishing binding rules

Trying to find a consensus does not mean that a consensus will actually be reached. One obstacle may be formed by insurmountable divergences which may emerge, for instance, with regard to the contents of specific guarantees – something that cannot be ruled out, considering the large number of players involved and their different perspectives. For this reason, any draft cannot be more than a mere contribution to the discussion. Another much more serious obstacle may be

[240] Cf. Pieters, Sociale Grondrechten op prestaties, loc. cit.

[241] For more information on the Community's regulatory philosophy, which currently is by all means in keeping with this principle, cf. Anselmann, RIW 1986, p. 936.

created by the question as to whether a binding guarantee of fundamental social rights is wanted at all. Instead, some may want to limit themselves to a declaration of intent. And even if everybody agrees to introducing binding provisions, these may take on different forms. The options available in this context are described and assessed below.

1. The legislative options

Different approaches could be adopted to introducing a "Declaration of Fundamental Social Rights" that is not legally binding. The political response to a "Recommendation" by the Commission under Art. 155 of the EEC Treaty (which might quickly get submerged in the flood of other similar acts) would probably be very limited. An instrument that would carry more weight would be a declaration by the European Parliament which might give rise to the expectation that the other institutions of the Community and the Member States will adopt the decisions expressed in this declaration.[242] However, this option is no longer available because the European Parliament already adopted a "Declaration of Fundamental Rights and Freedoms" on 12 April 1989[243] in which the catalog contained therein is described as "final." Another possible option (which under the given circumstances is the most likely) is a declaration by the European Council which would carry the highest moral and political authority within the Community system.

If a legally binding form is chosen instead, there are two options. The first one would be based on the so-called supplementary provisions clause (Art. 235 EEC Treaty).[244] Under this Article, a Regulation or Directive dealing with a catalog of fundamental social rights could be proposed by the Commission and adopted by the Council in order to attain the objectives of the preamble, Art. 2 and Art. 117 of the EEC Treaty.[245] The Economic and Social Committee is apparently in favor of this approach.[246] The second option would be amending the Treaty under Art. 236 of the EEC Treaty. However, this would only be possible by means of an international convention approved by all the Parliaments of the Community's Member States. This was the approach adopted for the Single European Act.

[242] See in particular Zuleeg, Festschrift Schochauer, pp. 990 et seq.
[243] EuGRZ 1989, p. 204.
[244] A more detailed discussion of the actual legal impact of Art. 235 of the EEC Treaty cannot be offered in this context.
[245] For more information on these provisions, see Sect. 4, II, above.
[246] See n. 230.

2. Assessment

The drawback involved in adopting a declaration that is not legally binding is that it requires a properly functioning European public, which does not exist. Only if a Community institution or a Member State failed to respect fundamental social rights, consequently encountering considerable legitimation problems, could such a declaration be expected to have a practical impact. However, past experience in Europe has shown that the opposite is true. Nobody is particularly upset about the fact, for instance, that the free movement of services should have been implemented since 1970. Now that this step is being seriously contemplated in the context of the completion of the Internal Market, it is celebrated as a success. More than 15 years of "execution deficiency" have simply been forgotten. This is all the more remarkable since the "programmatic norm" involved is actually very clear, i.e. the removal of obstacles at borders. In the field of fundamental social rights, the situation would be yet more difficult since there is leeway for interpretation and discretionary political decisions, so that it is always possible to deny that this leeway has been abused. It does not take much imagination to envision a Member State declaring that its employment policy was completely adequate because, although it did not reduce unemployment at the present, it would do so in future, which would practically be tantamount to an approximation to the "right to work". Positive effects can only be expected if a stronger sense of "European identity" develops on the part of the public and if both the European institutions and the Member States are prepared to take concrete steps in order to execute such a "program."

Unlike an amendment to the Treaty, a supplementary provision under Art. 235 of the EEC Treaty would have the advantage of not requiring any involvement of the Parliaments of the Member States. However, since such supplementary provisions would be part of the so-called secondary Community law, they would be interpreted "in the light of the Treaties establishing the European Communities" and of the other primary Community law. In addtion, the same procedure could be used for any subsequent amendments.

An amendment of the Treaty under Art. 236 would put the fundamental rights guarantees on an equal footing with the other guarantees of primary Community law. In addition, there would be no qualification as regards interpretation in the light of primary Community law or subsequent legal acts of Community institutions. In this case, the fundamental social rights would be a factor which would undeniably be as important as the economic integration objec-

tives. They would appear to be part of the "constitution" (which in fact they are in terms of their substance); they would make a major contribution to completing the unfinished building of the "European State fragment." Without any doubt, they would have the greatest protection and legitimation effect. Following the Single European Act, the "Fundamental Rights Act" would be another crucial step on the road to a Europe of the citizens.

3. Outlook

As of today, one cannot safely say which of these approaches will be adopted. However, this is not the most important issue anyway. What is needed is a social policy perspective, a "concrete Utopia." Keeping in mind all the existing constraints, what might the "social dimension" look like, when cast in legal norms? In keeping with the magnitude of the task at hand, the title chosen for this project is the "European Fundamental Rights Act," deliberately fashioned after the Single European Act.

Section 6: Draft of a European Fundamental Rights Act

I. Object

There is no sharp definition of the term "fundamental social rights." Essentially, it is a question of providing a legal correction for situations of underprivilege and need[247]; every citizen should, for example, have access to the educational system (right to education), he should be provided with a job (right to work), and he ought to have a home of his own (right to a home). The fields of life in need of regulating are not fixed for all time; there will, for example, certainly be a variety of opinions on whether consumer protection should be included among them.

In the following, we intend to opt for a pragmatic solution and to propose a relatively broad definition.[248] This approach is supported by the fact that the European Social Charter likewise includes very many fields of life and that the Opinion of the Economic and Social Committee is even more comprehensive in character. Finally, it is justifiable to adopt a broad approach to the subjects involved, because it will never be possible to forecast all the possible situations that can be a cause of jeopardy or need. Furthermore it is therefore conceivable that, under different circumstances, it will also be necessary to provide security for some situations that at present tend to be regarded as natural and acceptable consequences of the economic process.

The draft presented here offers the additional opportunity of considering some more recent developments that have only been dealt with to a slight extent so far in the existing legal texts, if at all. We are referring, for example, to the specific dangers arising from information technology and genetic engineering, which are still waiting for a

[247] Kittner, AK–GG, Art. 20 para. 3 IV, marg. note 64.
[248] As does Betten, p. 85.

legal answer. Apart from that, we shall need to consider the discussion on improved environmental protection, even though this does not constitute a constitutional novelty. In the "labor" field, there are two new features that need emphasizing. First of all, account will have to be taken of the fact that different kinds of employment relationships exist, ranging from part-time work to the activities of the self-employed – it is possible that the need for protection will not become less (but rather, if anything, greater) as a result of the fact that there are more and more deviations from the traditional type of standard employment relationship. Secondly, it is necessary to mention non-gainful work; there is a discussion taking place – and not only in the Federal Republic of Germany – about its equal value, which must also be reflected in a catalog of fundamental social rights.

It did not appear meaningful to select from among potential rights in such a way that only the consequences of the Internal Market were covered. These cannot be distinguished in terms of their contents and structure from other secondary phenomena and results of economic life; it was our intention that the standards to be drawn up should not be based on uncertain forecasts and rough estimates. At the same time, however, a link with economic life as a whole is necessary; if an attempt is made to guarantee rights and freedoms independently of the economic and social situation, they will not put down roots of their own: in this respect, we are dealing with the traditional canon of fundamental rights and liberties as reflected, for example, in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Nevertheless, the proposal to be drawn up here was not supposed to do completely without guarantees for defensive rights. The European Convention for the Protection of Human Rights and Freedoms is not yet an integral part of Community law, but only a "framework of reference" for judgments of the Court of Justice of the European Communities (ECJ).[249] The classic fundamental rights are largely protected in the Member States, so that they are only relevant for the Community itself in exceptional cases[250], but even so, it would be desirable to rule out the possibility of imponderabilities and superfluous differences of opinion in this field. By analogy with Art. 4 of the draft constitution of the European Parliament[251], the material part of the European Human Rights Convention should therefore be

[249] EP White Paper on fundamental rights, p. 15.
[250] Pescatore, EuR 1979, p. 5.
[251] See n. 46.

adopted into Community law. Formal accession by the Community is not recommended, since there are convincing aspects of an organizational and practical political nature that argue against it.[252]

II. Structure of the Fundamental Rights Act

In accordance with the customary practice in European law-making, the Fundamental Rights Act should be preceded by a preamble. This not only reflects the intentions of its authors, but also provides an opportunity for mentioning those elementary common goods that are the prerequisite for any protection of human rights: without internal and external peace, without an environment worth living in, without preserving the human race, and without a functioning, productive economy, the best guarantees are worth no more than the paper they are written on. These so-called third-generation human rights are elementary Community goods, which do not lend themselves to positivation in the form of subjective rights; to mention them expressly is more than simply to acknowledge the need for systematic consistency.

The Act's substantive regulations begin in a first paragraph with fundamental provisions concerning in particular the effect of the fundamental rights and their relationship with the law of the Member States.

The second part, entitled "General human rights," comprises those guarantees to which everyone is entitled, irrespective of whether he has worked or not. The order is not compulsory, but the draft is based on the idea that the general conditions should be regulated first of all, with the concrete personal rights only following on after that. It is therefore intentional that, for example, the right to security of basic needs (Art. 7) is mentioned before the right to the free development of the personality (Art. 8).

The third section is devoted to the "fundamental rights of the working population," a term that has been chosen intentionally, since it is not concerned exclusively with the rights of employees.[253] The distinction made here corresponds to that found in the Opinion of the Economic and Social Committee.[254] In individual cases – for example in the case of the unemployed or of those retiring from active working life – there may be some overlapping; in this respect, the

[252] Capotorti, Essays in Memory of Sasse, pp. 703 et seq.

[253] Apart from that, it was necessary to find an equivalent translation for the expressions "travailleurs," "lavoratori," "trabajadores," etc.

[254] See n. 25.

regulation of aspects that belong together has priority over absolute systematic consistency.

The fourth section deals with asserting rights, which comprises both political measures and resort to the courts. The fifth section contains provisions on the entry into force and publication.

In the following, we first present the text of the draft; this is followed by explanations relating to the individual sections or articles.

EUROPEAN FUNDAMENTAL RIGHTS ACT
(List of Heads of State concluding the Treaty)

Determined to continue the work started with the Treaties establishing the European Communities and the common tradition of preserving and developing human rights;

Considering that the rights of the individual can only be realized if external peace is preserved, if the threat to the natural basis of life is reduced, if the human genotype is not altered by technical intervention, and if the economy and technology are developed to such an extent that every form of poverty and backwardness can be abolished;

Convinced that human rights presuppose a free, democratic and peaceful society in which the rule of law prevails and in which everyone can play an effective role in organizing social, economic, political and cultural living conditions;

Expecting that, as the Internal Market is implemented step by step, a unity will come about whose dynamism will create the appropriate economic conditions for reducing unemployment, for increasing affluence for all citizens, and for satisfying their basic needs;

Determined that economic and social cooperation in the Community should be further developed and that the social progress created by the European process of unification should find visible expression;

Have agreed as follows:

A. Basic provisions

Art. 1: Protection of human dignity by fundamental rights

(1) The European Communities and the Member States shall protect the dignity of the individual and shall grant the following fundamental rights to every person subject to their legal sovereignty.

(2) The European Communities recognize as binding on them the fundamental rights guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Art. 2: Effect of the fundamental rights
(1) The fundamental rights shall be binding on the legislative, executive and judicial authorities of the Community and of the Member States.
(2) Restrictions shall only be permissible where they are expressly provided for.
(3) The elaboration and further development of the fundamental rights is a matter both for the European Communities and for the Member States. The existing distribution of competences in this respect shall be respected.
(4) No fundamental right shall be infringed in its substance.

Art. 3: Relationship to the law of the Member States
(1) Rights guaranteed in the Member States shall remain in force wherever they coincide with the following fundamental rights or afford the individual more extensive protection.
(2) The European Communities may not reduce these rights, even by means of other legal acts.

B. General human rights

Art. 4: Right to physical and intellectual integrity
(1) The right to life, health and physical integrity shall be inviolable.
(2) The production, distribution and use of goods shall only be permissible within limits compatible with the provisions of para. 1 hereof.
(3) The Member States and the European Communities undertake to counteract any threats to the objects of legal protection mentioned in para. 1 hereof. Where Member States are entitled according to their laws to intervene directly or indirectly, such interventions must be restricted to the unavoidable minimum.
(4) Medical care must be available to everyone. The needy shall be given treatment free of charge.

Art. 5: Right to an intact environment
(1) The production, distribution and use of goods must not destroy the natural basis of life (air, water, soil and forests) nor the existence of plant and animal species, and shall not jeopardize them

more than is unavoidable. The cultural heritage shall be preserved.

(2) The European Communities and the Member States shall adopt the necessary measures in order, by means of technical innovations, to further reduce the extent of the danger.

(3) The Member States shall appoint special administrators, who can start legal proceedings if para. 1 hereof is infringed. Nothing in this shall affect the right to initiate criminal proceedings.

Art. 6: Right to genetic identity

(1) Human beings shall not be made the object of genetic engineering processes. The passing of genetic material to the next generation must not be altered by means of technological intervention.

(2) The cloning of embryos and surrogate motherhood shall be forbidden; human organs must not be made the object of contracts against payment. Genotype analyses shall only be permissible within the framework of voluntary medical treatment.

(3) The European Communities and the Member States shall take effective precautions in order to ensure that these principles are also observed by private persons. This includes the appointment of special administrators who can initiate judicial proceedings if paragraphs 1 and 2 hereof are infringed.

Art. 7: Right to security of basic needs

(1) Everyone shall have the right to an adequate standard of living for himself and his dependants, including sufficient food and clothing and adequate accommodation. The European Communities and the Member States shall take the necessary steps to combat poverty.

(2) Anyone who does not possess sufficient funds and is unable to obtain them either by his own work or by receiving assistance from his family shall be entitled to support from public funds. The amount shall be calculated in such a way that the aims of para. 1 hereof are achieved. Special needs, for example in the case of illness or handicaps, shall be taken into account.

Art. 8: Right to the free development of the personality

Everyone shall have the right to the free development of his personality, provided that he does not thereby infringe the legally protected interests of third parties or the general public.

Art. 9: Right to data protection

(1) Everyone shall be allowed to decide for himself what data relating to his own person he wishes to release.
(2) Restrictions of this right shall only be permissible on the basis of regulations of the European Communities or parliamentary laws of the Member States and for the protection of a distinctly superior interest.
(3) Data may only be used for those purposes for which they were collected.
(4) Personality profiles and other data collections contrary to human dignity shall be inadmissible.
(5) The individual shall have the right to obtain information free of charge on all data stored in machines that relate to his person or which could be related to his person. The European Communities and Member States shall provide further control mechanisms, such as setting up independent data protection commissions to monitor the observance of the principles laid down here.

Art. 10: Right to education

(1) Everyone shall have a right to education. In this way, he is enabled to play a useful role in a free society.
(2) General education shall serve the full development of the human personality and shall promote understanding, tolerance and friendship among peoples and respect for human rights.
(3) Everyone shall be entitled to acquire the knowledge and ability that are necessary for exercising a profession.
(4) Access to educational facilities, including universities, shall be free and not dependent on the payment of fees. A shortage of educational and training capacities must not lead to the definitive exclusion of particular applicants.
(5) The Member States shall respect parents' right to ensure that their children receive an education and instruction in accordance with their own religious and philosophical convictions.

Art. 11: Right to work

(1) Every citizen of the European Communities shall have a right to work in a self-employed capacity or to paid employment. Any permitted activity may be chosen as a profession.
(2) The right to work in a self-employed capacity shall include the right to found an enterprise, to participate in an existing enterprise, and to form a cooperative or comparable organization together with others for the members' mutual benefit; this shall apply irrespective of the Member State in which the activity is exercised.

(3) The right to paid employment shall comprise the right to choose freely one's place of work and the entitlement to apply for vacant posts and not to be discriminated against for irrelevant reasons when a selection is made among a number of applicants. The results of a genotype analysis must not be taken into account. The Member States are obliged to set up or to maintain job placement services free of charge, which shall be available to all those seeking work. Employment agencies working on a profit-making basis shall be prohibited.
(4) The achievement of full employment shall have priority over other objectives of economic policy. Until full employment is achieved, the European Communities and the Member States may only adopt measures to promote the economy if they result in a positive effect on the labor market situation.
(5) Restrictions on the rights guaranteed according to paragraphs 1 to 3 shall only be admissible where this is in the overwhelming public interest. Forced labor must not be reintroduced.
(6) Because of their social importance, housework and bringing up children, voluntary honorary activities and other forms of socially useful non-gainful work shall gradually be made equivalent to gainful employment. The aim is to provide for the free choice of the individual between different forms of work, not governed by economic considerations.

Art. 12: Right to a family and life companionship
(1) Marriage, the family and life companionships regarded as permanent shall be protected.
(2) The European Communities and the Member States shall provide specific benefits and fiscal measures for this purpose.
(3) During an appropriate period before and after giving birth, mothers shall enjoy special assistance from the state.
(4) Children must have equal opportunities in society, irrespective of their social background.

Art. 13: Right to personal property
(1) Everyone shall have a right to respect for his personal property. The obligations under Art. 18 (3) shall be taken into account.
(2) Nothing in this shall affect Art. 222 EEC Treaty and Art. 86 EAEC Treaty.
(3) The law of succession shall be guaranteed, subject to the law of the Member States.

Art. 14: Right to consumer protection

(1) Everyone shall have the right to choose freely among goods and services. Articles forming part of the essential necessities of life must not be refused to the individual on the grounds of the freedom of contract.
(2) The European Communities and the Member States shall adopt the necessary measures in order to ensure that the consumer is informed about the supply of goods available.
(3) The consumer shall not be placed at an unfair disadvantage either with regard to contractual conditions or with regard to pricing.
(4) Anyone who manufactures goods or places them in circulation shall be responsible for any harm suffered by other persons as a result.

Art. 15: Freedom of movement

(1) Within the European Communities, there shall be freedom of movement. No national of a Member State may be expelled or deported from another Member State.
(2) Everyone shall have the right to leave the territory of the Community. Nationals of Member States must not be refused entry.

Art. 16: Equal rights

(1) All persons shall be equal before the law and shall not be treated differently for no objective reason.
(2) No one shall be directly or indirectly given preferential treatment or discriminated against on the grounds of his membership of a different Member State, or on the grounds of sex, race, religion, political or trade union activities, personal way of life or other personal or social circumstances. The command of a particular language shall only be taken into account if this is indispensable for the exercise of particular functions.
(3) It shall be task of the European Communities and the Member States to remove all economic and social obstacles that prevent the effective exercise of the rights guaranteed under this Act.
(4) Traditional disadvantages can be compensated for by the granting of specific advantages; this shall apply in particular to women and ethnic groups.

Art. 17: Right of asylum and rights of foreigners from third states

(1) The Member States shall grant asylum to persons persecuted on political grounds. In this context, they shall take the Convention on Refugee Status of 28 July 1951 and the Protocol on Refugee Status of 31 January 1977 as the basis.

(2) Persons from third states who are legally resident in a Member State at the time when this Act enters into force may only be expelled if their residence was temporary in nature from the very beginning, if their application for asylum has been rejected, or if they have become guilty of a serious criminal offense.
(3) The European Communities shall lay down the principles that shall apply in future to the entry of non-EC nationals.
(4) In their respective territory, the Member States can make work in a self-employed capacity or paid employment by persons from third states subject to a work permit.

Art. 18: Right to solidarity
(1) Any person in a situation of personal distress shall be entitled to the solidarity of society.
(2) Combinations for the mutual benefit of the members, such as cooperatives and self-help groups, and charitable organizations deserve the special support of the European Communities and the Member States.
(3) No one shall use his economic or social position to impair or hamper the exercise of other citizens' fundamental rights.
(4) The principle of solidarity shall justify the intervention by the European Communities and the Member States in earnings opportunities and existing economic rights.

C. Fundamental rights of the working population

Art. 19: Right to uniform protection
(1) Dependent employment shall enjoy the special protection of the European Communities and the Member States.
(2) Every Member State shall guarantee a uniform labor and social law that provides comparable protection for all employees, irrespective of the peculiarities of their employment relationships.

Art. 20: Right to form coalitions
(1) Every employee shall have the right to combine with others to form trade unions to preserve and promote their conditions of labor and their economic situation, and to join existing organizations. It shall be permissible to form employers' associations.
(2) Trade unions and employers' associations shall determine their internal structures and their programs in their own responsibility; their recognition as legal persons and the extent of their rights shall not depend on state registration.

(3) Trade unions shall have the right to provide information in the business about their activities, and to solicit new members; for this purpose, they can appoint delegates to the companies.
(4) Paragraphs 1 to 3 shall apply mutatis mutandis to the formation and activities of organizations working on a cross-border level.
(5) Trade unions and employers' associations shall have the right to combine into national and international umbrella organizations.

Art. 21: Right to collective bargaining
(1) Trade unions shall have the right to engage in collective bargaining negotiations with individual employers, combinations of enterprises and employers' associations; neither the Communities nor the Member States may prescribe a specific negotiation level with binding effect.
(2) Collective agreements shall be binding at least on the members of the organization concluding the agreement. The Member States shall have the right to extend the effect of collective agreements to employees who do not belong to the organizations concluding the collective agreement, and who do not enjoy any other collective protection. Employees who are only temporarily active in a country can be made subject to the collective agreements of that country even if they are subject to foreign collective agreements.
(3) It shall only be possible to contract out of collective arrangements where this is to the benefit of the employees.
(4) European collective agreements shall be admissible. They can be concluded by organizations in the sense of Art. 20 (4) and (5), and shall be subject to the general legal principles of the Member States unless the European Communities enact uniform regulations.

Art. 22: Right to participate
(1) Employees shall have the right to participate in the decisions made in their businesses and their enterprises, subject to the regulations in force in the Member States.
(2) If decisions on working conditions are made elsewhere than in the employer's enterprise, or in the state administration, adequate participation by the employees concerned shall be insured.
(3) The Community must not cut back existing participation rights either directly or indirectly.

Art. 23: Right to strike
(1) Employees shall be entitled to take collective action, including an

effective right to strike, in the event of conflicts of interest, except where this would run counter to obligations under current collective agreements. Legal labor disputes in other Member States can be supported by solidarity strikes.

(2) Intervention by the Member States in these rights shall only be admissible on the grounds of urgent requirements of the public interest. Compulsory arbitration shall be prohibited.

(3) Any persons in other businesses who, as a consequence of a labor dispute, cannot continue to be employed shall at least be entitled to substitute wage benefits in accordance with the law of the Member States.

Art. 24: Right to a contract of employment

(1) Every employee shall be entitled to a written contract of employment, which must not contain any conditions that place him at an unfair disadvantage.

(2) The employer can only derive rights from an employment relationship if the conditions of para. 1 hereof have been met.

Art. 25: Right to humane working conditions

(1) Employers and bodies representing interests in the business shall protect and promote the free development of the employees working in the business.

(2) Notwithstanding the obligations resulting from Art. 4, the organization of work must be orientated towards the objective of expanding the individual employees' room for action, facilitating the development of their creative abilities, and avoiding excessive burdens.

(3) If collective agreements and other autonomous arrangements fail to come up to the objectives of para. 2 hereof, the European Communities and the Member States shall pass the necessary regulations.

Art. 26: Right to appropriate working hours

(1) Every employee shall be entitled to appropriate working hours, the duration and position of which must neither endanger his health nor unreasonably impair his family and social relations.

(2) Regular working hours should not exceed 8 hours per day and 40 hours per week. In the case of particularly burdensome activities, shorter maximum times can be laid down, as can longer maximum times in the case of particularly light activities.

(3) If more than 2 hours of overtime are worked in a calendar week, they shall be compensated for by time off.

(4) The position of the working hours must correspond to the employee's individual requirements subject to the constraints of the working process.
(5) Sunday work shall only be permissible in the public interest, for the benefit of the population's leisure interests, and whenever working productivity on weekdays would otherwise be substantially impaired.
(6) Night work shall only be permissible in the public interest and in the case of those forms of technology that cannot tolerate an interruption.
(7) Sunday work and night work must also be compensated for by additional time off.

Art. 27: Right to holidays
(1) Every employee shall be entitled to a paid holiday for recreational purposes of at least 3 weeks per year.
(2) A longer duration and the modalities of the entitlement shall be determined by collective agreements; the individual Member State shall merely provide for a statutory minimum standard.
(3) The Member States shall be obliged step by step to improve the valid minimum standard within the limits of their economic possibilities; in this context, public holidays and any other forms of paid release from work shall be taken into account.

Art. 28: Right to maintenance of personal rights
(1) Employees shall not suffer any form of disadvantages in their employment relationship as a result of exercising their rights under Arts. 20 to 23 or their freedom of expression inside or outside the business. This shall not apply to criminal offences and to the betrayal of trade secrets.
(2) An employee shall be entitled to refuse to perform any task that would subject him to an unforeseeable conflict of conscience.
(3) Scientists working as employees shall be entitled within the limits set by the employer to determine the object of their research and to decide for themselves on the methods to be applied. The right to publish the results of the research may only be restricted for urgent reasons of public interest or because essential company interests would be jeopardized.

Art. 29: Right to appropriate remuneration
(1) Every employee shall be entitled to a wage or salary that corresponds to the extent and the nature of his work. In this respect,

physical and mental burdens, necessary qualifications and responsibility for others shall be taken into account.

(2) The remuneration must in all cases be sufficient to insure that the employee and his dependants can lead a free and dignified life.

Art. 30: Right to further training and retraining

(1) Every employee shall be entitled to the necessary further training or retraining when there are organizational or technical changes impending at his place of work.

(2) For this purpose, he shall be granted a limited release if necessary.

(3) For unemployed persons, special further training and retraining programs shall be organized. Anyone who has been unemployed for longer than 1 year shall be entitled to admission to such a program.

Art. 31: Right to protection against dismissal

(1) The employment relationship can only be terminated by the employer if an adequate period of notice is observed, unless the employee has committed a serious dereliction of duty.

(2) Termination of the employment relationship against the will of the employee shall only be permissible on the grounds of an overriding interest on the part of the employer.

(3) When an employment relationship is terminated, the employee shall be entitled to severance pay, the amount of which shall be determined by the employee's social situation.

(4) The Member States may exclude small businesses with up to 5 employees from the principles of paras. 2 and 3 hereof.

Art. 32: Equal rights for men and women

(1) Notwithstanding the principles deriving from Art. 16, men and women shall be entitled to equal remuneration for equal work. The essential criteria for determining the remuneration must not be laid down in such a manner that they are met distinctly less frequently by members of one sex than by members of the other sex.

(2) Men and women shall have equal access to jobs, except where a particular sex is an indispensable prerequisite for a specific activity. Any form of direct or indirect preference or discrimination shall also be prohibited in promotion, in conditions of employment and in termination of the employment relationship.

(3) If para. 1 hereof is not observed, the remuneration that is paid to the sex which is treated better shall be owing. If para. 2 hereof is

infringed, compensation for damages shall be paid, which shall as a rule amount to 6 months' salary.

(4) Anyone who claims an infringement of the principles of paras. 1 and 2 hereof need only furnish prima facie evidence in the form of substantial indications; the legal consequences provided in para. 3 hereof shall not arise only if the employer can show good cause not related to sex, or if he can prove that the employee's sex is an indispensable prerequisite for the activity.

(5) Pregnant women shall be released from work at least 6 weeks before and at least 8 weeks after giving birth; the Member States shall ensure that during this period, the wage continues to be paid or that the same amount in substitute benefits is granted from public funds. Pregnant women may only be given notice with state approval. Mothers and fathers shall be entitled to parental leave lasting at least until the time when the child reaches the age of 18 months.

Art. 33: Rights of migrant workers

(1) Nationals of other Member States shall have equal access to jobs; nothing in this shall affect Art. 48 para. 4 of the EEC Treaty. No work permit shall be necessary.

(2) Any form of direct or indirect discrimination or preference on the grounds of nationality shall be prohibited, also in the case of wages and salaries, conditions of employment, participation rights, promotion and protection against dismissal. Employees deployed in a country other than the state in which their employer enterprise has its headquarters shall be entitled at least to the wages and conditions of employment customary at their place of deployment.

(3) No one working in different Member States shall suffer any disadvantages in connection with social and unemployment insurance as a result.

(4) Persons from third states who are legally resident in the Community territory shall have the same rights as nationals of Member States, even if a work permit had to be granted under Art. 17 (4) before they could begin work.

Art. 34: Rights of juvenile employees

(1) Child labor shall be forbidden.

(2) The minimum age for admission to employment shall be 15 years. Exceptions for certain light work shall be admissible, provided that they endanger neither health nor morals nor education.

(3) Young persons under the age of 18 must not be employed for

longer than 40 hours per week and under no circumstances between 10 p.m. and 6 a.m. Attendance at schools and other activities serving vocational training shall count towards the working hours.

(4) Juveniles undergoing training shall in principle enjoy the same rights as employees. The amount of their remuneration shall be fixed according to the amount of work performed.

Art. 35: Rights of handicapped employees

(1) The European Communities and the Member States shall adopt appropriate measures to enable handicapped persons to undergo vocational training in accordance with their abilities.

(2) As long as the unemployment rate among the handicapped is higher than that among the non-handicapped, employers must, in accordance with the more detailed provisions of national law, fill a certain percentage of their jobs with handicapped persons.

(3) Handicapped persons shall be employed in accordance with their abilities. They shall enjoy increased protection against dismissal.

(4) For handicapped persons who are not available to the general labor market, occupations protected against competition shall be established.

Art. 36: Rights of older employees

(1) Higher age shall not lead to discrimination in employment.

(2) As long as the unemployment rate among employees older than 50 is higher than the average rate for all employees, the Member States shall be obliged to provide either for increased protection against dismissal or for wage subsidies for employing this group of persons.

(3) The Member States can permit employment relationships to end when a particular age is reached, provided that the payment of an adequate old-age pension is insured.

(4) The amount of the old-age pension shall be determined in accordance with the objectives of Art. 29 (2).

Art. 37: Rights of persons in atypical employment

(1) The protection guaranteed in Art. 19 shall also be enjoyed by part-time workers and employees on fixed-term contracts of employment.

(2) Part-time workers shall in particular be entitled to equal pay for equal work. They must not be employed for less than 3 hours per day. The time on standby, together with the work actually per-

formed, must not exceed 40 hours per week and shall be remunerated at 50 percent of the collectively agreed wage.
(3) Fixed-term contracts of employment shall only be permissible for those standing in for absent employees and for reasons connected with the person of the employee.
(4) Loan employment shall be prohibited.

Art. 38: Right to social security
(1) The Member States shall be obliged to maintain a system of social security that protects employees in the event of sickness, old age and invalidity, and also their surviving dependants.
(2) Every employee shall have access to this system unless he appears not to be in need of protection, because of his high income or because of alternative security that is not derived from other persons.
(3) The authorities responsible for social security shall enjoy self-administration within the framework of the law; the two sides of industry shall be enabled to participate in decision-making.
(4) Social security shall be financed by contributions from employers and employees and, to an appropriate extent, from tax revenue.

Art. 39: Right to unemployment insurance
(1) All employees shall be insured against unemployment.
(2) The benefits in unemployment insurance must amount to at least 60 percent of the net remuneration which the employee received in the last 4 weeks before becoming unemployed. Benefits granted for lengthy periods of time shall be converted and included; overtime shall not be taken into account.
(3) The benefits shall be granted for as long as the unemployed person is willing and able to accept a reasonable job and social insurance does not provide security.
(4) The Member States can make continued benefits in the event of unemployment lasting longer than 1 year dependent on the need of the person entitled.

Art. 40: Rights of the self-employed
(1) Anyone who can decide freely on his working conditions but is nevertheless economically dependent on another person shall be entitled to be treated no worse than comparable employees.
(2) The Member States may implement this principle by
- either making this group of persons in general subject to their labor and social law, or

- declaring individual parts of their labor and social law to be applicable, and at the same time providing for their remuneration to be an appropriate percentage higher than the collectively agreed wage for comparable work, or
- providing for the remuneration to be such a high percentage above the collectively agreed wage for comparable work that this provides adequate compensation for all the risks to be borne by the self-employed person.

(3) The European Communities and the Member States shall endeavor step by step to extend the protection provided for in Arts. 26, 27, 29, 30, 32, 38 and 39 also to those self-employed persons who employ not more than 5 employees.

Art. 41: Rights in the case of illegal employment

(1) Anyone who performs work in paid employment and thereby infringes valid law can claim the same entitlements that would have been derived from the same work if the law had been observed.
(2) The European Communities and the Member States shall adopt further measures in order to rule out any form of illegal employment.

D. Asserting rights

Art. 42: Accountability of the Community and the Member States

(1) Where the fundamental rights guaranteed above merely create obligations to pursue certain objectives, the European Communities and the Member States shall submit a report every year on the status of their efforts.
(2) Upon request, a copy is sent free of charge to every citizen.

Art. 43: Action by the Commission or a Member State

If a Member States infringes the obligations imposed on it by this Act, it shall be possible to bring the matter before the Court of Justice of the European Communities subject to the provisions of Arts. 169 to 171 EEC Treaty.

Art. 44: Action by an individual

(1) Anyone can apply to the courts of the Member States to assert the rights guaranteed by this Act; these courts in turn shall request a ruling of the Court of Justice of the European Communities according to the more detailed provisions of Art. 177 EEC Treaty.
(2) If a national court infringes Art. 177 para. 3 EEC Treaty, the per-

son affected can apply direct to the Court of Justice of the European Communities. The latter shall be authorized to pass judgment on the matter itself.

Art. 45: Legal action by an association
(1) The rights under Arts. 19 to 41 can be asserted in court by the trade union to which the person concerned belongs. The same shall apply if the rights under Arts. 4 to 6, 8, 9, 11 (3), 12 (3), 13, 16 or 18 are infringed during the performance of work in paid employment.
(2) Nothing in this shall affect Art. 5 (3) and Art. 6 (3).

Art. 46: Awarding of contracts and subsidies
Public contracts and subsidies may only be awarded by the European Communities and the Member States to those enterprises which fully observe this present Act.

Art. 47: Prohibition of discrimination
The exercise of the rights guaranteed above must not lead to discrimination. This shall also apply even if an employee temporarily withholds his labor until the employer ceases infringing these rights.

E. Entry into force and publication

Art. 48: Entry into force
This Act shall enter into force on 14 July 1989. Any laws of the European Communities or of the Member States that contradict it shall become invalid at the same point in time.

Art. 49: Publication
(1) The present Act shall be published in the Official Journal of the European Communities.
(2) After its entry into force, its wording shall be publicly displayed for one year; unless the Member States lay down something different, this shall be a matter for the local authorities.

EXPLANATORY NOTES ON THE PROPOSED TEXT

Preliminary remarks

The following brief explanatory notes are intended to make clear what was intended and to prevent misunderstandings. In addition, it is intended that the origins of individual provisions in the national constitutions should be made clear by corresponding references. In this connection, we have based ourselves on the available German translation.[255] With regard to English law, where there is no written constitution, the legal literature has been taken into account.[256]

The preamble

The content of the preamble contains a new accent in that human rights are not regarded as the precondition for all other goods, but on the contrary, that the existence of a specific state of nature and society is understood as the precondition for the possibility of realizing human rights.

As to the rest, a preamble is found in the Irish, French, Spanish and Portuguese Constitutions and in the German Basic Law.

Art. 1

Art. 1 is modeled on Art. 4 (1) of the draft constitution of the European Parliament.[257] In its reference to human dignity it agrees, inter alia, with Art. 1 (1) German Basic Law, and also with Art. 2 para. 1 of the Greek Constitution, Art. 1 of the Portuguese and Art. 10 para. 1 of the Spanish Constitutions.

Fundamental rights are regarded as human rights, not as rights that are restricted to a state's own nationals. An exception applies to the right to work under Art. 11, which is designed as a right of the Community citizens.

The acknowledgement of the European Convention for the Protection of Human Rights incorporates the traditional stock of human rights into Community law, and thus constitutes a safety net to catch all those – albeit not very frequent – cases in which the Community intervenes in the citizen's sphere of liberty by positive action. One

[255] Die Verfassungen der EG-Mitgliedstaaten (The Constitutions of the EC Member States). Texts with an introduction and index by Prof. Dr. Adolf Kimmel, Würzburg University, Munich, valid as of 1 July 1987.

[256] Loewenstein, Staatsrecht und Staatspraxis von Großbritannien (Constitutional Law and Constitutional Practice in the United Kingdom), vol. II, Berlin–Heidelberg–New York 1967; Wade/Bradley, Constitutional and Administrative Law, Tenth Edition, by A. W. Bradley, London and New York 1986.

[257] Reproduced in Section 1 IV above.

might think in this connection of competition and agricultural policy, and especially of its legal relations with its own civil servants. No reference to the additional protocols was necessary, since the rights mentioned there have either been expressly secured by the present Charter, or are not thematically relevant.

Art. 2

The provision makes it clear that these fundamental rights are standards which bind the European Communities in the same manner as the individual Member States. Models can be found in Arts. 9 para. 1 and 53 para. 1 of the Spanish Constitution, in Art. 18 para. 1 of the Portuguese Constitution and Art. 1 (3) of the German Basic Law. The commitment to guaranteeing the essential substance corresponds in addition to the decisions of the Court of Justice of the European Communities[258] and to Art. 26 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989, European Fundamental Rights Journal (EuGRZ) 1989, 207.

The principle of respecting the competences of the Member States makes it advisable expressly to emphasize that the Fundamental Rights Act is not intended to produce a shift of competences. Except where the Act itself lays down substantive regulations, the implementation and further development of fundamental rights is a matter for the Member States.

Where the fundamental rights do not refer to specific actions which the Community or Member States must perform or refrain from performing, but leave open (political) room for maneuver, this does not rule out the possibility of obligations. In such cases, these are restricted to the necessity of adopting at least some measures that are orientated towards the program laid down and to insuring that no inappropriate considerations play a role in this context.

The Act refrains from making a general statement on the effect of fundamental rights against private parties. As is made clear not least by the decisions of the European Commission on Human Rights and the European Court of Human Rights[259], it will in many cases be up to the (national) legislator to mediate between the colliding spheres of fundamental rights of individual citizens. It is expressly emphasized in Art. 18 that social and economic power must not be used to hinder or prevent others from exercising their fundamental rights; the validity of fundamental rights in employment relationships affects Art. 28 in particular.

[258] ECJ Collection 1974, p. 507 (in re Nold).

[259] Survey in Frowein/Peukert, EMRK-Kommentar (Commentary on the European Human Rights Commission), Art. 1, marg. notes 9 et seq.

Art. 3

The provision of para. 1 is modeled essentially on Art. 142 German Basic Law; it attempts to avoid the misunderstandings which are possible in that Article with regard to more extensive rights. In substantive terms, Art. 27 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989 (EuGRZ 1989, 207) coincides with this Article.

Para. 2 contains a regulation protecting the status quo, which not only excludes the possibility of dismantling rights, but which would, for example, also prohibit facilitating the escape from participation rights by creating a European company statute that did not include participation.

Art. 4

There are numerous parallels to the provision of para. 1 in national constitutional law; reference can be made to Art. 11 of the Netherlands Constitution, Arts. 24 and 25 of the Portuguese, Art. 21, para. 3 of the Greek, Art. 32 para. 1 of the Italian and Arts. 15 and 43 of the Spanish Constitutions.

The provision of para. 2 draws the necessary consequences from para. 1 for the area of jurisdiction of the European Communities. No provision of this kind exists so far in the national constitutions, but Art. 41 para. 2 of the Italian Constitution, for example, restricts the initiative of the private economy in such a way "that it (must) not be exercised contrary to the public interest or in a manner that harms the safety, liberty and dignity of man." Corresponding rules are far more common on the level of simple laws; the German Law on Equipment Safety[260] is based on a corresponding consideration. Ideas such as those expressed in para. 3 are playing an ever more important role in the context of environmental and building law.

There is a parallel to para. 4 in Art. 64 para. 2 of the Portuguese Constitution and Art. 32 para. 1 of the Italian Constitution.

Art. 5

Environmental protection has been expressly recognized in the Italian Constitution and in various more recent constitutions. Art. 9 para. 2 of the Italian Constitution lays down:

> "The Republic shall protect the countryside and the historical and artistic heritage of the nation."

Art. 21 of the Netherlands Constitution lays down:

> "The State and other corporations under public law shall insure

[260] Gerätesicherheitsgesetz of 30 August 1980, BGBl (Federal Gazette) I, p. 1432.

that the country is inhabitable and that the environment is protected and improved."

A more detailed regulation can be found in the Spanish Constitution, where it says in Art. 45:

(1) All persons shall be entitled to enjoy an environment that is beneficial to the development of their personalities, and shall be obliged to preserve it.

(2) The public authorities shall monitor the reasonable use of all natural resources with the aim of protecting and improving the quality of life and of preserving and restoring the environment. In the process, they will rely on the indispensable solidarity of the community.

(3) For infringements of the provisions of the preceding paragraph, the law shall provide for sanctions under criminal law or, where appropriate, administrative penalties, and the obligation to repair the damage caused."

A particularly far-reaching regulation can be found in the Portuguese Constitution, where it says in Art. 66:

"(1) All persons shall have a right to a healthy and ecologically balanced environment commensurate with human dignity, and shall be obliged to take care that it is preserved.

(2) It shall be task of the State to employ appropriate bodies, to appeal to the population and to support initiatives of the population, in order:

a) to prevent and to monitor environmental pollution and its effects, together with harmful forms of erosion;

b) to introduce a regional planning procedure in the entire national territory providing for the creation of biologically balanced landscapes;

c) to create and to extend nature conservation areas, natural parks and parks for recreation, and to classify landscapes and places according to the degree of protection they need, in order in this way to guarantee the preservation of nature and the maintenance of cultural values of historical or artistic interest;

d) to promote an economic use of natural resources that insures their regenerative capacity and secures the ecological balance.

(3) All persons shall be entitled, subject to the laws, to support the prevention or removal of causes of the deterioration of the environment, and in cases of direct harm to demand appropriate compensation.

(4) The state shall promote rapid advances in improving the quality of life of all Portuguese."

With regard to the detailed nature of the program, the formulation proposed does not go so far as the Portuguese Constitution, but in paras. 2 and 3 it lays especial emphasis on means of implementation. In addition, we could draw attention to Art. 24 para. 1 of the Greek Constitution, where it says: "It shall be the duty of the State to protect the natural and cultural environment. The State shall be obliged to adopt special preventive or restrictive measures to preserve it. Particulars on the protection of forests and other wooded areas shall be laid down by a law. The diversion of public forests and public wooded areas from their intended use shall be prohibited unless their use for agriculture or for other purposes required in the public interest should be necessary from the point of view of the national economy."

A general guarantee can also be found in Art. 24 para. 1 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989, (EuGRZ 1989, 206).

Art. 6

There is no model for this provision in the constitutional law of the Member States; the reason is the novelty of the endangering situation. Sentence 1 of para. 1 contains the fundamental principle, which, for example, also prevents the genotype analysis of employees. Sentence 2 and para. 2 contain important practical cases. Since we are concerned with possible technological consequences, there are no problems in numbering the corrections envisaged here among the fundamental social rights.

Art. 7

The principle expressed in this provision is shared by all Member States; its practical implementation varies according to the socio-economic state of development. An express right to a home is contained in Art. 21 para. 4 of the Greek Constitution, Art. 65 of the Portuguese and Art. 47 of the Spanish Constitutions. An entitlement to social security assistance is guaranteed in Art. 75 para. 5 of the Danish Constitution, in Art. 20 para. 3 of the Netherlands Constitution and in Art. 38 para. 1 of the Italian Constitution. A "right to adequate means for subsistence" is provided for in Art. 45 para. 2a of the Irish Constitution, but its realization is a matter for parliament alone, not for the courts. Para. 9 of the Preamble to the 1946 French Constitution, which is referred to in the Preamble to the 1958 Constitution, expressly guarantees "material security" for all. In the Federal Republic of Germany, there is no such express constitutional guarantee, but

the same nevertheless applies on the basis of the decisions of the Federal Administrative Court and on the basis of the Federal Law on Social Security.

Art. 8

Corresponding provisions can be found in Arts. 2 and 3 of the Italian Constitution, in para. 8 of the Preamble to the French Constitution, in Art. 5 para. 1 of the Greek Constitution and Art. 10 of the Spanish Constitution. Finally, we can refer to Art. 2 (1) of the German Basic Law.

The "fundamental right to a safety net" contained in Art. 8 is necessary to insure the complete protection of liberty. The European Human Rights Convention lacks any corresponding guarantee, so that certain forms of state intervention cannot be covered.

Art. 9

The provision lays down a series of elementary principles of data protection law, but it leaves it to the Member States to decide on numerous individual questions, such as the right to have incorrect data corrected, laying down the purposes of the data collection in detail, etc.

Data protection has been mentioned in three constitutions. Art. 18 para. 4 of the Spanish Constitution lays down: "The law restricts the use of data processing in order to guarantee the honor and the personal and family privacy of the citizens, and the full exercise of their rights."

Art. 10 of the Netherlands Constitution goes somewhat further, laying down: "(1) All persons, notwithstanding restrictions imposed by law or on the basis of a law, shall have the right to preservation of their private sphere. (2) The protection of the private sphere shall be regulated by law in connection with the storage and the passing on of personal data. (3) People's entitlement to inspect the data collected on them and their use, and to the correction of such data shall be regulated by law."

In Portuguese law, apart from the basic provision of Art. 26 para. 2, mention should be made of Art. 35 of the Constitution in particular, where it says: "(1) All citizens shall have the right to obtain information about the entries concerning them in files produced by machine, and on the application purpose of the data, and to demand that these data be corrected and updated. (2) The access of third parties to archives relating to persons and corresponding interconnections shall be prohibited, as shall the cross-border exchange of data, notwithstanding the exceptions provided for in the law. (3) Electronic data

processing shall not be used to process data about philosophical or political convictions, about membership in parties or trade unions, about religious denominations or private life; an exception to this provision is the processing of statistical data which are not personally identifiable. (4) The definition of personal data for the purposes of electronic data processing shall be laid down by law. (5) It shall be prohibited to assign a nationally uniform personal code to the citizens."

Neither the subject matter nor the degree of concreteness of the proposed regulation thus differs markedly from what is already generally known. Art. 18 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989 (EuGRZ 1989, 206) is restricted to a general right of access to information, which is not dependent on EDP processing.

Art. 10

A more or less extensive right to education is guaranteed in Denmark (Art. 76 of the Constitution), France (para. 11 of the Preamble), Greece (Art. 16 paras. 2 et seq. of the Constitution), Ireland (Art. 42 of the Constitution), Italy (Art. 34 of the Constitution), Luxembourg (Art. 23 of the Constitution), the Netherlands (Art. 23 of the Constitution), Portugal (Art. 73 para. 1 of the Constitution) and Spain (Art. 27 of the Constitution). The European Parliament also included this right in its declaration of fundamental rights of 12 April 1989, (EuGRZ 1989, 206) (Art. 12 para. 2: vocational training, Art. 16: education in general).

Equal rights for nationals of other Member States and their families are derived from Art. 16. Equal opportunities in education are provided for in particular by para. 4, but also by the provision of Art. 12 (4).

Art. 11

Only in the German Basic Law and in the United Kingdom is the right to work not guaranteed; all other constitutions contain a more or less clear acknowledgement in this respect. Reference can be made to Denmark (Arts. 74, 75 para. 1 of the Const.), France (para. 3 of the Preamble), Greece (Art. 22 para. 1 of the Const.), Italy (Art. 4 para. 1 of the Const.), Ireland (Art. 45 para. 2a of the Const.), Luxembourg (Art. 11 para. 4 of the Const.), Spain (Art. 35 para. 1, Art. 40 para. 1 of the Const.) and Portugal (Art. 47, Art. 49 paras. 1 and 3 of the Const.). The aim of full employment has also been mentioned in Art. 19 of the Netherlands Constitution.

The proposed provision differs somewhat from the model of these

provisions in that paid employment and work in a self-employed capacity are in principle treated equally, and in that non-gainful work is also recognized in principle as being of equal value. Para. 4 attempts to protect the objective of full employment against relativization by other objectives of economic policy. It will admittedly be difficult to have this point monitored by the courts; political supervision in the context of Art. 42 will therefore be of greater importance.

The declaration of fundamental rights adopted by the European Parliament on 12 April 1989, (EuGRZ 1989, 204) is restricted in Art. 12 to the right to choose freely an occupation and a place of work, and adds the right that no one shall be arbitrarily refused work.

Art. 12

The national constitutional provisions in West Germany (Art. 6 Basic Law), France (paras. 8 and 9 of the Preamble), Greece (Art. 9 para. 1 clause 2, Art. 21 para. 1 of the Const.), Ireland (Art. 41 of the Const.), Italy (Arts. 29 to 31 of the Const.), Luxembourg (Art. 11 para. 3 of the Const.), Portugal (Arts. 36 and 67 of the Const.) and Spain (Art. 39 of the Const.) in some cases go substantially further than the scope of the guarantees proposed here. Precisely in the field of family policy, however, the Member States must be left with especially great room for maneuver.

So far, there is no model in the constitutional law of the Member States for the protection of "life companionships regarded as permanent." It remains to be seen whether it will be accepted. Apart from that, para. 1 certainly admits of more emphasis on the protection of marriage and the family, since there is no suggestion that all the forms of companionship mentioned should be protected "in the same manner."

Art. 13

Property has been granted protection in all national legal systems in a more or less emphatic form. This applies to Belgium (Art. 11 of the Const.), Denmark (Art. 73 of the Const.), Germany (Art. 14 Basic Law), France (para. 7 of the Preamble), Greece (Art. 17 para. 1 of the Const.), Italy (Arts. 42–44 of the Const.), Ireland (Art. 40 para. 3, Art. 43 of the Const.), Luxembourg (Art. 16 of the Const.), the Netherlands (Art. 14 of the Const.), Portugal (Art. 62 of the Const.) and Spain (Art. 33 of the Const.). In the United Kingdom, too, the same situation applies on the basis of common law.[260a]

The place of the "social obligation" is taken by the duty of solidar-

[260a] Wade/Bradley, loc. cit., pp. 497 et seq.

ity under Art. 18 (3). This constitutes a shift of emphasis in so far as restrictions on property must be justified on the basis of the concrete realization of the fundamental rights of other individuals.

The guarantee is restricted to "personal property" which a person uses himself, and which can also consist of a craftsman's or farmer's means of production. With regard to larger items of property, the Community is not competent, pursuant to Art. 222 EEC Treaty; in this respect, the Member States' exclusive scope for decision-making is also intended to remain unprejudiced in future.

Art. 14

So far, consumer protection has only been mentioned in the constitutions of Portugal (Art. 110) and Spain (Art. 51), but it has also been included in the declaration of fundamental rights adopted by the European Parliament on 12 April 1989, (EuGRZ 1989, 206) (Art. 24 para. 1). The proposed provision contains a series of fundamental principles, but it leaves the more detailed specifications to secondary Community law and to the Member States.

Art. 15

The establishment of full freedom of movement within the Community improves the legal position in particular of those citizens who are not looking for gainful employment in another Member State, and who are not among the dependants of someone working there, either. The group of persons covered additionally is therefore not as large as might perhaps be assumed at first. In Art. 8 para. 1 of its declaration of 12 April 1989, (EuGRZ 1989, 206), the European Parliament provides for full freedom of movement.

The prohibition of expulsion constitutes a major step on the way to creating European civil rights. The freedom to leave the territory is guaranteed for "everyone," i. e. also for nationals of third states. The freedom of entry, on the other hand, is restricted to nationals of the Member States. On the question of the entry of persons from third states, see Art. 17.

Art. 16

Para. 1 contains a general legal principle that is recognized in the Member States.

In para. 2, the prohibition of discrimination on the grounds of membership of a different Member State has deliberately been placed at the beginning. The other prohibitions of discrimination are substantially recognized; the reference to the "personal way of life" concerns people of no fixed abode, for example, or those with atypi-

cal sexual inclinations. The special regulation on the grounds of language corresponds to present EC labor law.

Effective social equality as required by para. 3 is foreign to German law as a principle. It is, however, found in para. 8 of the Preamble to the French Constitution, in Art. 25 para. 1 of the Greek Constitution, in Art. 3 clause 2 of the Italian and in Art. 9 para. 2 of the Spanish Constitutions.

Para. 4 is concerned with positive discrimination, as it is known. With regard to women, it constitutes a novelty, but there are corresponding provisions in Belgium in favor of ethnic groups (Art. 59 bis and ter of the Constitution), in the Spanish Basque Country[261] and in South Tyrol.[262] The Community would be ill advised to sacrifice to rigid egalitarianism these rules, which have often only been achieved after hard struggles.

Art. 17

The right of asylum is by no means only recognized in Art. 16 (2) German Basic Law. It can also be found, for example, in para. 4 of the Preamble to the French Constitution, as a prohibition on extradition in Art. 5 para. 2 clause 3 of the Greek Constitution, in Art. 10 para. 3 of the Italian, in Art. 13 para. 4 of the Spanish and Art. 33 para. 5 of the Portuguese Constitutions. A common treatment of the right of asylum is indispensable if only for reasons of labor market policy. Since all Member States have ratified the refugee conventions referred to, it was logical to integrate them into Community law.

With regard to nationals of third states and stateless persons, a regulation is proposed that does not in principle encroach on the status quo, but which opens up the possibility of expelling persons residing illegally in a Member State and of regulating future practice on entry in a uniform manner.

Art. 18

The principle of solidarity can also be found in some cases in the constitutions of the Member States, e.g. in para. 10 of the Preamble to the French Constitution (restricted to bearing burdens in the event of na-

[261] Cf., for example, the greater negotiating rights of regional organizations in Art. 87 of the Spanish Employees' Statute; reproduced in German translation in Däubler (Ed.), Arbeitsbeziehungen in Spanien. Geschichte – Ideologien – Rechtsnormen (Labor Relations in Spain. History – Ideology – Legal Rules), Frankfurt/Main 1982.

[262] On this point, see Runggaldier, Das Vorrangrecht der in Südtirol ansässigen Arbeitnehmer bei der Arbeitsvermittlung im Lichte des Rechts der Europäischen Gemeinschaft (The Priority Rights of Employees Resident in South Tyrol in Job Placement in the Light of the Law of the European Communities), Saarbrücken 1989.

tional emergencies), in Art. 45 para. 2 of the Spanish Constitution (relating to environment protection), and in Arts. 21 para. 2 and 25 para. 4 of the Greek Constitution.

Para. 3 imposes an obligation on persons holding social power to make use of the latter in a manner that "does not harm fundamental rights." They are not, however, required to renounce substantial interests of their own.

Art. 19

The provision has a certain model in Art. 157 of the Weimar Reich Constitution, where it says: "(1) Labor shall enjoy the special protection of the Reich. (2) The Reich shall create a uniform labor law."

The fact that a differentiation is made in all the countries of the Community between employment relationships makes it necessary to emphasize that all forms of paid employment are in need of protection. In individual cases, the relevant rules can certainly differ from one another, which is why we speak of "comparable," not "uniform" protection. In the currently valid constitutions of the Member States, there is a similar value decision in Art. 35 para. 1 of the Italian Constitution, according to the which the Republic protects "work in all its forms and applications." The requirement contained in Art. 35 para. 2 of the Spanish Constitution, namely that an employee statute be issued, is likewise connected with the same basic idea.

Art. 20

The freedom of coalition, which is recognized in all Member States, is expressly extended to the formation of employers' associations. Trade unions and employers' associations must possess the degree of autonomy provided for in para. 2. The legal situation existing in the United Kingdom is corrected somewhat in this way[263], though not the situation in Italy, since the registration provided for in Art. 39 para. 1 of the Constitution exists only on paper so far. Cross-border activities are conceivable and meaningful not only in the form of establishing umbrella organizations, but also in the form of a membership organization as such. Para. 4 draws the legal consequence from this.

A ban on discrimination results both from Art. 16 and from Art. 28, so that it would be superfluous to mention it specifically at this point.

Art. 21

The right to collective bargaining is recognized in all Member States, though it is only mentioned expressly in the constitution in Italy (Art.

[263] See Wedderburn, The Worker and the Law, Third Edition, London 1986, pp. 718 et seq., pp 835 et seq.

39), Portugal (Art. 57) and Spain (Art. 37 para. 1). The European Parliament included the right to "negotiations between employers and employees" in its declaration of fundamental rights adopted on 12 April 1989, (Art. 14 para. 1 – EuGRZ 1989, 206).

The emphasis given to European collective agreements in para. 4 picks up the valid regulation of Art. 118b EEC Treaty. No more precise statement can be made about the legal status of the agreements concluded. It does nevertheless become clear from the systematic context and the general legal principles referred to that European collective agreements are also indispensable in the context of para. 3.

Art. 22

The draft deliberately refrains from laying down a specific model for co-determination; nor is it intended that Member States should be placed in a situation in which they must choose between models that have been laid down definitively. National traditions are to be taken into account in Community law; they can be developed further in the exclusive responsibility of the Member States. Art. 22 therefore merely contains three general principles:

Para. 1 provides for "participation" in the decisions made in the business and the enterprise, which can extend from a right to be heard and a right of consultation, via co-determination, even to forms of self-administration. It is also left up to the Member States whether they wish to provide for trade union organs or for representatives elected by the entire staff.

Para. 2 takes more recent developments into account, according to which decisions are no longer made in the employer's enterprise, but by the state authorities (example: conditions attached to subsidies) or in other companies (example: calling, in the case of on-line production). The employees' participation must not disregard these decision-making centers ab initio.

Finally, para. 3 picks up the principle contained in Art. 3 (2), according to which the Community must not curtail existing participation rights. What is excluded in particular is offering a company statute under European law which can be used to "escape" from existing forms of workers' participation.

Art. 23

Guaranteeing the right to strike in the constitution goes back to regulations in France (para. 5 of the Preamble), Greece (Art. 23 para. 2 of the Constitution), Italy (Art. 40 of the Constitution), Portugal (Art. 58 of the Constitution) and Spain (Art. 28 para. 2 and Art. 37 para. 2 of the Constitution). The wording is taken from Art. 6 No. 4 of the Euro-

pean Social Charter, which has been ratified in 10 of the 12 Member States. A similar formulation can be found in Art. 14 para. 2 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989, (EuGRZ 1989, 206).

The cross-border solidarity strike, which is expressly mentioned in para. 1, sentence 2, is intended to make it easier to represent interests across borders, and thus to make a contribution to the creation of a social space structured according to uniform principles.

Para. 3 draws consequences from the discussion in Germany on Section 116 AFG (Law to Promote Employment). It is up to the Member States to lay down how the "substitute wage benefits" are to be regulated. All that is excluded is that they should be identical to the entitlements under Art. 7 (2), since this would not constitute compensation for the lost wage entitlement.

Art. 24

This provision is the result of reflections on social policy that have so far not been included in constitutional texts. The written form of a contract of employment and the criterion of fairness with regard to the contents are of considerable importance, however, so that it appears justifiable to guarantee them expressly. Furthermore, the development in the Member States is also going in the direction of the regulation proposed here.

Art. 25

The provision has a certain parallel only in Art. 60 para. 1b of the Portuguese Constitution; para. 1, moreover, is modeled on Section 75 para. 2 of the German Works Constitution Act. It constitutes a further development of labor protection, which, in view of the universal validity of Art. 4, does not require a specific regulation. What is important is that para. 2 sees the organization of work not only as a potential source of danger for the employee, but also as a means for helping the individual's abilities to develop. In this way, the acknowledgement of the need for a development of the economy and technology contained in the Preamble is taken a logical step further. Since state interventions in the field of working conditions are largely impossible – if only because of the different conditions prevailing in the various companies – para. 3 expressly provides for priority for autonomous arrangements.

Art. 26

This provision takes up not only a traditional subject of employment protection, but also a central item of discussion in labor market policy.

Para. 1 contains a central regulation concerning the duration and location of working hours, both of which can constitute excessive interference with the employee's privacy.

Para. 2 permits general deviations from the 40-hour week for a transitional period. Similarly, it will probably not be impossible to create flexibility within certain limits. This also applies to the location of working hours referred to in para. 4.

The regulation of Sunday work under para. 5 is orientated towards Art. 140 German Basic Law, together with Art. 139 WRV. Art. 2 No. 5 of the European Social Charter likewise goes in the same direction, though it refrains from specifying the exceptions in more detail. Apart from that, mention should be made of Art. 36 para. 2 of the Italian Constitution and Art. 60 para. 1d of the Portuguese Constitution. Sunday work should not result in a "locational advantage," any more than night work should, which is why the two forms of work are removed from competition by the regulation proposed here.

Art. 27

The "right to holidays" is one of the classic fundamental social rights. It is referred to, inter alia, in Art. 36 para. 2 of the Italian Constitution, Art. 60 para. 1d of the Portuguese and Art. 40 para. 2 of the Spanish Constitutions. Art. 2 No. 3 ESC proceeds from an annual recreational holiday of at least 2 weeks. Art. 3 para. 3 of ILO Convention No. 132 guarantees a minimum holiday of 3 weeks, which appears acceptable to all Member States. Compliance with the obligation under para. 3 will primarily have to be enforced in the form of political supervision under Art. 42. Taking other forms of paid release into account is intended to prevent an unfair burden contrary to the rules of competition. Here too, it had to be emphasized expressly that collective bargaining arrangements should take priority (para. 2).

Art. 28

Para. 1 gives concrete form to the "obligation of solidarity" under Art. 18 (3) and is intended to prevent a "zone of diluted liberty" from arising in an employment relationship. Criticism of one's employer must likewise not lead to sanctions, unless it goes too far and constitutes criminal conduct or leads to the betrayal of trade secrets. While the constitutions of the Member States do in general recognize freedom of expression[264], they do not expressly secure it against dangers to which it may be exposed in the employment relationship. This can

[264] This also applies to the United Kingdom. See Wade/Bradley, loc. cit., pp. 501 et seq.

be contrasted with Art. 118 para. 1 of the Weimar Reich Constitution, for example, which laid down: "Every German shall have the right freely to express his opinion in speech, writing, print, images or in any other manner within the limits set by general laws. No labor or employment relationship may obstruct his exercise of this right, and no one may discriminate against him if he makes use of this right."

Para. 2 is a consequence of fairly recent discussions in West Germany, but it only concerns the situation in which the conflict of conscience was not "foreseeable." Anyone who, for example, was aware of his employer's particular objectives, e.g. in the armaments sector, at the time when he was taken on cannot later refuse his labor by pleading his conscience.

Freedom of science is guaranteed in half the national constitutions, either expressly or implicitly. Apart from Art. 5 (3) German Basic Law, reference can be made to Art. 16 para. 1 of the Greek Constitution, Art. 9 para. 1 and Art. 33 para. 1 of the Italian, Arts. 42 para. 1 and 73 para. 4 of the Portuguese and Art. 20 para. 1b and Art. 44 para. 2 of the Spanish Constitution. There is, however, no specification with regard to scientists working in an employment relationship. This is unjustified, since the majority of (natural) scientists do not work at universities, but in industry. The formulation proposed tries also to take the justified interests of the employers into account.

Art. 29

Corresponding provisions can be found in Italy (Art. 36 of the Constitution), in Portugal (Art. 60 para. 1a and Art. 60 para. 2a) and in Spain (Art. 35 para. 1 of the Constitution). The relatively general formulation leaves sufficient room for maneuver for the two sides of industry and for the state incomes policy. It is left up to the national courts whether they wish to derive from Art. 29 a right to payment on the collectively agreed scale also for those employees who do not belong to the associations concluding the collective agreement. A comparable guarantee to that provided in para. 2 can also be found in Art. 13 para. 2 of the declaration of fundamental rights adopted by the European Parliament on 12 April 1989, (EuGRZ 1989, 206).

Art. 30

The entitlement to further training and retraining is linked to a specific company situation; it will acquire practical importance especially when new technologies are introduced. The limited release provided for in para. 2 will as a rule involve the continued payment of wages or substitute wage benefits, but no binding criteria need to be laid down in this respect on the Community level. In legal disputes,

Art. 30 will at any rate be important in so far as dismissals will be declared invalid unless the obligation at least to provide further training and retraining has been met.

Para. 3 contains a special protective rule for the benefit of the long-term unemployed. Their entitlement to admission forces the Member States and the Community to do more than provide an inadequate minimum range of offers.

Art. 31

Protection against dismissal is not one of the classic fundamental social rights, and is usually discussed, if at all, as a sub-item of the right to work. In the constitutions of the Member States, the only reference found is in Art. 53 of the Portuguese Constitution, where it says: "Workers shall be guaranteed job security; dismissals for no just reason or for political or ideological reasons shall be inadmissible."

In addition, reference can be made to Art. 4 No. 4 ESC, which guarantees an appropriate period of notice.

Because of its great practical importance, protection against dismissal ought to be mentioned in the Fundamental Rights Act.

Para. 1 and para. 2 correspond substantially to the current legal situation in the Member States. However, in rare exceptional cases, German law, for example, permits termination without notice without any serious dereliction of duties. Nor is an adequate reason for dismissal in all cases dependent on an overriding interest on the part of the employer. In neither case, however, does this constitute a substantial alteration of the existing legal situation in the Member States.

The obligation in para. 3 to grant severance pay goes further than current German law, though there is a corresponding regulation, especially in France and Italy. The fact that small businesses are excluded under para. 4 has a parallel in Art. 2 No. 5 of the ILO Convention No. 158. The limit drawn at 5 employees is also to be seen in the light of Art. 40 (3); very small businesses are, for their part, classed as being in need of protection.

Art. 32

The rules concerning equal rights for men and women essentially reflect the present state of development of Community law. Only para. 4 constitutes a clarification as regards the decisions of the ECJ. The sanction contained in para. 3, sentence 2, is taken from the decisions of the German labor courts.[265] In this respect, the national constitutions contain less specific provisions. Attention should be drawn

[265] ArbG Hamm, DB 1984, p. 2700; ArbG Hamburg, DB 1985, p. 1402.

to para. 1 of the Preamble to the French Constitution, Arts. 4 para. 2 and 22 para. 1 clause 2 of the Greek Constitution, and Art. 37 para. 1 of the Italian Constitution. As a rule, the only subject is equal pay, not equal access to all jobs.

Para. 5 contains central criteria for the protection of pregnant women, which are substantially recognized in the Member States. With regard to educational leave, corresponding initiatives by the EC Commission[266] are being elaborated.

Art. 33

Paras. 1 and 2 repeat the principle of Art. 16, but at the same time, they also maintain the reservation in favor of the scope of sovereignty. In view of the universal freedom of movement granted by Art. 15, the problem which still exists in the current law, namely the right of residence for members of a migrant worker's family and other derived rights, no longer presents itself. Where dependants possess the nationality of a third state, their rights are determined according to para. 4 and also according to Art. 15.

Para. 3 creates the obligation to deal with the law of social and unemployment insurance in such a way that insurance periods spent abroad are treated in the same way as those spent in the home country. For the granting of benefits, it can no longer play any role, in the light of Art. 15, which Member State the insured person is resident in.

Arts. 34 to 36

These three provisions attempt to improve the position of three problem groups on the labor market.

Under Art. 34 (4) juveniles undergoing training possess all the rights of employees in principle, so that they cannot be used as "undercutting competitors" in preference to normal employees.

In connection with the security provided for older employees, old-age pension are also referred to. How this is treated in practice, and in particular what role is to be played by supplementary company pensions schemes, is left to the Member States. Art. 36 (3) simply entitles them to introduce certain age limits with regard to a particular employment; nothing in this prevents the individual from asserting his rights under Art. 11 even at an advanced age. The Fundamental Rights Act provides no foundation whatsoever for universal "compulsory retirement."

[266] Proposed directive on parental leave and leave for family reasons, of 24 November 1983, Official Journal C 333/6 of 9 December 1983, revised version in OJ C 316/7 of 27 November 1984.

Art. 37
The provision refers to the special situation of part-time workers and workers on fixed-term contracts of employment, and provides for a series of protective regulations, so that it gives concrete form to the requirement of Art. 19. If the fact that part-time workers are placed in a worse position also constitutes a form of indirect discrimination on the grounds of sex, Arts. 16 and 32 also apply. If the ban on loan employment contained in para. 4 is not observed, the legal consequences proceed from Art. 41; according to that provision, an employment relationship with the owner of the business where the work is performed comes into existence.

Art. 38
It is often stated in the national constitutions that certain risks are covered by social insurance. We can refer to Art. 22 para. 4 of the Greek Constitution, Art. 38 para. 2 of the Italian, Art. 11 para. 5 of the Luxembourg, Art. 20 para. 2 of the Netherlands, Art. 63 of the Portuguese and Art. 41 of the Spanish Constitutions. The provision proposed takes that a step further in that every employee must be included in social insurance; the exclusion of workers employed on a short-term or minor basis, which is customary in some Member States, can therefore only be maintained where spare-time work is involved.

The question of the extent to which employers and employees participate in the self-administration of social insurance, and the form in which this is done, is left to the Member States. The same applies to financing; for reasons of competition, the only thing that is ruled out is that it is predominantly financed from state funds.

Art. 39
Unemployment insurance covers all employees as a matter of principle. The benefits must reach a minimum level, which is linked to the wage levels prevailing in each individual Member State. The fact that the unlimited duration of benefits is extenuated by the regulation of para. 4 constitutes at the same time an incentive to finance work creation programs, and thus to reduce the burden on unemployment insurance.

Art. 40
This provision breaks virgin ground, and has no parallels in national constitutional law. Para. 1 is concerned with those who are only self-employed on paper, and who, because of their economic dependence, are no less worthy of protection than employees. The charac-

teristic feature of the latter is that they cannot freely determine their working conditions; if any national jurisdiction should define the term "employee" differently, para. 1 would at least serve as a catch-all provision. Para. 3 is concerned in particular with the activity of small craftsmen, tradesmen and farmers, whose working conditions in some cases are substantially worse than those of employees. The entitlement to holidays under Art. 27 can be secured, for example, by financing a stand-in, as is already done in some cases on the basis of mutual assistance.

Art. 41
This provision likewise has no models in national constitutional law, but in view of the large amount of "moonlighting" that is effectively carried out, it appears urgently necessary. Even if it is difficult to obtain precise figures[267], the scale is indeed relevant to the national economy, since it is estimated in Italy and Portugal, for example, to amount to some 20 percent.[268]

Art. 42
The accountability of the Communities and the Member States is the most important political means with which to insure that the programatic objectives contained in this Act are well observed. It may well be expensive to involve the individual citizen, but it will nevertheless prevent the reports from being swamped in the flood of information communicated daily. The right to obtain state publications does have a parallel, for example, in the individual citizen's right to demand a verbatim report of radio or television programs.

Art. 43 and Art. 44
The provision of Art. 44 goes further than the traditional system of legal protection (Art. 43) in that under certain circumstances, the individual is granted the right to appeal to the Court of Justice of the European Communities by means of a kind of non-admission appeal. In the present connection, it was not one of our subjects to examine what additional personnel would be needed by the Court for this purpose.

[267] On this point, see Morin, Schwarzarbeit in Europa ("Illicit Work in Europe"), Soziales Europa, 3/1988, pp. 9 et seq.
[268] See Morin, loc. cit., p. 12.

Arts. 45 to 47
The three provisions contain additional precautions so as to insure that the guaranteed rights take effect. The substantive content of the guarantee is not extended by them; even by means of legal action by an association, it will not be possible, for example, to enforce the adoption of concrete measures to implement Art. 40 (3).

The provisions of Art. 46 are modeled on Art. 36 of the Italian Employees' Statute, according to which state subsidies may only be granted to enterprises that pay the collectively agreed wages.

Arts. 48 and 49
The form of publication is based on No. 18 of the transitional provisions on the Italian Constitution.

I. Purpose of a contribution to the discussion

Formulating a detailed catalog of fundamental rights has not been a customary procedure so far. The Economic and Social Committee restricted itself to mentioning subjects[269], without considering any concrete wording. With its declaration of 12 April 1989[270], the European Parliament did go a considerable step further, but it restricted itself to one partial area of the problems that need solving today: there is no mention of atypical employment relationships, of other forms of work than gainful employment, or of the consequences of information technology and genetic engineering, which are sufficient examples in this respect. In not a few cases, moreover, there is a risk that the idea of providing an initiative will be lost; it is not certain, for example, that the announcement contained in Art. 24 para. 1, namely that the preservation, protection and improvement of the quality of the environment is an "integral part of Community policy," would really be of any importance in reality. Since so little has been done in this field, this can only be seen a priori as a preliminary draft that is intended as a contribution to the discussion.

The subject matter that is put forward for discussion here likewise rules out from the very beginning the possibility of presenting patent solutions which can enter the standardization process more or less without encountering any resistance. The social policy pursued by the 12 Member States differs not only because of specific national traditions, but also in the different political priorities set: even in the conservative camp, there is a broad spectrum in this respect.

If under these circumstances we nevertheless present a concrete proposal, it is with the intention of facilitating the future discussions.

[269] See n. 25 above.
[270] EuGRZ 1989, p. 204.

It can only be of benefit to all concerned if it becomes clear what the "social dimension" of the Internal Market can effectively be. The exchange of relatively benevolent statements and abstract declarations on such matters as "social progress" or "harmonization," which are easy to find consensus on, gives way to a discussion of concrete material problems: do we really want full freedom of movement for employees, priority for employment policy over other objectives of economic policy, or access to social insurance for everyone? It goes without saying that an extraordinarily wide variety of positions are conceivable on this, but the political dispute takes on a new dimension if there is an open discussion on the subject.

In producing the draft, the author was guided by the idea of a far-reaching participation by the working population and of comprehensive social protection. The "concrete utopia" sketched here aims at a Europe in which those who have so far remained without influence and the socially weak can feel at home. The great economic impetus that proceeds from the Internal Market as a growth project should also help social policy to make a great leap forward.

II. Objections with regard to costs and competences

Proposals on the lines of the ones made here are generally objected to on the grounds that they are "too expensive." In the present connection, this can conceal two different aspects. In the first place, it can be a question of protecting businesses against any additional cost burdens, thus ensuring that the employers' side alone is able to decide what is done with the profit from growth. This kind of argument needs contradicting, not only from the fundamental point of view of the social state, but also for economic reasons: in macro-economic terms, social expenditure is anything but unproductive waste. On the other hand, it is legitimate to maintain that the economy of one country and of the EC as a whole cannot bear unlimited burdens. This has been taken into account in the proposal in that the fundamental social rights which involve costs have been designed as binding programs which, and this goes without saying, are only to be implemented within the limits of what is economically feasible. Those guarantees involving a concrete quantification therefore remain within narrow limits. The emphasis is on having recourse to the fundamental social rights guaranteed in the national constitutions, which, moreover, automatically implies a "reservation as to feasibility": the "standards of origin" have likewise been integrated into the context of a national economic order, where they have been given in-

terpretations that are consistent with the functioning of the economic system.

More importance should, on the other hand, be attached to the obvious objection that the granting of fundamental social rights shifts competences from the Member States to the Community. This is correct in that, when they are bindingly anchored in Community law, the Court of Justice of the European Communities decides on the content of what the Member States have to observe in the form of social policy criteria. This, however, lies in the nature of things: if it is the Community's objective not only to open up markets, but also to provide for social corrections, the loss of national sovereignty which this involves must be accepted. A guarantee of fundamental social rights would be a piece of European constitutional legislation; this objective is the declared aim of all "Europeans." Fundamentally, the only dispute can be over the scope; in this respect, the draft has made every effort not to restrict the Member States' room for maneuver more than is necessary. For the further course of the discussion, it might also be useful to point out that the opening up of markets also has far-reaching consequences on the national level, of course, and that it substantially changes the ground rules for national economic policy: why should direct intervention in the grounds of rules of social policy be treated differently from "indirect" intervention via the market itself?

III. Ways towards implementation

The proposal submitted here is intended to lead to a discussion on the content of European social policy. Whether the Community really should go this far (or even further) in environmental protection or in the law of labor disputes can be disputed for very respectable reasons. The main difficulty, of course, lies in the fact that the consequences of standardization within Community law are very difficult to assess – in view of the novelty of the subject matter being regulated, side-effects and remote consequences are conceivable, which cannot be comprehensively fathomed out ab initio. There are also specific implementation problems that will result; it is impossible completely to forecast the judgments of the Court of Justice of the European Communities, which may extend a guarantee, or which could reduce it as well. The recourse to national constitutions is an attempt to restrict the risks that become apparent here: what has been practiced for more than 40 years in Italy, for example, can hardly have the effect in the Community of breaking the bounds of the system.

There still remains the question of the legal nature which a guarantee of fundamental social rights should have. The more limited the legal context and the practical implementation, the less it will be possible to solve the existing problems of legitimacy[271]. Pious hopes instead of firm guarantees might have a boomerang effect and produce an additional case of "European fatigue." The Community would gain decisively in acceptance if it were possible to adopt a binding charter on the lines of the Act of Fundamental Rights proposed here.

[271] See Sect. 3 above.

Bibliography

Anselmann, Norbert: Die Rolle der europäischen Normung bei der Schaffung des europäischen Binnenmarktes, RIW 1986, pp. 936 et seq.

Behrens, Peter: Identitätswahrende Sitzverlegung einer Kapitalgesellschaft von Luxemburg in die Bundesrepublik Deutschland, RIW 1986, pp. 590 et seq.

Betten, Lammy: The right to strike in community law, Amsterdam–New York–Oxford 1985.

Beutler, Bengt: Grundrechtsschutz in: *von der Groeben Hans; von Boeckh, Hans; Thiesing, Jochen; Ehlermann, Claus-Dieter:* Kommentar zum EWG-Vertrag, 3rd ed., Baden-Baden 1983, Vol. 2, pp. 1461 et seq.

Beutler, Bengt; Bieber, Roland; Pipkorn, Jörn; Streil, Jochen: Die Europäische Gemeinschaft – Rechtsordung und Politik, 3rd ed., Baden-Baden 1987.

Bieber, Roland; Dehousse, Renaud; Pinder, John; Weiler, Joseph H. H. (Eds.): 1992: One European Market? A Critical Analysis of the Commission's Internal Market Strategy, Baden-Baden 1988.

Bieber, Roland; Deousse, Renaud; Pinder, John; Weiler, Joseph H. H.: Back to the future: Policy Strategy and Tactics of the White Paper on the Creation of a Single European Market, in: *id.* (Eds.): 1992: One European Market? Baden-Baden 1988, pp. 13 et seq.

Bieber, Roland and *Schwarze, Jürgen:* Verfassungsentwicklung in der Europäischen Gemeinschaft, Baden-Baden 1984.

Bieber, Roland, see *Beutler, Bengt*

Birk, Rolf: Die internationale Zuständigkeit in arbeitsrechtlichen Streitigkeiten nach dem Europäischen Gerichtsstands- und Vollstreckungsübereinkommen, RdA 1983, pp. 143 et seq.

Birk, Rolf: Der Einfluß des Gemeinschaftsrechts auf das Arbeitsrecht der Bundesrepublik Deutschland, RIW 1989, pp. 6 et seq.

Bleckmann, Albert: Europarecht, 4th ed., Cologne–Berlin et al. 1985.

Borchardt, Klaus-Dieter: Vertrauensschutz im europäischen Ge-

meinschaftsrecht. Die Rechtsprechung des EuGH von Algera über CNTA bis Mulder und van Deetzen, EuGRZ 1988, pp. 309 et seq.
Braun, Fernand: Die Europäische Gemeinschaft auf dem Weg zu einem gemeinsamen Binnenmarkt, in: *Späth–Dräger* (Eds.), Die Europäische Gemeinschaft in der Weltwirtschaft, Baden-Baden 1987, pp. 137 et seq.
Breit, Ernst: Gewerkschaftliche Kriterien für einen europäischen Sozialraum, in: *id.* (Ed.) Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988, pp. 56 et seq.
Breit, Ernst (Ed.): Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988.
Brusis, Ilse: Die Vollendung des Binnenmarktes aus gewerkschaftlicher Sicht: Inhaltliche Einführung, in: *Breit* (Ed.), Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988, pp. 13 et seq.
Busch, Klaus: Der Binnenmarkt, die Entwicklung der Arbeitsteilung der Bundesrepublik mit den EG-Staaten und die Probleme der Gewerkschaften, Mitb. 1988, pp. 646 et seq.
Capotorti, Francesco: A propos de l'adhésion éventuelle des Communautés à la Convention européenne des droits de l'homme, in: Das Europa der zweiten Generation, Gedächtnisschrift Sasse, Kehl–Strasbourg 1981, pp. 703 et seq.
Cecchini, Paolo: Europa '92. Der Vorteil des Binnenmarktes. German version: *Michael Stabenow,* Baden-Baden 1988.
Cromme, Franz: Verfassungsvertrag der Gemeinschaft der Vereinigten Europäischen Staaten, Delmenhorst 1987.
Däubler, Wolfgang: Internationales Arbeitsrecht – Hoffnungsträger für die Gewerkschaften? WSI-Mitt. 1987, pp. 186 et seq.
Däubler, Wolfgang: Europäischer Binnenmarkt und Gewerkschaftspolitik, GMH 1988, pp. 459 et seq.
Däubler, Wolfgang: Grenzüberschreitende Fusion und Arbeitsrecht, DB 1988, pp. 1850 et seq.
Däubler, Wolfgang: Sozialstaat Europa? In: EG-Binnenmarkt '92 Chancen und Risiken für Betriebe, 2nd ed. Freiburg/Brsg. 1989, pp. 181 et seq.
Däubler, Wolfgang: Das zweite Schiffsregister. Völkerrechtliche und verfassungsrechtliche Probleme einer deutschen "Billig-Flagge", Baden-Baden 1988.
Dehousse, Renaud, see *Bieber, Roland*
Dicke, Klaus: Menschenrechte und europäische Integration, Kehl–Strasbourg 1986.
Dräger, Christian, see *Späth, Lothar*
Ehlermann, Claus-Dieter and *Noël, Emile:* Der Beitritt der EG zur Eu-

ropäischen Menschenrechtskonvention. Schwierigkeiten – Rechtfertigung, in: Das Europa der zweiten Generation, Gedächtnisschrift für Sasse, Kehl–Strasbourg 1981, pp. 685 et seq.

Ehlermann, Claus-Dieter, see *von der Groeben, Hans*

EP-Weißbuch Grundrechte (European white paper on fundamental rights): Europäisches Parlament, Institutioneller Ausschuß, Weißbuch über den Beitrag der Europäischen Gemeinschaft zur Förderung und Wahrung der Grundrechte und -freiheiten der europäischen Bürger, Author: *Karel de Gucht,* PE 115.274/ENDG. Strasbourg 1988.

Everling, Ulrich: Diskussionsbeitrag, in: *Mosler, Hermann; Bernhardt, Rudolf; Hilf, Meinhard* (Eds.), Grundrechtsschutz in Europa. Europäische Menschenrechtskonvention und Europäische Gemeinschaften, Berlin–Heidelberg–New York 1977, pp. 84 et seq.

Feger, Dieter: Grundrechtliche Aspekte des Rechts der Europäischen Gemeinschaften auf dem Gebiet der abhängigen Arbeit, RdA 1987, pp. 13 et seq.

Forschungsgruppe Europa (Ed.): Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988.

Forschungsgruppe Europa: Europäische Defizite, europäische Perspektiven – eine Bestandsaufnahme für morgen, Gütersloh 1988.

Franzmeyer, Fritz: Economic, Social and Political Costs of Completing the Internal Market, in: *Bieber, Roland; Dehousse, Renaud; Pinder, John; Weiler Joseph H. H.:* 1992: One European Market. A Critical Analysis of the Commission's Internal Market Strategy, Baden-Baden 1988, pp. 55 et seq.

Frowein, Jochen Abr.: Europäische Grundrechtsprobleme, in: Das Europa der zweiten Generation, Gedächtnisschrift für Sasse, Kehl–Strasbourg 1981, pp. 727 et seq.

Frowein, Jochen Abr. and *Peukert, Wolfgang:* Europäische Menschenrechtskonvention. Kommentar, Kehl–Strasbourg–Arlington 1985.

Frowein, Jochen Abr.; Schulhofer, Stephen; Shapiro, Martin: The Protection of Fundamental Human Rights as a Vehicle of Integration, in: *Cappelletti, Mauro; Seccombe, Monica; Weiler, Joseph:* Integration through Law, volume 1: Methods, Tools and Institutions, Book 3: Forces and Potential for a European Identity, Berlin–New York 1986, pp. 231 et seq.

Ganske, Joachim: Das Recht der Europäischen wirtschaftlichen Interessenvereinigung (EWIV). Systematische Darstellung mit Texten und Materialien, Munich 1988.

Grabitz, Eberhard (Ed.): Kommentar zum EWG-Vertrag, Munich, as of: December 1988 (loose leaf).

von der Groeben, Hans: Legitimationsprobleme der Europäischen Gemeinschaft, Baden-Baden 1987.
Heise, Bernt: Sozialpolitik in der Europäischen Wirtschaftsgemeinschaft, Göttingen 1966.
Hepple, Bob: The crisis in EEC Labour Law, The Industrial Law Journal 1987, pp. 77 et seq.
Herzog, Peter, see *Smit, Hans*
Hinterscheid, Mathias: Binnenmarkt und Sozialraum, in: *Forschungsgruppe Europa* (Ed.): Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988, pp. 45 et seq.
Hirsch, Valérie: Un volet social pour le grand marché, RMC 1988, pp. 371 et seq.
Holeschovsky, Christine: Die Kosten der Nicht-EG. Ergebnisse des Cecchini-Berichts, in: *Forschungsgruppe Europa* (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988, pp. 21 et seq.
Holeschovsky, Christine; Janning, Josef; Stoll, Karin; Weidenfeld, Werner: Probleme und Perspektiven der Einigung Europas – Synopse exemplarischer Aufgaben und Lösungsansätze der europäischen Politik, in: *Forschungsgruppe Europa:* Europäische Defizite, europäische Perspektiven – eine Bestandsaufnahme für morgen, Gütersloh 1988, pp. 27 et seq.
Hort, Peter: Eine Bilanz der deutschen EG-Präsidentschaft, EA 1988, pp. 421 et seq.
Hrbek, Rudolf and *Läufer, Thomas:* Die Einheitliche Europäische Akte. Das Luxemburger Reformpaket: Eine neue Etappe im Integrationsprozess, EA 1986, pp. 173 et seq.
Ipsen, Hans-Peter: Europäisches Gemeinschaftsrecht, Tübingen 1972.
Jacobi, Otto: Gewerkschaften, industrielle Beziehungen und europäische Einigung, Mitb. 1988, pp. 609 et seq.
Jacobs, Michael Ch., see *Rengeling, Hans-Werner*
Jaspers, Teun and *Betten, Lammy:* 25 Years European Social Charter, Deventer et al. 1988.
Jungk, Wolfgang: Integrationstheoretische Grundlagen der Sozialpolitik der EG, in: *Lichtenberg* (Ed.): Sozialpolitik in der EG, Baden-Baden 1986, pp. 35 et seq.
Kittner, Michael: Sozialstaatsprinzip, in: Alternativkommentar zum Grundgesetz, Vol. 1, Neuwied and Darmstadt 1984, Art. 20 Abs. 1–3 IV.
Kleinhenz, Gerhard: Die Stellung der Sozialpolitik im politschen Gefüge der EG, in: *Lichtenberg* (Ed.), Sozialpolitik in der EG, Baden-Baden 1986, pp. 17 et seq.

Köstler, Roland: Europäisches Gesellschaftsrecht, Mitb. 1988, pp. 632 et seq.
Koller, Martin: Regionale Lohnstrukturen, MittAB 1987, pp. 30 et seq.
Korn, Peter: Chancen und Risiken bei der Vollendung des EG-Binnenmarkts, in: *Forschungsgruppe Europa* (Ed.): Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988, pp. 51 et seq.
Küsters, Hans-Jürgen: Die Gründung der Europäischen Wirtschaftsgemeinschaft, Baden-Baden 1982.
Läufer, Thomas: Die Europäische Gemeinschaft im Wandel; EA 1988, pp. 697 et seq.
Lahnstein, Manfred: Über die Währungsunion zur Wirtschaftsunion? EA 1978, pp. 263 et seq.
Langeheine, Bernd and *Weinstock, Ulrich:* Abgestufte Integration: weder Königspfad noch Irrweg. Zur Auseinandersetzung über die Weiterentwicklung der Europäischen Gemeinschaft, EA 1984, pp. 261 et seq.
Lell, Hans-Joachim: Die soziale Harmonisierung in der Europäischen Wirtschaftsgemeinschaft und ihre wirtschaftlichen Auswirkungen, Berlin 1966.
Lichtenberg, Hagen (Ed.): Sozialpolitik in der EG, Baden-Baden 1986.
Lichtenberg Hagen: Die Freizügigkeit der Arbeitnehmer in der Europäischen Gemeinschaft – rechtliche und soziale Probleme, in: *id.* (Ed.), Sozialpolitik in der EG, Baden-Baden 1986, pp. 117 et seq.
Lörcher, Klaus: Soziale Grundrechte in der EG – Allgemeinplätze oder Rechtsfortschritt? AiB 1989, pp. 234 et seq.
Loewenstein, Karl: Staatsrecht und Staatspraxis von Großbritannien, Vol. 2: Justiz – Verwaltung – Bürgerrechte, Berlin–Heidelberg–New York 1967.
Lyon-Caen, Gérard, Lyon-Caen, Antoine: Droit social international et européen, 6e édition, Paris 1985.
Maillet, Pierre, Le Rapport Padoa-Schioppa: Efficacité, Stabilité et Équité, RMC 1988, pp. 3 et seq.
McLaughlin, Diarmid: L'Europe Sociale: Réalisations et Perspectives, RMC 1987, pp. 320 et seq.
Megret, Jacq.; Louis, Jean-Victor; Vignes, Daniel; Waelbroeck, Michel: Le Droit de la CEE, Commentaire, Tome 7: Politique sociale, Brussels 1973.
Miller, Rudolf: Stiefkind Sozialpolitik BArbBI 3/1982, pp. 5 et seq.
Miller, Rudolf: Aspekte 1984, BArbBI 11/1984, pp. 5 et seq.
Morin, Jackie: Schwarzarbeit in Europa, in: Soziales Europa, Issue 3/1988, pp. 9 et seq.

Narjes, Karl-Heinz: Sozialpolitik in den Europäischen Gemeinschaften, in: *von Maydell, Bernd* and *Kannengiesser, Walter* (Eds.): Handbuch Sozialpolitik, Pfullingen 1988, pp. 376 et seq.

Padoa-Schioppa-Bericht: Effizienz, Stabilität und Verteilungsgerechtigkeit. Eine Entwicklungsstrategie für das Wirtschaftssystem der EG. Bericht einer von der Kommission der Europäischen Gemeinschaften eingesetzten Studiengruppe unter der Leitung von *T. Padoa-Schioppa,* April 1987.

Pescatore, Pierre: Der Schutz der Grundrechte in den Europäischen Gemeinschaften und seine Lücken, in: *Mosler, Hermann; Bernhardt, Rudolf; Hilf, Meinhard* (Eds.), Grundrechtsschutz in Europa. Europäische Menschenrechtskonvention und Europäische Gemeinschaften, Berlin–Heidelberg–New York 1977, pp. 64 et seq.

Pescatore, Pierre: Bestand und Bedeutung der Grundrechte im Recht der Europäischen Gemeinschaften, EuR 1979, pp. 1 et seq.

Philip, Christian: Droit social européen, Paris–New York–Barcelona 1985.

Pieters, Danny: Sociale grondrechten op prestaties in de grondwetten van de landen von de Europese Gemeenschap, Antwerp 1986.

Reich, Norbert: Förderung und Schutz diffuser Interessen durch die Europäischen Gemeinschaften, Baden-Baden 1987.

Rengeling, Hans-Werner and *Jakobs, Michael Ch.:* Europäische Verfassung – Bemerkungen zum gegenwärtigen Diskussionsstand, DVBl 1984, pp. 773 et seq.

Rögge, Karin: Die Vollendung des EG-Binnenmarkts bis 1992, in: *Forschungsgruppe Europa* (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988, pp. 33 et seq.

Runggaldier, Ulrich: Das Vorrangrecht der in Südtirol ansässigen Arbeitnehmer bei der Arbeitsvermittlung im Lichte des Rechtes der Europäischen Gemeinschaft, Saarbrücken 1989.

De Ruyt, Jean: L'Acte Unique Européen, Commentaire, Brussels 1987.

Salisch, Heinke: EWG-Vertrag fordert Verbesserung der Arbeitsumwelt, Mitb. 1988, pp. 679 et seq.

Sasse, Christoph: Der Schutz der Grundrechte in den Europäischen Gemeinschaften und seine Lücken, in: *Mosler, Hermann; Bernhardt, Rudolf; Hilf, Meinhard* (Eds.), Grundrechtsschutz in Europa. Europäische Menschenrechtskonvention und Europäische Gemeinschaften, Berlin–Heidelberg–New York 1977, pp. 51 et seq.

Schatz, Klaus-Werner: Die Europäische Gemeinschaft auf dem Weg zu einem gemeinsamen Binnenmarkt? In: *Späth–Dräger* (Ed.): Die

Europäische Gemeinschaft in der Weltwirtschaft, Baden-Baden 1987, pp. 151 et seq.
Schlotfeldt, Walter: Rechtsfragen der Arbeits- und Sozialpolitik, in: *Clauder, Arnulf* et al.: Einführung in die Rechtsfragen der europäischen Integration, 2nd ed., Bonn 1972, pp. 170 et seq.
Schneider, Wilfried: Transporte in Europa, Mitb. 1988, pp. 658 et seq.
Schnorr, Gerhard: Arbeits- und sozialrechtliche Fragen der europäischen Integration, Berlin–New York 1974.
Schulhofer, Stephen, see *Frowein, Jochen Abr.*
Scriba, Michael O. E.: Die Europäische wirtschaftliche Interessenvereinigung, Heidelberg 1988.
Seidel, Martin: Grundsätzliche rechtspolitische Probleme bei der Verwirklichung des Binnenmarktes, EA 1987, pp. 553 et seq.
Shapiro, Martin, see *Frowein, Jochen Abr.*
Smit, Hans and *Herzog, Peter:* The Law of the European Economic Community. A Commentary on the EEC Treaty, vol. 3, New York 1981.
Späth, Lothar and *Dräger, Christian* (Eds.): Die Europäischen Gemeinschaften in der Weltwirtschaft, Baden-Baden 1987.
Steiert, Robert: Die Europäische Sozialcharta. Inhalt, Mängel und Möglichkeiten der Weiterentwicklung, in: Aus Politik und Zeitgeschichte, Supplement B 3/79 to "Das Parlament", pp. 34 et seq.
Stoll, Karin: Vorbereitung auf 1992 im Vergleich; Einschätzungen, Erwartungen, Reaktionen, in: *Forschungsgruppe Europa* (Ed.): Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1988, pp. 9 et seq.
Teske, Horst: Europa zwischen gestern und morgen. Von den Römischen Verträgen bis zur Europäischen Akte, Cologne 1988.
Troclet, Léon-Eli: La Politique Sociale, in *Ganshof van der Meersch,* Droit des Communautés européennes, Brussels 1969, pp. 943 et seq.
Verfassungen der EG-Mitgliedstaaten, Textausgabe mit einer Einführung und einem Sachverzeichnis von *Prof. Dr. Adolf Kimmel,* Universität Würzburg, Munich 1987.
Vetter, Heinz-Oskar: EG-Binnenmarkt und Arbeitnehmermitbestimmung, in *Breit* (Ed.): Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988, pp. 111 et seq.
Vogel, Otto: Die Bundesrepublik Deutschland im internationalen Standortwettbewerb, in: EG-Binnenmarkt '92. Chancen und Risiken für Betriebe, Freiburg/Brsg. 1988, pp. 25 et seq.
Wade, E. C. S. and *Bradley, A. W.:* Constitutional and Administrative Law, Tenth edition by A. W. Bradley, London and New York 1986.
Walz, Stefan: Multinationale Unternehmen und internationaler Tarifvertrag, Baden-Baden 1981.

Wedderburn, Bill: The Worker and the Law, 3rd edition, London 1987.
Weder, Dietrich Jörn: Märchen vom Schlaraffenland Binnenmarkt, Mitb. 1988, pp. 616 et seq.
Weidenfeld, Werner: Europa 2000. Zukunftsfragen der Europäischen Einigung, Munich–Vienna 1980.
Weidenfeld, Werner: Die Zukunft Europas: Strategien und Optionen, in: *Forschungsgruppe Europa* (Ed.), Europäische Defizite, europäische Perspektiven – eine Bestandsaufnahme für morgen, Gütersloh 1988, pp. 11 et seq.
Weidenfeld, Werner and *Wessels, Wolfgang* (Eds.): Wege zur Europäischen Union. Vom Vertrag zur Verfassung? Bonn 1986.
Weiler, Joseph H. H.: The European Court at a Crossroads: Community Human Rights and Member State Action, in: *Capotorti* et al. (Eds.), Du droit international au droit de l'intégration, Liber Amicorum Pierre Pescatore, Baden-Baden 1987, pp. 821 et seq.
Weinstock, Ulrich: Europäische Sozialunion – historische Erfahrungen und Perspektiven, lecture delivered on 5 December 1988 at a meeting in Mainz of Forschungsgruppe Europa, reprinted in this volume.
Zachert, Ulrich: EG-Binnenmarkt und Arbeitsrecht AuR 1989, pp. 161 et seq.
Zuleeg, Manfred: Die Charta der Rechte des Bürgers der Europäischen Gemeinschaft, in: Festschrift Schlochauer, Berlin–New York 1981, pp. 983 et seq.
Zwickel, Klaus: Tarifpolitik in einem gemeinsamen Europa, Mitb. 1988, pp. 635 et seq.
Zwischenbericht der interdirektionalen Arbeitsgruppe: Die soziale Dimension des Binnenmarktes, Soziales Europa, special issue, Luxembourg 1988.

ASSESSMENTS

An Economic View of the Social Charter

Gerhard Fels

Europe is at present preparing for one of the greatest projects in its history: the completion of the EC Internal Market by the end of 1992. This deadline is laid down by the Single European Act (SEA), which entered into force in 1987, supplementing the EEC Treaties of 1957. In the White Paper on which this Act was based, the EC Commission (1985) indicated some concrete steps in a total of 279 directives and regulations that must be taken in order to create the "free movement of goods, persons, services and capital" (SEA). In the process, the Commission is counting both on harmonization and on the mutual recognition of national legal provisions – the principle of equivalence. This means that goods and services which are legally produced and marketed in the country of origin must also have free access to the markets in all the other member countries. In some quarters, a need for harmonization is also seen which goes beyond the sphere outlined by the EC Commission. This applies above all to aspects such as environmental protection, currency union and the social problems of the Internal Market, which are mentioned only indirectly or in passing in the White Paper.[1]

It is easily overlooked in this context that the concept of the Internal Market does indeed have a social dimension. The realization of the free movement of goods, services and capital, and of the freedom of movement and of establishment for persons will improve the citizens' opportunities for personal development. In a European Community with no internal borders, the fragmentation into twelve national markets which we still have today will be overcome. Companies from the EC Member States will obtain a domestic market with more than 340 million consumers, which is greater than those of the United States or Japan, and which will increase its chances in competition with companies from third countries. This makes it possible to use the available resources efficiently and thus, according to the estimate of the Cecchini Report, which was produced on behalf of the EC Commission (1988, p. 136), produce "an increase in the GDP of the Community in the range of 6%" in the medium term. This sharp rise in growth will be reflected in an increase in employment, a decline in consumer prices, and a rise in incomes in real terms for all the strata of society. The expected additional revenue for the public purse will make it easier to maintain the system of social security. The

[1] Why the social problems are not explicitly considered is made clear by a comment attributed to Lord Cockfield, the architect of the White Paper: "If we had linked the social questions to the arrangements on economic policy, neither of the two projects would have got off the ground".

Internal Market will guarantee the standard of living of Europe's citizens for a long time ahead, and as such, it is a social deed in its own right.

1. "Social dumping"

Since these advantages of the market integration have in some cases deliberately not been taken into account, there has admittedly been an increasing amount of playing on the public's fears concerning what are claimed to be the anti-social side-effects of the single EC market. In this connection, the trade unions in particular are fond of using the expression "social dumping," which is as catchy as it is imprecise. Nor is it by any means new; on the contrary, it already appeared in the twenties in the context of the discussion on an appropriate participation of the workers in the growth in productivity. Nowadays, the expression is used particularly in the socially most progressive Member States, so that it gives expression to a dual fear in those countries: first of all, there is the concern that after the Internal Market has been created, EC Member States with relatively low labor and thus production costs will use their corresponding competitive advantages in order to conquer bigger market shares and to attract investments and create jobs at the expense of the other Member States by means of relocations. Secondly, it is feared that those countries' own social progress will be held up, or that the competition referred to will even exert a downward pressure on social standards in the most progressive countries.

If we look at the situation more closely, however, we can see that these fears are probably excessive, and that the use of the emotive term "dumping" is by no means justified. In a report on "The social dimension of the Internal Market," the EC Commission stated in 1988 that in most branches of industry, the specific effects of the Internal Market will hardly play a noticeable role in comparison to the other changes resulting, for example, from technological advances. But even in the branches concerned, it may very well be the case that locational disadvantages with regard to labor costs, social benefits, employment protection provisions, etc., are compensated for by advantages in respect of productivity, technology, reliability, social peace, etc. This consideration substantially limits the number of branches of industry that might be concerned to labor-intensive, relatively everyday sectors, such as certain branches of the food industry, transport or the building sector, for example. Besides, there is an existing platform in the form of EC regulations, provisions of the Inter-

national Labour Organisation, national laws, collective bargaining agreements and the Council of Europe's Social Charter, which prevent certain minimum standards from being undercut where this would be desirable for reasons of competition and social policy. Thus it becomes clear that while the general and undifferentiated use of the term "social dumping" is not justified, the problem of different social standards nevertheless deserves attention.

2. Harmonization of social standards?

It is surely more than doubtful, however, whether the harmonization of these different social standards on the highest possible level in each case, as proposed not least by the trade union side, is economically reasonable and meaningful in terms of social policy. Since in many fields the social standards in the Federal Republic of Germany are the highest in the EC[2], proposals of this kind constitute an attempt to alleviate the competitive disadvantages of one's own country by having the social policy situation in the competitor countries assimilated to the domestic level.[3] If egalitarian regulations are used to force those Member States which are economically less developed and efficient to adopt an assimilation on the highest EC level, they will automatically lose some of their competitiveness, or may even be deprived of it altogether. These members would then become a burden on the entire Community, which all EC members would have to bear in the form of the necessary equalization payments. The reason for this is that the less developed members are only competitive vis-à-vis the highly industrialized states of the Community and the world as long as their costs and standards in terms of social policy correspond to their productivity level. The employers, trade unions and governments of these countries are thoroughly aware of this and could be expected to mount emphatic resistance to efforts that would ultimately make their production costs more expensive.

Whereas the concept of social harmonization on the highest level must thus be rejected for economic reasons, the contrary ideas of global assimilation on a medium or even on the lowest level in each

[2] For a comparison of social standards throughout the EC, cf. Institut der deutschen Wirtschaft (1989).

[3] The fact that this is how it is seen abroad is made clear by a quotation from the "Economist" of 8 April 1989, p. 36, on "EEC social policy": "West Germany and Holland support the idea because they do not want other EEC countries to enjoy the competitive advantage of fewer regulations than they themselves have."

case appear unrealistic for reasons of social and political feasibility. This does not, however, exclude the possibility that a differentiated adaptation of the most drastic differences might become necessary in order to even out particularly striking competitive disadvantages. Upward or downward adaptations of this kind would, moreover, by no means be competitively neutral, because, depending on the ratios of labor and capital employed, they would affect the various branches of industry differently.

3. "Social platform" – A criticism of Wolfgang Däubler's proposal

Notwithstanding what has just been said, various parties regularly put forward proposals for a "platform law," intended to lay down minimum social requirements for the entire EC. It must not be overlooked in this context that a social platform of this kind already exists in fact, consisting as it does of various EC regulations, the Council of Europe's Social Charter, and the provisions of the International Labour Organisation. Because of national traditions and peculiarities, farther-reaching provisions have been unable to find acceptance in the past, nor will they be able to do them justice in future. For this reason, attempts at the global harmonization of social standards in a social charter are on the wrong track from the very beginning. This also applies even if "only" fundamental rights from constitutions of the EC Member States are summed up (and in some cases extended) therein, as is the case in the draft European Act of Fundamental Rights (1989) by Professor Däubler. A discussion of all the details in the proposed Fundamental Rights Act will therefore probably not be very meaningful or useful, but a few examples may help to illustrate the problems in the approach selected.

Taking the labor market regulations as an example, it can be shown what unfortunate side-effects might proceed from well-meaning efforts at harmonization. If the EC countries are compared under aspects such as the flexibilization of working hours, protection against dismissal, the regulation of mass redundancies, costs of social compensation plans, the hiring out of employees as temporary workers and time limits on employment relationships, it becomes clear that West Germany is one of those countries in which, on the one hand, a closely spun network of protective regulations and, on the other hand, complex and time-consuming procedural provisions impair the flexibility of the labor market. A comparison of this kind does, however, also make it clear that in the fields of labor law and working hours there are such great differences – as a result of tradi-

tions – in Europe that equalizing Community regulations will never be able to take into account the differentiated requirements of the various sectors and branches, let alone companies.

a. Labor market flexibility

The restrictive regulation of working hours (Art. 26) proposed by Däubler (1989), the even more restricted possibilities of dismissal, entailing a simultaneous entitlement to severance pay (Art. 31), together with further detailed specifications of employees' rights in Section III of his charter of fundamental rights, exacerbate existing inflexibilities on the German labor market and export these to the entire EC. Whereas, however, West German enterprises have so far been able to use other locational advantages to come to terms with this lack of flexibility – though not terribly successfully if one considers the unemployment figures – such restrictions would have a far greater impact on companies in some of our partner countries. These proposals reduce the possibility for European enterprises to adapt to the changing requirements of the market their personnel figures and the way they use their labor, and thus undermine the international competitiveness of Europe as a location in general and of the less developed EC countries in particular.

b. Full employment

A further example of how alleged protective measures will by no means automatically result in benefits for those to be protected is the priority demanded in Art. 11 (4) for a policy of full employment over other objectives of economic policy. Findings of economic theory and also empirical experiences in many Western European countries especially in the seventies show that any state guarantee of full employment is exploited by trade unions to enforce higher wages, without consideration for their effects on employment. It would also weaken the employers' resistance in collective bargaining negotiations, because any guarantee of full employment at the same time means there will be a guarantee that the costs will be passed on. In the most favorable case, according to the concept of the long-term vertical Phillips curve, this "only" leads to higher inflation, whereas in the worst case, there will even be a decline in employment, despite government countermeasures.[4] The Nobel Prize winner F. A. von Hayek (1974, p. 9) warned at a very early stage that it was "one of the most serious consequences of the monetary full employment policy

[4] Cf. Schnabel (1989, p. 150).

that it has removed the barriers that make it necessary for the trade unions to moderate their wage demands, because of the need to consider unemployment." The fathers of the Stability Law that has applied in West Germany since 8 June 1967 knew precisely why they obliged the Federal and Land authorities "to take into account in their economic and financial policy measures the requirements of the macro-economic balance" and to regard as equally important objectives of economic policy not only a "high level of employment" – not "full employment" – but also stable price levels, a foreign trade balance and growth.

c. Right to strike

The regulations on the right to strike proposed in Art. 23 are also likely to be counterproductive. The problem is not the fact that there is a constitutional guarantee for the right to strike per se, even if, for reasons of equality of opportunity, it ought to be balanced out by a right to lockouts. The problem consists rather in the guarantee for cross-border solidarity strikes, with state substitute wage benefits being simultaneously guaranteed for employees in other businesses who are indirectly affected by strikes. These proposals are, on the one hand, not beneficial to the social climate, and on the other hand, in view of the substantial international interlinking of the labor processes, they constitute a major potential burden on the public budgets.

d. Social security

The same applies to the proposals put forward by Däubler on Community-wide social insurance (Art. 38) and unemployment insurance (Art. 39) for all employees. The fact that unemployment benefits are set at at least 60% of the last net wage does not constitute a problem for the rich EC countries, such as Germany, the Netherlands and Denmark, and indeed they are already considerably exceeded there today.[5] For other countries, such as Ireland, Greece, the United Kingdom and Italy, these demands would, however, involve a greater additional burden or a revision of their system of security, which has traditionally had a different structure. One has to agree with Maydell (1989, p. 13), who writes, "one must ask whether the citizens' familiarity with this system is not a value in its own right, which should not lightly be sacrificed in favor of a solution which is perhaps technocratically better. Social systems cannot be cast off like worn suits."

[5] Cf. the survey in Institut der deutschen Wirtschaft (1989).

While the systems of social security in the various EC Member States are based substantially on the same fundamental ideas, and while they pursue similar objectives, there are nevertheless distinct variations in the concrete forms taken by these systems with regard to financing, administration, the quality of the benefits, and the group of recipients, which often have their roots in history and which in the meantime have become so firmly established that they cannot simply be thrown overboard.[6] In particular, the systems of old-age pensions, in which benefits are often based on life-long payments of contributions, are not susceptible of rapid change. The assimilation of the national social insurance systems is therefore neither likely to be feasible in this century, nor is it even necessary at all in order to create the Internal Market. Furthermore, according to figures provided by Elmar Brok, the Member of the European Parliament (1989), raising the different national systems of security to West German levels would increase costs throughout the EC from 923 billion ECU at present to 1.362 trillion ECU – a cost increase that could not be borne by the countries concerned.

e. How is it to be financed?

We now come to a main problem of the proposed charter of fundamental rights, namely that it is impossible to finance. This problem is also recognized by Däubler himself in Sect. 7 II, where he admits, "that the economy of one country and of the EC as a whole cannot bear unlimited burdens," and says that the proposals ". . . and this goes without saying, are only to be implemented within the limits of what is economically feasible." It must, however, be stated that his proposals in some cases go far beyond the bounds of what is economically feasible, and that if coupled to this Social Charter, the completion of the Internal Market will be completely incapable of producing the expected gains in welfare.

f. Transfer of competences and sovereignty

A second problem, which is likewise recognized by Däubler in Sect. 7 II, but which is not regarded as serious, is the shift of competences from the Member States to the Community. First of all, neither the EEC Treaty of 1957 nor the Single European Act of 1987 give the Community such comprehensive legislative competences in social matters. Such a transfer of sovereignty from the national parliaments to the Community can only be implemented by an amendment to the

[6] Cf. Institut der deutschen Wirtschaft (1989), Schmähl (1989) and Maydell (1989).

EEC Treaty, which would require ratification. Secondly, the European Court of Justice (ECJ) would ultimately be competent for interpreting the rights embodied on the Community level. The decisions on social law handed down by the ECJ so far are, however, not without their problems.[7] For example, even at present, the ECJ de facto supports not the principle of equal treatment, but rather that of placing migrant workers in a better position. Thanks to the cumulation of social benefits because of employment in different EC states, a migrant worker can put himself in a better position than a worker who only works in his home state. This will certainly not have the desired integration effect, but will make the citizens antagonistic towards Europe and will thus have a disintegrating effect.

In the "Salzano Case," the ECJ condemned the Federal Republic of Germany to pay to an Italian working here a German children's allowance for his family, who had stayed behind in Italy, even though their existing entitlement to Italian children's allowances had not been fully taken advantage of. In addition to this compulsory export of children's allowances, there is a proposal by the Vice-President of the EC Commission, Marin (1988), according to which there should also be a corresponding obligation to continue paying unemployment benefits even when an employed person moves his domicile to a different member country. If one bears in mind that German unemployment benefits are as a rule substantially higher than the wages that can be earned in Portugal or Greece on the basis of longer working hours[8], it is very difficult simply to dismiss fears of an uncontrolled European "social tourism." Däubler's proposed European entitlements to unemployment benefits (Art. 39) and security of basic needs (Art. 7) provide an ideal back door for the export of financial benefits, which would ultimately be impossible to pay for, and which would be taking the idea of European solidarity much too far.

4. Conclusions

Of course it is meaningful to continue coordinating the different social insurance systems in such a way that freedom of movement throughout the EC is thereby guaranteed. Many of the different regulations on social policy in the Member States are, however, so varied

[7] Cf. Clever (1989), Maydell (1989) and Münster (1989).

[8] Cf. Clever (1989), and the statistical data of the Institut der deutschen Wirtschaft (1988, 1989).

and so closely related to one particular country that they are not susceptible to a general policy of equalizing or harmonizing Community rules. For more than 200 years, the United States of America has formed a common internal market. But up to the present day, there is still no uniform social space there, and the USA has not suffered as a result. Furthermore, Europe's strength lies not least in its variety, which finds expression in the principles of subsidiarity, flexibility and decentralization. As the EC Commission also states (1988, p. 62), "laying down rigid Community rules at a time in which the greatest adaptability is required is counterproductive in effect," because this prevents the flexible use of resources. Would it not therefore be better, with a view to reducing or preventing inefficient overregulation, to leave the slow assimilation of social standards to the two sides of industry in the various countries, instead of to the civil servants in Brussels?

With such a decentralized solution, the differences in the social systems of the member countries can for the time being remain in existence. In the long term, these differences will actually have an integrating effect, since the Member States with less highly developed social systems will have certain cost advantages in the locational competition. Since these locational advantages will produce additional investments and thus higher economic growth, they will enable these countries gradually to raise their social standards. The decentralized approach to a solution thus makes it possible to use resources flexibly and creates opportunities for promoting innovation. In order to achieve the highest possible degree of flexibility, the different needs of the various branches and enterprises should be taken into account in such a way that decisions concerning working conditions, wages and salaries, and aspects of social security are made on the lowest possible level. This is accompanied by an enhancement of collective agreements, a strengthening of collective bargaining autonomy and the growing importance of the parties concluding collective agreements in economic policy. In Germany, the two sides of industry are in this case forced to accept responsibility and to exercise appropriate restraint, so that in future negotiations on social questions, the gap between them and those EC countries which are less advanced but are making more rapid progress in the field of social policy is reduced. The necessity of such an approach appears in the meantime to have been recognized also on the trade union level. In an interview with "Handelsblatt" on 24 August 1988, the chairman of the German union IG Chemie – Papier – Keramik, Rappe, said that it was his declared intention not to "hand in [his] common sense in economic policy at the cloakroom," and emphasized on behalf of his

union that he was "in favor of Europe as a social space, also under this condition."

A field in which there is extensive agreement between the German unions and employers, and in which concrete progress appears most capable of being achieved, is that of safety and health at work. Experts estimate that the approximately 10 million accidents at work, involving 11,000 casualties throughout Europe, result in losses to the national economies amounting to at least 170 billion Deutschmarks.[9] Binding and far-reaching standards for the entire EC are thus not only morally essential, but also economically meaningful. In Germany, the measures and investments by businesses in the field of safety at work have been reflected in a long-term positive development of accidents at work. The German Government, concurring with the two sides of industry, has spoken out in favor of harmonization on a high level in this field, since the Internal Market must not be realized at the expense of the safety or health of the employees.

One possibility of implementing these joint demands is offered by Art. 118a of the EEC Treaty, which was inserted by the Single European Act, and which lays down that in the field of the safety and health of employees, directives containing minimum provisions can be issued by a qualified majority. Directives of this kind do not prevent the individual Member States from maintaining measures on a higher level, and thus make harmonization possible with simultaneous progress. A whole package of regulations of this kind has already been passed by the EC Council of Ministers, and further directives are awaiting discussion in the form of proposals from the Commission or various Member States.

In view of their outstanding importance for humanitarian and moral reasons, it is urgently necessary to establish the highest possible uniform standards with regard to safety and health at work in the EC, and for this reason, they will also be possible to implement with no major difficulties. Similarly, environmental protection can and must not stop at the national borders. For virtually all other sectors, however, there is no such necessity, and here, efforts at global harmonization would tend rather to be counterproductive.[10] This finding, which is made clear above with reference to a few examples, is by no means novel, but it is nevertheless often ignored. As long ago as 1956, a group of international experts headed by the Swedish Nobel Prize winner, Professor Bertil Ohlin, which investigated "Social aspects of European economic cooperation" on behalf of the In-

[9] Cf. Clever (1989, p. 125).

[10] On the same lines, see also Schmähl (1989) and Maydell (1989).

ternational Labour Office, came to the following conclusion, which has lost none of its topicality and correctness up to the present day (p. 86): "If we sum up our investigation into the question of whether and to what extent harmonization of the social conditions and social policy measures is necessary, we arrive at the conclusion that it is apparent that for the effective functioning of expanded markets, a lesser degree of harmonization is likely to be necessary than is often assumed."

Bibliography

Brok, Elmar: Die soziale Dimension des europäischen Binnenmarktes; in: Frankfurter Allgemeine Zeitung of 26 January 1989, p. 14.

Cecchini, Paolo: Europa '92: Der Vorteil des Binnenmarktes; Baden-Baden 1988.

Clever, Peter: Der EG-Binnenmarkt aus sozialpolitischer Sicht; in: Arbeit und Sozialpolitik 5/1989, pp. 122–126.

Däubler, Wolfgang: Sozialstaat EG? Notwendigkeit und Inhalt einer Europäischen Grundrechtsakte: Expertise produced on behalf of the Bertelsmann Foundation, 1989.

Hayek, Friedrich August von: Zwölf Thesen zur Inflationsbekämpfung; in: Frankfurter Allgemeine Zeitung of 19 August 1974, pp. 9–10.

Institut der deutschen Wirtschaft: Aus zwölf wird eins – Perspektiven des europäischen Binnenmarktes, Cologne 1988.

Institut der deutschen Wirtschaft: Sozialraum Europa; IW-Dossier 7, Cologne 1989.

International Labour Office (Ed.): Soziale Aspekte der europäischen wirtschaftlichen Zusammenarbeit: Studien und Berichte, New issue No. 46, Geneva 1956.

Kommission der Europäischen Gemeinschaften: Vollendung des Binnenmarktes, Luxembourg 1985.

Kommission der Europäischen Gemeinschaften (Ed.): Die soziale Dimension des Binnenmarktes (Zwischenbericht der interdirektionalen Gruppe); Special issue of Soziales Europa, Luxembourg 1988.

Marin, Manuel: Die soziale Dimension des Binnenmarktes; Brussels 1988.

Maydell, Bernd von: Das Recht der Europäischen Gemeinschaften und die Sozialversicherung; in: Zeitschrift für die gesamte Versicherungswissenschaft 1–2/1989, pp. 1–24.

Münster, Winfried: Europa macht ein Faß auf; in: Süddeutsche Zeitung of 7 April 1989, p. 3.
Schmähl, Winfried: Europäischer Binnenmarkt und soziale Sicherung – einige Aufgaben und Fragen aus ökonomischer Sicht; in: Zeitschrift für die gesamte Versicherungswissenschaft 1–2/1989, pp. 25–50.
Schnabel, Claus: Zur ökonomischen Analyse der Gewerkschaften in der Bundesrepublik Deutschland; Frankfurt/Berne/New York/Paris 1989.

The Internal Market Without Social Justice and Fundamental Rights?

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[1] The sections referred to in the text relate to the study by Wolfgang Däubler printed in the previous part of this volume. Articles quoted without any further definition are those of the proposed European Fundamental Rights Act.

1. Constitutional principles of the European Community

The closer the Internal Market comes, the more persistently doubts emerge in terms of constitutional law. An Internal Market without a social dimension, without fundamental rights? Without the checks and balances of a state based on the rule of law and without sufficient democratic legitimacy? Do the current Community Treaties suffice to cover the gradually emerging width and depth of Community legislation reaching far into the political and cultural order of the Member States? Can the "Grundgesetz" (Basic Law of the Federal Republic of Germany) ignore such a development?

Art. 24, 1 of the "Grundgesetz" allows the transfer – it needs to be added: of certain – sovereign rights to intergovernmental bodies. But this only applies under the proviso that the fundamentals of the constitutional order are not impinged upon. The European Community or the future European Union is not required to have an identical constitutional order. Yet, essentially, there must be congruence of the fundamentals of constitutional law. Indispensable fundamental elements of the constitutional order of the "Grundgesetz" are democracy, the rule of law, the federal state principle, the republic and social justice as well as the effective protection of the fundamental rights that make up the constitutional order. Anyone who takes a look at the EC Treaties including the Single European Act (SEA) will discover none of these fundamentals at first glance. The SEA is the first text in which reference is made to democracy and the protection of fundamental rights, but only in the preamble. So, can Art.24, 1 of the "Grundgesetz" no longer function as a bridge of constitutional law to cope with the extensively proliferating Internal Market?

Wolfgang Däubler investigates this pressing question with reference to the social justice principle and the protection of fundamental rights. This concern of his will meet with broadly based interest and his diagnosis of the social deficit will find massive support. His proposed therapy of inacting a European Fundamental Rights Act will, on the other hand, encounter a number of substantive and methodological reservations bound to invigorate the discussion that Däubler is hoping for.

The observation of the other constitutional principles will have to continue to be the subject of discussion. The least cause for contradiction will be offered by the republic principle even though Däubler overstates the case by likening the Council of Ministers to a "Council of twelve prince-electors" (Sect. 3 III). This analogy overlooks the multifaceted institutional integration of the members of the Council on both the Community and the national levels.

The rule of law principle also seems to have been extensively implemented by the jurisdiction of the Court of Justice of the European Communities and by its increased observance in the field of secondary Community law. An open flank remains in the form of the still missing catalog of fundamental rights–to be commented on in the following.

As far as the federal state principle is concerned Art. 24, 1 of the "Grundgesetz" cannot demand congruence because of the very nature of the matter. At any rate, the Community does display a number of federal features.[2] These are often overlooked or deliberately denied so as not to conjure up a European Federal State.

The lack of democratic legitimacy of the proliferating legislation for the Internal Market is becoming increasingly obvious. As far back as in 1974 the Federal Constitutional Court quite rightly pilloried this weakness of the European legal order but recently gave up or at least mitigated this reservation without any recognizeable reason for doing so.[3] Or will there be a Solange III decision after all, this time with reference to the insufficient democratic basis of the Internal Market?

What remains are the questions concerning the social justice principle and the protection of fundamental rights. The 1985 White Paper on the creation of the Internal Market almost completely ignored the social dimension. With the Declaration on social rights (1989) the European Council has tried to shed some light on the social side of the Internal Market. But will that not merely make the currently existing concerns about this open flank of the Internal Market even more visible? Will such a declaration be of any help against social dumping, the reduction of higher social standards and the flight of companies into zones of lower social and labor protection?

Däubler's merciless diagnosis of the social deficit in the Community's legal order can largely be concurred with in the following (2). This also applies to his proposed therapy in the form of a European Fundamental Rights Act (3) whose substance, however, gives rise to severe reservations from the point of view of constitutional law (4). A solemn declaration of social rights will be just as efficient in coping with the concerns presented, without diluting the notion of effectiveness implied in the protection of fundamental rights by the introduction of the concept of enforcability (5).

[2] See Ulrich Everling, Zur föderalen Struktur der Europäischen Gemeinschaft, in: Festschrift Doehring (Berlin et al. 1989), pp. 179 et seq.

[3] Cf. BVerfGE 37, 271 (Solange I) and BVerfGE 73, 339 (Solange II).

2. The social deficit

The social deficit of the Community and also that of the Internal Market program submitted so far cannot be overlooked. On reading Arts. 117 et seq. of the EEC Treaty it becomes evident how these deficits were bound to come about. The Member States largely kept the responsibility for social and labor market policy for themselves. Mutual coordination and cooperation were the ultimate concessions. The competition of social and economic policies was to be preserved. Accordingly, the European Social Fund (Art.123) was largely prevented from developing its own European social policy. It was only the SEA in its Art.118a that permitted the Community to make a "contribution" to the improvement of the "working environment" in the Member States. Against the backdrops of the current criticism, the Commission declared that it wants to use the competences granted in Art.118a as extensively as possible.[4]

Hardly anything can be added to the overview given by Däubler on the current state of Community social law. This also holds true for Däubler's conclusion that, without a safeguarded social perspective, the Community will be faced by legitimacy problems resulting from the lack of acceptance of the Internal Market concept as it presents itself so far. As long as the debate on business locations feeds on differences in social and labor protection standards, as long as companies seriously consider an escape into a less "expensive" labor and social law and as long as the danger of lowering the highest standards achieved in the Community cannot be ruled out, the Internal Market concept will not find the necessary universal acceptance. From this Däubler quite rightly infers that there is an urgent need for perspective action (Sect. 3) that will go largely unchallenged. The study shows up a dual strategy that the Community should consider: the approach of concrete social policy legislation and the approach of a policy of fundamental rights.

Still: on the basis of its limited competences the Community has achieved more in social policy than meets the eye at first glance. Däubler recognizes this and draws a realistic picture of the current legal situation which, on balance, can only be described as "meager" all the same (Sect. 4 II 4). In this context the general provisions of Art.100 and 235 of the EEC Treaty – not only referring to social policy – played an essential role. Däubler considers these regulations requiring unanimity in the Council to be somewhat less promising

[4] Thus the President of the Commission in a speech to the European Parliament on 13 September 1989.

since any Member State would be capable of blocking any further social progress. This conclusion, however, is no longer in line with the current decision-making process. It is no longer possible – or at least difficult – for the individual Member State to maintain an isolated position in the Council of Ministers for a prolonged period of time. This may have been possible inititally with only six Member States. But recently it has been shown again and again that a position deviating from the majority of Member States can only be maintained if several Member States are in agreement. What is more, the newly created Art.118a only provides for a qualified majority in the Council of Ministers. Here, however, Däubler's sceptical question must be echoed as to what the Community organs will agree on when it comes to defining the blurred term of "working environment".

Community law is based on general unwritten legal principles, the majority of which are derived from shared general principles of the law in the Member States. This source of law broadly unfolded by the Court of Justice of the European Communities immediately leads to the question concerning the recognition of unwritten fundamental rights in the legal order of the Community. With special reference to labor and social law Däubler discusses the "general principle" of a ban on social retrogression for which he sees an explicit justification (Sect. 4 II 3) in Art. 68, 3 of the ECSC Treaty that has not been applied so far. However, Art. 86 of the ECSC Treaty itself provides for a number of exceptions so that only the rare cases of deliberate wage dumping are left. This article can therefore not be used as a justification for a comprehensive ban on social retrogression. Furthermore, the recognition of such a ban in the legal orders of the Member States would still have to be proven first.

3. The legitimizing function of a catalog of fundamental rights

Social policy by way of the second approach, i.e. a policy of fundamental rights, is Wolfgang Däubler's real concern. Correctly assessing the conditions of political efficacy he has not couched his demands in very general terms but has presented a catalog of fundamental rights spelled out right down to the last detail.

The initial theory of the need for such a catalog of fundamental rights for the Community is based on the criticism of the level of fundamental rights protection attained in the Community so far. This results from individual guarantees given in the Treaties and from the jurisdiction of the Court of Justice based on general legal principles. This jurisdiction is case-oriented and is therefore bound to be patchy.

From this Däubler infers a number of protection deficits (Sect. 4 III 1–3) which he wants to tackle with his own fundamental rights catalog.

It is only possible to follow this approach within limits. From the rule of law point of view it can hardly be denied that the protection of fundamental rights developed by the Court of Justice meets all modern requirements. This has above all been recognized by the Federal Constitutional Court on the basis of an extensive analysis of the court's jurisdiction[5] that Däubler does not respond to sufficiently. If you like: even the caselaw of the Federal Constitutional Court does not guarantee any ultimate legal safety although it is based on a written catalog of fundamental rights. Protection of fundamental rights can only become visible in concrete individual cases. Additionally, the Court of Justice of the European Communities has often proven that it neither derives a maximum standard from the constitutional heritages of the Member States nor does it systematically limit itself to the smallest common denominator. As a reaction to Solange I the Commission has already underlined quite clearly that in its view an optimum, case-oriented protection of fundamental rights is to be guaranteed in the Community as an integral part of the structure and the objectives of the Community.[6] If Däubler's fundamental doubts were justified the legal order of the United Kingdom could not be given a clean bill of health in terms of the rule of law. Is it possible that the socialist states, so amply provided for with catalogs, be even better off? In terms of the rule of law the current legal position in the Community is hardly open to criticism. It is certainly not if, unlike Däubler, one sees the Community committed to the material guarantees provided by the European Human Rights Convention. Severe fundamental rights violations by the Court of Justice in individual cases cannot be proven by Däubler, either. Even the balanced Hoechst judgement of 21 September 1989 will hardly be classified by critics as falling into this category.

If, however, one looks for guarantees of social fundamental rights, the legal situation in the Community and the jurisdiction of its Court of Justice yield as little as, for example, the catalog of fundamental rights of the "Grundgesetz". A protection by way of fundamental rights against cut-throat competition, against wage cost competition, social dumping or against companies escaping from areas with high social standards is not guaranteed. This apparently is the core of Däubler's criticism of the current legal situation in the Community.

[5] BVerfGE 73, 339, 379 et seq. (Solange II).
[6] Supplement 5/76 to EG-Bulletin, p. 16.

The catalog of fundamental rights he has formulated clearly expresses this criticism.

Däubler's proposal, however, does not only take as its starting point the lack of guaranteed social fundamental rights and minimum standards. Just as important to him are the lack of legitimacy and acceptance of the Community's legal order which in turn are attributable to the lack of a written catalog of fundamental rights. On this score Däubler can expect broadly based agreement. The architects of constitutions who, as in the United States of America (1887) or in the German Reich (1871), deliberately did without a catalog of fundamental rights knew about the legitimizing, unity and competence creating function of a catalog of fundamental rights. One can take it for granted that for the Member States in the founding years 1951 and 1957 neither the subject of fundamental rights nor the establishment of an immediate democratic legitimacy of the Community were of particular concern. This Community was not going to be given features that could in any way be compared to those of constitutional states.

However, the Community of today, just before taking the step towards a comprehensive Internal Market, has very little in common with the Community of the founding years. The concentration of activities achieved, affecting almost all areas in which previously the individual states had sole responsibility, requires the continuous acceptance of its legitimacy by the citizens. These must have the assurance and the conviction that effective protection by fundamental rights is guaranteed vis-à-vis any sovereign power they may be faced with. This guarantee cannot be based on a case-oriented jurisdiction of little transparency. Guarantees of fundamental rights must be visible and invocable vis-à-vis any type of sovereign power in order to be able to fulfill the previously mentioned functions of acceptance and legitimacy.

Däubler considers several ways in which a catalog of fundamental rights could be agreed upon. He includes the draft passed by the European Parliament on 12 April 1989[7] but fails to see any merits in it either in terms of substance (almost no social fundamental rights) or in terms of the approach taken with regard to constitutional law. Yet, the Federal Constitutional Court did already grant "legal relevance" to the very generally phrased Declaration of Fundamental Rights of the European Parliament, the Council and the Commission dating from the year 1977.[8] How much more relevant might the fully formu-

[7] Text in EuGRZ 1989, p. 205.

[8] BVerfGE 73, 383 (Solange II): on this cf. M. Hilf, EuGRZ 1987, pp. 1 et seq.

lated draft of the European Parliament be if it was supported by the Council and the Commission and if the parliaments of the Member States also expressed their support. Certainly it will then only be a small step towards a formal change in the Treaty. This is why the pioneering and triggering effect of the catalog formulated by the European Parliament should not be underestimated.[9] Däubler quite rightly considers the simpler approach by way of a regulation according to Art. 235 of the EEC Treaty to be unfeasible since it would be secondary to Treaty Law itself (Sect. 5 III 2). In addition, a "regulation" cannot be the appropriate form for a constitutional text designed to have constituent effects upon the Community. In the final analysis, therefore, Däubler presents a separate Fundamental Rights Act for the adoption of which he demands a formal modification of the Treaty. Such a modification seems to have become more easily attainable in the recent past than it appeared to be only a few years ago when the objective of integration was pursued less vigorosly.[10] Däubler wants to project this Treaty modification into the future in what he calls a "concrete utopia."

4. On the required substance of a catalog of fundamental rights

In spite of its all-encompassing name the European Fundamental Rights Act presented by Däubler is essentially limited to fundamental social rights. Echoing the European Social Charter Däubler uses a somewhat more comprehensive approach in order to meet all currently known and future deficiencies and threats. These do not only include economic threats but also the dangers emanating from information technology and genetic engineering mainly to the environment. The rights of freedom that "are to be guaranteed irrespective of the economic and social situation" are not explicitly established by Däubler. In this regard, reference to the European Human Rights Convention is deemed to be sufficient (Art. 1, 2).

This limitation may in fact constitute one of the main drawbacks of the approach chosen by Däubler. If the legitimacy of the Community and the gaining of acceptance are the major concerns, then those affected by the law must be shown all fundamental rights in one and the same catalog. At this point, the citizen must not be left in a state of uncertainty by being referred to some legal technicality or some other

[9] On this see B. Beutler, EuGRZ 1989, pp. 185 et seq.

[10] In concrete terms, Art.30 of the Single European Act already provides for an examination of a treaty modification after five years with reference to the inclusion of European Political Cooperation in the Single European Act. A Treaty modification is also under preparation with reference to the creation of European Monetary Union.

body of law: moreover, the European Convention on Human Rights merely offers a minimum standard jointly supported by 23 European states. For the benefit of a more closely defined Community a "concrete utopia" should be based on a stricter and above all more comprehensive standard of fundamental rights. The European Human Rights Convention does show a few gaps, not only in comparison with the catalog contained in the "Grundgesetz", for example, but also has a few shortcomings with reference to some of the rights guaranteed (inter alia, voting right, freedom to choose an occupation, right of ownership).

This concentration on the essential social fundamental rights to the exclusion of all others is regrettable for another reason as well. Däubler – unlike the European Parliament in the decision on its own draft – could have presented a "no compromise" catalog free of any thoughts of political expediency, which could have been used as a basis for the negotiations due after 1992 on supplementing of the Community Treaties. Thus, this will only apply to that portion of the social fundamental rights whose establishment is a matter of contention among and within the Member States anyway. This is already reflected in the split between fundamental rights protection in the European Human Rights Convention on the one hand and the European Social Charter, on the other hand, or in the separate establishment of these respective fundamental rights in the two United Nations human rights covenants dating from 1966. Regulatory intensity and implementation procedures differ in each case.

The "Grundgesetz", as a deliberate contrast to the Weimar Constitution, also avoided including social fundamental rights in its catalog of fundamental rights.

In the rationale of his Fundamental Rights Act Däubler points to the "lopsidedness" that the Community will suffer as a result of its social deficit (Sect. 5 I). His draft, which sets aside the classic rights of freedom with the briefest of references, will not be spared a similar fate. A consensus among Member States and/or a broadly based acceptance of this part of the presented Fundamental Rights Act can therefore not be expected.

In the actual area of fundamental social rights, on the other hand, the Fundamental Rights Act does show evidence of a sharpened perception. With very good reason, Däubler rejects the approach proposed by the Economic and Social Committee of the Community as amounting to a mere pooling of the social rights so far agreed upon and proclaimed internationally.[11] Here, Däubler quite rightly recog-

[11] ECASAC of 22 February 1989, CES 270/89

nizes that reference is made to a "giant patchwork carpet" which in addition – as proven by the example of the right to strike under Sect. 5 II 1 – contains contradictory statements. In contrast, Däubler refers to the constitutions of the Member States as a much more relevant basis for the Community and comes to some clear and sweeping statements by making reference mainly to the particularly "eloquent", more recent constitutions of Spain and Portugal. Above all, Däubler takes into consideration not only the conventionally discussed rights of employees but also the rights of "persons not in gainful employment", as well as the different types of employment relationships ranging from part-time work to the work of the self-employed. These differentiations are as important as the restrictive background conditions, clearly recognized by Däubler, that any listing of social fundamental rights has to take into consideration (Sect. 5 II 2): the Member States want to maintain constitutional responsibility for their social policies marked by different traditions (co-determination!) that must also be viewed against the background of widely differing financial capacities in the individual Member States. Guaranteeing a Community-wide minimum wage would therefore be unrealistic. In the final analysis, autonomy in collective bargaining must be guaranteed and must subsequently also be respected on the European level.

From these general background conditions Däubler quite sensibly draws the conclusion that he can go further in the formulation of rights of defence than in the case of rights of participation and rights of performance for which he leaves a lot of latitude to the Member States. And finally: Däubler clearly sees the difficulty that is in the way of an effective implementation of social fundamental rights. He therefore assigns greater chances of success to the reports to be presented by Member States than to the protection afforded by the courts since this would have to be limited to a monitoring of inactivity and of arbitrary action (Sect. 5 II 3). This primarily applies to the "rights" that merely constitute a duty to realize specific targets. On the whole, Däubler's attempt at distinguishing between enforceable rights as, for example, the social minimum, and those fundamental rights that are not accessible to any direct enforcement on the part of individuals (as for example the right to an intact environment in Art. 5) is a convincing one.

The catalog contains 41 articles with fully formulated rights, the first 18 of which contain general human rights. Art.19 through 41 deal specifically with the rights of the working population. Another eight articles refer to legal implèmentation and to the enactment procedure of the Fundamental Rights Act.

The Fundamental Rights Act presented does indeed offer a trea-

sure trove of rights to be guaranteed, some of which have already been generally recognized, some of which appear only sporadically in individual – mostly more recent – constitutions, and some of which have so far never been recognized and/or precisely formulated – as for example the "rights of the self-employed" (Art. 40) or the "rights of the illegally employed" (Art. 41). To some extent, the impression is created that many disputes conducted or still to be settled under the "Grundgesetz" will now be shifted to the European level. This holds true for the question of positive discrimination (Art.16) or for the question of alternative wage payments in companies indirectly affected by strike (Art. 23, 3). And finally, some regulatory areas are shifted to the Community level that are currently still perceived as being in the hands of the Member States (entry of non-EC nationals according to Art. 17, 3).

The overall appearance of the Fundamental Rights Act is not a uniform one: on the one hand, the text has been formulated with impressive clarity, while on the other hand it gets bogged down in excessive details which, taken individually, are of course important for working life, but which at the same time overburden the catalog, depriving it of some of its charismatic qualities. The protective duties of the Community and/or the Member States with regard to individual rights and especially the regulations for the implementation of these rights are dealt with at great length (inter alia, the appointment of attorneys and the possibility of group litigation in favor of labor unions according to Art. 45). This finding also holds true for the inclusion of certain political priority objectives like that of full employment according to Art. 11, 4. While the equality of men and women is expressed in five brief words in Art. 3, 2 of the "Grundgesetz", Däubler proposes five longer paragraphs in Art. 32 that relate to a number of specific labor law conflicts (inter alia, wage groups for light work and paragraph 611a of the German Civil Code). It is open to doubt whether such detailed regulations are appropriate in a constitutional text.

In this context no detailed comments can be made on individual articles. It would not be proper, anyway, for an expert in constitutional law to evaluate proposals made on fundamental issues of labor and social law. The explanatory notes given on each article do show the roots and the sources of reference and also indicate the different chances of implementation. Here are just a few comments all the same:

- After the declaration of human dignity in Art. 1, Art. 2 goes on to establish the principle of incorporation; the fundamental rights laid down in the Act are to be binding not only on the Community

but also on the Member States. As far as the Community is concerned, this question has not yet been finally settled.
The chances of implementation for the catalog would certainly be greater if it were to limit itself to being binding only on the sovereign power exercized by the Community. If that course of action were to eliminate the Member States as addressees of social fundamental rights, however, the catalog would fail to pursue its original objective.

- The phrasing used for the right of genetic identity in Art. 6 could easily serve as an example for the legislators in the Federal Republic of Germany who are still somewhat hesitant on this point. In Art. 7 the right of securing fundamental needs is defined as a right to have an "appropriate standard of living" for oneself and ones relatives and can therefore be taken as going well beyond the social minimum which, based on Art. 1, 1 and 2, would be an enforceable right according to the "Grundgesetz".
- On the whole, all those many formulations are quite revealing that deviate from the catalog of the "Grundgesetz", thus expressing existing criticism of certain constraints that have been imposed on the fundamental rights by jurisdiction. The Federal Constitutional Court has explicitly found that the protection afforded by fundamental rights on the Community level does not have to coincide with the protection according to the "Grundgesetz". From this point of view, one can agree with Art. 8 reducing the right of free development of the personality, i. e. excluding the associated right of general freedom of action as laid down in Art. 2, 1 of the "Grundgesetz". This also holds true for the failure to mention the law of morality among the barriers, but mentioning instead the somewhat dull interest of third parties or of the general public.
- A far-reaching deviation from the "Grundgesetz" which will certainly be considered questionable by many is proposed by Däubler for the protection of property. Art.13 of the Fundamental Rights Act provides only for a protection of "personal property" used by oneself. With regard to "larger property" the responsibility of the Member States is to be retained according to Art. 220 of the EEC Treaty. On the other hand, the newly formulated right of solidarity (Art. 18) is to permit interferences in earnings opportunities and existing economic rights without any compensations or other limitations being visible.
- Largely deviating from, perhaps even incompatible with the "Grundgesetz", is Art. 12 which proposes granting equal status to marriage, family and permanent non-marriage partnerships.
- In the articles on the Fundamental Rights of Workers (Art. 19 et

seq.) Däubler proposes a whole host of labor law regulations for the European area that were contentious in the Federal Republic of Germany and/or could not be derived immediately from the catalog of fundamental rights of the "Grundgesetz" (for example the role of the company officer in the union according to Art. 20, 3, detail regulations concerning strike law in Art. 23 right up to cross-border solidarity strikes). With regard to the Internal Market the ideas on the substance of the service contracts are of particular importance. In this context, Däubler's objective is to determine a certain minimum standard in order to avoid competitive distortions between the labor laws of individual Member States (cf. especially Art. 26 on working hours and Art. 31 on protection against dismissal).

There are quite a number of other details that one might mention at this juncture either with an approving nod or a non-comprehending shake of the head. Laying down fundamental social rights will hardly produce any rapid agreement between the Member States; even less so if – like Däubler – you refuse to shy away from highly controversial questions but, on the contrary, comment on them in no uncertain terms. Däubler goes well beyond the provisions of the Community Treaties – to some extent with very good reason – for example when he demands that, according to Art. 177, 3 of the EEC Treaty, the individual be given direct access to the Court of Justice of the European Communities for litigation to obtain his fundamental rights, for example in the event of a national court having violated its duty of submission. The Court of Justice of the European Communities in turn is held to hear the case and hand down a judgement. The ban, as laid down in Art. 46, on orders and subsidies to companies that do not observe the rights laid down in the Fundamental Rights Act offers a considerable conflict potential when it comes to formulating it in practice because of the then undoubtedly indispensable "black lists".

Art. 48 provides for the Fundamental Rights Act to come into force on 14 July 1989, certainly a date of historical relevance – but then, that has already been missed. There is no comment as to what other prerequisites have to be met for the Act to come into force. Art. 49 is a reminder of the CSCE's final act which proposes that in cases of doubt the Fundamental Rights Act be publicly interpreted by the local authorities.

5. The chances of implementation

The time for Däubler's study on a European Fundamental Rights Act could not have been better chosen. The Community has reached a stage of development at which for the first time the impairment of social rights must be viewed as a realistic possibility. Däubler's diagnosis of the Community's social deficit and the threat of a lopsidedness in the emerging Internal Market can largely be concurred with. Däubler's proposed therapy, on the other hand, which takes the form of a "European Fundamental Rights Act", will only meet with partial agreement, particularly since Däubler does not shy away from any controversial issues and takes a committed stand on all topical questions of labor and social law. This does, in fact, constitute the special value of the study.

But: no matter how important the cataloging of fundamental rights on the level of the Community may be in order to legitimize the latter and gain the necessary acceptance for it, it would be totally misguided to essentially limit the catalog to the fundamental rights for the working population. Using a legal technicality as a reference to the European Human Rights Convention will fail to bring home to the citizen the very right whose protection he perceives as a primary need. While the Fundamental Rights Act, in its section of social rights, can be assumed to cover all "fundamental rights" currently under public discussion, the debate on the protection of the classic rights of freedom remains an open issue.

Däubler's draft will be a valuable input into the further discussion on the modification of the original Treaties of the Community that has again become necessary and will probably relate to the strengthening of the safeguard mechanisms for the principles of democracy and the rule of law under the conditions of the Internal Market. At this point events will have to prove whether the rather more cautious "approach of the center" selected by the European Parliament in its draft of 12 April 1989 will be more promising than Däubler's European Fundamental Rights Act which will try to gain the acceptance of the Community citizen by offering "tangible guarantees" (Sect. 7). And it will also have to be seen whether threatening social deficits cannot be counteracted more sensibly and more efficiently by acts of legal harmonization including the determination of minimum standards.

A catalog of fundamental social rights, the majority of which cannot be immediately enforced by the individual might, in contrast, appear to be a somewhat watered-down alternative to the effective fundamental rights protection achieved in the "Grundgesetz". A

Declaration of Social Rights to be promulgated by the European Council, in conjunction with a concrete legislative program of the Community, would, on the other hand, be able to achieve the same objective without having to disappoint the high hopes created by the cloak of the fundamental rights.

Selected Bibliography

Compiled by Anke Kleinschmidt

This bibliography does not claim to be complete. It rather includes those sources and articles on which the contributions in this volume are based. In addition, some documents of central importance and a selection of standard works were included. For the English edition, this bibliography has, by and large, remained without major changes. Thus the references compile the thrust of the German literature on European social policy. Many titles may not be verifiable elsewhere. In this respect the bibliography can be used as a guide to German publications.

The documents listed in the first section of the bibliography give an overview of the positions taken and the concepts proposed within the European Community on the subject of the Internal Market and its consequential effects as well as the concept of a European social policy.

The titles on social policy within the European Community listed in the second part of the bibliography are meant to help the reader to assess the current political decisions in the context of European policy as pursued so far.

The third section includes literature on the social dimension of the Internal Market with the emphasis on a discussion of labor law and economic issues.

I. Documents

Bundesministerium für Wirtschaft/Bundesministerium für Arbeit und Sozialordnung: Soziale Dimension der Europäischen Gemeinschaft. Aufzeichnung. In: Sozialpolitische Umschau 13/1989 and as Studienreihe no. 60, December 1988.

Deutsche Bundesregierung: Initiative der deutschen Bundesregierung

zur Verwirklichung einer europäischen Sozial- und Gesellschaftspolitik dated 19 October 1972. In: Schwarz, Jürgen (Ed.): Der Aufbau Europas. Pläne und Dokumente 1945–1980, Bonn 1988, 479 et seq.

Europarat: Europäische Sozialcharta. Official Translation, Strasbourg 1980.

Europäische Gemeinschaften: Unterzeichnung des Zusatzprotokolls zur Europäischen Sozialcharta des Europarates durch die Mitgliedstaaten der Gemeinschaft, KOM (88) 218 final, 1988.

Europäischer Gewerkschaftsbund: Gestaltung des europäischen Sozialraums im Binnenmarkt. Europäisches Sozialprogramm des EGB. Verabschiedet durch den Exekutivausschuß am 11. und 12. Februar 1988.

Europäischer Gewerkschaftsbund: Entschließung "1992 und der Gipfel in Hannover". In: Entschließungen des 6. satzungsmäßigen Kongresses am 9.–13. 5. 88 in Stockholm, Brussels 1988.

Europäischer Gewerkschaftsbund: Entschließung "Wirtschaftspolitik für Vollbeschäftigung". In: Entschließung I auf dem 6. satzungsmäßigen Kongreß am 9.–13. 5. 88 in Stockholm, Brussels 1988.

Europäischer Gewerkschaftsbund: Entschließung zum Memorandum "Statut der Europäischen Aktiengesellschaft". Sitzung am 6./7. 10. 1988 in Madrid (duplicated).

Europäischer Gewerkschaftsbund: Entschließung zur Mitwirkung der Sozialpartner bei der Normensetzung in Europa. Angenommen vom Exekutivausschuß am 6./7. Oktober 1988 in Madrid.

Europäisches Parlament: Ausschuß für soziale Angelegenheiten und Beschäftigung: Bericht Salisch über den Begriff Arbeitsumwelt und den Anwendungsbereich von Art. 188a des EWG-Vertrags, Sitzungsdokument EP A2-226/88, 1988.

Europäisches Parlament: Institutioneller Ausschuß: Weißbuch über den Beitrag der Europäischen Gemeinschaft zur Förderung und Wahrung der Grundrechte und -freiheiten der europäischen Bürger (dupl. by Karel de Gucht), PE 115.274 final, Strasbourg 1988.

Europäischer Rat: in Hannover, 27. und 28. Juni 1988. Schlußfolgerungen des Vorsitzes. In: EG-Nachrichten 8/1988, in particular p. 3 et seq.

EVP-Fraktion im Ausschuß für soziale Angelegenheiten und Beschäftigung des Europäischen Parlaments: Soziale Aspekte des Europäischen Binnenmarkts (=Schriftenreihe der EVP-Fraktion im EP, 1988).

Gemeinsame Erklärung des Bundesverbandes der Deutschen Industrie und des Deutschen Gewerkschaftsbundes vom 31. 7. 1989:

Die Chancen des Europäischen Binnenmarktes nutzen, Cologne/ Düsseldorf 1989 (duplicated).

Gemeinsame Erklärung des Vorsitzenden des Deutschen Gewerkschaftsbundes, Ernst Breit, und des Präsidenten der Bundesvereinigung der Deutschen Arbeitgeberverbände, Dr. Klaus Murmann vom 26. Juli 1989: Zur sozialen Dimension des Europäischen Binnenmarktes. In: Informationsdienst der Bundespressestelle des Deutschen Gewerkschaftsbundes, Düsseldorf 1989.

Kommission der Europäischen Gemeinschaften: Sozialpolitisches Aktionsprogramm, Luxembourg 1974.

Kommission der Europäischen Gemeinschaften: Die Sozialpolitik der Europäischen Gemeinschaft, Luxembourg 1983.

Kommission der Europäischen Gemeinschaften: Vollendung des Binnenmarktes. Weißbuch der Kommission an den Europäischen Rat, Brussels 1985.

Kommission der Europäischen Gemeinschaften: Binnenmarkt und industrielle Zusammenarbeit. Statut für die Europäische Aktiengesellschaft. Weißbuch über die Vollendung des Binnenmarkts, Rdn 137, KOM (88) 320 final, esp. VIb.: Mitbestimmung der Arbeitnehmer.

Kommission der Europäischen Gemeinschaften: Die Kommission der EG legt die Leitlinien für die gemeinschaftliche Sozialpolitik in den kommenden Jahren fest, Informatorische Aufzeichnung 1988.

Kommission der Europäischen Gemeinschaften: 16. Tätigkeitsbericht des Europäischen Sozialfonds. Haushaltsjahr 1987, KOM (88) 701 final, 1988.

Kommission der Europäischen Gemeinschaften: Zwischenbericht der interdirektionalen Arbeitsgruppe. Die soziale Dimension des Binnenmarktes (Soziales Europa, Sondernummer), Luxembourg 1988.

Kommission der Europäischen Gemeinschaften: Vollendung des Binnenmarktes: Ein Raum ohne Binnengrenzen. Bericht über den Stand der Arbeiten gemäß Artikel 8b des EWG-Vertrages, KOM (88) 650 final, 1988. Samml. Dokument 1989.

Kommission der Europäischen Gemeinschaften: Arbeitsprogramm der Kommission für 1989. In: Bulletin der Europäischen Gemeinschaften, Supplement 2/1989, 13–70.

Kommission der Europäischen Gemeinschaften: Vorentwurf. Gemeinschaftscharta der sozialen Grundrechte vom 30. 5. 1989, KOM (89) 248 final.

Kommission der Europäischen Gemeinschaften: "Sozialbericht". Bericht über die Entwicklung der sozialen Lage der Gemeinschaft. "Sozialbericht" (Teilbericht des 22. Gesamtberichts über die Tätig-

keit der Europäischen Gemeinschaften 1988, Brussels/Luxembourg 1989).

Kommission der Europäischen Gemeinschaften: Vierter Bericht der Kommission über die Durchführung des Weißbuches der Kommission zur Vollendung des Binnenmarkts, KOM (89) 311 final, 1989.

Kommission der Europäischen Gemeinschaften: Vorschlag für einen Beschluß über ein mittelfristiges Aktionsprogramm der Gemeinschaft zur wirtschaftlichen und sozialen Eingliederung der am stärksten benachteiligten Gruppen, KOM (88) 826 final.

Memorandum der griechischen Regierung: Objet: Les priorités et les Objectifs de la présidence grecque pour la création d'un espace social commun, 1988 (duplicated).

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Informationsbericht der Fachgruppe Sozial- und Familienfragen, Bildungswesen und Kultur über die sozialen Aspekte des Binnenmarktes (Europäischer Sozialraum). Rapporteur Beretta, CES (87) 225.

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften (Economic and Social Committee of the Europeen Communities): The Social Aspects of the Internal Market. In: Agence Europe, Documents, 9 December 1987.

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Stellungnahme und Informationsbericht betreffend die sozialen Aspekte des Binnenmarktes, Abl. Nr. C 356 31 December 1987 and CES 225/87 fin).

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Stellungnahme zu Soziale Aspekte des Binnenmarktes ("Europäischer Sozialraum"). Stellungnahme, DOK.CES 1069/87, 19 November 1987.

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Blick auf 1992. Der Wirtschafts- und Sozialausschuß unterstützt "Das Europa der neuen Perspektiven" (= Blick auf 1992, WSA 1988).

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Entschließung zur sozialen Dimension des Binnenmarktes, DOK.CES 1267/88.

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Initiativstellungnahme zu den "grenzüberschreitenden Arbeitsmarktproblemen", Abl. No. C95 of 11 April 1988).

Wirtschafts- und Sozialausschuß der Europäischen Gemeinschaften: Die sozialen Grundrechte der Europäischen Gemeinschaft. Stellungnahme, CES 270/89, Brussels 1989.

II. Social Policy of the EC

Albertin, Lothar: Nationale Tradition der Sozialpolitik und Europäische Integration. In: Albertin, Lothar: Probleme und Perspektiven Europäischer Einigung, Cologne 1986, p. 69 et seq.

Curall, Julien: Le Fonds Européen de Développement Régional des origines jusqu'à l'Acte unique européen. In: Cahiers de Droit Européen 1/1988, p. 39 et seq.

Deleeck, Herman: L'avenir de la sécurité sociale en Europe, Paris 1987.

Dicke, Klaus: Menschenrechte und europäische Integration, Kehl-Strasbourg 1987.

Ewert, Holm A.: Der Beitrag des Gerichtshofs der Europäischen Gemeinschaften zur Entwicklung des Europäischen Sozialrechts, Munich 1987.

Euzeby, Alain: Financement de la protection sociale et vieillissement. In: Futuribes 128/1989, p. 3 et seq.

Frowein, Jochen Abr. und *Peukert, Wolfgang:* Europäische Menschenrechtskonvention. Kommentar, Kehl/Strasbourg/Arlington 1985.

Frowein, Jochen Abr.; Schulhofer, Stephen; Saphiro, Martin: The Protection of Fundamental Human Rights as a Vehicle of Integration. In: *Cappelletti, Mauro; Seccombe, Monica; Weiler, Joseph:* Integration through Law, vol. 1: Methods, Tools and Institutions, book 3: Forces and Potential for a European Identity, Berlin/New York 1986, p. 231 et seq.

Hohnerlein, Eva-Maria: Federal Republic of Germany. In: *Jaspers, A.* und *Betten, L.* (Ed.): 25 Years European Social Charta, December 1988, p. 105 et seq.

Kleinhenz, Gerhard: Leitbilder und Zielsysteme der Sozialpolitik der Europäischen Gemeinschaften. In: Sanmann, Horst (Ed.): Leitbilder und Zielsysteme der Sozialpolitik, Berlin 1973, p. 185 et seq.

Kleinhenz, Gerhard: Die Stellung der Sozialpolitik im politischen Gefüge der EG. In: *Lichtenberg, Hagen* (Ed.): Sozialpolitik in der EG, Baden-Baden 1986, p. 17 et seq.

Lichtenberg, Hagen (Ed.): Sozialpolitik in der EG, Baden-Baden 1986.

Lyon-Caen, Gérard and *Lyon-Caen, Antoine:* Droit social international et européen, Paris 1985.

Masberg, Dieter and *Pinz, Peter:* Die Sozialpolitik der Europäischen Gemeinschaft. In: *von Hauff, M.* and *Pfister-Gasperie, B.* (Ed.): Internationale Sozialpolitik, Stuttgart/New York 1982, p. 51 et seq.

Miller, Rudolf: Stiefkind Sozialpolitik. In: Bundesarbeitsblatt. Vol. 36 (1982), p. 5 et seq.

Narjes, Karl-Heinz: Sozialpolitik in den Europäischen Gemeinschaften. In: *Maydell, Bernd von* and *Kannengießer, Walter* (Ed.): Handbuch Sozialpolitik, Pfullingen 1988, p. 376 et seq.
Philip, Christian: Droit social européen, Paris/New York/Barcelona 1985.
Pieters, Danny: Sociale grondrechten op prestaties in de grondwetten van de landen van de Europese Gemeenschap, Antwerp 1986.
Pocar, Fausto: Diritto communitario del lavoro, Milan 1983.
Schnorr, Gerhard: Arbeits- und sozialrechtliche Fragen der europäischen Integration, Berlin/New York 1974.
Schulte, Bernd: Europäische Sozialpolitik–Eine Zwischenbilanz. In: Sozialer Fortschritt, 1, 2/85, p. 1 et seq.
Schulte, Bernd: Sozialpolitik in der Europäischen Gemeinschaft. In: Sozialpolitik in der Bundesrepublik, special issue of "Gegenwartskunde", Hamburg 1983, p. 81 et seq.
Schwarze, Jürgen (Ed.): Fortentwicklung des Rechtsschutzes in der Europäischen Gemeinschaft, Baden-Baden 1987.
Seidel, Bernhard: Regional- und Sozialpolitik. In: Jahrbuch der Europäischen Integration 1988/89, Bonn 1989. Cf. also previous articles in: Jahrbuch der europäischen Integration 1980 et seq, Bonn 1981 et seq.
Watson, Philippa: Social Security Law of the European Communities, London 1980.
Weiler, Joseph H.H.: The European Court at a Crossroads: Community Human Rights and Member State Action. In: *Capotorti* et al (Ed.): Du droit international au droit de l'intégration. Liber Amicorum Pierre Pescatore, Baden-Baden 1987, p. 821 et seq.
Weinstock, Ulrich: Erreichtes und Erstrebtes. In: *Weinstock, Ulrich* et al (Ed.): Neun für Europa. Die EWG als Motor europäischer Integration, Cologne 1973, p. 9 et seq.
Wellner, Walter and *Schmid, Gerhard:* Europa auf dem Wege zur Sozialunion. Entwicklung, Analysen, Perspektiven, Bonn 1988.
Wellner, Walter and *Schmid, Gerhard:* Europäische Sozialpolitik, Munich 1986.

III. Social Dimension of the Internal Market

Adams, Heinz W. (Ed.): Europa 1992. Strategie, Struktur, Ressourcen, Frankfurt/Main 1989.
Arbeitskreis Außenpolitik der SPD-Bundestagsfraktion (Ed.): Europäischer Binnenmarkt–Europäischer Sozialraum. Zusammenfassung der Redebeiträge der Anhörung vom 2. Mai 1988, Bonn 1988.

Berié, Hermann: Deutsche EG-Präsidentschaft. Erfolg für den europäischen Sozialraum. In: Bundesarbeitsblatt 9/1988, p. 5 et seq.
Binnenmarkt '92–Für ein soziales Europa. Zusammenfassende Dokumentation der Gemeinsamen Tagung von EG-Kommission und Deutschem Gewerkschaftsbund. In: Europäische Zeitung, November 1988, p. 8 et seq.
Birk, Rolf: Der Einfluß des Gemeinschaftsrechts auf das Arbeitsrecht der Bundesrepublik Deutschland, RIW 1989, p. 6 et seq.
Blüm, Norbert: Europa der Arbeitnehmer. In: Europäisch denken & handeln. MIT-Jahrbuch 1989, p. 338 et seq.
Hans-Böckler-Stiftung (Ed.) Materialien zur Fachtagung Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum?–Das Beispiel des Gesellschaftsrechts, Munich 1988.
Breit, Ernst (Ed.): Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988.
Brok, Elmar: Harmonisierung der Sozialpolitik. In: Europäisch denken & handeln. MIT-Jahrbuch 1989, p. 345 et seq.
Brown, Richard: The European Employer. Social and Employment Implications for Managers of "Completing the European Internal Market". Discussion Paper 11/1988 of the British Institute of Management (BIM), London 1989.
Deutsche Bundesregierung: Antwort auf die Große Anfrage Drucksache 11/4034: Europäischer Binnenmarkt und Soziale Demokratie, Drucksache 11/4699 des Deutschen Bundestages vom 6. 6. 89.
Deutsche Bundesregierung: Antwort auf die Große Anfrage Drucksache 11/4163: Sozialraum Europäische Gemeinschaft, Drucksache 11/4700 des Deutschen Bundestages vom 6. 6. 89.
Busch, Claus: Der Binnenmarkt, die Entwicklung der Arbeitsteilung der Bundesrepublik mit den EG-Staaten und die Probleme der Gewerkschaften. In: Mitbestimmung 1988, p. 646 et seq.
Cassen, Bernard: Le "social" à la remorque de l'Acte unique. In: Le Monde Diplomatique, Dec. 1988.
Cecchini, Paolo: Europa '92. Der Vorteil des Binnenmarktes, Baden-Baden 1988, in particular p. 138 et seq.
Clever, Peter: Der EG-Binnenmarkt aus sozialpolitischer Sicht. In: Arbeit und Sozialpolitik 5/1989, p. 122 et seq.
Coldrick, Peter: No progress without the social dimension. In: European Affairs 3/1988, p. 64 et seq.
Däubler, Wolfgang: Sozialstaat Europa? In: EG-Binnenmarkt '92. Chancen und Risiken für Betriebe, Freiburg i. Br. 1988, p. 155 et seq.
Däubler, Wolfgang: Europäischer Binnenmarkt und Gewerkschaftspolitik. In: Gewerkschaftliche Monathefte 8/1988, p. 459 et seq.

Däubler, Wolfgang: Grenzüberschreitende Fusion und Arbeitsrecht. In: Der Betrieb 1988, p. 1850 et seq.
Delors, Jacques: Binnenmarkt '92. Für ein Soziales Europa. In: Bundesarbeitsblatt 11/88, p. 5 et seq.
Delors, Jacques: Das Europa des Möglichen und des Notwendigen. In: Gewerkschaftliche Monatshefte 1/1988, p. 26 et seq.
Delors, Jacques: Kein wirtschaftlicher Fortschritt ohne sozialen Zusammenhalt. In: Kommission der EG (Ed.): Perspektive '92. Monatlicher Brief zum Europa ohne Binnengrenzen 7/1988, S. 1.
Delors, Jacques: Soziales Dumping wird es nicht geben! In: EG-Nachrichten 50/1988, p. 1 et seq.
Delors, Jacques: Die Orientierungen der Kommission. Rede vor dem Europäischen Parlament in Strasbourg am 17. 1. 89, EG-Nachrichten 3/1989.
EG-Binnenmarkt–Welche Chancen und Risiken zeichnen sich ab? Broschüre der Europäischen Gemeinschaften 1988.
Die Einheitliche Akte muß ein Erfolg werden: eine neue Perspektive für Europa. Bulletin der Europäischen Gemeinschaften, 1987, supplement 1/87.
Europa der Bürger. Fakten und Argumente. In: EG-Nachrichten 11/1989.
Europäisches Gewerkschaftsinstitut: Die soziale Dimension des Binnenmarktes. Teil I: Beschäftigung. Teil II: Arbeitnehmerrechte in den europäischen Unternehmen. In: Info 25+26, Brussels 1988.
Europäisches Parlament, Ausschuß für soziale Angelegenheiten und Beschäftigung: Bericht Gomes über die soziale Dimension des Binnenmarktes, Sitzungsdokument EP A2-399/88, 1989.
Europas Zukunft. Vollendung des Binnenmarktes 1992. Argumente und Anhang, Berichte und Informationen der Europäischen Gemeinschaften Doc. No. 2/88 and 2a/88.
Europas Zukunft–Vollendung des Binnenmarktes 1992 (Zusammenfassung der Ansprache von J. Delors, Präsident der Kommission der Europäischen Gemeinschaften (88) 145.
Fitoussi, Jean-Paul: L'Europa, le chômage et 1992. In: Pouvoirs 48/1989, p. 17 et seq.
Fondation Europe et Société: Cohésion sociale et dialogue social européen dans la construction du marché intérieur (= Les Cahiers de la Fondation 12–13/1989).
Franzmeyer, Fritz: Economic, Social and Political Costs of Completing the Internal Market. In: *Bieber, Roland; Dehousse, Renaud; Pinder, John; Weiler, Joseph H.H.:* 1992: One European Market. A Critical Analysis of the Commission's Internal Market Strategy, Baden-Baden 1988, p. 55 et seq.

Halbzeit auf dem Weg zum Binnenmarkt: Die Kommission zieht Bilanz, Informatorische Aufzeichnung 1988.
Hinterscheid, Mathias: Binnenmarkt und Sozialraum. In: Forschungsgruppe Europa (Ed.), Binnenmarkt '92: Perspektiven aus deutscher Sicht, Gütersloh 1989 (= Arbeitspapiere 1), p. 45 et seq.
Hirn, Wolfgang; Junker, Peter und Pühler, Susanne: Sozialraum Europa. Gespenster-Diskussion. In: Wirtschaftswoche 26/1989, p. 42 et seq.
Hirsch, Valéry: Un volet social pour le grand marché. In: Revue du Marché Commun 319/1988, p. 371 et seq.
Institut der deutschen Wirtschaft (Ed.): Sozialraum Europa, Cologne 1989 (= IW-Dossier Nr. 7).
Issen, Roland: Was erwarten die Gewerkschaften von Europa? In: Sonde 1–2/89, p. 32 et seq.
Jacobi, Otto: Gewerkschaften, industrielle Beziehungen und europäische Einigung. In: Mitbestimmung 1988, p. 609 et seq.
Kirchner, Dieter: Die Bedeutung der Sozialpartner für die Weiterentwicklung der europäischen Integration–Europäische Tarifpolitik ja oder nein? In: *Biskup, Reinhold* (Ed.): Europa–Einheit in der Vielfalt–Orientierungen für die Zukunft der europäischen Integration, Bern/Stuttgart 1988 (= Beiträge zur Wirtschaftspolitik, vol. 50), p. 151 et seq.
Lichtenberg, Hagen: Die Freizügigkeit der Arbeitnehmer in der Europäischen Gemeinschaft–rechtliche und soziale Probleme. In: *Lichtenberg, Hagen* (Ed.): Sozialpolitik in der EG, Baden-Baden 1986, p. 117 et seq.
Lobby document 1992. The European social area and young people. In: Youth Opinion 23/1988 (Suppl.), p. 1 et seq.
Lyberis, Nikolaos: Rechtliche Bindungskraft des Prinzips sozialer Kohäsion nach der Einheitlichen Europäischen Akte, Athen-Komotini 1988.
Maydell, Bernd von: Das Recht der Europäischen Gemeinschaften und die Sozialversicherung. In: Zeitschrift für die gesamte Versicherungswissenschaft 1, 2/1989, p. 1 et seq.
McLaughlin, Diarmid: L'Europe Sociale. Réalisations et Perspectives. In: Revue du Marché Commun 1987, p. 320 et seq.
Murmann, Klaus: Der Europäische Binnenmarkt aus der Sicht der Arbeitgeber. In: Sonde 1–2/89, p. 38 et seq.
Observatoire Social Européen: Le Fonds social européen. Signification des diverses réformes et perspectives d'avenir, Brussels 1989.
Poos, Jacques F.: Reussir l'Europe sociale. In: Studia diplomatica 1/1989, p. 11 et seq.
Quel espace social dans le futur marché unique? In: Opinion Jeunesse 23/1988, p. 7 et seq.

Salisch, Heinke: EWG-Vertrag fordert Verbesserung der Arbeitsumwelt. In: Mitbestimmung 1988, p. 679 et seq.
Schmähl, Winfried: Europäischer Binnenmarkt und soziale Sicherung–einige Aufgaben und Fragen aus ökonomischer Sicht. In: Zeitschrift für die gesamte Versicherungswissenschaft 1–2/1989, p. 25 et seq.
Seidel, Martin: Grundsätzliche rechtspolitische Probleme bei der Verwirklichung des Binnenmarktes, EA 19/1987, p. 553 et seq.
Der *soziale Dialog* in Europa auf sektoraler Ebene. In: Soziales Europa 2/85, p. 5 et seq.
Soziale Dimension des Binnenmarktes. In: Bulletin der EG2/1988, p. 26 et seq.
Die *sozialen Aspekte* des Binnenmarktes, vol. I (= Soziales Europa, suppl. 7/88).
Die Sozialpolitik der Gemeinschaft in der Perspektive 1992. In: Stichwort Europa 13/88.
SPD-Vorstand (Ed.): Die wirtschaftlichen Auswirkungen des Binnenmarkts 1992 auf Sektoren und Regionen der Bundesrepublik Deutschland. Abridged version of an "empirica" Study, Bonn 1989.
Stabenow, Wolfgang: Den Binnenmarkt durch regionale Entwicklung sichern. In: EG-Magazin 5/1989, p. 14 et seq.
Steinkühler, Franz (Ed.): Europa '92. Industriestandort oder sozialer Lebensraum, Hamburg 1989.
Sutherland, Peter: 1er Janvier 1993. Ce qui va changer en Europe, Paris 1988.
Vetter, Heinz-Oskar: EG-Binnenmarkt und Arbeitnehmermitbestimmung. In: Breit (Ed.): Europäischer Binnenmarkt: Wirtschafts- oder Sozialraum? Bonn 1988, p. 111 et seq.
Van Zweeden, Toon: The "Social Dimension" in Europe... a continuing problem. In: European Affairs 1/1989, p. 18 et seq.
Venturini, Patrick: La dimension sociale du marché interieur, pierre angulaire de la construction européenne. In: Futuribles 127/1988, p. 3 et seq.
Venturini, Patrick: Ein europäischer Sozialraum für 1992, Luxemburg (Amt für amtliche Veröffentlichungen der Europäischen Gemeinschaften) 1989.
Vergleichende Darstellung der Systeme der sozialen Sicherheit in den Mitgliedstaaten der Europäischen Gemeinschaft. Allgemeines System, Luxemburg (Amt für amtliche Veröffentlichungen der Europäischen Gemeinschaften) 1988.
Vogel-Polsky, Eliane: L'Acte Unique ouvre-t-il l'espace social européen? In: Droit Social 2/1989, p. 177 et seq.

Vogler-Ludwig, Kurt: Europäischer Binnenmarkt und Beschäftigung. Ein Problemaufriß, Nuremberg 1989 (= Beiträge zur Arbeitsmarkt- und Berufsforschung 127).
Vogt, Uwe: Europäischer Binnenmarkt. Soziale Dimension. In: Bundesarbeitsblatt 10/1988, p. 5 et seq.
Weder, Jörn Dietrich: Märchen vom Schlaraffenland Binnenmarkt. In: Mitbestimmung 1988, p. 616 et seq.
Zwickel, Klaus: Tarifpolitik in einem gemeinsamen Europa, Mitbestimmung 1988, p. 635 et seq.

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Publications include: Das Problem der Kondratieff-Zyklen. Ein Beitrag zur Entwicklung einer Theorie der "Langen Wellen", Berlin–Munich 1974; Regionale Wirtschaftspolitik in Frankreich–Eine Auseinandersetzung mit ihren Problemen und Methoden, Hamburg 1968; Neun für Europa–Die EWG als Motor der Integration (Ed.), Düsseldorf 1973; Administrative Strukturen der Europäischen Gemeinschaft – Ein Programm zur Revitalisierung der Brüsseler Bürokratie, Bonn 1977; Abgestufte Integration–Eine Alternative zum herkömmliche Integrationskonzept? (co-author) Kehl/Strasbourg 1984. Additionally author of many articles and contributions on different aspects of European integration.

The Project Partners

The Bertelsmann Foundation sees itself as an institution which, in line with the mandate and principles laid down in its constitution, is committed to promoting innovation, generating ideas and, above all, helping to move pressing problems closer to a solution and injecting important issues into a broadly based discussion.

It is with these objectives in mind that the Bertelsmann Foundation initiated the project "Strategies and Options for the Future of Europe". It is designed to make a contribution in conceptual, contentual and material terms to the solution of European political problems in the present and the future. At the same time the project is intended to improve understanding between European countries and to strengthen the process of integration in Europe while preserving national and regional cultural identities. To give the project the necessary conceptual guidance the Bertelsmann Foundation nominated an international advisory council composed of high-ranking experts in the field of politics, economics and science. The public is kept informed about the results of the project work by, among others, two series of publications: the "Basic Findings" or fundamentals, and the "Working Papers".

Responsibility for the scientific tasks in developing, implementing and communicating the project objectives was assumed by the *Research Group on European Affairs* within the Institute of Political Science at the Johannes Gutenberg University in Mainz. In doing so the group can fall back on more than ten years of intensive research into European issues conducted at the Institute of Political Science. A diversity of publications, among them the editorial responsibility for the "Mainzer Beiträge zur Europäischen Einigung" and cooperation on the "Jahrbuch der Europäischen Integration" are ample evidence of this work. What is more, the Research Group on European Affairs possesses a comprehensive infrastructure. This includes not only two editorial teams but also a research library and the European

Documentation Center that has on file all documents and publications of the organs of the European Community and is connected to the European data base network.

The Publications

As a direct outcome of the work on the project "Strategies and Options for the Future of Europe" the publications listed in the following have so far been issued:

Information on the approach, the objectives, the fields of work:
Bertelsmann Stiftung (Ed.), **Strategien und Optionen für die Zukunft Europas.** Ziele und Konturen eines Projektes. Gütersloh 1988, 23 p.
Bertelsmann Foundation (Ed.), **Strategies and Options for the Future of Europe.** Aims and Contours of a Project. Gütersloh 1989, 23 p.
Fondation Bertelsmann (Ed.), **Stratégies et options pour l'avenir de l'Europe.** Objectifs et contours d'un project. Gütersloh 1989, 23 p.

In the series "Basic Findings" (Bertelsmann Foundation Publishing):
Forschungsgruppe Europa, **Europäische Defizite, europäische Perspektiven–eine Bestandsaufnahme für morgen.** Grundlagen 1. Gütersloh 1988. 222p. ISBN 3–89204–011–7. DM 20.00.
Research Group on European Affairs, **European Deficits, European Perspectives–Taking Stock for Tomorrow.** Basic Findings 1. Gütersloh 1989. 232 p. ISBN 3–89204–018–4. DM 20.00.
Rolf H. Hasse, **Die Europäische Zentralbank: Perspektiven für eine Weiterentwicklung des Europäischen Währungssystems.** Grundlagen 2. Gütersloh 1989. 257 p. ISBN 3–89204–022–2. DM 20.00.
Rolf E. Hasse, **The European Central Bank: Perspectives for a Further Development of the European Monetary System. Strategies and Options for the Future of Europe.** Basic Findings 2. Gütersloh 1990. 280 p., ISBN 3-89204-036-2. DM 20.00.
Wolfgang Däubler, **Sozialstaat EG? Die andere Dimension des Binnenmarktes.** Grundlagen 3. Gütersloh 1989. 214 p. ISBN 3—89204–026–5. DM 20.00.
Dieter Biehl, Horst Winter, **Europa finanzieren – ein föderalistisches Modell. Strategien und Optionen für die Zukunft Europas.** Grundlagen 4. Gütersloh 1990. 175 p. ISBN 3-89204-028-1. DM 20.00.

In the series "Working Papers" (Bertelsmann Foundation Publishing):
Forschungsgruppe Europa (Ed.), **Binnenmarkt '92: Perspektiven aus deutscher Sicht.** Arbeitspapiere 1. Gütersloh 1988, 4th Ed. 1989, 222 p., ISBN 3-89204-015-X. DM 12.00.
Werner Weidenfeld, Walther Stützle, Curt Gasteyger, Josef Janning, **Die Architektur europäischer Sicherheit: Probleme, Kriterien, Perspektiven.** Arbeitspapiere 2. Gütersloh 1989. 73 p., ISBN 3-89204-020-6. DM 12.00.
Bertelsmann Stiftung (Ed.), **Die Vollendung des Europäischen Währungssystems.** Arbeitspapiere 3. Gütersloh 1989. 72 p. ISBN 3-89204-024-9. DM 12.00.
Werner Weidenfeld, Josef Janning: **Der Umbruch Europas: Die Zukunft des Kontinents.** Arbeitspapiere 4. Gütersloh 1990. 71 p., ISBN 3-89204-032-X. DM 12.00.
Werner Weidenfeld, Walther Stützle: **Abschied von der alten Ordnung; Europas neue Sicherheit.** Arbeitspapiere 5. Gütersloh 1990. 44 p., ISBN 3-89204-038-9. DM 12.00.
Werner Weidenfeld, Christine Holeschovsky, Elmar Brok, Fritz Franzmeyer, Dieter Schumacher, Jürgen Klose, **Die doppelte Integration: Europa und das größere Deutschland.** Arbeitspapiere 6. Gütersloh 1991. 109 p., ISBN 3-89204-042-7. DM 12.00.
Bertelsmann Stiftung (Ed.), **Wie Europa verfaßt sein soll. Materialien zur Politischen Union.** Arbeitspapiere 7. Gütersloh 1991. 458 p., ISBN 3-89204-045-1. DM 12.00.

List of Abbreviations

ABl	Amtsblatt (Official Journal)
AiB	Arbeitsrecht im Betrieb (Company-Level Labor Law)
AK-GG	Allgemeiner Kommentar zum Grundgesetz (General commentary on West Germany's Basic Law)
ArbG	Arbeitsgericht (Labor court)
BABl	Bundesarbeitsblatt (German Labor Law Gazette)
BGBl	Bundesgesetzblatt (German Federal Law Gazette)
Coll.	collection
CSCE	Conference on Security and Co-operation in Europe (KSZE: Konferenz über Sicherheit u. Zusammenarbeit in Europa)
DB	Der Betrieb (The Enterprise)
DGB	Deutscher Gewerkschaftsbund (German Trade Union Confederation)
DIHT	Deutscher Industrie und Handelstag (Conference of German Chambers of Trade and Commerce)
DVBl	Deutsches Verwaltungsblatt (German Administrative Law Gazette)
EA	EuropaArchiv (European Archives)
ECEI	European Confederation of Economic Interests (EWIV)
ECOSOC	Economic and Social Committee
ECSC	European Coal and Steel Community (Europäische Gemeinschaft für Kohle und Stahl)
EECT	EEC Treaty (EWG-Vertrag)
EFT	European Federation of Trade Unions (Europäischer Gewerkschaftsbund)
EGI	Europäisches Gewerkschafts-Institut (European Trade Union Institute) (Institut Syndical Européen)
EHRC	European Human Rights Convention
EP	European Parliament

ETUC	European Trade Union Confederation
EuGH	Court of Justice of the European Communities
EuGRZ	Europäische Grundrechte-Zeitschrift (European Fundamental Rights Magazine)
EuR	Europarecht (European Law)
FAZ	Frankfurter Allgemeine Zeitung
GMH	Gewerkschaftliche Monatshefte
HRC	Human Rights Convention
ILO	International Labour Organization
Mitb.	Mitbestimmung (German magazine on co-determination)
MittAB	Mitteilungen aus der Arbeitsmarkt- und Berufsforschung (German Newsletter on Labor Market and Vocational Research)
NJW	Neue Juristische Wochenzeitschrift (German weekly law magazine)
PE	Parlement Européen
RdA	Recht der Arbeit (Labor Law)
Reg.	Regulation
RIW	Recht der international Wirtschaft (International Economic Law)
RMC	Revue du Marché commun
SEA	Single European Act
TVG	Tarifvertragsgesetz (German Collective Bargaining Act)
UNO	United Nations Organization