Chapter VI

Labor Law and Social Security

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INTRODUCTION

It is the object of this chapter to consider the effect of the establishment and functioning of the European Economic Community on the legal principles and institutions governing labor-management relations in the members of the Community. The Treaty of Rome contains a number of provisions on social policy, of which some are potentially very important, indeed perhaps indispensable to the functioning of the Community. At the time of writing (1959) the Community is, however, still at the beginning of its formative stage, and the social policies embodied in the Treaty are largely promises rather than achievements. Moreover, some of the provisions of the Treaty are simply general statements of policy or of legislative programs—blanks to be filled in in accordance with economic and political developments which cannot now be predicted. No prophecies of any kind will be attempted here; the following pages will within certain limits give an account of what has happened and of what is happening. They will leave it to the reader, if he is so inclined, to form his own judgement as to what is more or less likely to happen in the future.

Nor will any attempt be made to analyze the details of labor law in the Six; there, as everywhere, labor law is extremely complex. Such details as are discussed will only serve to illustrate the broad principles and to explain the fundamental institutions of labor-management relations which are thought to be of interest to those to whom this book is addressed. A very brief account of the salient features of social security law will also be included. Social security

law is not only complex, however, it is extraordinarily kaleidoscopic, so that everything said today may very well have lost its validity tomorrow.

Accordingly this chapter falls under three headings, the last of which is an appendix. The first part is an attempt to analyze the Treaty itself and its impact on labor law and social security. The second is, as it were, a sketch map of the intricate landscape of the labor laws in the Six, including in particular the mutual relations of constitutions, treaties, legislation, and collective bargaining, the structure of unions, employers' associations, and their mutual relations, the role of the law in the enforcement of collective agreements, the legal representation of employees at plant level, the settlement of collective and individual disputes, and the special problems relating to the termination of contracts of employment. The third part will deal with some features of social security law.

None of these matters will be sufficiently analyzed to make possible the solution of practical issues. The object is to help the reader to ask the right questions rather than to give those answers which only the expert on the spot can provide.

I. THE IMPACT OF THE TREATY ON LABOR LAW AND SOCIAL SECURITY

A. General

The report made to the foreign ministries of the Six on April 21, 1956, by the Heads of the Delegations forming the Intergovernmental Committee set up by the Messina Conference (commonly referred to as the "Spaak Report") must serve in this field as the point of departure for an analysis of the Treaty itself. The Report emphasizes that the removal of internal tariffs and import quotas is in itself not sufficient for the creation of a common market. Other measures are required, and among these special importance attaches to provisions designed to promote mobility of labor and to those facilitating re-adaptation so as to protect workers from the "burdens and risks" attending progressive change. One of the aims of the Community must be the free circulation not only of goods and services, but also of the "factors of production themselves, that

1 Comité Intergouvernemental Créé par la Conférence de Messine, Rapport des Chefs de Délégations aux Ministres des Affaires Étrangères (April 21, 1956) [hereinafter cited as Spaak Report]. The Inter-Governmental Committee had been established by the Messina Conference in June, 1955, under the Chairmanship of M. Paul-Henri Spaak, then Belgian Foreign Minister.
is of capital and of men." "Thus we must give hope to an unemployed labor force, which instead of being a burden for some countries, will be transformed into an asset for Europe." This, however, cannot be achieved overnight. "Transformations as fundamental as these cannot be accomplished without long delay. Within reasonable limits, one year more or less makes no essential difference. The chances that the Common Market will be firmly established are all the better if the period provided for its establishment permits a gradual coalescence of monetary policies and of social policies." 2

"A gradual coalescence of social policies" ("une convergence progressive . . . dans les politiques sociales") appears in the Spaak Report not perhaps as an indispensable condition for the functioning of a common market, but as one of the elements which may greatly assist in giving it firm foundations. At the end of the transitional period labor should be free to circulate in the Community and common social legislation for which the Treaty provides should have been enacted. 3

It is useful at the outset to bear in mind that, within the framework of the Spaak Report as well as within that of the Treaty itself, the gradual assimilation of social and labor legislation and administration is intended to serve two related but distinct purposes: the removal of obstacles to migration of labor, and the removal of what are called "distortions" of competition. More will have to be said about the first point, especially with regard to social security law. The Spaak Report approaches the second problem with great caution. It deals with the "correction of distortions," pointing to the possibility that legislative and administrative measures, other than those of an openly discriminatory kind and those openly supporting certain industries or enterprises, may in fact falsify "the conditions of competition between national economies as a whole or certain of their branches." 4 Yet, the Report is at great pains to point out that differential burdens—for example, through public expenditure or through social security programs—do not in themselves falsify the conditions of competition, since they may be compensated for by rates of exchange. The Report also indicates that it is quite wrong to think that competition can develop only on the basis of equalizing the conditions which determine prices. "On the contrary: it is on the basis of certain differentials that equilibrium can be established and exchange be developed. It is thus for

2 Id. at 17–19.
3 Id. at 20.
4 Id. pt. I, tit. 2, ch. 2 at 60.
example with differences in wage levels if they correspond to differences in productivity.” And the Report points to the common interest in establishing labor-intensive industries in regions where labor is abundant. The Report is strongly influenced by the expectation that, as the demand for labor rises where labor is cheapest, wage rates will tend to rise, and that, on the other hand, the free circulation of labor will gradually facilitate an equalization of conditions of employment.⁵

These passages of the Spaak Report are of fundamental importance for an understanding of the Treaty and of the policies to which its provisions seek to give effect. “Equalization, so far from being a condition precedent of the operation of the common market, is, on the contrary, its result. Hence it is useless to try somehow to modify by decree the fundamental conditions of an economy which arise from its natural resources, its level of productivity, the significance of public burdens. Part of what is commonly called harmonization can therefore only be the result of the functioning of the common market itself, of the economic forces which it releases, and of the contacts between those interested to which it leads.”⁶

This is clearly not intended to be a plea for laissez-faire. “Deliberate and concerted action” is necessary for the functioning of the Common Market. But it must be “limited.” It must consist in “correcting or eliminating the effect of specific distortions which further or hinder certain branches of (economic) activity.”⁷

At first sight the problem here looks like that of the chicken and the egg—that is, is harmonization of labor conditions a prerequisite or a consequence of the Common Market? The answer given by the Report is clear—generally speaking new economic conditions should be allowed to have their impact on labor conditions, and “harmonization” should be resorted to only where there are “specific distortions.”

These policies are reflected in the Treaty, but not as clearly as might have been the case. This may be due to the fact that the relevant provisions were drafted only at the end of the crucial conversation between the French and West German Prime Ministers.⁸ It seems to have been argued, especially by the French Government,
that an elimination of gross distortions was not enough, but that it would be necessary to assimilate the entire labor and social legislation of the Member States completely so as to achieve parity of wages and social costs. The relevant provisions show the traces of a compromise between these two policies, but the general policy of harmonization as visualized by the Treaty would not appear to run counter to the principles of the Spaak Report, and only one of the special clauses imposes upon the members a compulsory obligation to take any concrete steps towards its realization. At the same time the Treaty places more emphasis than the Report on a deliberate policy of social improvement.

This is the meaning of the key Article 117 which has obviously confronted the Commission with difficulties of interpretation. Article 117 provides:

Member States hereby agree upon the necessity to promote improvement of the living and working conditions of labor so as to permit the equalization of such conditions in an upward direction.

They consider such a development will result not only from the functioning of the Common Market which will favor the harmonization of social systems, but also from the procedures provided for under this Treaty and from the approximation of legislative and administrative provisions.

At first sight this Article seems to disinter "the chicken-versus-the-egg" issue which had been so effectively buried by the Spaak Report. The first paragraph looks like a prescription and the second is more nearly a prediction; the first purports to inaugurate a policy, the second expresses a prophecy. In the first paragraph the "equalization" of the living and working conditions "in an upward direction" is envisaged as one of the objectives of the Community, no doubt as being desirable in itself, and at the same time as a part of the foundation of the Common Market. This means that by appropriate measures the conditions are gradually to be improved until they are at the level of that Member State which has the highest standard. But the second paragraph seems to express the view, adumbrated to some extent, as we have seen, by the Spaak Report, that, if coupled with "the procedures provided for under this Treaty and . . . the approximation of legislative and administrative provisions," the automatism of the Common Market itself
will produce the harmonization which in the first paragraph is seen as the end product of deliberate policies directed towards it.

That this is very far from being a legal "point," a lawyer's quibble, is shown by the attitude of the Commission, which has been at great pains to clarify the interpretation of Article 117.\(^{10}\) The second paragraph might have been thought to be compatible with a policy by which conditions of employment are not forced up but forced down. Competition may produce a uniform level of prices and wages below that prevailing in any given Member State. One country may be forced to dilute its social security system so as to remain competitive with others. This interpretation has been emphatically rejected by the Commission. It

\[\ldots\text{. considers that Article 117 provides for the equalization in an upward direction of the living and working conditions of labor, and a functioning of the Common Market which will favor the harmonization of social systems cannot imply a levelling on a theoretical average standard of living, as this would, for example, force those countries with the most advanced economic and social development to hold up their social evolution till less fortunate countries have managed to catch up. Against this equalization should be placed the desire to encourage and help all peoples in the Community to improve their existing social situation, as the equalization provided for by the Treaty must be sought by means of more rapid progress in those areas where progress seems to be most needed.}\(^{11}\]

This official view of the Commission was further expounded by Signor Petrilli, a member of the Commission and President of its Social Affairs Group. He added the significant observation that

\[\ldots\text{the concept "equalization in an upward direction" constitutes neither a reason to hold up development in the countries at present most favored nor a Utopian yearning after mechanical equalization of living and working conditions. For the Commission, this concept means an approach directed to offering individuals, social groups, geographical areas and economic sectors equal opportunities to play their part in social progress.}\(^{12}\]

This latter point is of importance. The "living and working conditions" referred to in the first paragraph of Article 117 are clearly


\[^{11}\text{Id. para. 169 at 107-08.}\]

understood, and to be understood, as an aggregate, and it will thus be legitimate, for example, when comparing wage levels, to take into account the effect of social security schemes or of public services (health, housing and the like) provided out of governmental funds. This has two significant consequences: In the first place, the Treaty does not inaugurate a policy of "mechanical" assimilation of legislation. It does not visualize uniformity of labor and social legislation, not even, necessarily, uniformity of social security burdens as a condition for the functioning of the Common Market. It does not, after all, give effect to a general program corresponding to that aspect of French policy in this matter which, in a more special context, has found expression in the "Protocol relating to Certain Provisions of Concern to France." In the second place, the interpretation put on Article 117 by the Commission, by the President of its Social Affairs Group, and also by the European Parliamentary Assembly, effects, so to speak, a second burial of the problem of automatism and planned action which, needless to say, is not really a mere logical conundrum but a profound problem of economic and social policy. It reads Article 117 as an expression of the views expounded in the Spaak Report in the sense that the automatism of the Common Market is permitted to have free play as long as it produces an equalization of working conditions in an upward direction, but that corrective and planned action will have to be taken if it impedes social progress or—this is implied rather than expressed—leads to a deterioration in the conditions of the more advanced members. In so far, then, as Article 117 thus interpreted permits and indeed demands conscious action not only to promote migration and to remove distortions of competition, but also to promote social progress, it constitutes a program which goes beyond that envisaged in the Spaak Report.

But even with this third objective of equalization added to the first two, it is not a program for wholesale legislative and administrative uniformity. Such uniformity is neither one of the objectives

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14 See its Résolution sur les questions sociales traitées dans le premier rapport général sur l'activité de la Communauté Économique Européenne, pt. I, paras. 2–4, [1959] JOURNAL OFFICIEL DES COMMUNAUTÉS EUROPEENNES [hereinafter cited as J'OFF.] 167. Numbers 4 and 5 of the Resolution reflect the dilemma discussed in the text. In the same Resolution (numbers 7–10), the Assembly also expressed the view that the Commission should urgently pursue a policy of developing the underdeveloped regions of Europe, and, in this connection, promote development programs transcending national frontiers, and cooperate in these matters with the Council of Europe and with O.E.E.C.
of the Community nor considered a necessary step to achieve the purposes of the Community formulated in Article 2 of the Treaty. “The approximation of their respective municipal law” appears in Article 3(h) as one of the activities of the Community, but only “to the extent necessary for the functioning of the Common Market.” Any other attitude towards the unification of law would, it is suggested, be wholly unrealistic generally, and especially in connection with labor and social legislation. The important differences between the various systems of labor legislation and social security in the six countries are no doubt partly the result of disparities in economic development such as the authors of the Spaak Report and of the Treaty hoped gradually to overcome. To a very large extent, however, they are caused by differences in tradition, in political outlook, in social *mores*—differences which are deeply rooted in the political and social history of Europe and quite incapable of being eliminated by a stroke of the pen of a legislator or treaty maker. The analogy with the evolution of the United States may be very misleading. There is all the difference in the world between developing the economy of a largely unpopulated continent for which a “common market” as well as a bond of political unity was provided in advance by a common constitution, and seeking to convert into an economic unit a continent enjoying the benefit, and suffering from the burden, of rich and manifold and very deep-seated traditions of thought and action. This may be a truism, but it happens to be a thought of special significance when contemplating the effect of the Treaty on social legislation. If, in two neighboring countries which are as closely connected economically as France and Western Germany, the structure and significance of collective bargaining and its relation to legislation, are very different (as in fact they are), the causes cannot, or cannot only, be found in economic disparities. They must be looked for in the political history and public opinion of these countries, and there is nothing to show that even a functioning common market would, within an appreciable future, produce uniformity where for centuries there has been diversity.

Although any thought of unification of labor and social legislation en bloc may, then, be dismissed at the outset, the “procedures provided for under this Treaty” and “the approximation of legislative and administrative provisions” are nevertheless expected—as Article 117 indicates—to make a contribution to the equalization of living and working conditions in an upward direction. The “procedures” here referred to are very obviously the steps which, in ac-
cordance with Article 8, will be taken during the transitional period, that is, before the Common Market can be said to “function”; and the gradual reduction of customs duties and elimination of quantitative restrictions within the Community, the gradual establishment of a common external customs tariff, the raising of agricultural productivity, the gradual freeing of the movement of workers, services and capital are thought in themselves to be able to help towards the desired improvement.

A closer look at the Treaty itself and at the Spaak Report is useful, however, in order to determine what role has been assigned to the “approximation of legislative and administrative provisions,” in the life of the Community and in the constitutional structure created by the Treaty.

B. THE APPROXIMATION OF LEGISLATIVE AND ADMINISTRATIVE PROVISIONS

In the Spaak Report the “Assimilation of Legislation” is linked in one chapter with the “Correction of Distortions,” though in a separate section. It is pointed out that distortions of competition can arise, for example, where in one country social security services are financed out of general taxation and in another out of contributions with the result that labor-intensive industries in the former country enjoy an advantage compared with those in the latter. Different methods of financing social security and different conditions of employment—for example, the relation between male and female wages, hours of work, overtime pay, and holidays with pay—are especially mentioned as possible causes of distortion. But the assimilation of legislation is not envisaged as the only primary remedy. Even where, as may be the case, several distortions do not so to speak cancel one another out, the Commission is, in the first place, not to go further than to propose that the governments concerned either recommend to the organizations adjustments in collective bargaining or submit legislative changes to their parliaments. In the event of the rejection of its proposals the Commission is to have the power of agreeing to countervailing “escape clauses” permitting subsidies or delaying tariff reductions in proportion to the retained “distortions.” Unification of legislation appears as an ultimate device where such measures do not promise success.

In certain cases the best way of making the distortion disappear will turn out to be to assimilate in the various coun-

tries the legal provisions the disparity of which gives rise to the distortion itself.

But even in such cases one ought to proceed with caution:

One must not however lose sight of the effect on costs which such modifications of legislation may have; it will also be necessary to endeavor to give priority to different modifications which between them can in this respect produce an effect of mutual compensation. 16

Although the assimilation of legislation thus appears in the Spaak Report primarily as an instrument to be applied in the last resort for the elimination of distortions which cannot otherwise be removed, it is recognized that it may serve more far-reaching purposes, for example, the removal of customs barriers (through unification of revenue legislation), or the removal of obstacles to the free circulation of goods and persons through the unification of social security systems. It will be noted that the Spaak Report does not envisage simply the preservation of social security rights for migrant workers (such as has already been largely achieved in the course of recent events) 17 but the unification of social security systems as a whole. These more far-reaching measures will, however, have to be adopted unanimously.

No one can read the section of the Spaak Report which deals with assimilation of legislation without becoming aware that the two branches of the law which must have been foremost in the minds of its authors were revenue law and labor and social security legislation. As regards labor law in particular, the Report leaves no doubt at all that the Common Market is expected to bring about a high degree of uniformity. The relevant passages are important enough to be given here in extenso: 18

As regards the conditions of labor, one cannot easily visualize the continued existence inside a common market of systems which are noticeably different from each other. The spontaneous tendency towards the harmonization of the social systems and wage levels and also the pressure exercised by the trade unions in order to obtain a co-ordination of the conditions of labor will be supported by the gradual creation of the Common Market. The unification which should proceed naturally, and without in any country encroaching upon the conditions of life and labor, will

16 Id. at 64.
18 Spaak Report 65.
moreover contribute to facilitating to a considerable extent the gradual creation of freedom of movement of labor.

Again we see, here more particularly with regard to legislation, the thought which runs like a leitmotiv through the Spaak Report, that assimilation must be the fruit primarily of economic development, subject, however, to the principle, more fully articulated in the subsequent pronouncements of the Commission, that the development thus engendered will always be upwards and not in the direction of deteriorating conditions. And again, as previously in a more general context, there is a warning against precipitate action.

On the other hand, one should not underrate the difficulty of solving these problems exclusively by governmental action and in accordance with a time-table rigidly fixed in advance. Thus, a shortening of the legal or normal work week constitutes in fact an increase of wages. Wage increases, however, are not compatible with stable prices unless they either accompany an increase of productivity or can be carried into effect through an increase of the wage earners’ share in the national income. The procedure which will have to be set in motion will have to give all the incentives which are necessary so as to make use of the given conditions in order to bring about an assimilation of the conditions of labor: it will in particular be a case of giving to such upward movements of wages as are compatible with stability a character which ensures the desired assimilation.

These procedures will have to make it possible to take account of the diversities of economic conditions, working class traditions, and the elements which go into the making of a policy of raising the standard of living of labor in their entirety. It will therefore be necessary to entrust the Commission with the task of making proposals which will take into account the forms and the times of change which are most propitious.

Here, as is true of the correction of distortions, these proposals will, during the first stage, require the unanimous consent of the Council representatives of the Member States; subsequently they can be adopted by a qualified majority vote. If there is in fact a distortion and if there is no agreement on the counter-measures proposed by the Commission, the state concerned should, in the opinion of the authors of the Spaak Report, be given by the Commission the benefit of an escape clause.
The Treaty itself has, with some modifications, given effect to the policy formulated in the Spaak Report. The programmatic pronouncement in Article 3(h) is implemented in Part III, Title I, Chapter 3 of the Treaty which bears the heading "Approximation of Laws." This Chapter makes clear that the legal power of the Community to enforce an approximation of legislation is very limited indeed. It has no power to legislate in a "supranational" manner with direct effect upon the laws of the Member States. The Council is by Article 100 instructed to "issue directives for the approximation of such legislative and administrative provisions of the Member States as have a direct incidence on the establishment or functioning of the Common Market." "Directives," in contradistinction to "regulations," are, of course, not directly applicable as part of the law of a Member State, but merely bind "any Member State to which they are addressed, as to the result to be achieved, while leaving to domestic agencies a competence as to form and means." \(^{19}\) Moreover, one exception apart, the Council can issue such directives only "by means of a unanimous vote" \(^{20}\) so that each of the six members has an absolute veto. This is, of course, in line with the recommendations of the Spaak Report. The Council must act "on a proposal of the Commission," that is, a directive can only issue if a majority of the Commission \(^{21}\) and all members of the Council are in agreement, and, where a directive involves legislative amendment in any Member State, the Assembly and the Economic and Social Committee must be consulted. The Spaak Report recommended that, after the first stage, proposals for unification of legislation should be passed by the Council with a qualified majority, and this has—with some qualifications—been adopted, thereby creating the one exception to the principle of unanimity. Where the Commission has found that a disparity between the legislative and administrative provisions of the Member States distorts the conditions of competition and thereby causes a state of affairs which must be eliminated, and where consultation between the Commission and the interested Member States has not resulted in an agreement which eliminates the distortion (a situation which may, perhaps, be regarded as not altogether unlikely in connection with social legislation), the Council will be able, after the first stage ends, to issue directives, acting by means of a qualified vote on a proposal

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\(^{19}\) Treaty art. 189.  
\(^{20}\) Id. art. 100.  
\(^{21}\) Id. art. 163.
of the Commission. Since the vote has to be by qualified majority, the issue of the directive could, of course, be vetoed by any two of the three Members which have four votes on the Council (France, Germany, Italy) or by any one of them with the concurrence of either Belgium or the Netherlands. A compromise between conflicting interests in the form of an amendment of the directive proposed by the Commission requires either the concurrence of the Commission itself or a unanimous vote of the Council.

It is certainly not the policy of the Treaty to make supranational legislation easy, and, as we have seen, this cautious approach to the problem corresponds not only to the attitude reflected in the Spaak Report but also to the needs of the situation. It would be unrealistic to place much reliance on the legislative powers of the Community as an instrument to assimilate social and labor legislation in the six countries.

This, however, is in no way to imply that certain branches of the law cannot, or should not, be gradually assimilated to one another. In fact, in a Resolution passed on January 15, 1959, the Assembly expressed the view that importance should be attached to the harmonization of conditions of employment in the Community, and that to this end the Commission should not only furnish the representatives of the interests involved with the necessary documentary material, but should also take active steps to promote assimilation of the legal rules which apply in the various countries and should make contact with the relevant organizations with a view to achieving it. The Directorate-General of Social Affairs, which is the relevant administrative service of the Commission, is actively engaged in a number of investigations, for example, of the existing legal situation with respect to the entry and the employment of foreign workers and their families, of collective agreements, of the way in which the principle of equal remuneration for men and women is applied in the six countries, and of other matters. A certain measure of conformity among employment conditions in the Six may be

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22 Id. art. 101, para. 2.
23 Id. art. 148.
24 Id. art. 149.
26 Second Gen'l Rep. Annexes A, B, C.
27 Id. para. 174.
29 Second Gen'l Rep. para. 79.
the fruit of these endeavors. Whatever is achieved will more nearly resemble the efforts of the United States Commission on Uniform State Laws than those of the United States Congress. In other words, it will result from cooperation under the auspices of the Community rather than from any direct intervention by the Community. Article 117 may be, in sum, the expression of an aspiration rather than of a program of action. To say this is not necessarily to imply a defeatist attitude concerning the possibility of gradually assimilating the legislation of the Six, but may only be to suggest that voluntary cooperation is the most promising method of doing so. This means that the policy of Article 118 may be more significant than the (at first sight) more ambitious pronouncements of Article 117.

C. Cooperation in General

Article 118 provides that “without prejudice to the other provisions of this Treaty and in conformity with its general objectives, it shall be the aim of the Commission to promote close cooperation between Member States in the social field.”

The Treaty does not attempt an exhaustive enumeration of methods envisaged to achieve this aim. Mutual advice may, of course, be sought and given directly between Member States, but the Treaty reflects the view that the Commission and its administrative services are the “chosen instruments” of assistance to Member States and are to act as intermediaries, presumably adopting methods already well tested by the International Labor Office at Geneva and by the High Authority of the European Coal and Steel Community.

The Commission has already established contacts with both of these organizations. On July 7, 1958, the European Economic Community entered into a very important Agreement with the International Labor Organization,30 in which the two bodies agreed to consult regularly with one another on questions of mutual interest, to keep each informed about the other’s programs, and to seek coordination of work. The I.L.O. also agreed to give the Commission technical assistance. Since this Agreement was concluded, the Commission has established relations with the I.L.O. especially in connection with problems of safety, industrial hygiene, health protection, and vocational training, and the Commission has sent

observers to I.L.O. meetings at which problems of this kind were discussed.\textsuperscript{31}

In regard to social as well as other problems close liaison has been established between the Commission and the High Authority of the European Coal and Steel Community\textsuperscript{32} especially with respect to the health and safety problems referred to.\textsuperscript{33} The history of what has so far been the most significant achievement of the Community in the field of social policy—the Regulations Concerning the Social Security of Migrant Workers\textsuperscript{34}—indicates that the work done over the past few years by the Coal-Steel Community and especially by the High Authority is a very important basis for the work of the Commission. The comprehensive research done by and on behalf of the High Authority, particularly in the fields of labor law\textsuperscript{35} and of social security,\textsuperscript{36} cannot fail to be of great benefit to the future work of the Economic Community. As regards health and safety, contact has also been established between the Commission of the Economic Community and that of Euratom, which is obviously faced in this area with very important special problems of its own.\textsuperscript{37}

The Commission must “act in close contact with Member States, by means of studies, the issuing of opinions, and the organizing of consultations both on problems arising at the national level and on those of concern to international organizations.”\textsuperscript{38} The extensive investigations which formed the basis of the two Exposés published by the Commission,\textsuperscript{39} on the Social Situation in the Community were


\textsuperscript{32} First Gen’l Rep. paras. 39, 104.

\textsuperscript{33} Second Gen’l Rep. para. 189.

\textsuperscript{34} See below, and for the history: First Gen’l Rep. paras. 117–18; Second Gen’l Rep. para. 165.

\textsuperscript{35} Especially the work of a group of six experts appointed by the High Authority. Three volumes have so far been published: They deal with sources of labor law, with workers’ representation at enterprise level and with job security. It is understood that a fourth volume on the law of strikes and lockouts is soon to be published. Each volume contains a detailed analysis of the law in each of the six countries, preceded by a general report. These volumes are of the highest quality and quite indispensable for any research in this field.

\textsuperscript{36} Especially the two volumes of synoptic monographs on the social insurance systems of the six countries and of Great Britain.

\textsuperscript{37} Second Gen’l Rep. para. 189.

\textsuperscript{38} Treaty art. 118, para. 2.

\textsuperscript{39} Pursuant to Treaty art. 122. The first Exposé sur la situation sociale dans la Communauté à l’entrée en vigueur du traité instituant la Communauté économique européenne, dated Sept. 17, 1958, describes the situation at the time of the coming into force of the Treaty (Jan. 1, 1958); the second, dated May 1959, covers the development in 1958 and during the first three months (broadly) of 1959 [hereinafter cited as First Exposé and Second Exposé].
carried out with the assistance of the appropriate authorities in the six countries. This is also true of the series of preparatory studies which have been made or are now underway and to which reference is made in the Second Report of the Commission: for example, the studies of the legal and administrative situation in each of the six countries with regard to the entry and employment of foreign workers and their families; the material collected in preparation of a legal instrument directed at the suppression of discrimination; the surveys concerning holidays with pay, hours of work, overtime pay; the legal situation in regard to collective agreements, equal pay for men and women; and the detailed analysis of the labor market and its prospects, of occupational training and other matters.

The employers' organizations and the trade unions of the Six have established permanent organs of liaison at the seat of the Commission. Through these, and, of course, through the Economic and Social Committee of the Community as well as the Social Affairs Committee of the European Parliamentary Assembly, contacts are established across the borders of the Member States, and between the Commission and its services on one side and representatives of the interests concerned, the "social partners," on the other. One of the most valuable features of the Community may be that it strengthens the ties between employers and unions in Europe and that it may give rise to an international set of "pressure groups" without which a modern constitutional organism is hardly capable of operating. The Treaty itself requires the Commission to consult the Economic and Social Committee before issuing opinions. The Assembly and especially its Social Affairs Committee have taken a very active interest in the social aspect of the work of the Commission.

Article 118 appears to place the Commission under a duty to aid Member States in shaping their policies with regard to the ratification of I.L.O. Conventions and the application of I.L.O. Recommendations. The Commission may conceivably also assist Member States in framing future reports required by the I.L.O. Constitution, and in formulating policies to be pursued at I.L.O. conferences.

Over and above all this, however, elucidation and compilation

41 Treaty art. 118, para. 3.
42 Second Gen'l Rep. para. 161; see also J'k Off., passim.
43 Adopted pursuant to I.L.O. Const. art. 19.
44 Id. art. 19, paras. 5(c), (e); 6(b), (d); 7(b) (iii), (iv), (v).
of facts with regard to social and labor conditions, and comparative legal and statistical studies like those so successfully completed over a number of years by the Coal-Steel Community will be a major benefit which the Community can confer on all those interested in the economic and social situation in the Six.

In Article 118 a number of matters are mentioned as particularly suitable for collaboration, but the Commission has emphasized that this list is enumerative and not exhaustive. It has pointed out that the Treaty provisions on "the action to be taken by the Community in the social field are in general less rigid than the provisions affecting the economic field" and it considers that "this is in a way balanced by the fact that the field of activity of institutions in the social sphere is not strictly delimited." On this basis the Commission has defined the scope of its activities:

The European Commission has already been able to state to the European Parliamentary Assembly and to the Economic and Social Committee that it is not the Commission’s intention that the interpretation (of the relevant Articles of the Treaty) shall be restrictive; it cannot conceive that the Community has no social purpose, and it has grounds for supposing that the other institutions of the Community share its views in this connection.

Among the items of collaboration expressly mentioned in Article 118, "employment" was given place of pride. This aspect of collaboration is closely connected with the implementation of the provisions (especially Article 49(d)) which serve the gradual creation of freedom of movement. The two Exposés on the Social Situation which the Commission has published to date in accordance with Article 122 of the Treaty contain surveys of the employment situation in the six countries. The Commission is, however, preparing a general detailed study of the labor market, and, so far as possible, forecasts by geographical and occupational sectors of what the manpower situation in the next few years will be, taking into account economic data, demographic developments, and foreseeable technological changes. The study will be in two stages: the first will consist in an analysis of the present situation, the second in the formulation of forecasts. It will include an analysis of employment—of men and women separately—from 1954 to 1958, and of the main

45 First Gen’l Rep. para. 103.
47 First Exposé ch. A.I.-B.I.; Second Exposé paras. 6-19.
lines of development (disparities in rates of expansion in different branches of activity or regions, changes in migration and the like) and a study of existing or proposed measures to establish equilibrium (for example, vocational training, decentralization, and regional development). The study is being undertaken jointly by the Directorate-General of Social Affairs of the Commission and the Joint Statistical Office of the three Communities, with the assistance of a group of statistical and labor experts of the various governments who conferred in January 1959 and approved the scheme. These studies should, when completed, prove to be of great practical interest to all those concerned with the future of the Community. The Commission is also considering a general scheme to coordinate measures aimed at improving employment services.

The subject "occupational and continuation training" which is also singled out in Article 118 as a particularly important topic for cooperation is very closely connected with the problem of freedom of movement as well. As the experience of the Coal-Steel Community shows, it is easier to create conditions of geographical mobility for skilled than for unskilled labor. Moreover, it is a commonplace that this is one of the decisive elements in raising the productivity of labor. Pursuant to Article 125 (1) (a) it is one of the purposes of the European Social Fund to cover one half of the expenses of a state or a public corporation in ensuring productive re-employment of workers by means of occupational re-training. Article 128 requires the Council, on a proposal of the Commission and after the Economic and Social Committee has been consulted, to "establish general principles for the implementation of a common policy of occupational training capable of contributing to the harmonious development both of national economies and of the Common Market." This power and duty of the Council is closely connected with one of the aims of the European Social Fund—achievement of a higher degree of labor mobility in Europe not only in law but in fact. The two Exposés which have so far been published by the Commission in accordance with Article 122 of the Treaty contain surveys of the institutions for occupational training which exist in the Six and of their significance in statistical terms. In...
both, analysis of the training of apprentices and other young workers on the one hand, and re-training, re-adaptation, or rehabilitation centers for adults on the other, are separately treated. In its First Report the Commission expressed the view that, for the time being, no common occupational training policy was feasible, but that it would seek to achieve a measure of coordination, including exchange of information between governments and undertakings, and joint projects. The Second Report indicates gradual progress: a general program has been drawn up which lays down an order of priority for such action as may be undertaken, but little has so far been done to implement Article 128, which obviously confronts the Commission with a most difficult task. Under the regulations to be issued pursuant to Article 127 for the purposes of the Social Fund the term "re-training" will have to be defined, a definition which will be of great importance for the social activities of the Community. Draft regulations have, at the time of writing, been agreed on by the Commissioners and passed on to the Council. In these "re-training" is defined to include all measures concerning the training and adaptation of skilled, semi-skilled, and unskilled workers in accordance with a training scheme. The Commission also attaches great importance to the exchange of young workers which, according to Article 50 of the Treaty, "Member States shall, under a common program, encourage." It proposes a first program making it increasingly possible for young workers to spend a period of apprenticeship abroad, and then, through regular annual exchange programs, to enlarge the scope of such multilateral and bilateral arrangements as are already in existence, but this scheme is still in a preparatory stage. In connection with all questions of vocational training, the Commission cooperates with other international organizations and especially with the I.L.O. Meetings have been held under the auspices of the High Authority of the Coal-Steel Community and of O.E.E.C., and these have been attended by observers from the Commission. From the point of view of the future prosperity of Europe this problem of occupational or voca-

55 Second Gen'l Rep. paras. 183-86.
56 See PART I, Section G of the text infra.
57 They have not yet been published, but for a detailed summary, see Bulletin, Sept. 1959, paras. 40-41, and on the point discussed in the text, the third sub-paragraph in paragraph 41.
59 Second Gen'l Rep. para. 185.
60 Id. para. 186.
tional training may well turn out to be one of the most important aspects of the Common Market. It is a matter of general knowledge that in some parts of Europe, especially in Italy, unemployment and under-employment is most acute among unskilled workers for whose services there is comparatively little demand.

Another subject mentioned in Article 118 as especially important for cooperation is "protection against occupational accidents and diseases." Such protection is closely connected with "industrial hygiene," (also mentioned in this context) and, of course, with social security. The Assembly showed its special interest in these matters in a resolution passed on January 15, 1959, urging the Council to provide the financial means to enable the Commission to carry into effect a program for the prevention of occupational diseases and industrial accidents, and for compensation for both. The Assembly's Resolution also urged the Council to carry out in conjunction with Euratom and the Coal-Steel Community a program for the coordination of the existing health and safety services. In its First Exposé on the Social Situation the Commission devoted a brief chapter to these problems containing a survey of recent legislative changes and administrative arrangements in the Six; this survey was brought up to date in the Second Exposé, but a great deal of information in this field clearly remains to be collected. Here especially the extensive work done by the High Authority of the E.C.S.C. ought to be invaluable as an example, and the Commission reports that it has established contacts with the High Authority, the I.L.O., and the Euratom Commission. The Commission is planning a number of general studies including one on the possibility of extending insurance to accidents and diseases not at present covered by social insurance legislation. In accordance with a special request of the Parliamentary Committee on Safety, Industrial Hygiene and Health Protection, a list of occupational diseases recognized as such in the Six has been drawn up by the services of the Commission, but this is considered to be only a "first working paper" for the study of occupational diseases. The Commission is to make a systematic

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61 Second Exposé para. 12.
63 First Exposé ch. D.II.
64 Second Exposé paras. 112-19.
67 First Gen’l Rep. para. 121.
study of every disease and to publish a series of monographs on the subject. This in turn is to lead to a comprehensive study which will consider medical, legal, technical and statistical aspects. 68

The problem of geographical mobility of labor in Europe is overshadowed by the housing shortage, and like the High Authority of the E.C.S.C., 69 the Commission was almost compelled by the force of circumstances to give it special attention. The significance of the housing shortage is obvious to anyone who reads the especially informative passages on social housing in the First 70 and Second 71 Exposés on the Social Situation. For some reason, this topic does not appear among those enumerated in Article 118, a fact which emphasizes the importance of the Commission’s conclusion that this enumeration is not exclusive. In its First Report 72 the Commission expressed its intention to devote special attention to housing problems (as well as to social services generally) and, in collaboration with the employers’ and employees’ organizations, to undertake as the first order of business a systematic collection of factual data. When the First Report of the Commission came before the European Parliamentary Assembly, questions were addressed 73 both to the High Authority of the E.C.S.C. and to the Commission with special reference to a passage in the latter’s Report to the effect that the Commission would endeavor to stimulate the raising of additional funds. It was suggested that the two executive bodies should enter into consultation with a view to creating a joint housing service. The answer was to the effect that, although contact had been established in order to make the High Authority’s experience available to the Commission and although the Commission would remain fully informed about the activities of the High Authority, a joint service was not feasible by reason not only of the different scopes of activity of the two organizations but also, and essentially, because the Commission lacked the financial resources which were at the disposal of the High Authority. The point was again made in the Second Report. 74 This is clearly one of the essen-

69 See for recent developments of this important branch of the High Authority’s activities: E.C.S.C. High Authority, op. cit. supra note 65, paras. 226–33.
70 First Exposé ch. D.111 (a).
71 Second Exposé paras. 120–27.
tial weaknesses of the European Economic Community compared with the European Coal and Steel Community. In a sense the interest the Commission is taking in "social dwellings for workers, large families, old people, refugees and repatriates, migrants and any other economically weak persons" is bound to be theoretical and to be restricted to obtaining and examining "the necessary information on which to base future action." It remains to be seen whether and to what extent the "re-settlement allowances" which will be payable out of the European Social Fund will be able to bridge the gap.

The Commission is also concerned with what in its Exposés and Reports are called "social services," that is, mainly the voluntary welfare services initiated either by individual firms or by charitable organizations. In its Second Exposé, special attention was paid by the Commission to the training and status of welfare workers. As pointed out in the Second Report this too is a matter very closely linked with migration problems. It stands to reason that, in the event that family migrations materialize, specialized welfare services will be necessary. A conference of senior officials in the field, of social service specialists, and of heads of social welfare schools and organizations was held under the Commission's auspices in Brussels in December 1958.

Other topics mentioned in Article 118 as subjects for "close cooperation" include "labor legislation and working conditions" and "the law as to trade unions and collective bargaining between employers and workers." This may, of course, eventually lead to the creation of common standards which do not necessarily have to be legislative in character. Thus, consultation between the "social partners" organized by the Commission may in the fullness of time lead to assimilated collective bargaining practices, provided that trade union organization and the facts of labor-management relations in the Six are sufficiently similar—of which there is no evidence at present. Perhaps it may even lead to collective bargaining on a supranational level, or, on the pattern of the remarkable work done in this field by the I.L.O., to supranational safeguards of

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75 Treaty art. 125 (1) (a) discussed infra in PART I, Section G of the text.
76 First Exposé ch. D.III (b); Second Exposé paras. 128-34.
78 Second Exposé paras. 135-41.
81 See PART II of this Chapter.
freedom of organization, or even to supranational methods for the prevention or settlement of industrial disputes.

This is only speculation, however. What is now certain is that the important work done by the High Authority of the Coal-Steel Community, in setting up a “working party” of distinguished academic lawyers and the extremely useful series of scholarly comparative studies on “Sources of Labor Law,” on “Stability of Employment,” and on “Workers’ Representation at Enterprise Level” which this group has so far produced are more likely to serve as a pattern for the immediate future activities of the Commission’s services in this area. The two Exposés of the Commission contain progress reports on labor legislation as well as on trends in trade union claims and in collective bargaining. In its First Report the Commission announced that it would have prepared (and would keep up to date) a series of comparative studies on labor law, trade union law, and collective bargaining, as well as on labor conditions, including wages and hours, with special emphasis on matters especially mentioned in the Treaty, that is, equal pay for men and women, holidays with pay, and overtime remuneration, as well as problems of techniques of production (including automation) and productivity. The Second Report shows that preparatory work on holidays, hours of work, overtime, and working conditions in the more important sectors of the Community is under way, and that a study on labor costs is contemplated. Studies on the law of collective bargaining and on equal pay for men and women have been begun, and a conference on automation is due to be held in the near future.

D. Social Security

One of the most important fields of cooperation mentioned in Article 118, and in some respects the most promising, is “social security.” The problem of social security has, within the framework of the European Economic Community, two distinct aspects: one is linked with the freedom of movement of workers within the Community and the other concerns the elimination of “distortions” and a gradual approach to the distant goal of “harmonization.”

83 See note 35 supra.
84 FIRST GEN’L REP. para. 108.
86 SECOND GEN’L REP. paras. 178-80.
I. THE REGULATIONS CONCERNING MIGRANT WORKERS

The Spaak Report attached some importance to the promotion of freedom of movement in Europe, and its authors pointed out that the machinery of re-adaptation and of centralized financial assistance for unemployed workers might lead to a harmonization of unemployment insurance and that this in turn would facilitate freedom of movement. The Treaty itself went considerably beyond this modest prognostication. Its provisions are based on the insight that social security—like employment and re-training—vitally affects the facts as distinct from the law concerning freedom of movement. If a migrant worker loses a legally protected expectation of benefits acquired through payment of contributions, or if benefit payments cannot be made across the boundaries of Member States, a serious obstacle is placed in the path of that "free movement of workers" which, according to Article 48, "shall be ensured within the Community not later than the date of expiry of the transitional period." Even before 1957 a network of conventions had been concluded in Western Europe—partly under the auspices of the Council of Europe and partly under those of the Brussels Treaty and of Western Union—which were designed to protect the social security rights acquired by workers in one country and to make them transferable to another, as well as to facilitate the payment of benefits abroad. On December 7, 1957, the Member States of the Coal-Steel Community signed a Convention concerning the Social Security of Migrant Workers, arrived at with the assistance of the I.L.O., and giving effect to these principles on a very broad scale. Although concluded under the auspices of the High Authority, this was merely a Convention; to become law it would have required ratification by the six parliaments. The Treaty of Rome, on the other hand, contains a provision—Article 51—which, in regard to social security provision for migrant workers, permits the adoption of international legislation in the strict sense. The Article requires the Council to adopt, in the field of social security, measures to facilitate the free movement of workers:

88 Id. at 91.
89 See PART I, Section G of the text infra.
90 HAAS, op. cit. supra note 51, at 374-75; and for an enumeration of these conventions, see Reg. No. 3, op. cit. supra note 17, Annex D at 587.
91 FIRST GEN'L REP. para. 117; SECOND GEN'L REP. para. 165.
The Council, acting by means of a unanimous vote on a proposal of the Commission, shall, in the field of social security, adopt the measures necessary to effect the free movement of workers, in particular, by introducing a system which permits an assurance to be given to migrant workers and their beneficiaries:

(a) that, for the purpose of qualifying for and retaining the right to benefits and of the calculation of these benefits, all periods taken into consideration by the respective municipal law of the countries concerned, shall be added together; and

(b) that these benefits will be paid to persons resident in the territories of Member States.

According to the wording of this Article, the "measures" taken by the Council with the object of encouraging freedom of movement among those in expectation or in receipt of benefits might have been "directives" only. Instead, the Council issued Regulations incorporating the Coal-Steel Community Convention of December, 1957, thereby automatically making its content law in the six countries. 92

It is no exaggeration to say that the Regulations concerning the Social Security of Migrant Workers of December 16, 1958, 93 and the accompanying Regulations for their Application 94 are, at the time of writing (autumn 1959), not only the most important step taken by the Community in the fields of labor law and social security, but by far its most significant achievement in legislation altogether. The transformation of the E.C.S.C. Convention into E.E.C. Regulations had been envisaged in a Protocol to the former, 95 and the preparatory work for the Regulations to be issued by the Council of the E.E.C. had, so to speak, been done before the Community itself had seen the light of day. This was therefore a unique situation in which a very comprehensive piece of Community legislation could be carried into effect within a comparatively short time. As early as April 1958 the Commission made the requisite proposals to the Council, proposals without which, according to Article 51, the Council could not have acted. Some of the governments registered a number of reservations with regard to certain aspects of

92 See Treaty art. 189, para. 2.
95 First Gen’l Rep. para. 118. This paragraph contains the history of the making of these regulations which is epitomized in the text.
the Convention, but, after the European Parliamentary Assembly had, on June 26, 1958, urged the adoption of the Regulations and expressed its regrets that the unanimous consent of the six governments had not yet been forthcoming, the Council was able, on July 2, to approve the Regulations in principle. All objections having been settled by agreement, the Council could then adopt them on September 25, 1958, by the requisite unanimous vote.96 The technical administrative Regulations 97 for the application of the new scheme were drafted with the aid of the I.L.O. and passed early in December, and on December 16 both sets of Regulations were published in the official journal of the Communities. In accordance with Article 121 the implementation of these measures was assigned to the Commission. For this, too, a unanimous vote of the Council was required, as well as prior consultation with the Economic and Social Committee, actions occurring on February 26 and 27, 1959.98 It may be noted that the Regulations are expressis verbis based not only on Article 51, but also on Article 227, paragraph 2 of the Treaty, and are applicable to Algeria and the "overseas Departments" of France (Guadeloupe, French Guiana, Martinique, and Réunion) as well as to metropolitan France itself.99

The application of these Regulations has been entrusted to a Commission of Administration with far-reaching powers.100 This Commission consists of representatives of the six governments (who, even prior to the coming into force of the relevant part of the Regulations, met as an informal group of experts; later they transformed themselves into a formal Commission),101 and they are assisted by technical advisers. A representative of the E.E.C. Commission and a representative of the High Authority of the Coal-Steel Community take part in the work of the Commission of Administration, but only in a consultative capacity. The I.L.O. is to give technical assistance in accordance with the Agreement of July 7, 1958, between the I.L.O. and the E.E.C.102 The Secretariat of the Commission of Administration is provided by the E.E.C. Commission by virtue of the decision of the Council of the 26th and 27th of February.

97 Ibid.; First Gen'l Rep. para. 119.
99 Reg. No. 3, op. cit. supra note 17, Annex A.
100 Id. arts. 43, 44; Second Gen'l Rep. para. 166.
102 Reg. No. 3, op. cit. supra note 17, art. 44 (1) ad finem. For the Agreement of July 17, 1958, see note 30 supra.
The functions of the Commission of Administration are, as pointed out in the Second Report of the European Commission, judicial, administrative, and financial. They are judicial inasmuch as the Commission of Administration is required to ensure a uniform interpretation of the Regulations in the six countries, by settling differences among them, by supplying authoritative definitions and the like. They are administrative because it is one of the tasks of the Commission of Administration to draw up the forms of such documents as the certificates and declarations required by the Regulations. The necessary documents for short-term benefits, especially for health insurance, were approved by the Commission of Administration on December 19, 1958, and published in the official journal of the Communities on January 16, 1959, whereas those for pensions and other long-term benefits were published on May 16, 1959. Lastly, the Commission of Administration has financial functions acting as a clearing house by effectuating the payments of the Member States to each other which, as a result of the new European scheme of social insurance for migrant workers, will fall due. For this purpose it will, for example, have to lay down criteria for the fixing of exchange rates and to settle the method of calculating certain lump-sum payments between the various social security institutions. This raises statistical problems which have been studied by a working party. They refer in particular to situations in which benefits are to be supplied or payments are to be made in one country in which the recipient resides on behalf of an institution in another country to which the relevant contributions have been or are being paid. One additional function of the Commission of Administration is to initiate cooperation between the Member States in matters of health and social administration.

As pointed out in the Second Report of the E.E.C. Commission, the Commission of Administration is not a mere consultative body, but a permanent institution, to some extent with executive authority, and part of the constitutional structure of the Community.
ing the initial period it has been meeting every month to assist in the solution of problems arising from the application of the Regulations.100

The above-mentioned agreement settled the objections of a number of Member States by incorporation into the Regulations of a number of very important reservations. Thus, the so-called "frontaliere"—workers who live in a frontier area and work in a neighboring country—and seasonal workers are largely, if not entirely, excluded as are seamen.112 Other reservations refer to pre-existing international treaties on social security,113 and to restrictions on payments of certain unemployment benefits outside the country of last employment.114

The provisions setting up the Commission of Administration came into force on December 19, 1958,115 the remainder of both sets of Regulations on January 1, 1959.116 Their general effect is, in the words of the Commission, that "equality of rights between natives and foreigners is made general, periods in insurance are added together and in certain cases benefits are paid out in another Member State." "Consequently frontiers no longer prevent wage earners from benefiting from the rights acquired in the field of social security."

2. ASSIMILATION OF SOCIAL SECURITY LEGISLATION

The first step in fulfilling the much more ambitious and long-term task of gradually assimilating the various social security legislations must be to collect information concerning both the legal and the financial aspects of existing social security, and especially social insurance schemes. In this respect the High Authority of the Coal-Steel Community has done pioneer work of very great importance 117 and paved the way for the further studies which the Commission is contemplating.118 The work of the two organizations in this field will be closely coordinated. The Commission plans to embark on a general analysis of the various systems of social insurance

110 Reg. No 3, op. cit. supra note 17, art. 4, paras. 3, 4, 7, and Annex C.
112 Reg. No 3, op. cit. supra note 17, art. 4, para. 6.
113 Id. art. 6 and Annex D.
114 Id. art. 37 and Annex C.
115 SECOND GEN'L REP. para. 165.
116 Id. para. 164.
117 Especially through the series of monographs on the systems of Social Security in the six Member Countries and in Great Britain.
118 FIRST GEN'L REP. para. 120; SECOND GEN'L REP. para. 187.
law in existence within the Community, and on special studies—for example, concerning social security financing and the relationship between social security and labor law. One aim is to arrive at a statistical basis for the comparison of the total labor costs of enterprises, a comparison which presupposes not only an investigation of wages but also of social expenditure by employers. The Exposés on the Social Situation will, if one may judge by the two Exposés which have so far seen the light of day, contain valuable information on current developments in this field. The First Exposé also contains a number of comparative tables which should be of great assistance to the readers of this book.

It is only when this preparatory and informative work is much further advanced that the Commission will be able to initiate substantive measures to assimilate legislation. The aim is in the first place to bring about a measure of uniformity in matters such as administrative procedures, age limits, various time limits, the lists of insurable occupational diseases and the like, and eventually, in application of the European Code of Social Security and the additional Protocol, prepared by, and adopted under the auspices of, the Council of Europe, to coordinate the systems of social security in the Member States and thus to contribute to an equalization of the conditions of competition. This, however, will obviously require years of study and preparation. Meantime the Commission considers that one of its objects is not only to keep an eye on the effect of social security on the functioning of the Common Market, but also on the repercussions which the operation of the Common Market may in turn have on the various aspects of social security.

E. Three Special Problems of Harmonization

Among the factors of "distortion" which should be eliminated by practical measures of assimilation, the Spaak Report mentions with special emphasis "conditions of labor, such as the relation between the wages of men and women, the systems of working hours, overtime, or vacations with pay." The authors of the Report consider these topics as particularly important in connection with the harmonization of legislation:

119 Second Gen'l Rep. para. 188.
120 First Exposé ch. D.I; Second Exposé paras. 107-11.
121 There are three tables at the end of First Exposé showing the scope of Social Security legislation.
122 See note 188 infra.
123 First Gen'l Rep. para. 130.
Even if the existing disparities did not give rise to distortions, it would be necessary for the governments to make special effort gradually to harmonize the existing systems with regard to:

i. the principle of equal pay of men and women;
ii. the length of the normal working week beyond which overtime is payable, and the rates of overtime pay;
iii. the length of paid vacations.\textsuperscript{125}

If its proposals for the elimination of distortions are rejected, the Commission is, after the end of the first stage, to be entitled to agree to the application of escape clauses. For example it could permit subsidies or the delay of tariff reductions commensurate with the continuing distortions.\textsuperscript{126} Once more it is emphasized that "escape clauses" were, according to the Report, to be applied primarily in connection with the three topics referred to above.\textsuperscript{127}

The Treaty has accordingly crystallized the general aspirations of the Community in the areas of labor law and social policy into more tangible policies in these three respects. It mentions (in Article 119) "the principle of equal remuneration for equal work as between men and women workers," "paid holidays" (in Article 120) and (in a very different form and in the Protocol relating to Certain Provisions of Concern to France, No. II) working hours and overtime payment.

I. EQUALITY OF THE SEXES

Of these three provisions the only one to create at once a legal obligation among the Member States is Article 119, the operative first paragraph of which is as follows:

Each Member State shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers.

The background of the provision is to be found not only in the proposals of the Spaak Report but also in the Preamble of the Constitution of the International Labor Organization of 1946\textsuperscript{128} and especially in the I.L.O. Equality of Remuneration Convention of

\textsuperscript{125} Id. at 65–66.
\textsuperscript{126} Id. at 64.
\textsuperscript{127} Id. at 66.
\textsuperscript{128} "And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the . . . recognition of the principle
which has been ratified by Belgium, France, the German Federal Republic, and Italy, but not by Luxembourg or the Netherlands. The relationship between the obligations imposed by the I.L.O. Convention and those arising from Article 119 of the Treaty is a matter of some complexity which has been studied by the competent departments of the Commission's organization both in the light of the history and in the light of the wording of the two documents. The Commission hopes to analyze this relationship in a study of the problems raised by Article 119 which it will publish. The Treaty refers to "equal remuneration for equal work," whereas the Convention, in its Article 2, speaks of "equal remuneration . . . for work of equal value," and one of the problems of interpretation is whether these phrases are to be treated as synonymous.

Before the Commission has completed the comparative legal and statistical investigation on which it embarked soon after the Treaty came into force, it is impossible to say to what extent the principle of Article 119 is a social aspiration and to what extent it represents aims which have already been achieved. That it represents a live issue is clear. The Second Exposé of the Commission on the Social Situation in the Community indicates that, at any rate in some countries, trade unions are actively campaigning for the rule of equal pay, and an active interest in the problem has been shown in the Assembly. To aid it in elucidating the law and facts obtaining in the Six, the Commission has contacted the governments concerned, the I.L.O. and employers' associations and trade unions.

The legal problems are complex because it is necessary not only to compare constitutional and legislative texts, but also case law and collective bargaining practices of the various countries with one

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130 This was the state of ratifications at the moment of the entry into force of the Treaty of Rome and was still the state of affairs in the summer of 1959. See also Réponse de la Commission de la Communauté Économique Européenne, [1959] J'L OFF. 851 [hereinafter cited as Réponse].

131 For all this see Réponse, op. cit. supra note 130.

132 SECOND GEN'L REP. para. 179.

133 Second Exposé, para. 64 (Belgium), para. 74 (Italy).

134 See Réponse, op. cit. supra note 130.
another. Many regulations and other subordinate legislation may also be relevant. Moreover, even a minutely detailed legal analysis will yield no conclusive results regarding the actual facts. This becomes clear from even a superficial comparison of some legal and statistical data. The Preamble to the French Constitution of 1946 laid down the principle that, in every respect, the rights of women should be equal to those of men, a principle incorporated with the rest of the 1946 Preamble in the Constitution of 1958, also embodied in French legislation on collective agreements and applied in the fixing of the National Minimum Wage. The Basic Law of the German Federal Republic of 1949 in its Article 3 also provides that men and women have equal rights, and legislation at variance with this principle is unconstitutional, null and void. Moreover, the courts and most learned writers hold that the principle must be applied in collective bargaining. Yet, in 1952 an inquiry instituted by the I.L.O. revealed that in France the average earnings of women workers amounted to only 91 percent of those of men, whereas the corresponding figure for Germany was as low as 78 percent (and for Great Britain 66 percent). How much significance attaches in practice to Article 37 of the Italian Constitution of 1947 which guarantees equal pay for male and female workers, and to the prevailing view that this is a norm of positive law and not a mere program, is a matter for conjecture. The difference between embodying the principle of equal pay in law (even constitutional law) and giving it practical effect is evidently great.

We do not know, of course, how far the figures produced by the


136 In the Constitution of 1958, "the French people solemnly proclaim their attachment to the Rights of Man and the principles of National Sovereignty as defined by the Declaration of 1789, confirmed and completed by the Preamble to the Constitution of 1946." [Translation by Campbell & Chapman, Oxford (Blackwell) 1958].


138 2 Durand (with the concurrence of André Vieu), Traité de Droit du Travail 641 (1950) [hereinafter cited as 2 Durand]; Brun & Galland, op. cit. supra note 135, at 451.

139 I Nikisch, Arbeitsrecht 302 (1955).

140 For a detailed discussion: id. at 304.

141 Quoted Brun & Galland, op. cit. supra note 135, at 445, n. 1.

142 Mazzoni, Manuale di Diritto del Lavoro 140 (1958).
I.L.O. inquiry of 1952 should be attributed to disparities in wage rates rather than to differences in employment opportunities or (within piece rate systems) of actual performances. The Commission itself, in answering a relevant question in the Assembly, emphasized that one could not, on the basis of existing statistics, determine with any degree of precision how far in any given country the rule of equal pay had been given effect, and that one would have to undertake “case studies,” presumably of selected industries. The Commission promised to prepare a general survey, based on collective agreements, regulations and the like, but it observed somewhat sceptically that no more than a general movement towards adaptation of female to male wages could be reliably ascertained from the existing material.

Although it creates binding obligations among the Member States, Article 119 is very cautiously formulated. The principle of equal pay for equal work does not ipso facto become part of the legal systems of the members, and the Council has not even been given power to issue regulations enacting it into law. The Member States have gone no further than to accept an obligation to each other and to the Community to transform their systems of wage rates so as to ensure application of the principle in the course of the first stage of the transitional period. Article 119 does not, therefore, confer any rights or impose any obligations on any individual based on the principle of equality. It does no more than to create an obligation binding the Member States in international law. Furthermore, it would appear that Article 119 implicitly incorporates the same rule which is expressed in Article 2, paragraph 2 of the I.L.O. Convention of 1951, that is, that the states are free to choose whatever method they wish so as to give effect to the principle. Thus, if, in practice, equality is achieved by collective bargaining, legislation is unnecessary. The principle is confined to “remuneration” and does not cover workers’ rights of a different character, such as, for example, representation on works councils, trade union membership, or membership of trade union committees or other governing bodies.

The term “remuneration” is, however, defined very comprehensively, and in this respect the relevant provision of the Treaty repeats verbatim the definition of Article 1 (a) of the I.L.O. Convention. “Remuneration” includes not only the “ordinary basic minimum wage or salary” but also “any additional emoluments what-

143 See Réponse, op. cit. supra note 130.
144 Treaty art. 119, para. 2.
soever payable directly or indirectly, whether in cash or in kind, by
the employer to the worker and arising out of the worker’s employ-
ment." This covers merit rates and skill differentials, family allow-
ances and bonuses of all kinds, and also “fringe benefits” such as
vacation payments and participation in pension schemes. As re-
gards basic wage rates it means what is generally called the “rate
for the job,” or in the words of the Treaty: “remuneration for work
at time rates shall be the same for the same job.” 145 As regards piece
rates the Treaty provides “that remuneration for the same work
. . . shall be calculated on the basis of the same unit of measure-
ment.” 146 This is obviously intended to say that the same rate must
be promised for identical units of work, or, in the words of the I.L.O.
Convention, it “refers to rates of remuneration established without
discrimination based on sex.” 147 What it does not mean is that either
time merit rates or piece rates have to be calculated in such a way
as to make up for any differences in the average performance of men
and women which may influence their aggregate earnings. It may
even be arguable that an attempt to do so might itself be a contra-
tvention of the principle. In other words, wage rates must be fixed
so as to give equal opportunities to all, but they need not, and per-
haps must not, even out such inequalities of opportunity as are the
result of natural differences. The I.L.O. Convention 148 suggests
“measures [to] . . . be taken to promote objective appraisal of
jobs on the basis of the work to be performed” and goes on to pro-
vide that “differential rates between workers, which correspond,
without regard to sex, to differences, as determined by such objective
appraisal, in the work to be performed, shall not be considered as
being contrary to the principle of equal remuneration for men and
women workers for work of equal value.” This principle must, it
is submitted, be considered as being implicitly incorporated in the
Treaty. If this submission is well founded, there would, after all,
be no difference between “equal remuneration for equal work” and
“equal remuneration for work of equal value.”

2. HOLIDAYS WITH PAY

The provision on holidays with pay is much more vague. Article
120 requires Member States to “endeavor to maintain the existing
equivalence of paid holiday schemes.” During the negotiations some

145 Id. art. 119, para. 3 (b).
146 Id. art. 119, para. 3 (a).
147 Convention 100, op. cit. supra note 129, art. 1 (b); see also 1 I.L. Code 1951,
art. 233 (L).
148 Convention 100, op. cit. supra. note 129, art. 3; 1 I.L. Code 1951, art. 233 (N).
expressed anxiety that differences in this area might lead to distortions of competition. In France, 149 Belgium, 150 and Luxembourg 151 the employees' right to annual vacations is regulated by statute, whereas in Western Germany 152 and in Italy 153 it is entirely or mainly based on collective agreements. This is also true of the Netherlands, 154 where, however, the Council of Mediators has certain powers to regulate holidays 155 and where a bill on annual vacations with pay is pending at the time of writing. The fact that in one country paid vacations are based on legislation and in another on collective bargaining does not in itself have any influence on the conditions under which the industries of those countries compete. Collective agreements are, however, plainly more adaptable than statutes to changing conditions of the market. This element of rigidity which is inherent in legislative as distinguished from autonomous industrial regulation may perhaps be considered as the most significant "distorting" factor arising from vacations with pay.

This observation is especially relevant in connection with French law. The French legislation governing annual vacations is very de-

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150 The relevant Belgian legislation was consolidated by a Royal Decree of March 9, 1951, [1951] Recueil Des Lois et Arrêtés de Belgique 814, but there are additional Decrees. See Horion, Les Sources du Droit du Travail en Belgique, in E.C.S.C. HIGH AUTHORITY, op. cit. supra note 135, at 69.


152 NICISCH, op. cit. supra note 139, at 442. Some of the Länder have since 1945 issued legislation on vacations with pay, but collective agreements remain of primary importance. There is no federal statute. For decades it has been customary to provide for vacations with pay in collective agreements (under the Nazis in collective "orders"). This has resulted in a principle that the employee is, by custom, implicitly entitled to paid annual vacations, even in the absence of a particular provision. See NICISCH, op. cit. supra at 444.

153 MAZZONI, op. cit. supra note 142, at 360. The provision in art. 2109 of the Civil Code is a blank to be filled in by agreement or custom. The statute envisaged by art. 36 of the Constitution has not yet been passed. See Mengoni, Les Sources du Droit du Travail en Italie, in E.C.S.C. HIGH AUTHORITY, op. cit. supra note 135, at 122, 140.


155 Under the "Extraordinary Decree on Labour Relations" of 1945, to which reference is made below, in PART II.
tailed, and, especially since the amendment of the Labor Code by a Law of March 27, 1956, is very favorable to the employee. The employee is entitled to one and a half days of paid vacation for each month he has worked for the particular employer, that is, 18 days per year, a minimum which is subject to extension on various grounds. This rigid, detailed and (from the point of view of the employers) onerous system of paid vacations made it desirable from the French point of view to reduce the flexibility of the vacation schemes existing in other Members of the Community, and to ensure that the other Member States would at least do nothing to reduce the existing vacation rights conferred upon employees by legislation, collective bargaining, or usage. No attempt was made in this respect to produce anything like equality between members, an attempt which in view of the complexity and multiplicity of existing vacation schemes would, in any event, have been doomed to failure. Article 120 envisages only that the existing basis of competition should in this respect be “frozen,” that is, that nothing should be done to increase whatever distorting effect present vacation schemes may have on the competitive power of the Member States. Article 120 creates no more than a mutual obligation of the members and an obligation of each towards the Community, and even this obligation is couched in terms of “endeavor” and not in terms of an undertaking. It is not very likely to play a major role in practice. What is significant, however, is that the existence of this Article 120 has induced the Commission to undertake surveys concerning vacations with pay and official holidays in what it calls “the more important sectors of the Community.” This is no doubt a long term scheme which so far has reached the state of “preparatory work only,” but it is another illustration of the fact that in many areas the Treaty is most effective in providing the machinery to obtain better factual information on the conditions of competition.

3. WORKING HOURS AND OVERTIME PAY

With regard to working hours and overtime pay the Treaty itself is silent. It imposes no obligation to adopt the 40-hour week or any particular scheme of overtime pay, nor does it enable the Community to introduce such measures directly into the legal systems of

156 For details, see BRUN & GALLAND, op. cit. supra note 135 at 418.
157 Katzenstein, Der Arbeitnehmer in der Europäischen Wirtschaftsgemeinschaft, 31 BETRIEBS-BERATER 1081, 1084 (1957).
158 SECOND GEN’L REP. para. 178.
the Member States. Yet, in fact, the French scheme of the 40-hour week, based on the famous "40-hour law" of 1936, and modified by later legislation, especially by the Law of February 25, 1946, has been treated by those participating in the negotiations as a kind of "signpost," which should point the way for the members of the Community. If one considers that, according to French law, the compulsory overtime rate for each hour between 40 and 48 per week is time and a quarter, and for anything beyond 48 hours time and a half, it is possible to understand the anxiety of those representing French interests. This anxiety appears even in legal textbooks, and is probably a result not so much of the legal principle of the 40-hour week itself, as of the system of overtime pay which, with working hours averaging somewhere around 45 per week, is thought to constitute a considerable handicap in international competition. As the Exposés of the Commission show, working hours have, over the last few years, in France as elsewhere, shown a downward trend—in France from 46 in 1957 to 45.6 in 1958, and as of January 1, 1959, to 44.9. However, and this is not unimportant from the point of view of any given industry, the differences in actual working hours concealed by these averages are very considerable. On March 1, 1959, about 37½% were estimated to work more than 48 hours, and only 8% less than 40 hours.

Conditions such as these form the background of the—at first sight enigmatic—Part II of the "Protocol relating to Certain Provisions of Concern to France" which is "an integral part" of the Treaty itself. The Protocol imposes no obligation on any Member State, but it expresses an expectation on the part of the Member States

... that the establishment of the Common Market will result, by the end of the first stage, in a situation where the basic level for overtime payment and the average overtime rates in industry will correspond to those existing in France according to the average figures for the year 1956.

No prescription, then, but once again a prediction. It is, of course, quite impossible to speculate on the chance that the prediction will

160 2 Durand, op. cit. supra note 138, at 406.
161 Katzenstein, supra note 157, at 1084, uses the word "Leitbild."
162 E.g., in the book by Brun & Galland, op. cit. supra note 135, at 397, whose very clear analysis of the law concludes on this note.
163 Id. at 396.
164 Second Exposé, para. 81.
165 Treaty art. 239.
be fulfilled. The Commission, in an answer given in July 1959 to a question in the Assembly, expressed the hope that it would be, but also pointed out that it was taking the necessary steps to be prepared, as it were, for the worst. This preparatory work now being done by the officials of the Commission consists in the first place in an attempt at a precise assessment of the average overtime rates paid in France in 1956, a task which, in the opinion of the Commission and of the French government experts assisting the Commission in this matter, presents no major difficulties. The Commission has also started preparatory work on surveys concerning working hours and overtime and in the two Exposés on the Social Situation it has already collected a certain amount of material of interest in the present context. In France, where the normal week is 40 hours, weekly working hours averaged 45.6 in 1958. In Belgium, on the other hand, the normal week of 45 hours (that is five days at nine hours each) was in 1958 the almost universal rule, and, in view of the recession, which hit Belgium harder than the other members of the Community, very little overtime was worked. In the West German Federal Republic the trade unions concentrated their demands in 1957 on the reduction of the normal working week and succeeded during that year in obtaining, without loss of wages, a reduction for two thirds of all workers—in the usual case from 48 to 45 hours. Average working hours (including overtime) were 46.5 in 1957 and 45.7 in 1958. Employees of the Bund (including railway, postal, telegraph, and telephone workers) and of the Länder have the 45-hour week, the metal, printing, and clothing industries a 44-hour week, and the coal miners in the Ruhr now have a 40-hour week. Information about Italy is not quite so specific, but it appears that in 1958 90.7 percent (as against 90.9 percent in 1957) worked 40 hours or more, and only 9.3 percent (as against 9.1 percent in 1957) less than 40 hours. The average actual monthly hours were 168.07 in 1958 as against 168.58 in 1957. In Luxembourg, the working week is 44 hours for industry, and the unions are trying to achieve a 40-hour week without loss of wages. The 45-hour week prevails in the Netherlands, and the intention is to reduce it cautiously, gradually, and industry by industry or enterprise by enterprise with a view to taking account of individual conditions and to avoiding a major dislocation.

106 Réponse, op. cit. supra note 130, para. 5.
107 Id. para. 6.
109 First Exposé, ch. C.I, para. 7 and ch. C.II, para. 16; Second Exposé, paras. 79–85. The statistical material in the text is based on the Second Exposé.
In the light of such information only a prophet could predict what the situation is likely to be at the end of the first stage. The possibility cannot be ruled out that at that time working hours and rates of overtime pay may, in the countries of the Community, have reached a point at which the Protocol is of little significance, but on the other hand it may produce a crisis. It would be a fatal mistake to think that the vagueness of the prediction in the Protocol and the absence in it of any legally binding obligation deprive it of practical importance; far from it. If the prediction proves to be wrong, that is, if in any given branch of industry the basic level for overtime pay (the normal working week) and the average overtime rate do not throughout the Community correspond to those prevailing in France in 1956, then

... the Commission shall [emphasis added] authorize France to take, in respect of branches of industry affected by the inequalities in payments for overtime, measures of safeguard of which the Commission shall determine the conditions and particulars. . . .

What this obviously means is that, as already adumbrated in the Spaak Report,\(^{170}\) France will have to be permitted to establish or re-establish tariffs or subsidies, or (a possibility not mentioned in the Spaak Report) quantitative import restrictions.

The standard of comparison is the French basic level for overtime pay and the average overtime rate of 1956, and any variations of either after 1956 are to be ignored. The working week and overtime rates of the other members of the Community obtaining at the end of the first stage will have to be compared with the corresponding French figures of 1956.

Moreover, whereas the general prediction of the first paragraph of Chapter II of the Protocol refers to the French economy of 1956 and the economies of the five other Member States as of the end of the first stage, each economy taken as a whole, the sanction contained in the second paragraph refers to "branched of industry" ("secteurs industriels"). No one seems as yet to know what this phrase means, and, in its answer in the Assembly in June 1959,\(^{171}\) the Commission emphasized the need for an agreed definition. In order to be prepared for the situation at the end of the first stage, the Commission obviously will also have to be informed about working hours and average overtime rates in each "branch of industry" in the Six.

\(^{170}\) Spaak Report at 64, 66.
\(^{171}\) Réponse, op. cit. supra note 130.
In one respect the French development since 1956 will have to be taken into account by the Commission in its delicate and difficult task of comparison at the end of the first stage. The Commission will have to compare the average increase since 1956 in the level of wages paid in the particular "branch of industry" in the various Member States other than France with the corresponding increase in that industry in France itself. If the increase outside France exceeds that in France "by a percentage fixed by the Commission with the approval of the Council acting by means of a qualified majority vote," then the Commission is not to authorize France to take "measures of safeguard" for that particular branch of industry, although the working week and average overtime rates outside France in that branch of industry do not correspond with the French situation in 1956. The Commission has informed the Assembly that it has organized an inquiry into the cost of labor in a dozen industries which will yield the required data about wages. The inquiry is based on the pattern established by the Coal-Steel Community for the investigations it has conducted for years, and the statistical methods of comparing real wages evolved by the Coal-Steel Community will also be used in assessing wage increases. The questionnaire and other aspects of the inquiry have been discussed and agreed on at two conferences with governmental experts. The governments have been officially notified of the inquiry, and, to give it legal status, the Council will be asked for a decision under Article 213 since, in the opinion of the Commission, such a decision would remove such legal obstacles to the conducting of the inquiry as might exist in the Member States. For example, in Germany this procedure would, in the opinion of the Commission, obviate the need for special legislation with reference to the inquiry. The representatives of the employers' associations and trade unions have also promised their support. The Commission has expressly stated that the Member State governments have been cooperative in this matter, since in a parliamentary question in the Assembly some suspicion had been voiced that the Commission had met with difficulties.\(^{173}\)

In the present connection it may not be unimportant that, according to the Second Exposé on the Social Situation in the Community published by the Commission,\(^{174}\) France is the only Member Country in which the level of real wages fell, however slightly, in 1958. This fall was accompanied by a rise in nominal wages (nominal wages

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172 Id. para. 3.
also rose in the other members of the Community) and by a reduction in hours. The situation at the time of writing may thus be said to illustrate the difficulties which will confront the Commission at the end of the first stage in the event of its having to apply Part II No. 2 of the Protocol. Although the Protocol does not say so expressis verbis, it seems to be clear—and it seems to be the view of the Commission itself—that what will have to be compared will be real and not nominal wages. A comparison of nominal wages would be wholly unrealistic and it would also raise rate of exchange problems of a most delicate character.

The concession made by the members other than France when accepting and signing this Protocol is formidable. How formidable it is one can see if one analyzes the constitutional situation which will arise at the end of the first stage. The Commission—acting if need be by a majority vote—is then under an obligation ("shall") to authorize France to take protectionist measures to make up for disparities in working hours or overtime rates. But the countervailing exception, intended to account for disparities in the development of wage levels since 1956 favorable to French industry from a competitive point of view, can only be applied if the relevant minimum percentage is fixed by the Commission with the approval of a qualified majority of the Council, an approval which can thus be prevented, if she so desires, by France herself, provided she obtains the support of any one member other than Luxembourg.

As a German commentator has pointed out, the immediate effect of the Protocol is admittedly nil. Neither the legislation nor the collective bargaining practice of any member of the Community need be affected by it. Nevertheless, the sanction behind the expectation expressed in the Protocol is in a sense much more potent than that behind the obligations as to equal pay for the sexes or vacation with pay, laid down in the body of the Treaty. In a sense the entire future of the Common Market has been made to hinge upon the adoption, in all the six countries, of something like the 40-hour week and the French overtime scheme. The scheme of overtime rates conceivably may prove a more serious hurdle than the principle of the 40-hour week itself.

These then are the directions in which the Treaty seeks to in-

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175 Réponse, op. cit. supra note 130, passim.
176 Treaty art. 163.
177 Id. art. 148.
178 Katzenstein, supra note 157, at 1082.
fluence conditions of employment. But the questions discussed so far do not exhaust those concerning labor and labor relations with which the Treaty deals.

F. FREEDOM OF MOVEMENT

I. THE GENERAL PRINCIPLE AND ITS EXCEPTIONS

The principle that workers should be free to move from one country to another—a principle which when implemented will create a common labor market—is, of course, fundamental to the plan for the European Economic Community. The Spaak Report\(^\text{179}\) emphasizes a psychological aspect, the need for destroying prejudices and for spreading the elementary truth that an influx of foreign workers may be a source of strength. The Spaak Report also observes\(^\text{180}\) that "liberation" of the movement of unskilled as well as skilled workers is necessary. In this respect—and in others—there is, as pointed out in the Spaak Report, a fundamental difference between the European Economic Community and the Coal-Steel Community. The problem of defining skills in the latter was and is a matter of first importance, but a community which is not limited to two specific industries has, as the Spaak Report convincingly demonstrates, an even greater interest in promoting freedom of movement for the unskilled (who are especially exposed to the risk of unemployment) than for skilled workers.

The Spaak Report also sounds a very necessary note of warning: it is dangerous to overestimate the magnitude of the actual movement of labor even in a completely free market. The information published by the Commission in its two Exposés on the Social Situation in the Community\(^\text{181}\) confirms the general impression that movement of labor is as yet quite insignificant in Europe. It would be entirely unrealistic to attribute this exclusively or perhaps even principally to legal obstacles. As the Spaak Report says, even within a given country—any European country—men and women are reluctant to change their occupations or their homes. Even if there were no housing shortage (as there is, and it must be counted as an overwhelmingly important factor) "mobility of labor" would not come naturally to people; it must be stimulated. This is not to say,


\(^{180}\) Id. at 89.

\(^{181}\) First Exposé ch. A.II, paras. 21–24; Second Exposé, paras. 15–17. And see Table 6 in the Statistical Appendix to the First Exposé, and Table 6 in the First Statistical Appendix to the Second Exposé.
as the Spaak Report also points out, that it should always be stimulated. The most recent tendency (of which the British Distribution of Industries Acts are an example) is to develop employment opportunities on the spot, that is to stimulate the migration of capital rather than of labor. The “European Social Fund” 182 is partly intended to assist in this process and the relevant Treaty provisions thus complement those on freedom of movement. Given the psychological and cultural (including linguistic) inhibitions militating against geographical mobility of labor, it may be especially necessary for an American observer to “think afresh” when considering Europe. It is, to say the least of it, possible that the reluctance to sever one’s links with an accustomed environment is rooted in traditions and sentiments which Europe could forego only at the risk of losing the richness and variety of its civilization.

Part II, Title III, Chapter 1 of the Treaty contains the provisions which are intended to remove the legal obstacles to freedom of movement within the Community, that is, in the words of the Spaak Report to establish

... the right in all countries of the Community to accept work in fact offered and, in the event of obtaining a job, to live in the particular country without any restriction which does not apply in the same way to workers who are citizens of the country.

Article 7 of the Treaty which appears in the introductory Part I (entitled “Principles”) provides that within its field of application “and without prejudice to the special provisions mentioned therein” “any discrimination on the grounds of nationality shall hereby be prohibited.” The provisions in Part II, Title III, Chapter 1 183 are clearly “special provisions.” The power of the Council, acting by a simple majority pursuant to Article 49, to take measures to give gradual effect to the free movement of workers is by the same token not impaired by the second paragraph of Article 7 under which the Council, acting by a qualified majority, may lay down rules in regard to the prohibition of any such discrimination as is mentioned in Article 7, paragraph 1.

Article 7 may, however, be of importance in connection with the rights of persons employed by public enterprises or enterprises to which any Member State grants “special or exclusive rights,” for example, concessions. This is by virtue of Article 90, but although

182 See PART I, Section G of the text infra.
183 Treaty arts. 48-51.
this may conceivably be of some practical significance to American enterprises in Europe, it is not further considered here because, for the time being, that is as long as the Council has not exercised its rule-making power under Article 7, paragraph 2, this aspect of Article 90 is not operative.

The provisions of Articles 48–51 had been foreshadowed by Article 8 of the Convention for European Economic Cooperation of April 16, 1948, which applies to the (now) 18 Members of the Organization for European Economic Cooperation and which is as follows:

The Contracting Parties will make the fullest and most effective use of their available manpower.

They will endeavor to provide full employment for their own people and they may have recourse to manpower available in the territory of any other Contracting Party. In the latter case they will, in mutual agreement, take the necessary measures to facilitate the movement of workers and to ensure their establishment in conditions satisfactory from the economic and social point of view. Generally, the Contracting Parties will cooperate in the progressive reduction of obstacles to the free movement of persons.

Decisions of the O.E.E.C. can of course be taken only “by mutual agreement of all the members” (Article 14 of the Convention), and, in the absence of such decisions, the O.E.E.C. can implement the policy of Article 8 only through recommendations. One such recommendation is based on Article 16 and Article 17 of the Revised I.L.O. Migration for Employment Recommendation of 1949. It provides that, after five years of residence and employment, foreign workers should be free to accept employment of their choosing. The Spaak Report prefers this method of increasing freedom of movement to another scheme, also proposed by the O.E.E.C., according to which recruitment of foreign labor by any given employer could not be prohibited after the lapse of a maximum period (in principle one month), during which unsuccessful attempts have been made to fill the vacancy, by engaging labor available in the territory. The disadvantage of the latter system is that it may, in the opinion of the authors of the Spaak Report, result in something akin to a game of “musical chairs,” that is, a situation in which a vacancy is filled by a workman who in accepting the vacant

185 See 1 I.L. Code 1951, art. 1511, at 1732.
job has himself given up another and so on *ad infinitum* so that the occasion for the recruitment of foreign labor never arises. As against this, the O.E.E.C. proposal for a five-year maximum for any restrictions to be placed on choice of employment could, as the Spaak Report says, be the starting point for a more promising development if the period were gradually reduced. A third possibility (also appearing in the Spaak Report, but not in the O.E.E.C. proposals) would be gradually to enlarge (by stages fixed in advance) the number of foreign workers to be admitted for employment, taking as the basis the mean of the numbers of foreign workers admitted during the last three years, and enlarging it annually by at least one percent of the total labor force of the country, all of this to be coupled with escape clauses to protect particular industries in times of unemployment.

None of these specific proposals have been written into the Treaty of Rome. Its relevant provisions are thus more general and vague than the O.E.E.C. proposals. The legal powers wielded by the institutions of the Community, however, are plainly very much greater than those of the organs of O.E.E.C. Thus, although the policies written into Article 8 of the O.E.E.C. Convention and those which are given expression in Article 48 et seq. of the Treaty are similar, the means available for their execution are very different. Within the framework of O.E.E.C. a free labor market can only be brought about by agreements between the Contracting Parties (although the organs of O.E.E.C. may, of course, be empowered to prepare and carry into effect such agreements). But under the Treaty a supranational body of law may be created which will take effect during the transitional period, and a supranational principle, which will take effect at the end of the transitional period, has been created by the Treaty itself. This emerges from Article 48 of the Treaty which must be regarded as one of its cornerstones and therefore deserves analysis in some detail. Four points seem to call for special comment.

In the first place it should be noted that, with respect to the establishment of the common labor market, no four-year “stages” are envisaged. Article 48 (1) provides that “the free movement of workers shall be ensured within the Community not later than at the date of the expiry of the transitional period.” According to Article 49, the “free movement of workers” is to be brought about “progressively,” that is gradually, during the transitional period,

187 Treaty arts. 48, 49.
but the Treaty is silent concerning the rate or rhythm of progression. The Treaty does, however, indicate the steps which the organs of the Community are to take to make a free labor market possible (Articles 49–51), and it further indicates (Article 49) that these were to be initiated as soon as the Treaty came into force.

The second noteworthy point is that, "at the end of the expiry of the transitional period," legal obstacles to freedom of movement (with certain exceptions) are automatically to disappear. The Treaty does not provide for decisions by any Community institution at that point, but its Article 48 contains substantive law which, if unamended, will come into force in the six countries at the end of the transitional period. Needless to say, this applies to legal obstacles only, for example, to restrictions on immigration or on the employment of foreign workers. Other impediments to free migration, such as those caused by wage differentials, differences in social security expectations,¹⁸⁸ language difficulties, social mores, and national allegiances are either beyond the reach of legislation or dealt with in other provisions of the Treaty.

Thirdly, however, this automatic implementation of the principle of a free labor market in the Community has been expressly limited so that it has no application with regard to "the non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands" (Articles 131 and 135) and with regard to "Algeria and the French overseas departments" (Article 227). The "non-European countries and territories" referred to in Article 131 are subject to the special provisions contained in Part IV of the Treaty (Articles 131–136), and are listed in Annex IV of the Treaty. They consist of those territories of the French Community which are situated outside Europe (other than territories such as Algeria which are, for constitutional purposes, part of metropolitan France), of the Belgian Congo and Ruanda-Urundi, of Italian Somaliland, and Nether lands New Guinea.¹⁸⁹ The main

¹⁸⁸ This obstacle has been overcome in so far as the preservation of acquired expectations and the claim to equal treatment is concerned. See Treaty art. 51; Reg. N° 3, op. cit. supra note 17; Reg. N° 4, op. cit. supra note 94, and with regard to equality of treatment, especially art. 8 of Reg. N° 3. But this does not, of course, bring about an equalization of the substantive rights to benefit, such as that recommended by the Council of Europe in the Interim Agreements drafted by it in 1953 (1 European Handbook 226 et seq.), and referred to by the Commission in its First Gen'l Rep. para. 120. For the Council of Europe agreements: Europ. T.S. Nos. 12, 13; Five European Conventions put out by the Directorate of Information of the Council of Europe; Robertson, The Council of Europe ch. 8, at 130–31 (1956).

¹⁸⁹ According to the Protocol relating to the Application of the Treaty to the Non-European Parts of the Kingdom of the Netherlands, which is annexed to the Treaty,
body of the Treaty does not apply to these territories, but the Member States have by Article 131 agreed to associate them with the Community. This is not the place to discuss the politically momentous aspect of this differentiation with regard to the Common Market in general, a differentiation which is regulated in Articles 131–134, and for the first five years from the entry into force of the Treaty by the implementing Convention annexed to it (Article 136). This Convention, although it deals with the “Right of Establishment” in the Overseas Territories (Article 8 of the Convention) and in Algeria and the French overseas departments (Article 16 of the Convention), that is with matters regulated for the European territories of the members in Articles 52 to 58 of the Treaty, has no provisions concerning freedom of movement for workers. This freedom is regulated in Article 135 of the Treaty which provides:

Subject to the provisions relating to public health, public safety and public order, the freedom of movement in Member States of workers from the countries and territories, and in the countries and territories of workers from Member States shall be governed by subsequent conventions which shall require the unanimous agreement of Member States.

If no such conventions can be unanimously agreed on, there will be no freedom of movement from the overseas territories, or into or among them, either at the end of the transitional period or at any subsequent time. This provision in Article 135 does not, however, apply to Algeria or the French overseas departments. Neither, however, do Article 48 et seq. on free movement of workers. These are not among the Treaty provisions which, by Article 227(2) of the Treaty, have been made to apply to Algeria and the French overseas departments. The conditions for the application of these and other Treaty provisions not applicable to those territories shall be determined, not later than two years after the date of [the Treaty’s] entry into force, by decisions of the Council acting by means of a unanimous vote on a proposal of the Commission.

the Netherlands may ratify the Treaty so as to include only the Kingdom in Europe and Netherlands New Guinea, thus excluding Surinam and the Netherlands Antilles. The parties to the Treaty are however—according to a Declaration of Intention annexed to it—ready, at the request of the Netherlands, to open negotiations for the economic association of these territories with the Community.
All measures designed to ensure free migration of labor, then, must be confined to the European territories of the Member States, and no one can say how far such measures ever can or will be applied to any overseas territories. It is even more difficult to predict to what extent the free movement of labor which is to be guaranteed by the end of the transitional period in the Community will apply to the overseas territories.

The principle of free movement and of the abolition of legal obstacles to its exercise is further subject—and this is the fourth point of importance—to a number of significant exceptions even where Europe is concerned.

Restrictions on free immigration or emigration or upon the employment of foreigners for reasons of "public order, public safety or public health" (Article 48) can be maintained. It will be a somewhat delicate task for the Court of Justice to distinguish between limitations imposed for economic reasons and limitations prompted by reason of public order, safety, or health. One can think of any number of situations in which these motivations may overlap; for example, where housing or medical facilities are inadequate or where there are political or religious dissensions among groups of workers or disputes concerning trade union organization, or where potential immigrants are not sufficiently familiar with the safety or hygienic requirements imposed by the country of immigration and the like. The need of these exceptions to the principle of freedom of movement is nonetheless clear. This is just another illustration of the difficulties facing an economic community which is to be established in an environment of cultural, political, and legal diversity.

Another exception concerns "employment in public administration" (Article 48(a)), which may also be difficult to interpret. The central and municipal government administrations of the Member Countries are clearly included, but is employment by public corporations? Does the exception in fact mean that the principle of freedom of migration is not to extend, for example, to the railway services which in all European countries are public services? Or to public utilities?

2. CHANGES DURING THE TRANSITIONAL PERIOD

Such questions are even now not entirely academic since pursuant to Article 49 Community institutions are to "lay down the measures necessary to effect progressively the free movement of workers as

190Spaak Report, supra note 186.
The measures to be taken are to be directed at a gradual achievement of certain legal changes enumerated and explicitly described in Article 48. The matters affected will be these:

1) Discrimination based on nationality between workers of Member States is to be abolished as regards employment, remuneration, and other working conditions (Article 48 (2)). Of these "employment" is perhaps the most important. It means not only that nationals of all Member States have equal rights to seek employment and to accept it, without any need for the approval of any governmental authority (this point is specifically mentioned in Article 43 (3) (a)) but also that employment exchanges must not, in finding employment for workers or workers for vacancies, make any distinction between their own nationals and those of other Member States. It further means that no discrimination must be agreed upon between trade unions and employers or employers' organizations, or be practiced by statutory works councils or by councils of shop stewards, whether such councils are based on statutes or collective agreements. Industrial conciliators, mediators, and arbitrators are bound by the rule of non-discrimination whatever the basis of their authority. As soon as the principle of non-discrimination becomes a rule of law in the Member States (and this might happen—at any rate in some industries—by virtue of measures taken pursuant to Article 49 long before Article 48 gives automatic effect to the principle), individual employers will also be bound by it. An employer could, in accordance with the procedural rules prevailing in the country concerned, be prevented from practicing systematic discrimination in the hiring of labor, and he could certainly be compelled to reinstate an employee upon proof that the worker had been dis-

191 SECOND GEN'L REP. Para. 173.

191a Art. 48, para. 3, appears to be enumerative and not exhaustive, but the matter is not free from doubt. The principle established in para. 1 goes beyond the particular instances mentioned in para. 3. This means that workers will be free to enter any Member Country in order to seek work there, and not only to accept work already offered. This is a matter of great importance. An early clarification of this question of interpretation is desirable.

192 See PART II of this Chapter.
missed because he was a national of a Member State other than that of the employer. Clearly “discrimination as regards employment” refers to “firing” as well as “hiring.” It would therefore also be illegal for unions and employers or employers’ associations to adopt by collective agreement any principle of “seniority” which would, in the event of dismissals, give preference to nationals of one Member State over those of another. Works councils, arbitrators, and the like would be similarly restricted.

2) Discrimination with regard to remuneration is less likely to occur, at any rate as a systematic measure. The word “remuneration” clearly covers not only wages and salaries of various kinds (time and piece rates, overtime rates and the like), but also “fringe benefits,” and discrimination regarding fringe benefits, especially among salaried employees, may be more likely than wage discrimination. Discrimination between nationals of the Community states with regard to paid vacations, to pension schemes, or to bonuses is forbidden, and the same prohibition applies to other “working conditions.”

3) Two matters of very great potential importance are not expressly referred to in Article 48—social security rights and trade union membership.

Social security rights are not expressly covered by Article 51 because this provision, which is concerned with assimilation of qualification periods and benefit payments, does not deal directly with the question of the equal treatment of workers employed in the same country. Any differences of treatment in this area would nevertheless clearly violate the spirit of Article 48, and provision against it is therefore within the powers vested in the Council under Article 49. The question has in fact been settled by Article 8 of the Council’s Regulation No. 3, concerning the Social Security of Migrant Workers. It provides that all residents of one of the Member States to whom the Regulation applies are subject to the obligations and entitled to the rights established by the social security legislation of each Member State under the same conditions as the nationals of that State.

Trade union membership raises a much more formidable problem. In this respect the experience of the American courts in relying on the Equal Protection Clause of the Federal Constitution may

103 See the definition in art. 6 (r) (a) (i) of the I.L.O. Migration for Employment Convention (Revised), 1949, in I.L. CODE 1951, art. 1499, at 1110. Article 6 also deals with trade union rights, social security, and kindred matters.

104 See Reg. No 3, op. cit. supra note 17, art. 8.
perhaps be of some assistance. It may be arguable that the rule against non-discrimination makes it incumbent on unions not to reject any applicant for membership for reasons condemned by law, but such a principle, however desirable, is obviously very difficult to enforce. As is true in a similar situation in the United States, the rule against non-discrimination can perhaps be more usefully applied to collective bargaining practices of unions than to their membership policies. Article 48 might, in other words, play a role comparable to that of American provisions which make the union the statutory bargaining representative of all members of the bargaining unit and invalidate any agreement purporting to discriminate between members and non-members in so far as non-membership is in fact the result of the non-members' nationality. It might, moreover, implicitly provide a check on expulsions from trade union membership which are in fact based on discriminatory policies.

4) Freedom of movement implies not only the "right . . . to accept offers of employment actually made" (Article 48 (3) (a)), but also the right to move about freely in order to do so, a right to stay in the country in which one has found employment, and—a point of great importance—a right to continue to live in the country of employment even after the loss of the actual job. All these matters are mentioned in Article 48 (3) (b), (c), and (d), but the last is subject to "implementing regulations laid down by the Commission." The effectiveness of the entire scheme may well depend on these regulations. If a foreign worker has to face expulsion in the event of a loss of his employment, he is not in fact on a par with indigenous workers, and would moreover find himself in a state of dependence which is undesirable. On the other hand, in the event of protracted unemployment a repatriation of foreign workers may become an urgent economic necessity. The regulations to be issued by the Commission are clearly a matter of great importance. The Treaty is silent as regards the right of the worker's family to live in the country of his employment, and silent as regards his rights in relation to the allocation of housing accommodation, the schooling of his children, public assistance, and public

196 When laying down these Regulations, the Commission "... shall take due account, in so far as the Grand Duchy of Luxembourg is concerned, of the particular demographic situation of that country." Treaty, Protocol Concerning the Grand Duchy of Luxembourg, art 2. The number of foreign workers in Luxembourg is proportionately very large: see First Exposé A. II, para. 24 ad finem.
197 See arts. 16, 17 of the I.L.O. Migration for Employment Recommendation (Revised), 1949, in 1 I.L. CODE 1951, at r511 at r132.
health services (other than those based on social security legislation). In this respect as in others the scheme of the common labor market is still fragmentary.

3. METHODS OF GIVING EFFECT TO THESE CHANGES

The powers vested in the Council by Article 49 for the purpose of gradually effecting the free movement of workers are far-reaching. The Council has been placed under a duty to (it "shall") adopt measures by means of directives or regulations. Neither a unanimous decision nor a qualified majority vote is required so that the Council can in this case create law applicable in each Member State by majority vote provided the measures it adopts are based on the required proposals of the Commission and provided the Economic and Social Committee has been consulted. Whether, in fact, the Council is likely to act by means of regulations and whether the measures mentioned in Article 49 would not more appropriately take the form of directives is a matter of opinion. The Commission in its Second Report leaves the matter open, speaking of a "legal instrument" which is in course of preparation.

Article 49 requires immediate steps to achieve the aims of Article 48, and two methods of doing so are envisaged: (1) the removal of certain restrictions on the employment of foreign nationals (Article 49(b) and (c)), and (2) the improvement of employment opportunities by reforms in the employment exchange services (Articles 49(a) and (d)).

1) The Commission emphasized in its First Report that its proposals would have to deal with three fundamental problems: access to work, freedom of movement, and the possibility of residing, and settling down in, the country of employment. It further stated that the progressive removal of restrictions "according to a plan" as required by Article 49 would have to take account of the experience of the Coal-Steel Community in applying Article 69 of the E.C.S.C. Treaty and also the decision of the O.E.E.C. It indicated more particularly that during a first phase the lapse of time between application for work permits and their grant or refusal would have to be reduced to a minimum and grounds for their refusal restricted to reasons of public order and health. Renewal

198 Treaty arts. 148 (1), 189.
199 Id. art. 149.
200 SECOND GEN'L REP. para. 175.
201 FIRST GEN'L REP. para. 111.
202 See text preceding note 184 supra.
procedures would have to be improved by lengthening the duration of permits and liberalizing the grounds for extension, and reform and unification of procedures for acquiring permission to enter and remain in a country—which are at present extremely complex—would also be needed. The Commission envisaged measures to implement the Recommendation of the O.E.E.C. that foreign workers should have complete freedom of choice of employment after five years' residence and that this period should be gradually reduced.\textsuperscript{208}

This program, although "preliminary," is sufficiently ambitious to require very extensive preparations, and the Second Report of the Commission contains an account of the preparatory work done so far. A systematic comparative analysis of the legal position of foreign workers in the six countries has been completed,\textsuperscript{204} but not published. It includes a study of the conditions of entry and residence for workers and their families as well as of labor permits, whether based on legislation or administrative practices or bilateral and multilateral treaties, as well as of methods of bringing together offers of work and persons seeking it. A draft of an "instrument" has also been prepared by the Commission which will have "limited objectives and will cover only a first stage,"\textsuperscript{205} affecting the entry of workers and their families, employment and residence, the right to remain in the territory entered, and the right of establishment there. The Commission will also initiate "a thorough and systematic study of the legal position of nationals of Member States who have established themselves in the territory of another Member State."\textsuperscript{206} Finally, a committee is to be set up to assist the Commission and to propose practical measures by which freedom of movement is to be created.\textsuperscript{207}

At the end of this first phase the need for labor permits, time limits restricting the free choice of jobs (Article 49(c)) and exclusion from certain, or from all but certain, occupations (Article 49(d)) should have disappeared—whether they were created by the law of any Member State or by existing treaties.

2) A reform of the system of labor exchanges to promote freedom of movement can be brought about by instituting a common system of such exchanges. This can be done either by close collaboration of the national labor administrations (Articles 49(a)) or (Article

\textsuperscript{208} First Gen'l Rep. paras. 112-13.
\textsuperscript{204} Second Gen'l Rep. para. 174.
\textsuperscript{205} Id. para. 175.
\textsuperscript{206} Id. para. 177.
\textsuperscript{207} Id. para. 175.
it can be effected by a supranational machinery designed to even out regional unemployment and regional excesses in the demand for labor over its supply. The Treaty describes the latter as the:

appropriate machinery for connecting offers of employment and requests for employment, with a view to equilibrating them in such a way as to avoid serious threats to the standard of living and employment in the various regions and industries.

The reorganization of the labor exchanges is obviously a necessary preliminary for the establishment of a common labor market.

The Commission hopes to improve the liaison between the employment services of the Member States, to promote direct contacts between employers and workers and to ensure that workers can make use of employment exchanges. It also hopes to create a coordinating agency to study labor market developments, to cooperate with national employment services in helping employers to find workers in other Member Countries, to promote closer contacts between existing employment services and to suggest improvements. When the Assembly received the Report of the Commission which contains this program, it passed a resolution strongly recommending the creation of a European Employment Exchange with a view to coordinating the activities of the national employment exchanges. The “legal instrument” of which the Commission has prepared a draft does not go quite so far, but it provides for measures of cooperation between labor exchanges to bring together supply and demand and for the general coordination of their work under the aegis of the Commission. The Commission further aims at a gradual harmonization of the working methods of labor exchanges and at a regular exchange of information between them.

4. EXCHANGE OF YOUNG WORKERS

The best that measures to be taken by the Council can be expected to achieve is the removal of legal obstacles to the free fluctuation of supply and demand in labor markets. They cannot by themselves overcome the economic and ideological barriers which separate the

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unemployed or under-employed worker and potential employers. The Treaty does, however, envisage during the transitional period action in several directions in addition to the progressive abolition of legal and administrative restrictions on employment. Besides measures (already taken) in the field of social security the Treaty envisages that "Member States shall, under a common program, encourage the exchange of young workers" (Article 50). Unlike the social security measures, this program is not to be effected by supranational legislation, but by the Member States themselves. No organ of the Community has been assigned specific tasks in this respect, except, of course, that the Commission, by virtue of Article 118, is to promote close cooperation among Member States in this as in other employment matters.

The importance of such exchanges to the creation of "Europe" could be great, and it augurs well that the Commission proposes a first program making periods of apprenticeship abroad for young workers more feasible. Bilateral and multilateral understandings to this effect already exist, but the Commission believes that an annual program is needed so as to make foreign apprenticeships available to a substantial number of workers.

G. THE EUROPEAN SOCIAL FUND

"The European Social Fund is intended to be a cornerstone in the edifice of social security which is to be built up side by side with the measures of economic expansion in the Community." The need for it arises, in the words of the Spaak Report, from the "risks which accompany the changes" demanded by economic progress. The aim is to protect labor against these risks and to "reconcile the necessary mobility and the stability of employment," which must not be confused with a policy permitting workers to cling to their jobs. The authors of the Spaak Report, in proposing what they called an "adjustment fund" (fonds de réadaptation) were convinced that this device, by protecting the worker against the consequences of labor mobility, would promote mobility. They also thought that the fund should be used to assist workers who were undergoing re-training or changing their homes. The Treaty accordingly defines the aim of the Fund as one of "promoting within the

Community employment facilities and the geographical and occupational mobility of workers.”  

A similar policy is embodied in the Treaty instituting the European Coal and Steel Community, but in a number of respects the structure and function of the European Economic Community are so different from those of the Coal-Steel Community that the arrangements applicable to the latter have not been able to serve as a pattern. Under the E.C.S.C. Treaty this policy is carried out by the High Authority by means of funds raised through the Coal-Steel Community’s “taxing” power, but the Treaty of Rome confers no corresponding powers either on the Commission or on the Council. The European Economic Community has no power to levy taxes, and for the time being the revenues of the Community consist of the financial contributions of the Member States. These contributions are not intended to cover expenses incurred in assisting Member States to implement Treaty policy. Therefore a special fund will be established to be known as the European Social Fund. This is in accordance with the proposals of the Spaak Report, but the Spaak Report also pointed out that the system of re-adjustment grants would have to differ from that administered by the High Authority of the E.C.S.C. in respects other than the source of the funds. Inevitably such a scheme, if applied to a general common market, has to be different from a scheme applied to two particular industries. It is, for example, quite impossible to require—as the Coal-Steel Community Treaty does—that the payment of grants to workers be justified by proof that the loss of employment resulted either from the introduction of technical processes or new equipment or from the operation of the Common Market—that is, from increased freedom of competition and movement. Further, under the Coal-Steel Community Treaty, grants presuppose that the state to which a grant is made will itself make a

214 Treaty art. 123.
216 Treaty art. 201 envisages the possibility that eventually the Community may have its own revenue, e.g., from the common customs tariff.
217 Treaty art. 200 (1).
218 Id. arts. 123–28.
219 Spaak Report, supra note 213, at 84.
220 Id. at 83.
grant over and above its normal payment of unemployment insurance benefits or assistance.\textsuperscript{222} This rule, too, was regarded by the authors of the Spaak Report as not easily applicable to the European Economic Community. They thought that the principle of re-adaptation grants should gradually be integrated into the general systems of unemployment insurance or assistance, and that these systems might be harmonized in the process, which in turn would aid in rendering labor more mobile. They pointed to the American system of unemployment insurance to show how one could arrive at harmony of legislation without “federalizing” the administration of the scheme.

Hence, neither the requirement of causal nexus between the operation of the Common Market and the dislocation of labor nor the requirement of special financial assistance by the state concerned have been incorporated in the Treaty. The basic function of the Fund\textsuperscript{223} is to cover, at the request of a Member State, 50 percent of the expenses incurred by that state or by a body under public law\textsuperscript{224}

\ldots for the purpose of:

(a) ensuring productive re-employment of workers by means of:
   — occupational re-training,
   — resettlement allowances; and

(b) granting aids for the benefit of workers whose employment is temporarily reduced or suspended as a result of the conversion of their enterprise to other productions, in order that they may maintain the same wage level pending their full re-employment.

The fund is fed by financial contributions of the Member States according to a special scale laid down in Article 200, paragraph 2. This special scale differs substantially from the general scale of contributions. This, too, is in accordance with the Spaak Report proposals,\textsuperscript{225} which are to the effect that contributions to the Fund

\textsuperscript{222} See for these provisions of the E.C.S.C. Treaty and their operation in practice: Haas, op. cit. supra note 215, at 92 et. seq. Since the above was written, the text of E.E.C. Treaty art. 56 has been amended so as to enable the High Authority to grant assistance in the event of dislocation due to fundamental changes in marketing conditions (1960). Section 23 of the Convention on Transitional Provisions expired on Feb. 9, 1960.

\textsuperscript{223} Treaty art. 125 (1).

\textsuperscript{224} For the meaning of this term in this context see p. 356 infra.

\textsuperscript{225} Spaak Report, supra note 213, at 84.
should be proportionate to the total of wages and statutory or agreed social insurance contributions, that is, to total (direct and indirect) labor costs (except in sectors covered by the Coal-Steel re-adaptation scheme). The differentiation between the proportionate distribution of the general contributions to the Community and those to the Social Fund is important. It means that the highly industrialized countries contribute proportionately more than the potential sources of labor emigration. Germany and France pay 32 percent each of the expenses of the Social Fund, but only 28 percent of those of the Community in general, Belgium pays 8.8 percent of the expenses of the Social Fund, as against 7.9 percent of general expenses. Italy, however, contributes only 20 percent of the Fund compared with 28 percent of the general expenses.

The Fund is established by Article 123 of the Treaty "in order to improve opportunities of employment of workers in the Common Market and thus contribute to raising the standard of living." This is entirely in accordance with the general principle underlying the proposals of the Spaak Report. The Report—rejecting the view that the Fund should intervene only where unemployment could be shown to be the result of the Common Market itself—indicated that the Community was interested in progressive change in the industrial structure, in the rationalization of undertakings, and in better employment of the labor force; it was interested in all of these because they will increase productivity and improve standards of living. Such aims justify the Community in bearing part of the cost of protecting labor against the risks which accompany such changes. The drafters of the Treaty wholly accepted this general principle, and, although they did not adopt many of the detailed proposals of the Spaak Report, the general rule that the Community would bear 50 percent of these costs (as the Report suggested) has been adopted, but adopted as a rule not of prospective but of retrospective participation. The Spaak Report indicated that the distributive trades and professional and other services should be brought within the orbit of the Social Fund only from the moment and to the extent to which they would come within the Common Market, but no such limitation has been written into the Treaty. On the other hand, only wage-earners and not small independent craftsmen or peasants may benefit from the fund, whereas the authors of the Spaak Report took the view that the latter might

226 Not, e.g., the proposal to use the Fund towards assisting enterprises in "staggering" closures: Spaak Report, supra note 213, at 85.
227 Id. at 87.
be made eligible for Fund aid if they were also eligible for re-adapta-
tion assistance provided by Member States.

The Fund will be administered by the Commission which will be
assisted by a Committee presided over by a Member of the Com-
mmission and composed of government, trade union, and employers’
association representatives.228 The Committee has not yet been
formed.229 The activities of the Fund will be circumscribed by regu-
lations to be issued by the Council (by qualified majority vote) on a
proposal of the Commission, and after the Economic and Social
Committee and the Assembly have been consulted.230 The Com-
mision submitted its proposal to the Council on July 1, 1959, and
shortly thereafter draft regulations were sent by the Council to the
Economic and Social Committee and to the Assembly in order to
obtain their views.231 The Fund can and will begin to operate as
soon as that Committee and the Assembly have been consulted and
the Council has made its decision.232 The Assembly has already
expressed the opinion that the Commission should be given the widest
possible scope of action and that the Fund at its disposal should be
sufficiently large for the creation of opportunities for employment
and for the improvement of the free circulation of manpower.233
The Assembly also expressed the view that, in administering the
Fund, the Commission should cooperate with the European In-
vestment Bank and with the High Authority so as to prevent unem-
ployment, for example, in regions in which coal mines have to be
closed down on a large scale. In accordance with a desire expressed
by the Assembly, the principles underlying the draft Regulations
were discussed in its Social Affairs Committee,234 and a statement on
the subject was also made to the Economic and Social Committee.
In preparing its draft, the Commission ascertained from the Mem-
ber Governments235 what action had been taken and what expenses
had been incurred by them or by public bodies under their jurisdi-
cion in 1958 for purposes which would qualify for assistance by

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228 Treaty art. 124.
229 Its jurisdiction and procedure will be regulated by the Third Part of the
Regulations to be passed under art. 127: see SECOND GEN’L REP. para. 171; Bulletin,
230 Treaty art. 127.
233 This opinion was expressed in a European Assembly Resolution after receipt
by the Assembly of that part of the Commission’s First Report dealing with social
234 SECOND GEN’L REP. para. 172.
235 FIRST GEN’L REP. para. 115.
the Fund. The draft consists of three parts, one which defines the scope of activity of the Fund and the conditions under which its assistance can be claimed, a second which lays down the procedure for obtaining a grant, and a third which deals with the advisory committee.236 Experts in the ministries of labor and finance in each of the Member States have been consulted, and contact had been made with employer and union representatives.237 In preparing its draft, the Commission obviously faced a difficult problem of definition since the relevant concepts—for example, “unemployed worker” or “occupational re-training”—vary from country to country and had to be precisely determined for the purposes of the Fund.238

The functions of the Council should be distinguished: it has to issue the regulations, but it must also adopt the budget of the Social Fund. The provisions fixing the conditions on which assistance can be granted and the categories of enterprises whose displaced workers are to benefit must be adopted by a qualified majority vote,239 so that any two members, neither of which is Luxembourg, have the power of veto. The weighing of the votes for the adoption of the budget relating to the Social Fund is however differently regulated240 by reason no doubt of the difference in rates of contribution. Here a majority of at least 67 out of 100 votes is required, which gives the veto power to any two members either of which is Germany or France and neither of which is Luxembourg, while Germany and France together with any other member except Luxembourg can carry a favorable vote.

“Within the framework of the rules” laid down by the Council the Fund can in accordance with Article 125 make certain grants. These grants are never made to private firms or to individual workers, but always to a Member State or to a “body under public law.” The quoted words presumably refer to public corporations—the Belgian Office National de Placement et du Chômage, the German Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung, the Italian Istituto Nazionale della Previdenza Sociale, the Luxembourg Office National du Travail, or the Netherlands Algemeen Werkloosheidsfonds.241 (There is no system of un-
employment insurance in France.) The state or public body can, however, never recover more than 50 percent of the expenses incurred. Within these limits there are three kinds of grants:

1) **Occupational re-training grants.** These can only be made towards expenses incurred for re-training workers who cannot find employment except in a new occupation. It is not a grant for re-training in general, but only assistance towards overcoming the consequences of unemployment. Moreover—and in this respect the structure of the system inaugurated by the Treaty differs materially from that proposed in the Spaak Report—the grant is retrospective, that is, it cannot be made until the re-trained workers have been productively employed for at least six months in the new occupation. The Fund is not, therefore, to participate in re-training experiments, but only to reimburse part of the expenses of successful re-training. This retrospective character of grants made it possible to dispense with a number of additional "controls" proposed in the Spaak Report, for example, that grants could only be made where undertakings or plants were totally or partially closed down or where partial shut-downs or dismissals affected at least 10 percent of the workers of an enterprise. The fact that the grant is retrospective, following a change of occupation, guarantees that the resources of the Fund will be spent on cases originating in structural economic changes. Though the methods of the Treaty differ from those recommended in the Spaak Report, their object is, of course, the same—to promote occupational mobility.

2) **Resettlement allowances.** Here the object is to promote geographical mobility. The assistance granted is conditional upon the unemployed workers having been obliged to change their residence within the Community. This may prove to be important in those cases in which effective freedom of migration depends on financial assistance, and this aspect of the Social Fund is thus clearly a corollary to the provisions in Article 48 et seq. concerning freedom of movement from one country to another within the Community. The power to make grants is not, however, restricted to such cases, but extends to changes of residence within any one Community country. Thus the Fund could participate, for example, in the expenses of the re-settlement of Italian workers in France or in Belgium, but it could also do so if workers from one part were to be re-settled in another part of Italy. Here, too, the grant is retrospective since it can only be given in respect of workers who have been "in productive employment for a period of at least six months
in their new place of residence." What was said above about the relation between the proposals of the Spaak Report and the Treaty with regard to occupational re-training grants applies mutatis mutandis to the resettlement grants as well.

3) Aids for the benefit of workers temporarily displaced as a result of the conversion of their enterprise to other production. Workers will be benefited who have not lost their employment permanently, but who have suffered temporary wage cuts or suspensions or whose work weeks have been reduced—in the words of the Treaty "whose employment is temporarily reduced or wholly or partly suspended." The object of the grant is to assist in maintaining wage levels pending full re-employment, the Fund paying half the lost wages if the government or public corporation concerned pays the other half. In this case no grant can be given except on proof that the suspension of employment was the result "of the conversion of the enterprise to other production," but—as the Spaak Report has suggested—it is not necessary to show that the conversion was in turn the result of the operation of the Common Market.

The conditions of this type of grant are particularly stringent in other respects, too. Not only is the grant retrospective in the sense that the grant cannot be made before the workers concerned have again been fully employed in the same enterprise (not necessarily in the same plant) for at least six months, but the conversion plan for the particular enterprise, including a plan setting out the financing of the re-conversion, must have been drawn up by the enterprise in advance, the government concerned must have submitted it to the Commission and the Commission must have given its approval. This is in accordance with the Spaak Report proposals. But the proposal in the Report of a special system of grants to assist in staggering the closing-down of undertakings in order to prevent sudden mass unemployment has not been incorporated in the Treaty, although there is, of course, nothing in it to prevent the Commission from giving especially favorable consideration to such cases provided they are within the reach of Treaty provisions. In this respect as in others much will depend on the Regulations to be issued by the Council.

As especially emphasized in the Spaak Report, this system of grants imposes no obligation on states should they find it difficult to finance increased unemployment benefits, but it is intended to give each Member State a powerful financial incentive to make financial

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\[^{242}\text{Spaak Report, supra note 213, at 86.}\]
provision for various kinds of re-adaptation grants. The American scheme of financial incentives, which is part of the United States system of unemployment insurance law,\(^\text{243}\) has doubtless to some extent served as a model. The Commission hopes\(^\text{244}\) that, “through its retrospective financial activities the Fund will serve as a powerful corrective helping those states and bodies under public law which have taken positive action in connection with re-employment to prevent the workers in certain economic sectors or certain areas from being harmed by the structural changes which are inevitable, and which can even be considered desirable.”

But, as the Commission also says in its Second Report, the Fund may achieve a great deal more. By fostering occupational re-training (and also re-settlement) it may help to make freedom of movement a reality and thereby aid in “the attainment and continued existence of a high level of employment.”

This plan for grants has been devised for the transitional period. At its end various procedures may be adopted\(^\text{245}\) to terminate part of the assistance functions of the Fund, and also to entrust it with new tasks. These, however, must be within its general mandate which is to promote employment facilities and the geographical and occupational mobility of workers in order to improve employment opportunities and thus to contribute to the raising of living standards.

**H. Conclusions**

In many ways one of the most important activities of the Community is likely to consist in the collection of social and economic facts and the explanation of social and economic trends. Experience has already shown the great value of the work of the Commission in this respect, as could have been expected from the precedents set by the International Labor Office and the High Authority. In concluding this analysis of the Treaty provisions on labor and social policy special emphasis can therefore appropriately be placed on Article 122, which requires the Commission in its annual report to the Assembly\(^\text{246}\) to include a special chapter on the social situation within the Community. The first two of these Exposés, on the social situation at the beginning of 1958 and on its development from early 1958 to March 1959, are mines of information. For the future the Commission is particularly anxious to promote comparative studies.

\(^{242}\) *Id.* at 84.

\(^{244}\) *SECOND GEN'L REP.* para. 170.

\(^{245}\) *Treaty* art. 126.

\(^{246}\) *Id.* art. 156.
of the structure of wages,\textsuperscript{247} and of—and this may prove very important—the costs of labor in the six countries.\textsuperscript{248} The preparation of this latter study is being undertaken jointly by the Directorate-General of Social Affairs and the Joint Statistical Service, in conjunction with the competent department of the High Authority. A joint conference of these bodies was held in November 1958\textsuperscript{249} to which the heads of the Statistical Departments of the Member Governments were also invited. If and when this study reaches fruition, it may yield the most valuable information to those interested in investing in the industry of any of the six countries.

The Assembly also may invite the Commission to draw up reports on special problems concerning the social situation, presumably on such matters as safety measures, minimum wage laws, methods of wage payment and the like. A broad interpretation will probably be placed on the words “social situation” so as to make them cover not only such questions as employment, wages, social security, and housing conditions but also education and health services, all of which are closely connected with labor and with social security. The existing Exposés show a welcome tendency to deal with such things as superannuation schemes, private housing schemes, private insurance against illness and funeral expenses and other “special services.”\textsuperscript{250} The work of the Commission may thus open up the possibility of providing the factual information required for a unified and enlightened social policy in Europe.

It is obvious—and the Commission and its officials appear to be very much aware of the fact—that the success of these inquiries depends to no small extent on the cooperation of the governments concerned and on that of the representatives of labor and management. During the summer of 1959 a major question of policy in this connection was raised in the Assembly.\textsuperscript{251} Did the Commission consider the cooperation of governments, labor, and management so important that it would refrain from an inquiry unless it had obtained the approval of all of them or at any rate of the latter two? Did not the Commission consider that it had a measure of autonomy in selecting topics for inquiry? To this searching question (which goes to the essence of the relation between the Community and its members) the Commission, as might have been expected, gave a

\textsuperscript{247} \textit{First Gen'l Rep.}, para. 108.
\textsuperscript{248} \textit{Sec. Gen'l Rep.}, para. 188.
\textsuperscript{250} First \textit{Exposé}, ch. D.111 (b); Second \textit{Exposé}, paras. 128–41.
\textsuperscript{251} \textit{Question écrite N° 28}, para. 7, [1959] \textit{J'Off.}, 850.
highly diplomatic answer. It said \footnote{252} that it was free to deal with all questions connected with the application of the Treaty, within the framework of its own organization and within the limits of its budget. Yet the Commission considered the closest collaboration with governments and the two sides of industry as valuable in itself and as absolutely necessary for the performance of its own obligations and for the achievement of the objects of the Treaty. Is it an exaggeration to say that the pattern of the relation between governments and representatives of labor and management, which has become an essential feature of western democracy, is beginning to find its counterpart at an international level?

Despite the limitation of the labor and social provisions of the Treaty to the European territories of the Member States,\footnote{253} the investigative functions of the Commission may extend to the overseas areas. On January 15, 1959, the Assembly passed a Resolution\footnote{254} inviting the Commission to study carefully the social conditions of the overseas peoples and as soon as possible to report its findings. The services of the Commission in conjunction with government experts have now drafted a working plan for this purpose.\footnote{255} The significance of this matter for the Overseas Development Fund needs no emphasis.\footnote{256}

The Treaty’s provisions on labor and on social policy create a network of policies and promises rather than a set of legal principles which can be immediately translated into practice. The effect on labor law in the Six is, therefore, for the present not likely to be conspicuous. The trend towards harmonization of the various legal systems is unmistakeable, but it is anyone’s guess how far it will go. For a long time to come those interested in the labor conditions and relations of the Six will, therefore, have to consult national legal sources.

II. A SKETCH MAP OF LABOR LAWS IN THE SIX

Despite the great diversity of the systems of labor legislation in force in the Six they share a number of common features of basic importance. To Continental lawyers, employers, or trade unionists

\footnote{252} Id. at 852.
\footnote{253} Treaty arts. 131–36.
\footnote{256} Treaty, Implementing Convention relating to the Association with the Community of the Overseas Countries and Territories, arts. 1–7.
these basic characteristics are matters of course, but they are unfamiliar to many Americans. Even though they are unfamiliar to an American lawyer, however, his European colleague may fail to draw his attention to them simply because he recognizes no need for doing so. An attempt will therefore be made in the following pages to explain five fundamental characteristics of Western European labor law and with regard to each of them to indicate what the laws of the Six have in common and in what respects they differ. It goes without saying that this can be no more than an introductory survey. The five matters which have been singled out for discussion are: (a) the role of legislation in shaping labor-management relations and defining the rights and obligations arising from employer-employee relationships; (b) the method and legal significance of collective bargaining; (c) councils or committees at plant or enterprise level which represent the interests of the employees or are entitled to be consulted concerning, or to cooperate in resolving, questions of management; (d) the settlement of conflicts, collective and individual, including the structure of labor courts; and (e) the restrictions imposed by law or collective agreements on the power of the employer to terminate the contract of employment. These five matters are likely to be relevant to the routine work of anyone engaged in business on the Continent, or in advising businessmen in the Community.

A. THE ROLE OF LEGISLATION

The simple fact is that legislation in that part of the European Continent with which we are concerned is of greater importance in regulating labor relations than it is in the United States or in Great Britain. There is, to be sure, an important and voluminous body of labor legislation in the United States, but its principal role is to ensure that the collective bargaining process can work and can produce the substantive rules which are to govern labor-management relations. On the Continent, however, the bulk of legislation is

257 See for information on the content of this section: E.C.S.C. High Authority, *Étude comparative des sources du droit du travail dans les pays de la Communauté Européenne du Charbon et de l'Acier* (1957). This is the first of a series of monographs published by the High Authority of the E.C.S.C., and written by a group of six experts. In this volume the part on Germany is by Prof. G. Boldt, the one on Belgium by Prof. P. Horion, the one on France by Prof. P. Durand, the one on Italy by Prof. L. Mengoni, the one on Luxembourg by President A. Kayser, and the one on the Netherlands by the late Prof. A. N. Molenaar. Prof. Molenaar also wrote the general introductory summary.
designated to regulate these relations directly. A great many things which in the English-speaking countries are left either to collective bargaining or custom are subject to more or less detailed statutory regulation. Such statutory regulation is frequently (but not always) mandatory, that is, it cannot be avoided, at any rate not to the detriment of the employee, either by contract of employment or by collective agreement. In some cases collective agreements can do what the individual contract cannot do, that is, vary in either direction the terms of employment provided for by statute. In other cases the statute provides no more than an optional norm which can be displaced by the contract of employment between the individual employer and worker. As a general rule, however, statutory provisions on labor are mandatory, and—a point which an American observer may find difficult to grasp at the outset—even in countries with a very highly developed and efficient collective bargaining system (such as Belgium or Germany) important aspects of the labor-management relation are not subject to collective bargaining since they are regulated by mandatory legislation. In Belgium "there are no collective agreements which deal with the terms of notice: this question is the object of very detailed statutory provisions." A similar observation could be made about Germany. The decisive bearing of legislation on the discharge of employees (so unfamiliar in America) will have to be constantly borne in mind by anyone interested in labor relations in any of the Six.

To some extent, but with great variations in the six countries, the constitutions themselves contain principles of law which have a direct bearing on the relation between management and labor. This is true of France, Germany, Italy, and Luxembourg, but not of Belgium, and only to a very limited extent of the Netherlands. In some cases the constitution contains positive law. For example, one of the provisions of the Basic Law of the Federal German Republic on "fundamental rights" declares that any agreement which aims at restricting or impairing the freedom of organization of any person is null and void, with the result that "yellow-dog" contracts as well as closed-shop agreements are illegal and invalid, and with the further result that an employer cannot discharge any employee

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258 E.g., with regard to working hours in Germany and with regard to terms of notice in the Netherlands.
260 Basic Law of the Federal Republic of Germany, art. 9, para. 3.
by reason of his membership or non-membership in a, or in any particular, trade union.\textsuperscript{261} The act of discharge would be invalid and the obligation to pay wages would continue.

Another equally important example of the direct effect of constitutional norms on the labor relationship is that of Article 40 of the Italian Constitution of December 27, 1947,\textsuperscript{262} according to which "the right to strike is exercised within the framework of the laws by which it is regulated." The highest Italian court and the prevailing opinion among learned writers consider this as a norm of positive law, and not merely as a legislative program, and the highest court has held that, as a result of this provision, contracts of employment are not terminated but merely suspended by a strike and the strikers have an automatic right of reinstatement. This direct effect of constitutional provisions on labor-management relations may in itself be familiar to American lawyers, but it may come as a surprise that such an effect has also been ascribed to seemingly programmatic pronouncements such as those contained in the Preamble to the French Constitution of 1946, which has been expressly incorporated in and confirmed by the Constitution of 1958. Freedom to organize, is, for example, guaranteed by the Preamble to the Constitution which also provides that "no one may be injuriously affected in his work or in his employment by reason of his origin, his opinion or his belief."\textsuperscript{263} Moreover, the highest French court has drawn from the Preamble of the Constitution of 1946 precisely the same conclusions, in regard to the right to strike, which the highest court of Italy came to on the basis of a similar clause in the body of the Italian Constitution.\textsuperscript{264}

On the other hand, it is very common to find in Continental constitutions provisions which are not intended to be applied as rules binding the individual and the courts, but as programs addressed to the legislature, either in the form of general ethical, social, or economic maxims or in the form of specific mandates to legislate on a particular matter. The Italian Constitution contains provisions of this kind with reference to hours of work, to the effect of collective

\textsuperscript{261} Nikisch, \textit{Arbeitsrecht} 574 (1955); Spyropoulos, \textit{La Liberté Syndicale} 199–200 (1956).
\textsuperscript{262} Mazzoni, \textit{Manuale di Diritto del Lavoro} 142 (1958); Mengoni in E.C.S.C. High Authority, \textit{La Stabilité de l'Emploi dans le droit des pays membres de la C.E.C.A.} 251 (1958).
\textsuperscript{263} Préambule de la Constitution du 27 octobre 1946: "Nul ne peut être lésé, dans son travail ou son emploi, en raison de ses origines, de ses opinions ou de ses croyances."
\textsuperscript{264} 3 Durand (with the concurrence of Viu), \textit{Traité de Droit du Travail} paras. 26, 252, 292 (1956) [hereinafter cited as 3 Durand].
agreements, to workers’ councils and other matters. The Constitution of the Netherlands supplied the programmatic foundation for the Dutch law of 1950 concerning the Economic and Social Council, which exercises important consultative functions, and concerning the various kinds of Industrial Councils comprised in each case of labor and management representatives, which are intended to exercise consultative, and also to some extent regulatory, functions for particular industries. The Constitution of Luxembourg was amended in 1948 in order to guarantee to each citizen the right to work, and to enjoin the legislature to provide for social security, for the protection of the health of all workers and of their hours of rest and for guarantees of the freedom to organize. All of this is nothing more than a program for legislation, except that the courts have held that the concluding words concerning freedom of organization confer an immediate right to strike.

These examples should suffice to emphasize the fact that European constitutions can be very misleading. One must in each case look at the decisions of the courts and at the opinions of learned writers in order to determine the extent to which a given provision of a constitution creates rights and obligations of labor and management, and to what extent it merely holds out promises of future legislation. This is especially important if one’s view is colored by American constitutional law since American and European canons of interpretation differ greatly. On the Continent it is the object of a constitution not only to define the limits of legislation but, to some extent, to provide a blue-print for it—that is, to say what the legislature should do and not only what it may not do. Whether the legislature will accept the assigned tasks is generally determined by political considerations (as is vividly illustrated by the debates concerning the implementation of Article 39 of the Italian Constitution). The courts can do nothing to enforce such constitutional mandates unless they decide that they embody norms of positive law, and whether they will do so or not cannot be predicted. Where courts are unfavorably disposed towards policies embodied in constitutional provisions, they are unlikely to see in such provisions more

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265 Italian Constitution, art. 36 (3), art. 39, art. 46. See Mazzoni, op. cit. supra note 262.
266 Molenaar, Les Sources du Droit du Travail aux Pays-Bas, in E.C.S.C. High Authority, op. cit. supra note 257, at 161, 166.
than legislative programs. This fact explains to some extent court decisions in Germany between 1919 and 1933, and these decisions in turn explain why so many of the constitutional provisions of the Bonn Basic Law are expressly formulated as positive norms. On the other hand, the important clauses on labor law and social policy contained in the Constitution of the Fourth French Republic and now incorporated in that of the Fifth were written into the Preamble rather than the body of the Constitution in order to make it impossible for the then competent “constitutional committee” to scrutinize legislation with regard to its compatibility with these provisions.

In France and in the three Benelux countries, it should be added, judges have no power to declare a law unconstitutional, and in Germany and in Italy this power is reserved to a “constitutional court” to which all litigation must be submitted in the event of an allegation of unconstitutionality. Under the Constitution of the Fifth French Republic the Constitutional Council can be asked to determine on the constitutionality of legislation prior to its promulgation, but the right to submit ordinary legislation to the Council is reserved to the President of the Republic, the Prime Minister, and the presidents of the two houses of Parliament.

The question of the distribution, in matters concerning labor relations, of legislative powers between a federal parliament and the parliaments of members of a federation arises only in Germany. Labor law and social insurance belong to the sphere of “concurrent legislative jurisdiction” of the Federal Republic and its states (Länder). This means that as soon as the Federal Republic has exercised its legislative jurisdiction (as, in fact, it has in most fields of labor and social security) the field is “pre-empted” and the Länder can no longer legislate. Labor and social security problems clearly require uniform solutions, and the federal government is therefore expected to enact legislation in these areas. Nonetheless some areas remain—industrial arbitration is one—where some laws of the Länder are still in force. Anyone concerned with German labor legislation must keep an eye not only on the legislation of the Federal Republic but also on that of the states, as well as on some still existing

269 For the foregoing: E.C.S.C. High Authority, op. cit. supra note 257, passim; Constitution de la République Française art. 61 (1958).
270 Except with regard to the Italian “regions.” This matter is not further pursued here.
remnants of legislation of the Inter-Allied Control Council and of the transitional legislative bodies which preceded the formation of the Federal Republic. A vast amount of consolidation and simplification of legislation has been achieved in the last few years, but there are still vestiges of the chaos which prevailed during the years following the collapse of the Nazi State.

The status accorded to treaties by constitutions is important to an understanding of labor law in the Six not only because of the need for analyzing the relation between the Treaty of Rome and the municipal laws of the Member States, but more importantly in order to have a clear understanding of the status in municipal law of conventions of the International Labor Organization which have been ratified by the Member States. Nothing in the laws of the Six corresponds to the provisions of the United States Constitution concerning the treaty-making power or stating that treaties form part of the "supreme law of the land." The provisions of a treaty do not acquire the force of law so as to impose obligations or to confer rights upon any individual unless the treaty has been ratified or approved by an act of the legislature. In some of the Member States ratified international agreements are said to prevail over ordinary legislation. This principle was expressed in the Constitution of the Fourth French Republic, but according to the present Constitution the principle applies only if the other contracting parties fully apply the treaties or agreements concerned. In the case of I.L.O. conventions the obligation of the governments concerned to place the matter before their legislative organs "for the enactment of legislation or other action" is based on the Constitution of the I.L.O. itself.

All the six countries have, at one stage of the development of their legislation, enacted a civil code. The extent to which the provisions of those codes are now of importance in regard to the law governing labor relations depends largely on the date at which the particular code was enacted. The French and Belgian Civil Codes were enacted at a time when industry was in its infancy and when legislation was still dominated by the economic principles of laissez-faire. They have almost completely lost their importance in prac-
AMERICAN ENTERPRISE IN THE COMMON MARKET

practice: their special provisions concerning the contract of employment were, in France, either repealed or incorporated in the Labor Code (Code du Travail). In Belgium the Code was superseded by later legislation, notably the statutes of 1900 and 1922, amended in 1954 and 1955, regulating the contract of employment of manual and of non-manual employees, but no labor code has ever been enacted in Belgium. In Luxembourg the Civil Code, to which much special legislation has been added, continues to apply to manual workers, but as regards non-manual workers it has been superseded by legislation first enacted in 1919 and then considerably amended in 1937. In the Netherlands the Civil Code would have suffered the fate of the French and Belgian Codes had it not been, as it were, rejuvenated by the law on the contract of employment of 1907, which (differing from legislation enacted elsewhere) took the form of a comprehensive amendment of the Code itself. Italy got an entirely new Civil Code in 1942, and, consequently, the provisions of the Civil Code (Articles 2096–2129) are of greater importance in Italy than in any other of the six countries. In Germany the amended provisions of the Civil Code of 1896 are still of importance, but they are supplemented and partly superseded by special rules contained (with regard to industrial workers and employees) in the Industrial Code (Gewerbe-Ordnung) originally of 1869 and often amended, in the Commercial Code (with regard to clerical workers) and in many special enactments. The Industrial Code comprises the bulk of the protective rules on labor in factories.

It goes without saying that labor legislation in all countries is voluminous. Legislation concerning health, safety, and welfare of workers in factories, mines, and offices, and in the various branches of transport, concerning hours of work and the employment of women, children, and young persons, concerning the payment, and to some extent the amount, of wages, concerning collective bargaining, trade unions, labor disputes and their settlement, labor courts, labor inspection and employment exchanges, and many other matters besides, has been passed in all six countries. Everywhere there is a vast and unwieldy mass of statutes and statutory regulations which only specialists can hope to master. French law, however, differs in one respect from legislation in the other Community countries. In France an attempt has been made to consolidate the existing labor legis-

276 See text infra at footnote 278.
277 For this information and for further details, see E.C.S.C. High Authority, op. cit. supra note 257, passim.
lation in what is misleadingly called a "labor code" (Code du Travail), originally enacted (in installments) between 1910 and 1927 and more or less kept up to date by means of amendments. Although the work is (and presumably always will be) incomplete, the volume of the "non-codified" texts being many times that of the Code, the consolidation has made it a little less difficult to find one's way through French legislation than through that of the other nations. In Germany a private venture, the looseleaf publication of labor legislation by H. C. Nipperdey, performs up to a point a similar service.

As was said above, legislation plays a greater role in the regulation of labor relations on the Continent of Europe than it does either in the United States or in Britain, but the extent to which this is true differs greatly in the six countries of the Common Market. With some exaggeration one may say that the role of legislation in determining the rights and obligations of employers and employees in a given country is inversely proportional to the quality of its collective bargaining machinery. The stronger the latter, the less need there is for invoking the aid of the legislature, and the strength and quality of collective bargaining in turn depend very much on the structure of the trade union movement. The political and other difficulties which beset the French trade unions and in particular their disunity should be kept in mind when trying to understand the role played by labor legislation in France. Legislation is more important than collective bargaining as a source of the mutual rights and obligations of employers and employees in France, much more than in Germany, Belgium, or the Netherlands, and certainly no less so than in Italy. Thus in Belgium collective bargaining functions well, largely, though not exclusively, through standing bilateral committees known as commissions paritaires. Consequently, if one compares the situation with that half a century ago, "state intervention emerges today as very much less important: this is a fruit of trade unionism." 282

The increasing importance of collective bargaining is exemplified by the shift in methods of shortening hours of work in Belgium.

278 For its history and structure: 1 Durand & Jaussaud, Traité de Droit du Travail para. 98, at 117-120 (1947) [hereinafter cited as 1 Durand].
281 The structure of Belgian industrial relations in some ways resembles that in Britain. See text at note 310 infra.
"Fifty years ago one thought only in terms of legislative intervention or intervention of the executive (for example, the law of December 31, 1909 concerning working hours in mines). In 1921, the law established the general principles of the eight-hour day and of the 48-hour week, but appealed to collective bargaining (at industry or plant level) to introduce divergent schemes (that is, schemes more favorable to the workers). In 1936, when the question of reducing the working week to 40 hours arose, Parliament was content to invite the bilateral committees to take the initiative in this direction. More recently, in 1955 and 1956, when the trade unions started a movement for the five-day week, no proposal for legislation was laid before the Chambers (of Parliament): reform was carried into effect exclusively by agreements with the employers' associations, first at the inter-industrial, then at the industrial, and finally at the plant level." 283

This should be contrasted with the development in France. The 40-hour week was introduced by statute in 1936, and the system of overtime pay was again changed by legislation in 1946. Collective bargaining has made much progress since the enactment of the law of 1950,284 but a very large proportion of all collective agreements in France continue to be agreements about wages only, leaving all such matters as working hours and overtime pay, holidays and holiday remuneration, or the employer's obligation to compensate the employee in the event of dismissal, to regulation by statute. Two of the most distinguished French authorities on labor law have, indeed, attributed the slowness of the growth of collective bargaining to the impoverishing effect which the rapid development of labor legislation has had on the content of collective agreements.285 One may wonder, however, whether the tendency to invoke the aid of the legislature (so markedly different from the tendency in Belgium) was not itself partly a result of the weakness of the collective bargaining machinery caused both by the structure of the French economy and by the split among the trade unions.

Despite the complete destruction of the German trade unions by the Nazi government and the cessation of all collective bargaining between 1933 and 1945, collective agreements are in many respects of far greater importance in Western Germany today as sources of

283 Ibid.
rights and obligations than statutes. The rapid and spectacular revival of collective bargaining in the Federal Republic since 1945\textsuperscript{286} is partly due to the unity of the German trade union movement which distinguishes it so dramatically from the French. It would be wrong to attribute this unity exclusively to the virtual absence of Communist influence in the West German trade unions, but that this is a contributing factor cannot be doubted. In any event the regulation of the details of the employment relationship by collective agreement has become the rule to such an extent in Germany that legislative intervention affecting the contract of employment has, in this century, been comparatively inconspicuous.\textsuperscript{287} The "statute law concerning the contract of employment . . . is still essentially that of the codifications of the end of the 19th century, that is, in particular of the civil code and the commercial code. This self-restraint on the part of the legislature was only possible because the collective parties had taken the development of labor law in this area out of its hands."\textsuperscript{288} The great exception to this general statement is that of the law of Kündigungsschutz which protects the employee in the event of dismissal and fulfills to some extent the function of the American collective agreements on seniority.\textsuperscript{289} This is a significant example of a matter which, in Germany and in France, is governed by statutes\textsuperscript{290} but which Americans do not see as a subject of legislation.

Italian labor law is still in a state of transition, and it is more difficult to gauge the relative importance of legislation and collective bargaining in shaping labor relations in Italy than it is in the other five countries. Fascist legislation has disappeared,\textsuperscript{291} but the promise—held out by Article 39 of the Constitution of 1947—of legislation to define the legal status and effect of collective agreements has not yet been fulfilled. A provisional and transitional statute of 1959 has, however, empowered the Government for the period of one year to issue decrees fixing legally binding minimum

\textsuperscript{286} Kerr, Collective Bargaining in Postwar Germany, in CONTEMPORARY COLLECTIVE BARGAINING IN SEVEN COUNTRIES (Sturmthal ed. 1957). See also Second EXPOSÉ para. 68.

\textsuperscript{287} This observation does not, of course, apply to matters such as protection of health, safety, and welfare, or to the organization of the works' council system, to be discussed infra.


\textsuperscript{289} See PART II, Section E, Subsection 3 infra.

\textsuperscript{290} The matter is discussed below in section E. As will be seen, what has been said here about France and Germany cannot be applied to all the six countries. In Italy collective bargaining is today more important in this context than legislation.

\textsuperscript{291} Law Decree of Nov. 23, 1944, No. 369, [1943-44] Lex. Legislazione Italiana 521.
wages and other conditions of employment. These are to correspond in substance to collective terms agreed upon prior to the coming into force of the statute.\textsuperscript{292} The constitutionality of this statute will remain doubtful until the Constitutional Court has spoken.

At the moment of writing no one can predict which of the many definitive legislative projects under discussion in Italy will be translated into law.\textsuperscript{293} It is noteworthy that, despite the absence of legislation on collective bargaining and despite the complicated and voluminous legal controversies which surround the status of the trade unions and of their agreements with employers and employer associations, collective bargaining has had a considerable development since the end of the second World War.\textsuperscript{294} One of the most remarkable features of this development is the formulation—chiefly by two “inter-industrial agreements” of October 18 and April 21, 1950—of certain principles of procedure to be observed, and concerning indemnities to be paid, in the event of individual discharges or discharges caused by reduction of personnel.\textsuperscript{295} These agreements, which have been sustained by the courts, amplify the relevant provision of Article 2120 of the Code of 1942 and embody what is probably the closest parallel to the American conception of “seniority” agreements to be found in Europe today. Nevertheless, in spite of the survival or revival of collective bargaining in Italy, the over-all picture seems to resemble that of France. “State legislation certainly constitutes the most abundant source of provisions with regard to the regulation of labor relations, and one can even observe an unmistakable tendency on the part of the legislature to reserve to its own jurisdiction an increasingly important range of topics which are thus withdrawn from that of the autonomous organizations in industry. With regard to certain topics the Constitution itself provides that they will be regulated by legislation, for example, working hours, the weekly period of rest, and annual vacations (Article 36); legal status in industry and working conditions of women and children (Article 37); restrictions on the right to strike (Article 40); and the participation of workers in the man-

\textsuperscript{292} See for the situation apart from the statute of 1959, Mazzoni, National Italian Report on Collective Labour Relations, 2nd International Congress on Social Legislation (Brussels, 1958). The statute of 1959 is further discussed below.

\textsuperscript{293} On the bill submitted by Signor Rubinacci in 1951, the most widely discussed of these attempts to solve the problem, see Mazzoni, \textit{supra} note 268, at 99.

\textsuperscript{294} Sanseverino, \textit{Collective Bargaining in Italy}, in \textit{Contemporary Collective Bargaining in Seven Countries} 210 (Sturmthal ed. 1957). However, compared with the development in Germany, that in Italy is modest. Second \textit{Exposé} para. 73.

\textsuperscript{295} Mengoni, \textit{supra} note 262, at 278; see also Mazzoni, \textit{supra} note 268, at 109, where the relevant cases are cited.
agement of undertakings (Article 46). On the other hand, one topic, and, of all things, that which concerns wages, appears, on principle at any rate, to have been withdrawn by the Constitution from legislative intervention and to have been reserved to collective agreements." The legal status of collective bargaining in Italy more nearly resembles that of collective bargaining in Britain and in the United States than that of the other Member States, but its significance, compared with legislation, cannot—or, perhaps, cannot yet—be compared with that of its counterparts in the English-speaking countries.

It is only in the Netherlands of all the Community countries that wages and conditions of employment are subject to the control of a governmental institution, the Council of Mediators. Nevertheless—or perhaps because of the stimulus which the Council has deliberately given to collective bargaining since 1945—the number of agreements and the number of workers subject to agreements has risen spectacularly. The Netherlands is one of the European countries in which collective bargaining flourishes. The significance of legislation in shaping the employment relation is nevertheless great, greater probably than in Belgium or in Germany, both because the law concerning the contract of employment of 1907 (which amended the Civil Code of 1838) was a comprehensive measure of 70 articles, and because an important law concerning the termination of contracts of employment was enacted on December 17, 1953. As in France and in Germany provision has been made by statute not only for the periods of notice to be given by the employer to the employee prior to the termination of the contract but also for compulsory payment by the employer of a special compensation in the event of an unfair use of the right to give notice. Although the Council of Mediators has in some cases made supplementary provision for the regulation of the termination of contracts of employment, this important statute of 1953 remains the principal source of law and is therefore decisive, inter alia, in that area which corresponds to the American regulation of "seniority" rights.

300 PART II, Section E infra.
In Luxembourg there is a very marked difference between the position of manual and non-manual workers. The position of the latter is controlled by a fairly up-to-date codifying enactment, but there is no corresponding statutory regulation for manual workers. It is perhaps a fair generalization to say, therefore, that the importance of collective bargaining overshadows legislation in determining the relation of manual workers to their employers.\(^{301}\)

This very brief survey should suffice to convince the reader that any analysis of the mutual rights and obligations of employers and employees in the Six must take legislation as well as collective bargaining into account. The I.L.O. has long since recognized that standards established by it can be adopted, and obligations to introduce such standards can be implemented, by either method.\(^{302}\) By the same token "harmonization" pursuant to the Treaty will lead nowhere unless bargaining practice as well as legislation is taken into account. In France paid holidays are regulated by statute, in Germany mainly by collective bargaining, and in the Netherlands regulation of paid holidays is in a state of transition from one to the other. From the point of view of harmonization, what matters, of course, is the substance of the mutual obligations, not their source.

**B. THE METHOD AND LEGAL SIGNIFICANCE OF COLLECTIVE BARGAINING \(^{303}\)**

Where bargaining methods and the legal effect of collective agreements are concerned, European ideas and practices differ from those

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\(^{301}\) See Kayser, *supra* note 267, at 151. The law concerning salaried employees dates from 1937.


\(^{303}\) General Reference is made to the following works:

a) *Comparative Labor Movements* (Galenson ed. 1952).

b) *Contemporary Collective Bargaining in Seven Countries* (Sturmtha) ed. 1957).

c) *Steinmann-Goldschmidt, Gewerkschaften und Fragen des kollektiven Arbeitsrechts* (1957).


f) Among the national treatises, the third volume of Durand’s *Traité de Droit du Travail* (1956) is of special importance.

in the United States, and there are some important differences among the Six as well.

I. BARGAINING BY EMPLOYERS' ASSOCIATIONS

Without any doubt the most important difference between collective bargaining all over Europe (on the Continent as well as in Britain) and in the United States is the prevalence of bargaining in Europe by employers' associations. Collective bargaining by individual employers is not unknown and indeed it is inevitable where—as is true of railways all over Europe, of coal mining in France and partially of coal mining in the Netherlands, and of the postal, telephone, and telegraph services everywhere—the bargaining employer is either the state or a public corporation administering an industry as a public enterprise. Even in such cases, however, the bargaining unit on the employer's side is likely to be the enterprise and not the plant. It is, in American terms, "company-wide" and not "plant-wide" bargaining.

The usual bargaining partner of a trade union or unions is, however, an employers' association or a number of such associations. This does not necessarily mean that bargaining is nation-wide. In France district bargaining is very common, whereas, for example, in Germany "industry-wide" or "nation-wide" bargaining prevails, as it does in Italy and the Benelux countries.

Plant-wide bargaining is, not without reason, viewed with a certain amount of suspicion, especially in France.\textsuperscript{304} Hence French law, according to what is probably the correct solution of "one of the greatest riddles" in the law of collective bargaining, seeks to counteract the danger that, "within the framework of a plant, agreements might be concluded between an employer and a union which is too accommodating."\textsuperscript{305} Although the matter is not free from doubt, it appears that under French law only that organization which is "most representative" (a highly technical term explained below), and therefore sure to be independent, can enter into collective agreements which cover only one plant or several enumerated plants. Moreover, in the absence of a national, regional, or local agreement such an "accord d'établissement" or plant agreement can only deal with wages, and in the presence of a national, regional, or local agreement it can modify its terms only in favor of the employees. The details of the highly technical distinction between

\textsuperscript{304} See the reference to the debates in the National Assembly preceding the passing of the law of Feb. 11th, 1950, in 3 Durand para. 181.

\textsuperscript{305} 3 Durand para. 241.
"accords" and "conventions" need not be further discussed here.306

The reason or reasons why collective bargaining in Europe has in this respect developed along lines so different from those which its development has followed in America cannot be explored either. They must be sought in the history of industrial relations and in general economic and political trends. Clearly, however,—whether this be a cause or an effect of bargaining by employers' associations or both—collective bargaining in Europe has a very important function in determining relationships between enterprises or management units as well as those between labor and management. It helps to regulate competition and to prevent certain kinds of undercutting. Moreover, it is quite impossible to understand the law relating to collective agreements without realizing that, in principle, there are two kinds of firms from the point of view of collective bargaining, those who have and those who have not joined the appropriate employers' associations. The distinction among workers between organized and unorganized labor has its counterpart, therefore, among employers—that between federated and non-federated firms. Once an agreement has been concluded by an employers' association, its members are very likely to be interested in the "extension" of its terms to non-federated employers. Such an extension is not normally effected by collective bargaining, however, since non-federated firms will frequently be those unwilling to bargain with unions. Only the law can effect such extensions and this is one of the reasons, but not the only one, why the law has played such a prominent role in the evolution of collective bargaining in the Six. In five of the six countries there exist, in one form or another, procedures to extend, by administrative act, the effect of collective agreements to "non-federated" employers, and in the sixth country, that is, in Italy, similar legislation was—in substance though not in form—provisionally introduced in 1959.307

From the point of view of an American firm wishing to operate in one of the six countries this point is important. The American employer cannot, in the countries of the Community, remain outside the nexus of collective bargaining if he is inclined to do so, any more than he can in the United States. To some extent the "extension," and similar, provisions of European legislation fulfill a function like that of American laws which compel employers to bargain in good faith. The non-federated employer must contemplate at least the

306 Id. para. 242.
307 It is, however, controversial whether this provisional statute is constitutional in view of Art. 39 of the Constitution.
possibility of being placed under a legal obligation to observe the terms of an agreement on which he had no influence. In view of the legal requirements to be fulfilled as a condition for an "extension" or similar order, the likelihood of this happening may be less in some cases than in others, but the possibility is always there, and its practical corollary is the advisability of joining an employers' association.

Collective bargaining is, then, on the whole, more centralized in Europe than in America. This is reflected in the structure of the trade unions. By and large, the powers of the "local" or "branch" union compared with those of the district or national organs are smaller in Europe than in America. Even in France, where a strong tradition of decentralization inside the unions grew out of the organizational and ideological traditions of the labor movement, the real power rests with the central union institutions. It would be very misleading to compare the functions of an American "local" with those of its European counterpart, and the causes of the difference can only partly be found in the size of the United States as contrasted with that of any of the Six. The process of centralization does not stop at "industry-wide" bargaining. For example in Germany, in Italy, and in Belgium confederations of trade unions (that is, the equivalents of the A.F.L.-C.I.O.) enter into compacts on vital questions with central associations of employers' federations. In Luxembourg, the smallest of the Six, this phenomenon is particularly marked.

2. CONTRACTUAL AND INSTITUTIONAL BARGAINING

Another aspect of collective bargaining in the Six which might strike an American as unfamiliar is the existence of two types of bargaining machinery, which—for want of a better word—might be called "contractual" and "institutional." In two of the six countries, Germany and Italy, bargaining machinery is purely "contractual" (as it mainly is in the United States). The bargaining partners, normally organizations on both sides, occasionally a single employer on one side and a union or unions on the other, meet, discuss, and, if all goes well, arrive at a contract. At the opposite extreme is Belgium, where collective bargaining is highly developed, but in a form more reminiscent of the British than of the American type. Begin-
ning shortly after the end of the first World War, the two sides of industry have there set up—and for a long time they were entirely outside the law—bilateral committees (commissions paritaires) consisting of equal numbers of employers and employees, that is, employers' association and trade union representatives in equal numbers. These committees fixed wages and other conditions of employment by unanimous decisions and sought to settle industrial conflicts, in very much the same way as British "joint industrial councils" and similar bodies do. They were (and are) generally established on an industry-wide basis, although sometimes their scope is national and sometimes district-wide. Originally they had no official status whatever, but were simply collective bargaining organs established by the joint action of the unions affiliated to certain top organizations and of the employers' organizations. In 1945, after the Liberation, they were given legal status. Each of them now has an impartial president and vice-president (usually civil servants), a secretarial staff and the like, appointed by the Minister of Labor, but only the management and labor representatives can vote. They usually meet at the offices of the Ministry. The whole of Belgian economic life is now covered by the more than 100 existing committees, some of which deal only with manual workers, whereas others deal with salaried employees, and still others with both. The resolutions (accords) adopted by a committee (necessarily unanimously) can be given a legally binding effect by royal decree. This possibility is certainly important, but the overwhelming majority of these "resolutions" are never made legally binding, and are neither contracts nor enforceable norms, but, like British collective agreements, no more than social compacts. Collective bargaining outside the committees is not insignificant, prevailing for example in the textile industry around Verviers and in the cement industry, but the overwhelming majority of all collective agreements are today resolutions of the permanent bilateral committees.

The collective bargaining system of Luxembourg resembles that of Belgium. In Luxembourg there is only one bilateral committee (commission paritaire) established by a Decree of 1945 as part of...
the National Conciliation Office. As in Belgium, most but not all collective agreements are concluded in the form of resolutions of this committee, which consists of three employer and three union representatives but, unlike the Belgian bilateral committees, the Luxembourg committee consists of representatives of the top organizations and not of the individual unions, a type of bargaining which can, of course, only exist in a very small country—at any rate as the normal type of bargaining. Again, whereas in Belgium some of the committees deal with salaried employees, there has so far been virtually no collective bargaining for salaried employees in Luxembourg, their conditions of employment being largely governed by a comprehensive statute. 313 There is a very appreciable difference between the legal effect of collective agreements in Belgium and in Luxembourg, the law of Luxembourg being in this respect much more akin to French than to Belgian law.

Generally speaking, the French type of collective bargaining is "contractual" rather than "institutional." Nevertheless, a very strong "institutional" element has been introduced by legislation. 314 Joint committees (commissions mixtes) are, and in some cases have to be, 315 summoned by the Minister of Labor ad hoc, that is, for the sole purpose of concluding a collective agreement capable of being "extended" by the Minister to non-federated employers, and thus of being made a "common rule" of industry. Only the "most representative organizations"—that is, in practice, on the employers' side, the National Council of French Management 316 (the French National Association of Manufacturers) and, on the employees' side, the C.G.T., 317 the Force Ouvrière (F.O.), and the C.F.T.C. 318 (the three leading French top organizations)—are represented on these committees, which are presided over by a representative of the Minister, who does not vote. Some of these committees operate on a national and others on a regional or local basis.

Unlike the Belgian and Luxembourg bilateral committees, the joint committees are not, then, normal bargaining bodies, but oper-

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Commentary: Comparative Law at the University of Paris. The author expresses his gratitude to M. G. van Verweecke, Secretary of State in the Ministry of Labor, and to M. F. Ewen of the same Ministry for having put this and other material at his disposal.

315 See the detailed analysis in 3 Durand, para. 219.
316 Conseil National du Patronat Français.
317 Confédération Générale du Travail.
318 Confédération Française des Travailleurs Chrétiens.
ate only in those exceptional (but also exceptionally important) situations in which “the most representative organizations” are called upon to agree to terms and conditions which the Minister can then convert into a “law for the trade.” In addition, French law provides for a purely consultative body, made up of representatives of both sides of industry and of other interests, the Higher Committee on Collective Agreements (Commission Supérieure des Conventions Collectives) which is called upon to advise the Minister of Labor in the event that management and labor cannot agree and also in the event of an application to “extend” the terms of an agreement to outsiders. Its most important function is in connection with the fixing of the statutory over-all minimum wage.

In the Netherlands the pattern of collective bargaining is largely determined by the existence and the powers of the Council of Mediators, which, being a body of impartial outsiders appointed by the government, cannot be compared with the representative committees of Belgium, Luxembourg, and France, quite apart from the fundamental difference in functions and in jurisdiction. Nevertheless, the Foundation of Labor, in which labor and management cooperate and which is completely independent of the government, gives to collective bargaining—seen from a social rather than a legal point of view—the imprint of the “institutional” pattern. The Foundation has only consultative functions but the Council of Mediators neither approves nor disapproves of an agreement without consulting it, and normally, when the Foundation recommends approval, the Council will approve.

3. UNION STRUCTURES AND IDEOLOGIES

An American looking at the European scene is likely to find much that is unfamiliar not only in trade union structures but also in trade union ideologies, and he will soon realize that these ideological differences have had their effect on collective bargaining methods and on the substance of collective bargaining. In the first place he cannot fail to notice the continuing strength of working class solidarity. Each union is, and sees itself as, not only an organization for the defense of the interests of its members but also a part of the working class movement. In the second place, however, Western European trade unionism is linked with political programmes and

320 Pels, supra note 298, at 119; see also Levenbach, supra note 297.
321 No more than a few suggestions are given here. Reference is made to the literature quoted in note 303 supra.
ideas and with religious persuasions—although this differs greatly from country to country. In the Netherlands there are unions with Socialist, Communist, Protestant, and Catholic leanings; in France there are three types of unions whose tendencies are, broadly speaking, Communist, Socialist, and Christian; whereas in Germany, as a result of the dire experience of the Nazi system, the division among “free” (that is, Socialist), “Christian” and “Liberal” (nationalist) unions was eliminated in 1945 when the present “united” trade union movement came into being. This dual phenomenon—working class solidarity and the political-religious affiliation of trade unions—has meant that “splits” between unions and jurisdictional disputes are not normally the result of purely “organizational” rivalries, but rather of conflicts concerning lines of demarcation, for example, between two craft unions which cannot come to terms concerning the allocation of certain work processes or between unions of different political persuasion. Working class solidarity certainly does not mean trade union unity, since the ideological differences remain, but it does mean that, vis-à-vis the employer or the employers’ association, the various unions, however divided among themselves, can form a united front. Joint collective bargaining by trade unions of different political and religious persuasions is common and, where industrial unionism is not fully developed, unions with the same political or religious persuasion but organizing different types of workers or employees, may, and often do, appear as joint bargaining partners. This is one of the principal reasons why the American observer will look in vain for anything corresponding to the procedures for the determination of the “statutory bargaining representative” with which he is familiar. There is no need for determining the union which may bargain since many unions may bargain together.

Moreover, the structure and the ideology of the European trade union movements leave little room for a counterpart of the American “union security agreement.” Trade unions everywhere aim at 100 percent trade union organization in the industries in which they operate, and everywhere they may, if the law allows them to do so, go to the point of obtaining the agreement of an employer or employers not to hire anyone who is not a member of a trade union or perhaps of a trade union of a particular political persuasion or one affiliated to a particular federation of unions, although even these types of agreements appear to be rare in Europe. But the American variety of union security agreement, tending to reserve employment
to members of the contracting union, though perhaps not unknown in Europe, is certainly not frequent. In France all discriminations in hiring and firing based on membership or non-membership in a union have been made illegal by statute,322 and to some extent the same applies in Belgium under a law of 1921.323 In Germany the courts have held closed-shop agreements to be illegal as against public policy.324 In the Netherlands a closed-shop agreement of what above has been called the American variety has been declared void by statute325 (as it has been, of course, in the United States), but a closed-shop agreement excluding non-union labor without seeking to reserve employment to members of a particular union 326 is valid, although it cannot be “extended” so as to bind non-federated employers. But agreements of this kind appear to be of no great significance in community countries with the exception of France. The exception is explained by the conflict between the Communist C.G.T., the Socialist F.O. and the Catholic C.F.T.C. The recent French statute of 1956 was an attempt to give some protection to the smaller groups vis-à-vis the C.G.T.

Within this very broad framework the differences among the union movements in the Six are very great, and what separates them is as important for an understanding of the law as what they have in common. The contrast between the situation in France and in Western Germany illustrates the point. In France the trade union movement has been split along political lines for many years, and of all its various schisms that of 1947 was the most important. The decisive events of 1947 themselves were closely connected with the international political situation (the opening of the rift between East and West), and the French trade unions have in many respects remained at the mercy of political upheavals. The policy of the C.G.T. has in the past been all too obviously subservient to that of the Communist party, and the general revulsion against Communism all over Europe which the events in Hungary in 1956 created

322 Law of April 27, 1956, [1956] J.O. 4080 (Fr.). This made it unlawful for an employer to take any account of the union membership of his employees or to exercise any pressure in the direction of joining or not joining an organization. The “check-off” is also illegal.

323 Law of May 24, 1921, [1921] Recueil des Lois et Arrêtés Royaux de Belgique 956; see Van Goethem, supra note 310, at 8.

324 Judgment of Apr. 6, 1922, 104 Entscheidungen des Reichsgerichts in Zivilsachen 328 (Ger.).


led to widespread resignations from the C.G.T. The inherent weakness of the French trade unions stems not only from their disunity but also from the low percentage of workers organized, which is only partly to be accounted for by disunity. It is estimated that of something like 20 million persons gainfully employed only two million are members of trade unions—approximately one million of the C.G.T., 400,000 of the C.F.T.C. and about 300,000 of the F.O. unions (the latter being to a very large extent civil servants and white collar workers).\footnote{These figures are given by Prof. G. Friedel of the University of Nancy in his National Report for France on Collective Labour Relations, made to the 2nd International Congress on Social Legislation (Brussels, 1958), at 3.}

In Western Germany trade unions were compelled in 1945 to start their organization "from scratch." They were not burdened with the damnosa hereditas of the inter-war tradition from which they were separated by the gulf of twelve years of suppression. Before Hitler, the German unions, too, had been split on ideological lines, and the "free" (socialist) unions always occupied a position of overwhelming strength. In 1945, however, the unions rallied behind a drive for "unity," with the result that, at any rate as far as manual workers are concerned, there are today no ideological schisms in the German trade unions. Sixteen "unified unions" (Einheits-Gewerkschaften) are combined in one top organization, the D.G.B.,\footnote{D.G.B. stands for "Deutscher Gewerkschafts-Bund."} the total number of D.G.B. union members being estimated at well over six million.\footnote{For this, and other statements on German trade unions and employer's association: \textit{2 Hueck & Nipperdey, Lehrbuch des Arbeitsrechts} 128 (6th ed. 1955-57).} German union structure and "official" German trade union ideology exhibit an impressive but perhaps slightly deceptive simplicity.

In France and in Germany, as elsewhere in Europe, the principle of industrial union organization clearly prevails over that of craft unionism. This is a tendency inherent in the development of modern industry. In France craft unionism survives at a few not very significant points—in Germany it seems to be dead, as far as manual workers are concerned. The result of this development towards industrial unionism is of course most important from the legal point of view because it minimizes the risk of demarcation disputes, and the difficult problems connected with the simultaneous application of several agreements in one enterprise. Industrial unionism makes for large and powerful unions: the German metal workers union (I.G.
Metall) has over 1.6 million members, and the union organizing transport workers and workers employed by municipal authorities well over 800,000. Nevertheless, there is in one respect an important difference between the principles of union organization in Germany and in France. In France the non-manual workers (civil servants, teachers, white collar workers) belong to unions affiliated with the same top organizations with which manual worker unions are affiliated. In Germany, however, whereas about one million white collar workers and civil servants belong to industrial unions affiliated with the D.G.B., others belong to separate unions affiliated with separate, comparatively small, top organizations such as the D.A.G. the D.B.B. and a few very much smaller ones. This deviation from the principle of industrial unionism is closely connected with the German tradition of a separate status for non-manual workers, a tradition reflected in social insurance law. It does not, however, involve a conflict between the various organizations concerned. In fact, for collective bargaining and other purposes the D.G.B. and the D.A.G. cooperate, a cooperation to which both were formally committed by a solemn resolution adopted by both in 1953. The number of organized workers and civil servants in 1956 totalled more than seven million of the 18.6 millions employed.

In Italy, as in Germany, trade unions had to be rebuilt following a period of totalitarian dictatorship, and, as in Germany, an attempt was made to overcome the ideological rifts of the past and to erect a structure of unified organizations. But, for a number of reasons connected with the past history of Italian trade unionism, with the economic structure of the country, and with the resulting influence of Communism, the attempt, which was successful in Germany, proved abortive in Italy. The present situation in Italy is reminiscent of that in France—there are three principal groups of trade unions of which one, the C.G.I.L. (Confederazione Generale

330 See 2 HUECK & NIPPERDEY, op. cit. supra note 329, and the very informative survey by Kerr, supra note 286, esp. at 176. Special reference should also be made to Taft, “Germany,” in Comparative Labor Movements 243 (Galenson ed. 1952), but its statistical material is slightly out of date having been published in 1952. This is, for an American reader, the best introduction to the history and background of the German situation.


332 Separate organization for old age and survivors pensions. See PART III infra.

333 For Italy, see LA PALOMBARA, THE ITALIAN LABOR MOVEMENT, PROBLEMS AND PROSPECTS (1957); Adams, Italy, in Comparative Labor Movements 410 (Galenson ed. 1952); Sanseverino, supra note 294.
Italiana del Lavoro) is regarded as being under Communist influence, one, the C.I.S.L. (Confederazione Italiana Sindacati dei Lavoratori) is generally considered to be politically close to the Christian Democrats, and one, the U.I.L. (Unione Italiana del Lavoro) is said to favor the Socialist and Republican Parties. Reliable information concerning the strength of these groups is apparently unobtainable, but it is clear that the C.G.I.L. is far stronger than either of the others, and that the C.I.S.L. is stronger than the U.I.L. Broadly speaking, the unions affiliated to these groups are industrial unions, called federations. In short, there is a close factual resemblance between the French and Italian unions, despite important differences in their legal situation. Collective bargaining is generally on a national basis.

The situation in Belgium differs fundamentally from that in France and in Italy. It also differs from that in Germany since Belgian trade unions have not succeeded in unifying the two large politically-orientated groups, the General Federation of Labor in Belgium (Fédération Générale du Travail en Belgique) (which in some respects cooperates with the Socialist Party) and the Catholic Confederation of Christian Unions (Confédération des Syndicats Chrétiens). Trade unions affiliated to the former group were thought to have some 681,000 members in 1955, and those in the latter group some 625,000 members in 1953. Both groups cooperate closely in collective bargaining and also as political pressure groups. In addition there are in certain occupations and localities unions affiliated with the General Central Office of Liberal Unions (Centrale Générale des Syndicats Libéraux) said in 1952 to number about 90,000 members. These are the three groups of unions which are represented in the bilateral committees (commissions paritaires), but the latter two are not on all of them. The Communists appear to be quite insignificant, and are not represented at all on the bilateral committees. The employers' associations represented on these committees are affiliated to the Federation of Belgian Industries (Fédération des Industries Belges). The very high standard of development of collective bargaining is demonstrated not only by the organization of the bilateral committees, but also by the significant agreements on particular topics reached by the top union organizations, especially the agreement concerning shop steward

334 See LA PALOMBARA, op. cit. supra note 333, at 106; Adams, supra note 333, at 447, states that accurate statistics are unobtainable.

335 Figures and other statements from Steinmann-Goldschmidt, op. cit. supra note 303, at 85.
organization—that is, the representation of the unions at plant or enterprise level—concluded in 1947. In France and in Western Germany such representation is regulated by statute (consultative, as distinguished from representative organization in the individual undertakings being regulated by statute in Belgium as well). The over-all picture of collective bargaining in Belgium is one of centralization, coupled with a minimum of legal intervention or enforcement. In such a scheme of things there is little room for craft unions or for agreements between unions and individual firms.

A comparison between Belgium and the Netherlands reveals great contrasts but also striking similarities. The Dutch trade unions, like their Belgian counterparts, are split on ideological lines, with the difference, however, that the divisions are much more complicated. The largest group is the Netherlands Federation of Trade Unions (N.V.V.) which is loosely linked with the Labor Party, and which (in ideology but not in proportional significance) corresponds to the Force Ouvrière in France. Others are the Catholic Workers' Movement, and the (Protestant) Christian National Federation of Trade Unions in the Netherlands. “Each of these trade union organizations comprises, for instance, trade unions of workers in the metal industry, the building industry, food establishments, transport undertakings, miscellaneous branches of industry, as well as unions of government servants, office staff, and the like.” What is more, there are three groups of employers' associations, one non-denominational, one Catholic and one Protestant. The strength of denominational feeling, which may reflect the dramatic history of the Netherlands, appears to have very little impact on the social realities of collective bargaining. The three groups of trade unions and the three groups of employers' associations customarily engage in joint collective bargaining, and such other groups, for example, Communist groups, as exist are not significant. To this extent the picture presented by the Netherlands is not too different from that of Belgium. “Nationwide” bargaining between associations is usual in both countries, the coverage of central regulation of wages and other conditions of employment is broad in each country and both the Dutch and Belgian wage regulation systems operate efficiently. Here, however, the similarities end. The second World War and its aftermath—which included the separation of Indonesia from

and See PART II, Section C infra.

336 Pels, supra note 298, at 105.
the Netherlands—made it necessary in the Netherlands—as it apparently still is—to counteract inflationary tendencies by governmental control of wages and conditions of employment. The Netherlands is the only country in the Community to impose a system of maximum wages. Collective agreements require the approval of a board of experts, the Council of Mediators appointed by the government. This Council can itself issue regulations, and the number of persons affected by these regulations is apparently larger than that of persons within the scope of collective agreements.\textsuperscript{338} The importance of the distinction between collective agreements and central regulation can, however, easily be exaggerated. The Council of Mediators acts in close cooperation with the Foundation of Labor, a central organization comprising both the trade union and the employers' top organizations, and it appears that, far from suppressing collective bargaining, state regulation of wages and conditions since 1945 has helped to stimulate it in the Netherlands. The difference between the situation in the Netherlands and that obtaining in the other five Member Countries may be more one of legal form than of social substance. The fact remains that, within the Community, Belgium (together with Italy) today represents the minimum, and the Netherlands the maximum of legal regulation of collective bargaining.\textsuperscript{339}

Luxembourg has a very highly developed system of collective bargaining on an industry-wide basis. In 1956 four-fifths of all industrial workers (including mining) were covered by collective agreements. An official memorandum of March 1957 states that all agreements have been concluded in accordance with a general pattern; they cover not only wages and hours, the making and unmaking of the contract of employment, holidays and vacations, as well as family allowances and bonuses, but also the settlement of differences by a bi-partite commission at the enterprise level. In the event of failure of settlement the matter must be taken before the "National Conciliation Office."\textsuperscript{340} The memorandum adds that

\textsuperscript{338}Id. at 103.

\textsuperscript{339}The Exposé on the Social Situation attached to the Commission's Second Report shows that, compared with the other members of the Community (except Luxembourg) the Netherlands has had remarkably few strikes in the recent past. Only 7,214 working days were lost in 1957, and 37,241 in 1958. The Commission attributes this partly to the "spirit prevailing in the (Netherlands) Economic and Social Council in which employers, workers and the general interest are represented," and partly "to the fact that the Council of Mediators has the power to impose, in case of conflict, compulsory regulations." (Second Exposé para. 77).

\textsuperscript{340}Decree of Oct. 6, 1945, art. 9, [1945] Pasin. Lux. 540.
“since the conclusion of these collective agreements and the establishment of the National Conciliation Office, strikes have practically ceased to exist in the Grand Duchy of Luxembourg.”

The collective agreements cover manual workers in both the private and public sectors of the economy, whereas the working conditions of clerical, technical, and administrative employees are regulated by a rather elaborate statute. It is a unique feature of collective bargaining in Luxembourg that it is, generally speaking, a function not of the unions but of the top organizations. There are, as in Belgium, two principal confederations of unions, and collective bargaining is entrusted to a committee which they have jointly formed.

4. LAW OF COLLECTIVE BARGAINING IN GENERAL— FREEDOM OF COLLECTIVE BARGAINING AND ITS RESTRICTIONS

The legal aspects of collective bargaining and of collective agreements in the Six are complex, and only some of the problems thought to be of special importance for readers of this book can be touched on here. The topics of principal significance are freedom of contract with regard to collective agreements, the effect of the agreement as a contract, its effect as a compulsory norm, its extension to outsiders, its enforcement through administrative and similar measures, and the publicity which by law must be given to collective agreements.

The legislative treatment of collective agreements is profoundly different in France, Germany, and the Netherlands on one hand and Belgium, Italy, and Luxembourg on the other. In France, Germany, and the Netherlands systematic and comprehensive legislation has been passed to regulate the conclusion and the effect of collective agreements, whereas such legislation as exists in the remaining three countries is unsystematic and fragmentary. The relevant legislation is:

—in France, the Law of Feb. 11, 1950, which has considerably amended the Labor Code (Code du Travail);

—in Germany, the Law Concerning Collective Agreements (Tarifvertrags-Gesetz) of April 9, 1949, originally applicable in the American and British Zones of Occupation only, and extended to the entire Federal Republic by the Law of April 23, 1953;

—in the Netherlands, the Law on Collective Agreements of De-
December 24, 1927, the Law of May 25, 1937, concerning the binding force of collective agreements, and the Emergency Decree of October 5, 1945, on labor relations.

In Belgium the relevant legislative texts are the Decree of June 9, 1945, concerning bilateral committees, and certain provisions in the Law concerning contracts of employment, consolidated by the Decree of July 1955. What legislation there is in Luxembourg is contained in the Decree of October 6, 1945, concerning the National Conciliation Office. Article 39 of the Italian Constitution of 1947 provides that legislation should be passed to give legal effect to collective agreements, but no such legislation has yet been passed, nor can it be expected in the near future. A provisional statute has been approved by both Houses of the Italian Parliament, however, and this law of 1959 regulates in a fragmentary way the effect of collective agreements. There is, however, considerable doubt whether it is constitutional.

In five of the six countries freedom of contract prevails in relation to collective bargaining in the sense that, in so far as a collective agreement has legal effect as a contract or as a compulsory norm binding on individual employers and employees, it derives this effect from the act of contracting as such and no consent or approval of any governmental authority is required. In the Netherlands, however, the so-called "Extraordinary Decree" of October 5, 1945, provides that no collective agreement is valid without the consent of the Council of Mediators whose task it is to protect the economy against potential inflationary effects of the bargaining process, a function which may remind Americans of that of the former War Labor Board in the United States. The Council is in close contact with labor and management, and its powers do not seem to be regarded as a serious encroachment on the freedom of industry, no strong agitation for its abolition being apparent.

In a different sense, however, freedom of collective bargaining is much more seriously "hedged in" in the Six than in either the United States or in Great Britain. Mandatory legislation is of importance in the Six (though not of the same importance everywhere), and there is a general rule that any provision of a collective agreement which runs counter to mandatory legislation is null and void. Where, as, for example, in Germany, France, Luxembourg, and the Netherlands,° the election or appointment and the functions of shop stewards are regulated by statute, collective agree-

° See PART II, Section C infra.
ments at variance with the statute are void, so that even by agree­
ment between unions and employers or their associations the powers
and duties of shop stewards cannot be restricted, though they may
perhaps be enlarged. Similarly, where, as in Germany, Belgium,
the Netherlands, and to some extent in Luxembourg, the law fixes
periods of notice which the employer and the employee must ob­
serve when terminating the contract of employment, collective
agreements concerning terms of notice are valid only to the extent
to which the relevant statutes expressly provide that their provi­sions may be abrogated in this way (as is the case, within certain
limits, in the Netherlands).344 A similar observation could be made
about the regulation by statute of the employer’s obligation to con­
tinue wage or salary payments in the event of the employee’s sick­
ness. Where such payments are concerned as well as with regard to
the regulation of working hours,345 German law provides examples
of mandatory statutory provisions of which the effect can be ren­
dered inapplicable by collective agreement but not by an individual
contract of employment. This is also true of the Belgian law with
regard to working hours.346 It is as if in America a statute, such as
the Fair Labor Standards Act, could be derogated from by collec­
tive agreement but not otherwise.

The two most significant restrictions on the freedom of collective
bargaining imposed by legislation are, however, those which con­
cern freedom of organization and minimum wage standards. In all
of the Member States any collective agreement which seeks to re­
strict the employee’s freedom to join a union would be null and void.
In France, under the Law of April 27, 1956, in Germany by virtue
of the relevant provision of the Bonn Basic Law and of general
principles, and to some extent in Belgium and in the Nether­
lands this means that union security agreements are void, and, although
this is not so clear, the same result, based on general principles, is
likely to be reached in Italy.347

Far more important, however, is the limitation which minimum
wage legislation imposes on freedom of collective bargaining. The
French National Guaranteed Minimum Wage (Salaires Minimum

344 See on all this: PART II, Section E infra.
345 BÜRGELICHES GESETZBUCH [hereinafter cited as BGB] para. 616; Decree on
Working Hours of April 30, 1938, para. 7, [1938] Reichsgesetzb. (hereinafter cited
as RGBl.) I, 448 (Ger.).
346 Law of June 14, 1921, arts. 2, 5, 7, [1921] 1 Recueil des Lois et Arrêtés Royaux
de Belgique 1028.
347 See note 322-26 supra, and for Italy: MAZZONI, MANUALE DI DIRITTO DEL LAVORO
92 (1958).
National Interprofessionnel Garanti—S.M.I.G.) is comparable to the American Federal Minimum Wage under the Fair Labor Standards Act in that it constitutes a "floor" for all wages and makes it impossible, either by individual contract or by collective agreement, to undercut in any way the specified minimum. A similar system exists in Luxembourg under two Decrees of 1944 and 1956, but no comparable institution exists now in any of the other four Common Market countries. In its economic and social functions, however, the French National Minimum Wage Act differs considerably from the scheme inaugurated by the American Fair Labor Standards Act. The French National Minimum Wage is not (as is the corresponding Luxembourg minimum wage) fixed as a rigid absolute figure. It is constantly kept under review, and, through a complicated system of computation, linked with the cost of living index. It moves up if the monthly average expenditure of an average family in Paris (as ascertained by the National Institute of Statistics) rises by more than five percent, although it can never by the operation of this sliding scale be altered more than once in any four-month period. This system was introduced by an amendment of the Labor Code in 1952, and whereas all sliding scales in collective agreements were forbidden by the Order of January 7, 1959, as part of the program of the De Gaulle government to stabilize prices and the currency, the automatic sliding scale applicable to the statutory minimum wage was expressly preserved.

Nor is the cost-of-living sliding scale the only method of keeping the statutory minimum wage flexible. Under the Law of 1950, by which free collective bargaining for wages was re-introduced in France, after being suppressed since the outbreak of the second World War, a method was provided for and is still used by which the minimum can be changed by government decree on the basis of a recommendation made by the Higher Committee on Collective Agreements. This recommendation does not, however, bind the government. The minimum is fixed for the Paris region, and reduced for other regions in which the cost of living is lower.

See on this: Sturmthal, Collective Bargaining in France, in Contemporary Collective Bargaining in Seven Countries 151 (Sturmthal ed. 1957); Lorwin, op. cit. supra note 280, at 219; 2 Durand paras. 338 et seq., and more up to date: Brun & Balland, Droit du Travail 449 (1958).


See on this Second Exposé, para. 49, and for the most recent developments of the National Minimum Wage, paras. 47-51 in general.

minima are fixed on an hourly basis, they immediately affect the system of overtime pay to which reference has already been made. Although in practice the wages paid in industry exceed the national minimum, the National Minimum Wage doubtless plays a far greater role in the economic and social life of France than does the federal minimum wage in the United States. The French system is (through the interaction of a number of statutes with conflicting tendencies) extraordinarily complex, and only a very superficial idea of its operation can be gleaned from the above remarks. In collective bargaining the National Minimum Wage operates, as one author puts it, as a “minimum of minima.”

The term “minimum wage legislation” is (somewhat misleadingly) also used for a different type of statutory wage regulation of which the British law is today the principal example. This “selective” system, under which there is no national over-all minimum, but minima can be fixed for particular industries in which collective bargaining does not function satisfactorily, was introduced (for wages and other conditions of employment) in the West German Federal Republic by a law of 1952. It is not, however, of great importance in practice. Similar legislation exists in Belgium, France, and the Netherlands for homeworkers, and, in a different form in Italy, for homeworkers and also for caretakers and similar personnel. The Italian provisional statute of 1959 to which reference was made above restricts the freedom of contract of the parties in the sense that, once the government has regulated the wages or other conditions of employment of a given category of workers on the basis of an existing agreement—and the agreement is only the pattern on which the government moulds its decree—any subsequent collective agreement applicable to the same workers is invalid in so far as it purports to derogate from the governmental decree to their detriment.

More important even than these restrictions on the parties’ freedom of contract (with the exception of this temporary Italian law

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352 Agricultural Wages Act, 1948, 11 & 12 Geo. 6, c. 47; Wages Councils Act, 1959, 7 & 8 Eliz. 2, c. 69; Kahn-Freund, Minimum Wage Legislation in Great Britain, 97 U. PA. L. REV. 778 (1949).
of 1959 if constitutional) is the power of the Dutch Council of Mediators to fix wages and other conditions of employment by collective regulations. These are absolutely binding, that is, they do not permit any variation in favor of the employers or of the employed. But since in the Netherlands collective agreements require the approval of the Council of Mediators and since, on the other hand, the Council does not decide either on the issue of collective regulations or on the approval of agreements until it has consulted with both sides of industry and especially with the Foundation of Labor on which they are both represented, there would not, from a practical point of view, appear to be any appreciable difference between the two types of collective determination of the conditions of employment. 857

5. THE COLLECTIVE AGREEMENT AS A CONTRACT

It is today generally recognized on the Continent that a collective agreement has a dual legal function: to create obligations between those who have concluded it, that is, between the organizations on both sides, or between the union or unions and an individual employer, and also to establish a code for the individual employers and employees in the industry. It is customary to refer to these two aspects of a collective agreement as its contractual and normative effect. Perhaps it is unnecessary to point out that, whether or not these or similar terms are actually used in the United States, in substance collective bargaining has this same dual function there as everywhere, and it may be sufficient to refer to the two decisions of the Supreme Court in Textile Workers Union of America v. Lincoln Mills of Alabama 858 on the one hand, and in J.I. Case Co. v. N.L.R.B. 859 on the other, to illustrate the point.

The question whether a collective agreement is a contract is, as the American experience has shown, of very great practical importance indeed. More than that, given an affirmative answer to the question, a second question arises concerning the obligations implied by the contract. There is no unanimous agreement concerning answers to either of these questions in the Six. In France, Germany, Luxembourg, and the Netherlands 860 a collective agreement can clearly be enforced as a contract between those who have concluded

857 See Pels, supra note 298, passim.
858 353 U.S. 448 (1957).
860 France: 3 Durand paras. 209 et seq.; Germany: Hueck & Nipperdey, Tarifvertraggesetz art. 1, notes 57-111 (1951); Luxembourg: Bill on Collective Agreements of Nov. 16, 1955, art. 8, which is deemed to codify the present law; Netherlands: Leven-
it. In Belgium, however, the question whether a collective agreement operates as a contract between the organizations which have concluded it appears to be a question of fact to be decided in accordance with the intentions of the parties, and this applies to agreements which take the form of a resolution of a bilateral committee and to others. Where an agreement operates as a contract, each party is under the usual duty to "keep the peace," to see to it that its members carry out the terms of the agreement, and each is liable for damages in the event of breach. Moreover, there is nothing to prevent the parties from creating by express provision additional obligations, a matter of special importance in view of the contractual and non-statutory basis of the appointment and operation of shop stewards.

In this respect as in others the situation in Italy is complicated by the fact that the Fascist so-called "syndicates" were abolished by a law of November 23, 1944, but the same law provided that the collective and individual relations would continue, subject to subsequent modification, to be governed by the terms of the existing collective agreements, awards and the like. Article 39 of the Constitution of 1947 provides for legislation under which registered unions and employers' associations would make agreements having the force of law erga omnes, but such legislation has not yet been passed. In the meantime the old collective terms continue to apply (in so far as they have not been modified) and new—so-called "post-corporative"—agreements have been concluded by the organizations set up since the fall of the Fascist regime. There are thus at the moment two kinds of collective terms—those which survive from the Fascist era under the law of 1944, and those which have since been agreed upon. The former have survived the parties who made them, and, although they continue to operate as norms binding individual employers and employees, they cannot have any contractual effect because the parties to the contracts from which they arose were suppressed. The "post-corporative" agreements on the other hand have contractually binding effect on the organizations which are parties to them.


Horion, supra note 274, at 76.

Steinmann-Goldschmidt, op. cit. supra note 303, at 101.

Horion, supra note 259, at 6.

The importance of this—and particularly to the reader of this book—is that, generally speaking, the right to resort to hostile action in labor-management relations, the "freedom to strike" and the "freedom to lockout" is to a very large extent restricted by the law of collective bargaining. There is no such thing on the Continent as a concept of "unfair labor practices," nor is there an administrative agency comparable to the American National Labor Relations Board. The borderline between that which is permissible and that which is forbidden in collective labor management relations is in some degree drawn by what corresponds to the law of tort and to the criminal law, but much more importantly by the "peace obligation" which, even if unexpressed, is deemed to be implied in a collective agreement. The legal principles governing this "peace obligation" have been mainly developed in Germany, and subsequently in France. With important exceptions, the obligation is deemed to be "relative." This means that both sides implicitly undertake not to resort, during the term of the agreement, to hostile action in an attempt to alter terms of the agreement. The organizations on both sides are "bound to do nothing which might jeopardize the loyal performance of the agreement." These words are contained in the French Labor Code but they summarize the essence of the "peace obligation" everywhere. It follows that there is nothing to prevent the parties from resorting to or supporting a strike or lockout for purposes unconnected with the agreement, for example, to obtain an advantage in connection with matters not regulated by it, or to enforce the agreement, or in response to a breach by the other party, or for political or purely economic reasons. The parties may, however, by an express clause in the agreement extend the peace obligation making it "absolute." In regard to agreements capable of "extension," the "peace obligation" has been made absolute by French, but not by German, law. The German Courts have, however, gone very far in their definition of what acts constitute a breach of the peace obligation, as is illustrated by a recent decision of the Federal Labor Court to the effect that arrange-

361 CODE DU TRAVAIL bk. I, tit. II, art. 31q, inserted by the law of Feb. 11, 1950, [1950] J.O. 1688 (Fr.). ("Tenus de ne rien faire qui soit de nature à en compromettre l'exécution loyale.")

363 3 DURAND 594. For Germany: HUECK & NIPPERDEY, op. cit. supra note 360, notes 74 et seq. to para. 1 of the 1949 law.

364 CODE DU TRAVAIL bk. I, tit. II, art. 31g(1) No. 8; see 3 DURAND 595.

ments for a trade union poll concerning a possible strike is a breach of a collective agreement. Both judgments for damages and injunctions or their equivalent may follow in the event of a breach.

Both parties to a collective agreement (as a rule the organizations on both sides) are further under an obligation to draw their members' attention to its provisions and to the need for implementing them, and Dutch law expressly creates such a duty. In Germany and in the Netherlands the parties must go even further to ensure loyal performance of the agreement. They are bound to make use of such powers to this end as the by-laws or rules of the organization put at their disposal, including if necessary, the power to expel members. French law does not go nearly so far.

In addition the parties are, of course, bound to fulfil such special provisions in the agreement as impose obligations with regard, for example, to the establishment of organs of conciliation or arbitration, agencies to administer agreed vacation schemes, social welfare schemes and the like.

This contractual function of collective agreements is enforced through actions for injunctions, including mandatory injunctions (or their equivalent), and for damages—the threat of which is a formidable weapon. Such actions belong in France to the jurisdiction of the ordinary courts, and in Germany to that of the labor courts. In Germany, only the parties to the agreement (normally the organizations) can be parties to such actions, except that as a result of the third party beneficiary doctrine embodied in the German Civil Code, a member of one organization may sue the organization which is the other party to the agreement. This is of little practical importance, however. In France and in the Netherlands, however, the members of the organizations are subject to a similar liability.

6. THE COLLECTIVE AGREEMENT AS A LEGALLY ENFORCEABLE CODE

The "normative function" of a collective agreement means, in the first place, that in the absence of an express agreement to the

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371 DURAND 597.
372 See PART II, Section D infra.
373 BGB para. 328.
contrary between the individual employer and the individual employee, their mutual rights and obligations are governed by the relevant collective agreement. This rule is expressly stated only in two Belgian laws—that of 1954 in regard to manual workers and that of 1955 in regard to salaried employees—and it applies whether or not the employer or employee is a member of the organization or union which is a party to the collective agreement. This is, however, doubtless the law in all six countries. In French this is often called the "automatic effect" of the agreement.

In Germany, France, and the Netherlands express legislation provides that this effect is not only "automatic" but also "compulsory." In France this principle applies to the relations between an employer who is a party to the collective agreement or member of an organization which is a party and all his employees, irrespective of their union membership. In Germany and in the Netherlands it applies only if the employee is a member of a contracting organization, but in the Netherlands the employer may be liable to damages or to an injunction on the complaint of a trade union party to the agreement if he does not, in relation to unorganized workers, fulfill the terms of the collective agreement.

The effect of this legislation is that any agreement between an individual employer and individual employee which is at variance with the collective agreement is ineffective and replaced by the corresponding terms of the collective agreement, unless it is expressly permitted by the collective agreement or more favorable to the worker than the terms of the latter. In Belgium this applies only to such resolutions of bilateral committees as have been declared legally binding by royal decree—and these represent a minority of existing agreements. In Luxembourg, on the other hand, it is

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370 Horion, supra note 259, at 10; Van Goethem, supra note 310, at 2. The relevant clause which is contained in both statutes says that if no decision of a commission paritaire which has been made binding by Royal Decree applies, and if the parties to the contract of employment have failed to deal with a matter, the terms laid down in collective agreements or non-binding decisions of commissions paritaires apply as implied terms of the contract of employment. Similarly the Dutch law of Dec. 24, 1927, art. 13, [1927] Stb. No. 415.


378 CODE DU TRAVAIL bk. I, tit. II, art. 31e.


380 Id. art. 14.

381 See Horion, supra note 259; STEINMANN-GOLDSCHMIDT, op. cit. supra note 303, at 103.
thought that this principle, although incorporated expressly only in
a draft bill, is nevertheless part of the existing law.\textsuperscript{382} The situa-
tion in Italy is less clear than that in the other five countries, since
Italian law is still in transition, but the courts appear generally to
assume that such a compulsory effect attaches both to the surviving
agreements of the Fascist era and to the “post-corporative agree-
ments” which have since been concluded.\textsuperscript{383}

It may not be obvious to an American observer at first sight why
there should be a differentiation between members and non-members
of a union, but it must be remembered that the American concept of
a “statutory bargaining representative” is alien to European law.
In Europe, however strongly it may be union policy to induce or com-
pel employers to apply the terms of collective agreements to non-
organized as well as to organized labor, the union “represents” no
one except its members. Moreover, union policy with regard to the
treatment of non-organized labor is far from uniform, and the de-
sire to prevent undercutting by outsiders still conflicts with the de-
sire to restrict the privilege of the “union wage” as an inducement
to joining the union.

7. THE EXTENSION OF COLLECTIVE AGREEMENTS

Whatever may be the policy of a given legal system with regard
to the compulsory effect of collective agreements on contracts be-
tween organized employers and unorganized employees, the prob-
lem of the position of unorganized employers remains. This is the
problem of “extending” the collective agreement so as to make it
a “common rule” of the trade irrespective of the membership of
the employer in a contracting organization. With certain important
variations the German Law of 1949/1953,\textsuperscript{384} the French Law of
1950,\textsuperscript{385} the Dutch Law of 1937 as modified by the Decree of 1945,\textsuperscript{386}
the Belgian Decree of 1945,\textsuperscript{387} and the Luxembourg Decree of the
same year \textsuperscript{388} all provide for such extension procedure.

In Germany, where this procedure was first introduced in 1918,
the extension order is made by the Minister of Labor after consulta-
tion with a committee consisting of representatives of the top organi-

\textsuperscript{382} Art. 8 of the Bill of 1955.
\textsuperscript{383} Mazzoni, supra note 364, at 118.
\textsuperscript{384} Law of April 9, 1949, para. 5, [1949] WiGBL. 55 (Ger.), extended by Law of
\textsuperscript{385} CODE DU TRAVAIL bk. I, tit. art. 31j.
\textsuperscript{386} Law of May 25, 1937, art. 2, [1937] Stb. No. 801; Extraordinary Decree of Oct. 5,
1945, art. 15, [1945] Stb. No. F 214 (Neth.).
\textsuperscript{388} Decree of Oct. 6, 1945, art. 22, [1945] Pasin. Lux. 540.
zations on both sides, upon application by one or more of the parties to the collective agreement. It is a condition of extension that those employers who are either themselves parties to the agreement or members of organizations which are parties employ at least 50 percent of the employees coming within the terms of the agreement. The extension also must appear to the Minister to be required by the public interest.

In France extension orders were first introduced in 1936: under the present law they are made by the Minister of Labor and Social Security but only if the Higher Committee on Collective Agreements makes a positive recommendation to this effect. The conditions which must be fulfilled in France to enable the Minister to make an extension order differ from those in Germany. Only agreements made by the "most representative organizations" within the framework of a "joint committee" summoned for this purpose can be so extended: the criterion is not, as in Germany, the factual significance of the agreement, but the character of the parties, the degree to which they are "representative" (their représentativité). In France, agreements made by any organization which is not "most representative" cannot be so extended. These must be submitted to a special procedure at the Ministry of Labor and Social Security. 

In Germany only agreements made by the "most representative organizations" within the framework of a "joint committee" summoned for this purpose can be so extended: the criterion is not, as in France, the character of the parties, but the factual significance of the agreement. In France, agreements made by any organization which is not "most representative" cannot be so extended. These must be submitted to a special procedure at the Ministry of Labor and Social Security.

In the Netherlands the power to make extension orders was, under the Law of 1937 by which they were introduced, vested in the Minister of Social Affairs, but it was transferred by the Emergency Decree of 1945 to the Council of Mediators. The extension order presupposes an application by the "industrial council" or by one or more of the parties to the agreement, and it can only be made with regard to agreements which cover the majority of those to whom they apply.

389 This is defined in CODE DU TRAVAIL, bk. I, tit. II, art. 31(f). See 3 DuRAND 628.
390 CODE DU TRAVAIL, bk. I, tit. II, art. 31(g).
391 Law of May 25, 1937, art. 3, [1937] Stb. No. 801. "Industrial council" is a body on which both sides of industry are represented.
The corresponding orders which can be made under the laws of Belgium and of Luxembourg have a different character. In Belgium only resolutions of bilateral committees come within the relevant provisions,\textsuperscript{392} and the order is made by royal decree upon application either of the bilateral committee which has passed the resolution or of one of the organizations. Its effect is to give the resolution obligatory force, to convert it into a "law of the trade" which cannot be avoided by contract. In Germany, France, and the Netherlands a collective agreement cannot be avoided by individual contracts, at any rate to the detriment of the employee, between organized employers and organized workers. In France this is also true where organized employers and unorganized workers are concerned, and it is true in all three countries whether or not it has been "extended," the "extension" merely binding unorganized employers to the same extent that organized employers are in any event bound. On the other hand a Belgian royal decree is necessary to make the agreement compulsory for organized as well as unorganized employers: it transforms an optional into a compulsory norm for all those concerned.

In Luxembourg \textsuperscript{393} the situation is in fact similar to, though in law different from, that in Belgium. Only agreements concluded before or confirmed by the National Conciliation Office, normally that is, agreements made within the bilateral committee, can be declared to be "generally binding." This is done by the government on the basis of a unanimous application of the bilateral committee and on a recommendation of the organizations on both sides, which in turn may consult their members. An organization which has consulted its members cannot recommend the making of an order unless two thirds of the members concerned have voted in favor. On the other hand, no organization can refuse to recommend the making of the order unless it has consulted its members and the majority have voted against the order. The effect of this is in Luxembourg, as it is in Germany, France, and the Netherlands, to extend to "outsiders" the compulsory effect which, even without the order, the agreement has on "insiders." Legally it differs, therefore, from the corresponding royal decree in Belgium.

Article 39 of the Italian Constitution of 1947, which envisages a system enabling unions and employers' organizations to register, and, when registered, to conclude agreements with binding force

\textsuperscript{392} See note 387 \textit{supra}.

\textsuperscript{393} Decree of Oct. 6, 1945, art. 22, [1945] Pasin. Lux. 540.
throughout the trade, that is, constituting a "common rule," has not yet been implemented by legislation. It is useless to analyze here the numerous draft bills which have been produced. No one knows which, if any, of them will ever become law, and when.

Meanwhile, in the face of a lively discussion of the extraordinarily complex constitutional situation, Parliament has passed a temporary statute which seeks to circumvent the constitutional issue—whether successfully or not remains to be seen. According to this statute the Government can issue orders with legally binding force, in order to secure to workers of a given category minimum standards which cannot be bargained away (minimi inderogabili di trattamento economico e normativo). These "minimum wages and conditions orders" must in substance be in accordance with the relevant collective agreements which have been deposited in the Ministry of Labor and Social Security. Only agreements made prior to the coming into force of the statute (summer, 1959) are taken into account, and no orders can be made more than one year after its coming into force. The object of the statute, is, of course, to produce the effect of an order making collective agreements into "common rules" without violating Article 39 of the Constitution which reserves this universally binding effect to agreements made by unions registered under a procedure which has not yet been introduced. Hence the provision that the terms of the order have to "conform" to existing agreements, but that the orders do not incorporate them or extend them.

The effect of an extension or similar order is everywhere that no one concerned can avoid the collective agreement by contract to the detriment of the worker (in the Netherlands any derogation from the terms of the agreement either to his advantage or detriment is prohibited).

8. SANCTIONS AND PUBLICITY

The sanctions which protect the standards established by collective agreements are not civil sanctions only. In France it is a criminal offense for an employer to pay wages lower than those provided for in an extension order,\(^{394}\) and labor inspectors are under a duty to see that the relevant provisions are observed.\(^{395}\) Much the same applies to violations of resolutions of Belgian bilateral committees which have been declared binding by royal decree. These are also en-

\(^{394}\) Code du Travail, bk. I, tit. II, art. 312b.
\(^{395}\) Id. arts 31y and 31zc.
forced by inspectors.\textsuperscript{396} In the Netherlands\textsuperscript{397} and Luxembourg\textsuperscript{398} any violation of a collective agreement by an employer is an offense, and in Luxembourg this applies also to an employee. German law has no penal sanctions, but the civil sanctions, including injunctions, of German law\textsuperscript{399} are available to enforce provisions such as those concerning limitations on the number of apprentices and generally concerning the making rather than the content of the contract of employment, which in other countries cannot be directly enforced. The new Italian law also provides for penal sanctions and for enforcement by inspectors.\textsuperscript{400}

In France\textsuperscript{401} and Germany\textsuperscript{402} the employer must exhibit in the plant the wording of relevant collective agreements, and in the other countries this is often required by the agreement itself. In Germany all collective agreements are entered in a Register kept in the Ministry of Labor where they can be inspected.\textsuperscript{403} In France they are deposited in the local labor court (\textit{conseil des prud'hommes}) or failing this, the general local court.\textsuperscript{404}

\textbf{C. Employee Representation in the Plant and in the Undertaking} \textsuperscript{405}

Statutory employee representation at workshop or enterprise level is alien to American thinking and experience. Nevertheless any American, whether businessman, lawyer, or trade unionist, who has anything to do with labor-management relations in any of the Six will be inevitably and almost immediately concerned with questions of employee representation as day-to-day problems.

Two things should be mentioned at the outset. In the first place, there are two distinct, though often related,\textsuperscript{406} social objectives which the institutions to be discussed are intended to serve: one is

\textsuperscript{397} Extraordinary Decree of Oct. 5, 1945, arts. 17, 21, [1945] Stb. No. F 214 (Neth.).
\textsuperscript{398} Decree of Oct. 6, 1945, art. 26, [1945] Pasin. Lux. 540.
\textsuperscript{399} HUECK \& NIPPERDEY, \textit{op. cit. supra} note 360, notes 40 et seq. to para. 4 of the Law of 1949.
\textsuperscript{400} Discussed pp. 401 supra.
\textsuperscript{401} \textit{CODE DU TRAVAIL} bk. I, tit. II, art. 31u; see also \textit{id.} art. 312 as to the public display of the extension decree.
\textsuperscript{402} Law of April 9, 1949, para. 7, [1949] WiGBi. 55 (Ger.).
\textsuperscript{403} \textit{Id.} para. 6.
\textsuperscript{404} \textit{CODE DU TRAVAIL} bk. I, tit. II, art. 31d. The general local court is the "justice de paix." The agreement does not take effect until one day after having been so deposited.
\textsuperscript{405} In addition to the books listed in note 303 supra, see in particular E.C.S.C. HIGH AUTHORITY, \textit{LA REPRÉSENTATION DES TRAVAILLEURS SUR LE PLAN DE L'ENTREPRISE DANS LE DROIT DES PAYS MEMBRES DE LA C.E.C.A.} (1959).
\textsuperscript{406} \textit{E.g.}, in the case of threatened closures or changes in production liable to lead to reduction of personnel, see Law of Oct. 11, 1952, para. 72, [1952] BGBi. I, 681 (Ger. Fed. Rep.).
the representation of the employees' interest at plant level, the other is joint consultation on, and, in some cases (notably in Germany) joint administration of, the affairs of the enterprise by employer and employees. In the second place, although the union or unions may in fact and even in law have a strong influence on the formation and operation of these organs of representation and consultation, they are independent from the unions. It is necessary to emphasize this because the representative function which they exercise closely resembles that of shop stewards in English-speaking countries, but unlike shop stewards they do not generally speak for the unions; they are representatives of the employees of the plant or enterprise, irrespective of whether those employees belong to a particular or to any union. To this there is one exception: Déléguations syndicales du personnel, or shop stewards are elected in Belgium pursuant to collective agreements and represent the unions at plant level, functioning along side the statutory works councils (or conseils d'entreprise).

The legal basis on which this representative and consultative machinery rests may be either legislation or collective agreements. It is entirely statutory in France, Germany, Luxembourg, and the Netherlands; it is (for the time being) entirely a matter of agreement in Italy; and it is a mixture of both in Belgium.

The French legislation is contained in the following enactments:

Order on Works Councils (comités d'entreprises) of February 22, 1945, as amended by a law of May 16, 1946;
Law of April 16, 1946, on Employees' Representatives (délégués du personnel);
Decree of August 1, 1947, on Health and Safety Committees (Comités d'Hygiène et de Sécurité).

The principal German enactments are:

Law of October 11, 1952, concerning the Constitution of the Plant (Betriebs-Verfassungs-Gesetz);
Law of October 8, 1951, concerning Protection of Employees in Case of Dismissal (Kündigungs-Schutz-Gesetz);
Law concerning Co-Determination by the Employees in the Undertakings of the Mining and Iron-and-Steel-Producing Industries of May 21, 1951;
Law Supplementary thereto of July 8, 1956.

In Luxembourg older legislation has been largely superseded by:

- Decree of October 30, 1958, concerning the Institution of Workers' Representation in Industrial, Commercial and Craftsman's Undertakings; and
- Decree of November 21, 1959, regulating elections thereto.

Still in force are:

- Law of June 7, 1937, concerning the contract of Employment of Salaried Employees, and
- Decree of May 11, 1938, on the Institution of Salaried Employees' Representations.

In the Netherlands the relevant statute is:

- Law on Works Councils (Onderneemingsraden) of May 4, 1950.

In Belgium the principles are found partly in statutes and decrees and partly in collective agreements which, without having the force of law, operate in fact as regulatory provisions:

- Law of September 20, 1948, concerning the Organization of the Economy (Portant l'Organisation de l'Économie), Section IV (Works Councils);
- Decree of October 6, 1958, concerning Works' Councils;
- National Collective Agreement (Accord National) of July 16, 1958, relating thereto;
- National Collective Agreement relating to the General Principles governing the Organization of Shop Stewards (Accord National relatif aux principes généraux du statut des délégations syndicales du personnel des entreprises) of June 16–17, 1947;
- Law of July 17, 1957, concerning committees dealing with safety, health, and amenities at the place of work. (This is only the principal of several enactments on these comités de sécurité, d'hygiène, et d'embellissement des lieux de travail).

In Italy the works committees (commissioni interne) have been established on the basis of the "interconfederal" national agreement (between the top organizations) of May 8, 1953. There is a special agreement concerning salaried employees, dated October 23, 1950.

In all Continental countries a distinction is made between the plant or workshop (établissement, Betrieb) and the undertaking or enterprise (entreprise, Unternehmen), the first being a technical or
organizational unit, the second commercial or financial. This distinction is relevant because, where, as in the case of most large undertakings, one company or other undertaking operates a number of plants, it stands to reason that the "representative" function of employees' representatives is most naturally exercised at plant level, and much if not all of their "consultative" function at enterprise level. This leads to a certain complexity of organization. In Germany, which has much the most elaborate scheme of employee representation in Europe, the representative function is exercised by works councils which are elected for each plant. These works councils have the task of representing the employees' interests in relation to the employer. For example, they make (within the framework of the existing collective agreements) "plant agreements" with him concerning matters such as the beginning and end of the daily hours and intervals, the time and place of wage payments, vacation schemes, apprenticeship, administration of welfare schemes and institutions, discipline, piece rates, principles and methods of remuneration, and health and safety measures. They must try to induce the employer to remedy grievances of the employees, and to see to it that statutes, orders, collective agreements and the like, which are designed to serve the interests of employees, are applied in the plant. Finally, they exercise such statutory functions as the workers' representatives have in connection with the hiring and discharge of employees. All this takes place within the plant, and, although the law provides that where an undertaking consists of two or more plants a "joint works council" can be formed, that council does not supersede the individual works councils nor are they subordinated to it. Its jurisdiction is restricted to such necessarily exceptional cases as concern more than one plant.

On the other hand, and generally speaking, the organs of joint consultation operate at the enterprise level. If the total number of employees in one undertaking (that is, the aggregate number of employees in all plants belonging to the undertaking) exceeds 100, a joint consultative committee will be formed for that undertaking, known as a Wirtschafts-Ausschuss consisting of an equal number of employee and employer representatives which meets once a month. It is the employer's duty—within the limits of the required

409 Id. para. 54.
410 Id. paras. 60 ff.
411 Id. paras. 46 ff.
412 Id. paras. 67-69.
secrecy—to keep this committee informed about the affairs of the firm ("the economic development of the undertaking"), including methods of production, production programs, the volume of production and sales, and other matters "which intimately concern the interests of the employees of the undertaking." This has to be done in the light of such documentary material as in the employer's discretion is needed to explain his statement, and the employer must explain to the joint consultative committee the annual balance sheet and profit and loss account. Four times a year the employer, together with the joint consultative committee and the works council in each plant, gives an oral or written account of the development of the undertaking which is addressed to the employees in their entirety. 413

On similar lines, and again at the enterprise rather than the plant level, it is the policy of the law to associate the employees with the larger undertakings by providing that one third of the supervisory board (Aufsichtsrat) of all those corporations (normally the larger ones) which are by law required to have such a board, must consist of elected representatives of the employees. 414 All this is under the general law, and it amounts to very much less than the special system of "co-determination" or "joint management" which under the statute of May 21, 1951, applies to the mining and iron-and-steel-producing industries. In these industries (and by virtue of the supplementary law of 1956 also in the holding companies of those industries) membership of supervisory boards consists half of employees and half of shareholder representatives under an impartial chairman. One member of the board of directors (the Vorstand) is a "labor director" appointed, normally in consultation with the trade unions, by the supervisory board. In the operating companies, he may not be appointed if the employee members of the supervisory board vote against him.

This is the barest outline of what is meant by "co-determination" (Mitbestimmung), an institution which does not appear to have any parallel in other European countries (and to which, for example, British trade unions are, on the whole, strenuously opposed). "Joint consultation" on the other hand (which in practice means very much less since the powers of the supervisory board vis-à-vis the board of directors in an ordinary German company vary greatly and are mal-

413 See for all this: Id. paras. 67 and 69.
414 Id. paras. 76 and 77. See Conard, Chapter VIII, where he discusses the difficulties of translating such terms as Aufsichtsrat. The term which he adopts, "supervisory board," is hereinafter used. The Aufsichtsrat either makes the policy or (if the Vorstand does so) does nothing at all. It does not "supervise."
leable) is a very general phenomenon in Europe. German law has arrived at a compromise between these two principles by confining "co-determination" to the mining and heavy industries, that is, broadly speaking, to those which come within the jurisdiction of the Coal-Steel Community. The reasons for this compromise are purely historical: they are of course connected with the very special place which the German coal, iron, and steel industries have occupied in the political destinies of Germany and indeed of Europe.

Both joint consultation and co-determination aim at a closer association of the employees with the undertaking as an economic unit. Where the special interests of the employees are concerned, the relevant unit is the plant, even where the law restricts the managerial power of the employer. This is indicated by those provisions of German law 415 which confer a right of co-determination on the works councils of all plants with normally more than 20 employees who are entitled to vote for the council. This right can be exercised when management is planning changes which may have a detrimental effect on the workers, such as cutting down, closure, or transfer of a plant or any essential part thereof, its amalgamation with another plant (whether or not in the same undertaking) or fundamental changes in production or equipment (unless clearly caused by the needs of the market), or fundamentally new working methods (unless clearly the result of, or the means towards, technical progress). In all such cases the works council (not the joint consultation committee) must be asked for its consent, and, failing agreement between employer and works council, a mediation procedure may be set in motion before an impartial tri-partite body the chairman of which will, if necessary, be nominated by the President of the competent Court of Appeal. This body has no compulsory power; but if the employer resorts without adequate reason to measures at variance with an agreement arrived at with the works council or with a recommendation made by the tri-partite body, he must compensate any employee discharged as a result of these measures being put into effect.

Emphasis has been placed here on the difference between those provisions which operate at plant level and those which operate at the level of the undertaking because the latter do not apply to foreign companies, that is, according to the principles of the conflict of laws generally accepted in Continental countries, to such cor-

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porations as have their central management and control (siège social effectif, Verwaltungssitz) abroad. Those operating at plant level, apply to all plants within the territorial jurisdiction of the country from which the relevant legislation emanates, irrespective of the nationality or domicile of the company, for example, irrespective of whether the plant belongs to an American corporation or to its local subsidiary.

The separation of representative and consultative functions is known in the six countries, though the corresponding distinction between organs operating at plant and at enterprise level has nowhere been developed as fully as in Germany. In France there exist side by side the works councils (comités d’entreprises) and the employees’ representatives (délégués du personnel). The consultative function is exclusively reserved to the former, and the representative function is divided between them, so, however, that in any undertaking which comprises more than one plant with 50 employees, a separate plant committee (comité d’établissement) is set up which takes over the representative functions of the works council. None of these representative functions amount to a right of co-determination, except with regard to the discharge of members of the representative organs themselves (which requires the consent of the works council or, alternatively, of a factory inspector) and with regard to the administration of welfare arrangements.419 Except where collective agreements provide for more extensive powers, the functions of the French representative and consultative organs are otherwise purely advisory. The employer himself is a member of the works council (which is not the case in Germany). In undertakings which have the form of stock companies (sociétés anonymes) the works council is entitled to obtain the balance sheet, the profit and loss account, and the auditor’s report, and to employ, at the expense of the undertaking, the services of an independent accountant. The works council also sends two delegates to the administrative board of the stock company, but they have no right to vote. These provisions do not apply to foreign corporations.420

The situation in Belgium resembles that in France inasmuch as in Belgium, too, works councils (conseils d’entreprise) and em-

417 Durand, La Représentation des Travailleurs sur le plan de l’entreprise en droit français, in E.C.S.C. High Authority, op. cit. supra note 405, esp. at 211.
418 Id. at 218.
419 Id. at 236.
420 Id. at 212.
ployees' representatives (délégations syndicales du personnel) exist side by side. There is an important distinction, however, in that the basis of the latter is an agreement and is not statutory, and that, to a larger extent than in France, the functions even of the statutory works councils are determined by collective agreements (notably by the decisions of the bilateral committees) as well as by the statute itself.\textsuperscript{421}

The collective agreements (decisions of the bilateral committees) which created employees' representatives do not belong to those which have been given legal force by royal decree.\textsuperscript{422} The Belgian "employees' representatives" thus resemble British shop stewards in that they exist practer legem. The consultative function is reserved to the works councils which so far have been established only in undertakings with more than 150 employees,\textsuperscript{423} a figure which was substituted for the previous figure of 200 by a royal decree of October, 1958.\textsuperscript{424} The employer is a member of the works councils. Detailed information about the development of the undertaking must be furnished at regular intervals, and in undertakings carried on in corporate form this includes furnishing balance sheets, profit and loss accounts, auditors' reports and the like.\textsuperscript{425} There is no provision for employee representation in the organs of the stock company, as there is in Germany and in France. Clearly the consultative functions can be usefully exercised only at the enterprise level, and the name of the works councils (conseils d'entreprise) appears to indicate that they are intended to operate at that level. Nevertheless, there is in Belgium a certain amount of doubt on this point,\textsuperscript{426} which is understandable since the works councils combine with their consultative functions purely social tasks appropriate to the plant rather than to the undertaking, for example, those dealing with the fixing of annual vacations, the management of welfare institutions, agreement on works rules, and above all, the task of ensuring that safety and other protective social legislation is observed.\textsuperscript{427} On the other hand, it is the employees' representatives and not the employee members of the works councils who

\textsuperscript{422}Horion, supra note 421, at 174.
\textsuperscript{423}Id. at 149.
\textsuperscript{424}See Second Exposé para. 129.
\textsuperscript{425}Horion, supra note 421, at 158 et seq.
\textsuperscript{426}Id. at 150.
are the spokesmen of the employees in the event of grievances, but they must take care not to usurp the functions of the works councils.428

One would expect the employees' representatives to be elected at plant level, but the General Agreement of 1947 speaks in terms of undertakings. It should be emphasized, however, that this Agreement does not operate automatically, but by virtue of its incorporation in decisions of bilateral committees for particular industries.429 Incorporation on a large scale has, in fact, been effected and much detailed regulation is to be found in these individual decisions pursuant to which sub-committees can be formed for individual plants (as has happened, for example, in the coal mining industry).430

In Luxembourg the situation is very much simpler than in Belgium. Existing legislation does not provide for any consultation between management and labor representatives on purely economic or commercial matters. There are no "works councils" but only separate "workmen's delegations" (délégations ouvrières) and "salaried employees' delegations" (délégations d'employés), of which the employer is not, of course, a member. Their tasks431 are generally to defend the rights of the workers, to advise on works rules to be adopted by the employer and to see that they are applied, to transmit grievances to the employer, to try to settle difficulties, to participate in the management of welfare institutions, to promote the employment of disabled persons, to cooperate in the organization of apprenticeships for manual workers, and to assist in the prevention of accidents and occupational diseases. Although it is expressly said only with regard to salaried employees, it is clearly also a function of these delegations to transmit communications of employer to the workers. Unlike their German counterparts, the delegations have no right to intervene in the case of dismissals, but if an employer wishes to dismiss a manual worker without notice he must inform the delegation of his reasons, and notice must be given to them of any intended discharge of large numbers of workers, for example, by reason of contraction of business.432 All these are obviously functions which can be fully exercised only at plant level.

428 Horion, supra note 421, at 155, 183.
429 Id. at 174.
430 Id. at 177.
The law provides that where an undertaking consists of several plants, there will be a separate manual workers’ and a separate salaried employees’ delegation for each plant, but that (in forms which differ for manual workers and for salaried employees) there can be central committees for the entire undertaking as well. Manual workers can have separate representation for each workshop inside a plant provided it contains at least 50 workers, but this appears to be rarely applied. The entire legislation does not apply to undertakings with less than fifteen employees.

The Netherlands legislation on employee representation is of comparatively recent origin, and is still being gradually introduced. It is far less elaborate than that now in force in France and Belgium, to say nothing of Germany. According to the relevant law of 1950 each employer who employs at least 25 employees entitled to vote (that is, who are over 21 years old and have been employed in the undertaking for more than one year) must set up a council (onderneemings-raad). By the beginning of 1959 councils had, however, been established in only about one-fifth of the 5,000 undertakings to which the statute is applicable. It was expected that within the foreseeable future this would increase to one-fourth. In some industries (for example, textiles and banking) the figure is much higher, and in the metallurgical industries, although only 25 percent of the undertakings had councils by the middle of 1958, these employed 74 percent of all metallurgical workers. These councils are designed to further understanding between labor and management; their tasks are purely deliberative and advisory; and they have no power of co-determination (not even in purely social questions). Their functions are to transmit grievances to the employer, to consider matters such as vacation rosters, shift work schemes, and intervals (in so far as they have not been fixed by collective agreement), to see that the agreed conditions of employment are observed as well as the protective provisions of statutes, and to

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436 Molenaar, La Représentation des Travailleurs sur le plan de l'entreprise en droit Néerlandais, in E.C.S.C. HIGH AUTHORITY, op. cit. supra note 405, at 331.

437 FORTANIER & VERAART, ARBEITSRECHT 142 (1959).

438 Molenaar, supra note 436.

inspect safety installations, canteens and the like, and also to suggest technical and other improvements. Like the French works councils (comités d'entreprises) they have one function which is more than deliberative—to participate in the management of welfare arrangements. Moreover, the employer, who is a member and chairman of the council, is under a duty to furnish the necessary information, to keep the council informed about the commercial situation of the undertaking, and to consult it before issuing works rules. Although the relevant legislation is not explicit on the point, these councils are apparently on principle designed to operate at the level of the undertaking, but one provision seems to make it possible to create a special council for each plant. The councils are part of the general organization of the Dutch economy provided for by the legislation of 1950, under which undertakings are grouped both vertically and horizontally, and organized by law to further their mutual interests. Each “horizontal” group has a committee, consisting of equal numbers of employer and employee representatives, which supervises the establishment and operation of the works councils, the idea being that an employer should be induced to create these councils by persuasion and not by penal sanctions.

The structure and functions of the existing Italian system of employee representation, like those of the corresponding institutions in Germany, can only be understood against the background of the complex political and social history of the country. Although Article 46 of the Constitution of 1947 provides for legislation dealing with the cooperation of employer and employees in the management of enterprises, no such law has been enacted. Of the far-reaching attempts to achieve participation of workers in management which have from time to time played a dominant role in the political history of Italy in this century, only a few vestiges remain—such as the councils of management of the Olivetti works at Ivrea and elsewhere, and certain experimental agreements between the Confederation of Christian Trade Unions and a number of employers establishing mixed committees to consider the raising of productivity. Such general arrangements as exist serve mainly social and not economic purposes, that is, the enforcement of collective agreements and protective legislation, the ventilation and settlement of

440 Molenaar, supra note 436, at 326.
441 Id. at 322.
442 Mengoni, La Représentation des Travailleurs sur le plan de l'entreprise en droit Italien, in E.C.S.C. HIGH AUTHORITY, op. cit. supra note 405, at 268.
443 Id. at 270.
grievances, the formulation of works rules in cooperation with the employer, the regulation of vacation rosters, methods of wage payments, working hours and shift work, the management of welfare schemes, and, in certain very narrowly defined limits, the settlement of conflicts arising from dismissals and lay-offs. These are the matters with which the works committees (commissioni interne) are principally concerned. They are clearly subjects to be dealt with at the plant level, and so are technical or organizational improvements suggested by workers and their transmission to the employer. The relevant provision in the Collective Agreement of 1953 has to be interpreted as envisaging a committee for each plant, branch, or office which is "autonomous," that is, which has some independence as a technical and organizational unit. This Agreement (and its amendments) apply to industry only, and only to those undertakings which are members of the General Confederation of Industry—to which most larger and medium-sized enterprises in fact belong. Those which do not belong nevertheless observe the Agreement. A separate Agreement of October 23, 1950, applies to purely commercial undertakings. In industry, committees are provided for plants with more than 40 employees; for those with fewer than 40 and more than five there is an individual "delegate.

It must be clear to an American observer that the great importance of these representative institutions in the Six results partly from the fact that collective bargaining takes place at industry and not at plant level. This makes it necessary to have "on-the-spot" representative organs which can fit the provisions of the general collective agreement to the needs of the individual plants.

This relationship between collective bargaining and representation at plant level has important practical consequences. These committees and councils are legally not organs of the unions (with the possible exception of the Belgian employees' delegates). This legal independence from the unions exists even where, as in France, the unions have a limited power to demand their "recall." Whatever their legal position, however, workers' representatives are bound in fact often to be very closely connected with the unions.

The German statute expresses a principle which is inherent in

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444 Id. at 284.
445 Id. at 280.
446 Id. at 272.
447 Id. at 271.
448 Id. at 274.
449 Durand, supra note 417, at 215.
the legislation of all the six countries where it states that the employer and the works council are to collaborate "within the framework of the existing collective agreements and in cooperation with the trade unions and employers' associations represented in the plant." Collective agreements have priority over any agreements the works council may make with the employer. The law of "plant agreements" (Betriebsvereinbarungen) is particularly developed in Germany and very complicated. On some topics such agreements must, on others they may, be made, and an elaborate arbitration mechanism is provided in case of failure of agreement. But plant agreements must always be subordinate to collective agreements to which unions are a party, and in this connection it is useful to emphasize the difference between, on the one hand, an agreement between a works council (or other representative organ at plant level) and the employer, and on the other hand a collective agreement for a single plant (accord d'établissement). In Germany the distinction is relevant among other reasons because, in the event of disagreement between management and works council about the compulsory plant agreement (concerning the beginning and end of the working day, intervals, vacation rosters, apprenticeship, administration of welfare schemes confined to plant or enterprise, discipline, piece rates, time and place of wage payments, principles and new methods of wage payments) arbitration is compulsory, whereas arbitration between trade unions and employers and their associations is entirely voluntary. In Germany, as well as in Belgium, Italy, and the Netherlands, the representatives at enterprise or plant level have expressly been given the task of watching over the enforcement of collective agreements and of the provisions of protective legislation. Moreover, the works rules or règlement intérieur must either, as in Germany and in Belgium, be agreed to by the employer and the works council or other representation, or, as in France, Italy, Luxembourg, and the Netherlands, be issued after consultation between these parties.

All the representative bodies here referred to—with the excep-

\[451\] Id. paras. 50, 56, 57.
\[452\] Id. para. 56.
tion of the Belgian employees' representatives—are elected by the employees in the plant or enterprise, and in Germany and Italy, as also in Belgium in the larger undertakings, manual workers and salaried employees vote for separate lists. In France there is a separate list for certain supervisory and higher technical personnel. Clearly, whether the law says so or not, the competing lists of candidates are frequently those put up by rival trade unions, but the desire, for example, of the French trade unions, to exercise a right of "direct appointment" has not been realized.

Members of the representative bodies will frequently be the most active trade unionists in the enterprise. Hence the great importance of the provisions which, in order to protect them from being victimized by the employer, restrict his right to dismiss any of them except for misconduct or with the consent of the works council or of the workers' delegation itself, or of some outside body. In Germany the employer cannot dismiss any member of a works council except if he is entitled to dismiss the member without notice by reason of his misconduct or on any other ground which, according to the provisions of the Industrial Code, the Commercial Code, or the Civil Code enables the employer to discharge a worker without giving notice. Moreover, a member of a works council can be dismissed in the event of closure of a plant or of a division of a plant if it is impossible to transfer the works council member to another division. The employer may not take action in any form which hinders the members of the works council in the exercise of their functions or affects them to their advantage or to their detriment.

To some extent the purpose and effect of these provisions and of similar provisions in others of the Six are comparable to those of American statutes directed at certain kinds of unfair labor practices. In France the contract of employment of a works council member cannot be terminated by the employer without the consent of the council or, in the alternative, that of the labor inspector, and similarly no employees' representative can be discharged except under

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456 E.C.S.C. HIGH AUTHORITY, op. cit. supra note 405, at 104, 153, 274. Luxembourg is the only member of the Community to have not only separate lists but also separate "workmen's" and "salaried employees" delegations.
457 Durand, supra note 417, at 216.
459 See PART II, Section E infra.
those conditions. The protection in France against discrimination by the employer of members of councils, of employees' representatives, of candidates for one of these offices and of former office holders was strengthened by a recent Decree of January 7, 1959.462

Belgian law 463 is similar to German law, except that the employer cannot dismiss a member of, or candidate for office in, a works council in cases other than those justifying instantaneous dismissal, unless there are "economic or technical" grounds for the termination of the contract, recognized in advance as such by the bilateral committee. The employees' representatives are, in fact, also protected by the collective agreements.

In Luxembourg 464 no member of a workmen's delegation can be dismissed except for reasons justifying instantaneous dismissal or with the consent of the delegation itself. In Italy 465 the members of the "internal committees" are protected against discharge by a series of complicated provisions in the Collective Agreement of 1953. Normally the employer requires the consent of the relevant trade union, and if this is withheld, as frequently happens, the matter is settled by an arbitration tribunal which declares the discharge to be void if it is found to be due to the representative activities of the employee. In the Netherlands 466 such protection as exists would appear to depend on the autonomous rules which the works councils themselves have power to adopt.

In all the six countries countervailing obligations are imposed on the members of works councils and on employees' representatives. These duties are mainly of two kinds: they must not interfere with the powers of management to any larger extent than the law provides, and they are under strict duties of secrecy with regard to such technical or commercial information as they obtain in their official capacity.

This is only a bird's-eye view of workers' representation in the six countries, since the details of the law are complicated and could not be discussed. In order to understand fully the social significance

462 See Second Exposé, para. 53. The protection was, on the Belgian pattern, extended to candidates and former members.


of these institutions and also of collective bargaining it is necessary to glance at the settlement of conflicts in the six countries.

D. Settlement of Conflicts

One of the outstanding legal characteristics of labor relations on the Continent when compared with those in the United States is, as has been suggested, the importance of the role of legislation in creating rights and obligations of employers and employees. A similar observation can be made about the judicial function of the state and about litigation. Litigation in the courts between individual employers and employees on matters such as wages and the legality of dismissals is a common occurrence, and in many cases the courts determine the meaning of terms of collective agreements where such terms have been incorporated in individual contracts of employment. Litigation in the courts takes the place which, in broad areas of American industry, is occupied by grievance arbitration. Arbitration itself is very important in at least some Continental countries but, generally speaking, it is arbitration between unions and employers' associations concerning collective terms to be adopted for the future.

To appreciate the significance of litigation one should bear in mind a number of facts which are not obvious. In the first place, it is customary on the Continent to draw a sharp distinction between "collective conflicts" and "individual conflicts," a distinction which also exists, of course, in America and in Britain but is not nearly as important there as, say, in Germany or in France. The distinction is very clearly defined in a recent article by Professor Paul Durand of the University of Paris:

Fundamentally, the collective industrial dispute differs from the individual dispute in two respects. It presupposes in the first place the intervention of a group, which may be either a legally recognized group (such as a trade union) or simply a de facto group consisting of an unorganized majority of employees. But this first feature does not suffice of itself, for in that case the distinction between individual disputes and collective disputes would depend exclusively on the initiative of the group. A second condition is required: the existence of a collective interest. The dispute will be a collective one if it involves a question of

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407 In addition to the books listed in note 303 supra, see Grunebaum-Ballin & Petit, Les Conflits Collectifs du travail et leur règlement dans le monde contemporain, 9 Travaux et Recherches de l'Institut de Droit Comparé de l'Université de Paris (1954).
principle, the settlement of which affects the legal status of the different members of the group. It will also have this character if a common interest is at stake, e.g., freedom of opinion, trade union freedom, representation of the staff in the enterprise, or recourse to strike action, even though the settlement of the dispute may affect the legal status of only one employee. The dismissal of an employee on the ground of his membership of a trade union can give rise to a collective dispute, because the attack on the "right to organize" endangers a prerogative of workers as a whole.\footnote{Durand, *Conciliation and Mediation in Collective Industrial Disputes*, \textit{10 International Social Science Bulletin (UNESCO)} 545-46 (1958).}

The mere fact that in a case of allegedly unlawful or abusive dismissal, for example, the trade union takes up the cudgels on behalf of one of its members and that a union official negotiates with the employer and, if necessary, acts for the member in court, does not make the dispute a "collective conflict." The distinction is especially important in countries such as France, Belgium, and Luxembourg, where special courts deal with individual disputes, whereas collective disputes, in so far as they can go before any courts at all, are dealt with by the ordinary courts. Many of those cases which in the United States concern, for example, seniority issues in grievance arbitration proceedings would, by French or German lawyers, be characterized as individual disputes, although the employee may be represented by his union. The distinction is vital in view of the procedural differences which are involved.

The second point which one should bear in mind when considering the significance of litigation is that, by and large, it is very much simpler and cheaper than in America, and that people resort to the courts with little hesitation. This is true quite generally, but especially in labor matters in those countries among the Six—France, Germany, Belgium, and Luxembourg—in which special labor courts exist. These labor courts are tribunals provided by the state for the adjudication of conflicts between employers and employees in proceedings which are speedy and inexpensive and in which the tribunal makes special efforts to induce the parties to arrive at an amicable settlement. Such tribunals have existed on the Continent for over 150 years, having been first introduced by Napoleon. No attempt will be made to describe in any detail the composition and functioning of these labor courts. In France, Belgium, and Luxembourg they are called \textit{conseils des prud'hommes} and they are organized in France
pursuant to Book IV of the Labor Code,\textsuperscript{469} in Belgium pursuant to a law of 1926,\textsuperscript{470} and in Luxembourg to a Decree of 1938.\textsuperscript{471} In Western Germany they are called \textit{Arbeitsgerichte} and governed by a law of 1953\textsuperscript{472} which, like the legislation in France and Belgium, has taken the place of older statutes.

There are important differences between the various types of labor courts. Thus in Germany, but not in France or in Belgium, the whole country is covered by a network of these courts. In Germany each court when sitting consists of a chairman who is a lawyer and normally a judge\textsuperscript{473} and one employer and one employee representative taken from panels nominated by the organizations on both sides.\textsuperscript{474} In France and in Belgium the court consists of an equal number of employees and employers,\textsuperscript{475} and the chair is taken alternatively by a member of the employer and by a member of the employee group.\textsuperscript{476} They are elected—one of the few examples of elected judges in Europe.\textsuperscript{477} In Germany and in France they have jurisdiction over both manual workers and salaried employees, but, whereas in Germany jurisdiction extends to all contracts of employment irrespective of the amount of the salary, excluding completely that of the ordinary courts the \textit{conseils des prud'hommes} in France have exclusive jurisdiction only over contracts of employment of the less highly paid employees. In the case of employees at the higher levels, their jurisdiction is concurrent with that of ordinary courts.\textsuperscript{478}

The right of appeal is restricted in both countries to cases involving more than a minimum amount.\textsuperscript{479} In France the appeal is heard by

\textsuperscript{469} For discussions of the law, see: 2 \textsc{Durand} paras. 502-30; \textsc{Brun} \& \textsc{Galland}, \textit{Droit du Travail} pt. I, paras. 96-112, at 126-46 (1958).


\textsuperscript{471} Decree of Dec. 31, 1938, [1938] Pasin, Lux. 571.


\textsuperscript{474} \textit{Id.} paras. 20-23.

\textsuperscript{475} See notes 469 and 470 \textit{supra}. France: \textit{Code du Travail}, bk. IV, Art. 6. In Belgium there is also an "assesseur juridique" who votes in certain cases: Art. 26 of the law quoted in Note 470.

\textsuperscript{476} \textsc{Code du Travail}, bk. IV, art. 10.

\textsuperscript{477} \textsc{Code du Travail}, bk. IV, arts. 7, 22-35. This applies also to Belgium.


\textsuperscript{479} France: \textsc{Code du Travail} bk. IV, arts. 80 \textit{et seq}. (for details: \textsc{Brun} \& \textsc{Galland}, \textit{op. cit. supra} note 469, at 144 et seq.). Germany: Law on Labor Courts, Sept. 3, 1953,
the ordinary courts, but in Germany there is a Labor Court of Appeal and, in the last resort, a Federal Labor Court. The jurisdiction of the German labor courts is in some respects wider than that of the conseils des prud'hommes.

No such tribunals exist at the moment in Italy, although there are some special provisions to be applied by the ordinary courts when dealing with labor matters. Nor do they exist in the Netherlands, although a similar function is exercised by a Dutch administrative tribunal, the ontslagcommissie or "discharge committee" consisting of one employer, one employee, and two officials, which must decide whether the official consent required in the case of each discharge of an employee, otherwise than for urgent reasons or by agreement, should be given or withheld.

The frequency of litigation in most of the six countries is partly explained by the existence and accessibility in most of them of inexpensive and expert tribunals. The parallel between their social function and that of grievance arbitration in America is also suggested by the fact that in many cases the employee, who is normally the plaintiff, will be assisted or represented by an official of his union, while the employer's case will often be presented by an official of his employers' association. But the courts are, of course, open to the unorganized on both sides as well as to organization members.

One would expect the interpretation of collective agreements to be a principal activity of these labor courts, and this is true, especially in Germany. The terms of collective agreements become terms of the relevant contracts of employment and a dispute con-
cerning the meaning of any of these terms may arise between the individual employer and employee and thus come before the court. Disputes may, however, also arise between the parties to a collective agreement, that is, between a union and an employer or employers' association, or—in France—between an organization on either side and an organization member on the other. Such disputes are heard by ordinary courts in all Member States except Germany where the jurisdiction of the Labor Courts, sitting with two representative members of each side, extends to collective disputes on existing rights. 485

All that has been said so far refers exclusively to disputes about existing rights, including collective disputes concerning the interpretation of collective agreements or concerning, for example, such matters as an alleged breach of a collective agreement by a trade union in calling a strike or by an employers' association in failing to use all available means to induce its members to observe the terms of the agreement. As in the United States, but perhaps with even greater emphasis, a distinction is made everywhere on the Continent between disputes over existing rights (conflits d'ordre juridique, Rechts-Streitigkeiten) and disputes over future rights, that is, "conflicts of interest" (conflits d'ordre économique, Interessenstreitigkeiten). Examples of disputes over future rights are disputes about demands for wage increases or other matters concerned with the making of new, or the modification of existing, collective agreements. The need for keeping this distinction clearly in mind in attempting to understand the conciliation, fact-finding, and arbitration in the various European countries is especially great in view of the ambiguity of the word "arbitration." "Arbitration" covers both types of conflict, and, indeed is used indiscriminately in the United States to designate totally different proceedings—grievance "arbitration" on the one hand, and "voluntary arbitration and compulsory arbitration as procedures for the settlement of labor controversies arising in the course of collective negotiation" 486 on the other.

Although the distinction is made in all the six countries, it has a different practical significance in Germany, where labor courts deal with all conflicts of right even if they are of a collective character, 487 than it does elsewhere. In France, Belgium, and Luxem-

487 See note 485 supra.
purely interpretive conflicts, that is, disputes about the meaning of collective terms and their application which arise between the parties to the agreement, do not go to the courts at all, but in France suits for injunctions or claims for damages by reason of breaches of a collective contract (for example, in the event of a strike) go to the ordinary courts. In the Netherlands and also in Italy—although this is not absolutely clear in view of the uncertain state of the law—collective disputes as well as individual disputes of a legal character belong to the jurisdiction of the ordinary courts, there being neither a statutory system of arbitration nor a system of special labor courts.

The three methods of dispute settlement which have been developed in the United States and in Britain—conciliation, fact-finding (inquiry) and arbitration—are represented in the Six. Although they differ very much from country to country, certain tendencies are clearly discernible everywhere.

One is the preference for settlement machinery created by collective bargaining to that created by statute. In Italy there were at the time this was written no statutory conciliation or arbitration schemes, but, partly by ordinary collective agreements and partly by agreements between top organizations (accordi interconfederali), schemes for conciliation and arbitration of disputes have been developed by the two sides of industry themselves. In Germany there are provisions for arbitration, and to an extent also for conciliation, in the Control Council Law of 1946 which is still in force, and in a number of statutes of the individual states (Länder). More significant, however, is the Model Arbitration Agreement adopted by the top organizations in 1954 which has been incorporated in collective agreements in a number of industries. In

489 France: 3 Durand para. 216, at 608–10. In Belgium the question does not seem to have arisen (Horion, supra note 259, at 14) but if it arose, the ordinary courts would presumably have jurisdiction. This would also appear to be the case in Luxembourg. For Belgium, see 2 Geysen, Droit Social no. 1069, at 258 (1953).
490 Steinmann-Goldschmidt, Gewerkschaften und Fragen des kollektiven Arbeitsrechts 123 (1957); Levenbach, supra note 360, at 11–12.
491 See Aranguren, supra note 483.
492 Aranguren, supra note 483, at 245.
495 Printed in 7 Recht der Arbeit 383 (1954).
the metal industry, which is the most important of all, it has now, however, been terminated by the union as a result of a decision of the Federal Labor Court of October 1958 in which the Court interpreted the Agreement in a manner to which the unions took exception.

In the Netherlands the functions exercised elsewhere by conciliation and arbitration arrangements are to a large extent fulfilled by the Council of Mediators. The Council is, as already pointed out, a statutory institution, but it cooperates so closely with the organizations on both sides as they are combined in the Foundation of Labor that it is hard to say whether its social function (as distinguished from its legal structure) more nearly resembles that of an autonomous or a statutory institution. The Council has completely pushed the conciliation machinery established by a law of 1923 into the background, but arbitration based on collective agreements continues to be important.\textsuperscript{496}

In Belgium the effective machinery for the settlement of disputes is that of the bilateral committees. A law of 1948 has even entrusted to them the implementation of certain emergency measures. Older legislation on conciliation by government officials, passed in 1926 and amended in 1929 and 1932, has lost its importance, but the conciliation powers of labor inspectors and other similar officials, based on legislation of 1945, are still exercised.\textsuperscript{497}

In Luxembourg the existing compulsory conciliation and voluntary arbitration scheme is based on the Decree of 1945\textsuperscript{498} and is given effect by the National Conciliation Office. Inside the Office, however, settlement is handled by a bilateral committee so that despite the statutory framework, settlement is not by governmental organs but by cooperation of labor and management. Preference for autonomous as compared with governmental action in conflict settlement has, in sum, become a developing principle of "European" scope.

Nor is this statement invalidated by the structure of the French system, despite first appearances. The law of 1950\textsuperscript{499} provides for compulsory conciliation and voluntary arbitration, but this has been largely a failure. On the other hand it is generally agreed that con-


\textsuperscript{498} Decree of Oct. 6, 1945, [1945] Pasin. Lux 540.

\textsuperscript{499} Law of Feb. 11, 1950, arts. 5, 9, 10, [1950] J.O. 1688 (Fr.).
conciliation procedures based on collective bargaining were much more successful. This may, it is true, be partly due to the fact that the courts stigmatized strikes in violation of an agreed conciliation procedure as illegal but did not enforce statutory provisions concerning compulsory conciliation in the same way. Nonetheless it appears also to indicate the greater vitality of agreed procedures.\textsuperscript{500} Moreover, the great reform of French settlement procedure inaugurated in 1957\textsuperscript{501} with the introduction of proceedings modelled on American "fact-finding" machinery was the result of previous experience with similar arrangements under collective agreements.\textsuperscript{502}

Another important aspect of settlement procedures which seems to have developed in the countries of the Community is a general aversion to compulsory proceedings. Even where conciliation, fact-finding (inquiry) or arbitration is carried out by statutory organs, it is generally voluntary. With the minor exception of compulsory arbitration of certain disputes concerning "plant agreements" between employers and works councils in Germany and, much more conspicuously, of the powers of the Councils of Mediators in the Netherlands, the recommendations of conciliators, reports of investigators, and awards of industrial arbitrators in the Six have no compulsory effect except where they have been accepted by both sides either in advance or after the fact. In at least two of the Member Countries, in France and in Germany, compulsory arbitration was a decisive feature of labor law for several years between the Wars (to say nothing of Fascist Italy and its \textit{Magistratura di Lavoro}). It has been abandoned because of its adverse effect on collective bargaining.

On the other hand, in some countries, and especially France, proceedings are "compulsory"—at least according to the letter of the law—in the sense that the authority seeking a settlement may intervene on the application of either side without the consent of the other and the latter is under a legal duty to participate in the proceedings. In this sense conciliation has been compulsory in France since the decisive statute of 1950, as it is in Luxembourg. Because they lacked sanctions, these provisions of the French statute proved quite ineffective, and they have now been replaced by the very much more elaborate and effective provisions of the Law of July 1957. This law is of great practical importance and of special interest to

\textsuperscript{500}Brun & Galland, \textit{op. cit. supra} note 469, at 936-40.
\textsuperscript{502}Brun & Galland, \textit{op. cit. supra} note 469, at 943.
Americans because its model was the "fact-finding" provisions of American federal legislation.\textsuperscript{503} In its social function, if not its legal structure, it is perhaps the nearest European equivalent of the obligation to bargain in good faith with which American lawyers are familiar. Under the Law of July 1957 conciliation has remained compulsory, but this fact has quite a different significance under this new statute. All collective agreements must provide for the conciliation of disputes arising between the parties, whereas hitherto this was only required in those agreements which were to be "extended."\textsuperscript{504} Furthermore, within one month after a dispute has arisen, the matter must be taken before either an agreed conciliation committee, or in the absence of agreement before the competent regional, or before the national conciliation committee, consisting of an equal number (a maximum of three) of delegates from the "most representative" organizations on either side and up to three representatives of the public authorities under the chairmanship of the Minister of Labor or a Divisional Labor Inspector.\textsuperscript{505} The proceedings can be initiated \textit{ex officio} by the Minister of Labor, the prefect, or the directors of the Labor Inspection Service,\textsuperscript{506} but the authorities are somewhat reluctant to make use of this power. Normally, therefore, the proceedings will be set in motion by either side to the dispute, but regardless of how they originate, a party who has been summoned to appear before an agreed or statutory conciliation committee and fails to do so can be fined. This means that the party must appear in person and, if a corporate body, must be represented by someone in a managerial position who is empowered to negotiate and conclude an agreement.

This is a large measure of "compulsion," but under the new law of 1957, as under the old one of 1950, a strike or lockout in defiance of the compulsory conciliation provisions is not for that reason alone illegal. On the other hand, it is illegal if it violated a conciliation agreement, which may mean \textit{inter alia} that participation in the strike constitutes "serious misconduct" (\textit{faute lourde}) which under the relevant provision of the statute of 1950,\textsuperscript{507} enables the employer to terminate the contracts of employment with the strikers.

\textsuperscript{503}Durand, \textit{supra} note 468.
\textsuperscript{504}Id. at 552.
\textsuperscript{505}Id. at 562.
\textsuperscript{506}Id. at 579–81.
\textsuperscript{507}Law of Feb. 11, 1950, art. 4, [1950] J.O. 1688 (Fr.): "La grève ne rompt pas le contrat de travail, sauf faute lourde imputable au salarié. ("A strike does not terminate the contract of employment, in the absence of serious misconduct on the part of the employee.")
If the conciliation procedure is successful, the resulting "conciliation agreement" is the equivalent of a collective agreement. If it fails, "mediation," that is, "fact-finding" proceedings, can be set in motion either by the chairman of the conciliation committee before which the proceedings have taken place or by the Minister of Labor. They are not, however, available where the dispute is about existing rights. These fact-finding proceedings on the American model constitute the great innovation of 1957 in French law and may provide a pattern for similar legislation elsewhere in Europe. The difference between the powers of the mediator, who is appointed from a panel of names maintained by the Ministry of Labor, and those of a conciliator is that the mediator, in addition to making a further attempt at conciliation, formulates a recommendation based on a systematic analysis of the facts. This recommendation is not only submitted to the parties but published, the idea being to mobilize public opinion in favor of a settlement of the dispute. According to the most competent French authors, the British experience in dispute settlement has been repeated in France—the sanction of public opinion proving far more effective in settling conflicts than compulsory arbitration and the threat of legal penalties or damages. In fact, one gains the impression that arbitration plays a very minor role in France. The French law of 1957 is much the most interesting recent development within the countries of the Community in the general field of the law governing dispute settlement.

The German statutory arbitration schemes of the Control Council Law of 1946 and of the still surviving Länder legislation, are, as has been pointed out, less important than those based on the Top-Organization Agreement of 1954 and its Model Arbitration Code. The significance of what was said above about the "contractual" function of collective agreements and the so-called "peace obligation" here becomes apparent. Once an obligation to refrain, until the termination of the agreed arbitration proceedings, from "hostile action" (Kampfmassnahmen) has been written into a collective agreement, both sides are under stringent and legally enforceable obligations. Judgments awarding possibly heavy damages and the

508 Id. art. 16.
509 Durand, supra note 468, at 578, emphasizes the contrast in this respect between art. 15 of the French Law of 1957 and the American attitude which does not exclude from "fact-finding" proceedings questions "turning on the interpretation or violation of a legal provision."
510 Durand, supra note 468, at 584-86.
511 Id. at 594; BRUN & GALLAND, op. cit, supra note 469, at 947-48.
equivalent of injunctions threaten an employers' organization, an individual employer, or a union refusing to participate in arbitration proceedings, or one who initiates or (as the Federal Labor Court has now held) even prepares a lockout or strike. How long this very serious restriction of the freedom to strike will be tolerated by the German trade unions is difficult to guess. The contrast between the strength of the legal sanctions in Germany and the French tendency under the new law of 1957 to rely chiefly on the influence of public opinion is clear, but it should not be overlooked that the German sanctions operate only where arbitration is based on a collective agreement. Another feature which distinguishes the German from the French (and also from the Luxembourg) system of promoting industrial peace is the absence in Germany of a clear distinction between the functions of conciliation and arbitration—arbitration agencies are expected to perform the function of conciliators as well.

This merger of conciliation and arbitration functions is also characteristic of Belgium, the bilateral committees exercising both functions. Labor inspectors, on the other hand, act only as conciliators and, if their efforts fail, they submit the case to the competent bilateral committee, which may and often does act in such cases through a conciliation sub-committee. Like the French "mediation" of conflicts this Belgian procedure cannot be used to settle disputes concerning existing rights. The parties may, of course, agree to accept the recommendation of the sub-committee. If they do not, the settlement recommendation may be incorporated in minutes which are deposited at the Ministry of Labor. The Belgian procedure is singularly free from elements of compulsion and, unlike that in France, does not even compel the parties to participate in the proceedings. Belgian industry is, however, strongly organized on both sides and the autonomous forces of industry presumably exercise a strong pressure in favor of settlements. In a decree of March 1946 the Belgian legislator made a highly original and interesting contribution to these efforts. This decree provides that, if an employer does not avail himself of the existing arrangements for

515 See STEINMANN-GOLDSCHMIDT, op. cit. supra note 490, at 104.
516 Sceuws & Fournier, supra note 487, at 49; STEINMANN-GOLDSCHMIDT, op. cit. supra note 490, at 105.
a settlement, the strikers can be treated as involuntarily unemployed for the purposes of unemployment insurance which in effect means that a recalcitrant employer is threatened with a government-financed strike. By the same token workers can be deprived of unemployment benefit for six months if settlement fails through their fault or through that of the union of which they are members.

In the Netherlands the functions of conciliation and, in so far as this term can be used at all, of arbitration are mainly concentrated in the Council of Mediators to which frequent reference has already been made.

In Italy, in addition to conciliation effected pursuant to collective agreements and to agreements between top organizations, conciliation functions are exercised informally—but apparently on a large scale—by the Ministry of Labor and its offices in the provinces, the labor administration having been re-constituted after the war by a decree of 1948. Like so much else which has been said about Italy, this situation may sooner or later be changed by legislation.517

E. Protection of Employees in the Event of Dismissal

No American lawyer familiar with seniority arrangements in the United States needs any special reminder of the profound importance of security of tenure in contemporary industry. This idea has taken deep roots all over Europe. The job is the basis of the worker's livelihood, and the law cannot allow him to be deprived of it unfairly and without just compensation any more than it can tolerate the arbitrary expropriation of the property of a farmer or of a businessman. The least that can be done for the worker is to ensure that he is given due notice, just as it should be incumbent on him to give due notice to the employer before quitting his job.

Generally speaking the idea of the arbitrary right to "hire and fire" has, all over Europe, given way to what the French call the principle of "stability of employment" or job security. The subject has recently been analyzed, and the legislations of the Six have been compared, in a volume published by the High Authority of the Coal-Steel Community518 to which the present writer is much indebted and to which reference is made for further details.

517 STEINMANN-GOLDSCHMIDT, op. cit. supra note 490, at 141.
I. PERIODS OF NOTICE

In Belgium, Germany, and the Netherlands, and, with regard to salaried employees, in Italy and in Luxembourg, periods of notice are fixed by statute. In France (one recently introduced exception apart), and, with regard to manual workers, in Italy and Luxembourg, they are fixed by collective agreement, and failing this, by usage. There is no general doctrine as there is in English law to the effect that “reasonable” notice must be given, nor have the courts a power to fix the time of notice, except in Belgium with regard to the most highly paid salaried employees and in the absence of a contract.519

According to German law 520 the period of notice is two weeks for industrial manual workers, but this may be extended or shortened by agreement, including a collective agreement, provided that the periods to be observed by the employer and by the worker are identical. For clerical 521 as well as technical 522 salaried employees the period of notice is six weeks, and notice can only be given so as to terminate the contract at the end of a quarter, that is, on March 31, June 30, and so forth. This, too, can be altered by contract, provided that the period of notice is not less than one month and that the contract can by its terms only be terminated at the end of a month, for example, on January 31, February 28, or March 31. Special provisions relate to apprentices, 523 and particular industries 524 and where neither the provisions of the Industrial Code nor those of the Commercial Code apply (for example, in the professions), the general provisions of the Civil Code supply a subsidiary rule. 525 Special provisions also apply to the most highly paid employees. 526 Salaried employees are in all undertakings employing more than two people (not including apprentices) entitled to at least three months’ notice terminating the contract at the end of a quarter, if they have been employed in the enterprise for at least five years 527 (but only years after the employee’s 25th birthday are taken into account). After eight years’ employment the period of

520 G E W E R B E O R D N U N G [hereinafter cited as G E W O ] para. 122 (Ger.).
521 H A N D E L G E S E T Z B U C H [hereinafter cited as H G B ] para. 67 (Ger.).
522 G E W O para. 133a.
523 E.g., G E W O para. 127b.
525 G B B paras. 620–25.
526 E.g., G E W O para. 133ab; H G B para. 68.
527 Law on the Period of Notice for Salaried Employees, July 9, 1926, [1926] Reichsgesetzblatt I, 399 (Ger.).
notice is four months; after 10 years, five; and after 12 years, six months. These seniority provisions do not, however, affect the period of notice to which the employer is entitled.

In Belgium as in Germany the periods of notice for salaried employees differ from those for manual workers. Manual workers are entitled to two weeks' and must give one week's notice, the period to begin running on the Monday after the day the notice is given, but these periods are doubled for those who have been employed in the enterprise without interruption for 10 years, and quadrupled for those who have been employed for 20 years. Individual contracts can only reduce the period to be observed by the worker or extend that to be observed by the employer, except in the case of workers employed for less than six months, in which case special provisions apply. Special provisions also apply in the building industry. If orders for his product are lacking the employer may introduce a shortened working week after giving seven days' notice, but there are special rules for certain branches of the textile industry. Salaried employees who earn less than 120,000 francs a year must be given three months' notice which begins to run from the beginning of the month following that in which the notice is given. The period increases by three months for each five-year period commenced, but not necessarily completed, by the employee after the first five years in the same enterprise. These periods cannot be reduced by contract, but the notice to be given to employees earning more than 120,000 francs a year is fixed by contract, and in default of a contract, by the court. The court cannot, however, fix a shorter period of notice than that to be given to the less highly paid employees. Contracts of employment for a fixed period of less than three months concluded with the intent of evading the statutes concerning notice are by the courts considered as contracts for an indefinite period. In Belgium, as elsewhere in Europe, "chain contracts" for fixed periods designed to evade periods of notice are frowned upon by the courts. The employee's required period of notice to the employer is half that of the employer, but this can, within limits, be changed by contract. Special provisions protect the employee under notice who has found another job.

In the Netherlands\(^{530}\) the period of notice is in principle identical with the pay period, for example, one week for workers paid weekly, one month for employees paid by the month. This rule applies both to notices given by the employer and by the employee, subject to a contractual agreement derogating from it. Such an agreement must be in writing, may not enable the employer to discharge the employee on shorter notice than that required of the employee, and may not be longer than six months. These periods of notice are extended in the case of all employees who, after having reached full age, have served the same enterprise for a full year. For them the period of notice to be given by the employer is at least one week for each year of service up to a maximum of 13 weeks, and that to be given by the worker at least one week for each two years of service up to a maximum of six weeks. This can only be abrogated by collective agreement and within certain defined limits.

In Luxembourg\(^{531}\) salaried employees can only be dismissed by notice in writing, the period of notice beginning to run at the middle or the end of a calendar month. The period may not be less than two months for employees who have been in the employer's service less than five years, four months for those in service for five or more but less than ten years, and six months for those who have been in the service of the same employer for ten or more years. Periods of notice required of the employee are one half of these. There are no statutory provisions for manual workers, notice depending on usage and in practice mainly on collective agreements which normally provide for up to two weeks' notice irrespective of duration of service.

Until very recently no periods of notice were fixed by statute in France. The Labor Code\(^{532}\) merely says that these periods have to be in accordance with usage or collective agreements, by which usage can be abrogated, and that any term of a contract of employment or works rule (règlement intérieur) purporting to reduce the period of notice as established by usage or collective agreement is void. Under a statute of 1958\(^{533}\) any manual, clerical or other employee who has served the same employer for at least six months without


\(^{531}\) See Kayser, in E.C.S.C. High Authority, \emph{op. cit. supra} note 518, at 287.

\(^{532}\) CODE DU TRAVAIL bk. I, tit. II, art. 23.

interruption is entitled to at least one month's notice, but the notice he has to give is not affected by the statute. In practice notice periods are invariably extended and not curtailed by collective agreements, which may take into account the place of the employee in the hierarchy of the undertaking and his seniority. This is true even in industries such as the building industry where workers were entitled to no notice at all according to usage. Contractual agreements purporting to fix periods of notice which are too long may be void as an infringement of freedom of work.\(^{534}\) Under the statute of 1958 the employer must give notice by registered letter and must obtain a receipt.\(^{535}\)

The Italian Civil Code refers to usage and collective agreements with regard to the notice to be given to manual workers,\(^ {536}\) but salaried employees are entitled to statutory periods of notice which apply in the absence of usage or collective agreements more favorable to the employee. These statutory periods range from 15 days to four months in accordance with seniority.

In the event of a violation by the employer of statutory provisions concerning notice some laws provide that the contract continues and wages are due to the end of the period of notice; others that the contract is terminated by the notice but that the employer is liable to pay damages for breach of contract.\(^ {537}\)

2. GROUNDS FOR INSTANTANEOUS DISMISSAL

In all the six countries the employer has a right of instantaneous dismissal, irrespective of any provisions or rules on notice, or special protective provisions normally safeguarding the employee, if a situation has arisen in which he cannot be expected to keep the employee in his employment. Similarly, a right to quit instantaneously is given to the employee where he cannot be expected to remain longer. This basic idea is shared by the six legal systems, but there are great variations in detail.

In France\(^ {538}\) there are no general statutory provisions, but the courts permit the employer to dismiss the employee on the spot if

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\(^{534}\) Durand, supra note 533, at 210–11.

\(^{535}\) Id. at 227.

\(^{536}\) CODICE CIVILE art. 2118 (Italy); Mengoni, in E.C.S.C. HIGH AUTHORITY, op. cit. supra note 518, at 242.

\(^{537}\) This matter is highly complex and cannot be discussed here. Reference is made to Boldt, supra note 524, at 43 et seq. and to the discussions of the various legal systems in that volume.

he has been guilty of a \textit{faute grave}, that is, a breach of duty such as breach of discipline, absenteeism, unauthorized work for another firm, and the like, the seriousness of the offense always being weighed against other factors such as seniority. Participation in a strike as such is no cause for dismissal and leaves the contract suspended but intact. In the case of some employees, for example, war pensioners, the employer must according to statute be able to prove very serious misconduct (\textit{une faute très grave}). Special principles apply to contracts on approval.

In Germany\footnote{389 GEWO paras. 123, 124, 124a, 133b–133d; HGB paras. 70–72; BGB para. 626; Boldt, \textit{supra} note 524, at 75–77.} instantaneous dismissal is regulated by statute. Manual workers who have a right to a term of notice of two weeks or less—the normal case—can be dismissed on the spot only for certain specific reasons enumerated in the statute such as theft, attacking or insulting the employer or his representative, or “persistent refusal to fulfil their obligations” (\textit{beharrliche Arbeits-Verweigerung}). Persistent refusal to fulfil obligations may include participation in a strike. The worker may quit without notice for certain specific reasons, such as assaults and insults, non-payment of wages, and the like. Other employees, including commercial and salaried technical employees, can be discharged and can quit “for important reasons,” a phrase which recurs in German legislation. It is interpreted as envisaging facts, whether or not caused by the fault of either side, so grave as to make it impossible to expect either side to continue the relationship. This does not include every breach of contract, but only serious breaches, and it certainly does not include a lack of orders for the product or a need for reducing personnel. The courts are very exacting in their interpretation of this phrase.

In Belgium manual workers can be dismissed and can quit instantaneously for serious reasons\footnote{340 Law of Mar. 10, 1900, arts. 16, 20, 21, [1900] Recueil des Lois et Arrêtés Royaux de Belgique 76, as amended by the Law of Mar. 4, 1954, [1954] Moniteur Belge 1770; Law of Aug. 7, 1922, arts. 18, 20, 21, [1922] Recueil des Lois et Arrêtés Royaux de Belgique 864, as amended by the Law of Mar. 11, 1954, [1954] Moniteur Belge 2078; Horion, \textit{supra} note 519, at 120–22, 135–36.} (\textit{juste motif}), which in practice are much the same as the “important reasons” of German law. Belgian statutes list certain situations to exemplify what such serious reasons are. Much the same applies to salaried employees, except that in the case of an instantaneous dismissal the employer must, within three days, let the employee know by registered letter the precise facts on which the dismissal is based. The law is similar in
Luxembourg, except that the dismissal or the termination of the contract by a manual or clerical worker must be based on a grave default by the other party to the employment contract. In the Netherlands either side can terminate the contract for “urgent reasons” and can obtain a judgment for the termination of the contract for “important reasons.” “Urgent reasons” in the Netherlands means much the same as faute grave in France, or “important reasons” in Germany. A strike does not automatically terminate the contract, but is generally an “urgent reason” for the employer to discharge the strikers. In Italy either side can terminate a contract made for an indefinite time, if the other side has committed a grave breach of contract.

3. SOCIALLY UNJUSTIFIED DISMISSALS

The principle of “job security” requires that an employee should be either indemnified or reinstated if the employer abused his right of discharge and acted in a way which is socially unjustified. This principle has been given effect, especially in French, German, and Dutch legislation, and it is not completely absent, though much attenuated, in the laws of Italy, Belgium, and Luxembourg. In all these situations it is assumed that the employer has given the requisite notice. If he has not, he will in France, and may in Germany, be liable to pay a double indemnity: for the period of notice and for abuse of right. Except in the Netherlands, the principles here under discussion do not apply where the employee terminates the contract.

In France the employer must compensate but need not reinstate, the employee if the discharge constitutes an abusive dismissal (rupture abusive). In the course of the many years since this principle was first introduced, the courts have gradually enlarged its scope until it now means that the employer must compensate the employee if he has dismissed him in circumstances in which a reasonable employer would not have done so. According to the case law, however, the employee bears the burden of proof.

541 Kayser, supra note 531, at 289, 294.
542 Fortanier & Veraart, op. cit. supra note 437, at 56-57.
543 Molenaar, supra note 530, at 302.
544 Codice Civile art. 2119 (Italy); Mengoni, supra note 536, at 243-44.
545 Durand, supra note 533, at 224.
547 Molenaar, supra note 530, at 308.
French law has adopted this means of attempting to do what the United States tries to achieve by counteracting "unfair labor practices" on the one hand, and by giving effect to seniority principles on the other. Some of the cases in which the employer has had to pay indemnity were, for example, plainly cases of discrimination; others were cases of personal hardship of the employee. Apart from the protection by statute of more senior employees against abusive dismissal, there are also special arrangements under collective agreements to protect older employees.

The German principle 549 of Kündigungs-Schutz or protection against "socially unjustified dismissals" goes much further. It enables all except managerial employees, who are more than 20 years old and have had more than six months' uninterrupted employment in a plant normally employing more than five employees, to ask the labor court within three weeks of their discharge to declare the discharge socially unjustified and therefore invalid. It is socially unjustified if it is not required by reasons connected with the person or conduct of the employee or by urgent needs of the enterprise. All this the employer has to prove, but even if he establishes the urgent needs of the enterprise, it is open to the employee to prove that, in selecting the employees to be discharged, the employer took insufficient account of social factors, for example, of seniority. The employer may then show that the discharge of a particular employee was technically or economically necessary. If the labor court finds that the complaint is justified, it declares that the contract was not terminated by the discharge. Except in certain cases, it must at the same time at the request of either side (which is frequently made) terminate the contract of employment as of a date it considers appropriate and fix the compensation (up to one year's wages) which the employer must pay to the employee.

Before invoking the jurisdiction of the labor court, the employee may put the matter before the works council. If the council thinks the complaint is justified, it should attempt a settlement with the employer. Moreover, the works council must be consulted before each discharge 550 and, although a violation of this obligation does not render the discharge void, it will probably make it socially unjustifiable in the eyes of the labor court. Whether the powers of the

works council can be enlarged by collective agreement is a moot point much debated by German lawyers.551

In the Netherlands protection against manifestly unreasonable termination of the contract by either employer or employee was introduced in 1954.552 A discharge is manifestly unreasonable if no reason is given, the stated reason for it is a pretext, or the reasons for it are false, or if, in view of the difficulties of finding another job, the hardship inflicted upon the employee by the termination of the contract outweighs the employer's interest in terminating it, or if the employee is discharged for complying with his military obligations, or if, except for serious reasons, the employer in discharging the employee has contravened a regulation or usage concerning seniority. The termination of the contract by the employee is manifestly unreasonable if he has no reasons or his reasons are a pretext or false, or if the consequences of the employee's quitting the job are so serious from the employer's point of view as to outweigh the employee's interest in giving up his job. The judge fixes the compensation payable by the party whose action is manifestly unreasonable, but he may also order him to resume the employment relationship. The Netherlands is one of the few countries where what corresponds to the penalties for contempt of court by reason of non-compliance with a decree of specific performance can be used to enforce a contract of employment. The importance of this legislation of 1954 is, however, overshadowed by the need for obtaining the consent of the Regional Employment Exchange prior to the termination of a contract of employment.

No legislation corresponding to that concerning abusive dismissal in France, or socially unjustified dismissal in Germany, or manifestly unreasonable termination of the contract in the Netherlands exists in the three other countries of the Community. In Belgium553 an employer who gives the proper notice is liable to indemnify the employee only if there is a real "abuse of right," for example, if he has been dismissed for demanding payments due to him or if an innocent employee has been accused of theft. The works councils have nothing to do with individual dismissals but must cooperate in

551 See DIETZ, BETRIEBSVERFASSUNGSGESETZ, MIT WAHLORDNUNG n. 12 to para. 66, at 512 (2nd ed. 1955); Boldt, supra note 524, at 78.
552 This was introduced by the Law on Discharge, Dec. 17, 1953, [1953] Stb. No. 619, which amended the Law on Contracts of Employment, July 13, 1907, [1907] Stb. No. 193 (Neth.). See Molenaar, supra note 530, at 308-10; FORTANIER & VERAART, op. cit. supra note 437, at 60-61.
553 Horion, supra note 519, at 118, 166.
defining general rules to govern engagements and dismissals in the plant. In Luxembourg \(^{554}\) collective agreements prohibit dismissals by reason of union membership or activities, and special indemnities are payable under statute to salaried employees dismissed after long service. They amount to two months' salary after 15 years, four months after 20 years, and six months after 25 years. In the event of a discharge without notice the works councils must be informed of the grounds of dismissal.

In Italy \(^{555}\) there are some rare cases in which, according to the general principles of the law of contract, the dismissal may be void by reason of illegality or immorality, but this is of little practical importance. Apart from some special statutory provisions for certain branches of the economy, what is of interest is the restriction which the law imposes on the power of the employer to dismiss an employee during sickness, or a female employee during pregnancy and during the first few weeks after confinement. During a lawful strike the strikers, whose contracts of employment are suspended, may not be discharged.\(^{556}\) More important even than this are a number of statutory provisions imposing upon the employer an obligation to pay "seniority compensation," except in the event of a serious breach of contract by the employee or in cases in which he voluntarily quits his job.\(^{557}\) Of principal interest and importance, however, are the three "inter-industrial" collective agreements of October 1950 and May 1953 of which the one in force since October 18, 1950, is here relevant.\(^{558}\) According to this agreement any employee who has been discharged can lodge a protest with his union, and if the union does not arrive at a settlement with the employer, the matter is sent to arbitration. If the arbitration board judges the employee's complaint to be justified, it can impose on the employer an obligation either to re-engage the worker or to pay an indemnity. This applies only in undertakings with more than 35 workers. The "works committees" which used to play an important role in discharge procedures under previous collective agreements are no longer concerned with them.

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555 Mengoni, supra note 536, at 236–38.
556 Id. at 245–51.
557 Id. at 253–55.
558 Aranguren, supra note 483, at 245–72; Mengoni, supra note 536, at 274–76.
4. DISMISSALS SUBJECT TO CONSENT

In a number of important situations the employer must have the consent or authorization of some authority, whatever his motive for discharging the employee. He is often spared the necessity of obtaining such consent or authorization, however, if the employee was guilty of a serious breach of discipline or the employer for some other reason would have been entitled to dismiss the employee on the spot.

In the Netherlands neither the employer nor the employee can terminate the contract of employment without the authorization of the Director of the Regional Employment Office. This does not apply where the contract of employment is terminated not by unilateral notice but by mutual consent or where either side has an “urgent reason” for putting an immediate end to the contract. The need for authorization by the Director of the Regional Employment Office arises from one of the provisions of the Extraordinary Decree on Labor Relations of 1945 designed to counteract inflationary tendencies by regulating the labor market. If either side purports to terminate the contract by notice without having obtained this authorization, he commits an offense and is liable to imprisonment up to six months or to a fine up to 10,000 florins. Moreover, the contract continues, the employer is liable to pay wages and the employee to work, and these obligations can be enforced by court order. Here, then, the validity of the termination of the contract depends on the decision of an administrative authority. In fact, however, the procedure is more “judicial” than at first appears. The Regional Employment Office consults the organizations on both sides and the Labor Inspector. In the more important cases the matter is submitted to a “discharge committee” which hears the parties and tries to bring about an understanding—successfully, it is said, in about 40 percent of the cases. If unsuccessful, the discharge committee sends a recommendation to the Employment Office on which the latter acts. This recommendation is, so we are told, usually made unanimously.

The authorities, including the “discharge committees,” apply published directives issued by the Labor Department. The policies it pursues are intended to ensure a distribution of labor designed to

559 Molenaar, supra note 530, at 300; Fortanier & Verlaart, op. cit. supra note 437, at 58-59.
guarantee the maximum of production and to promote peaceful labor relations. Moreover, the "discharge committees," which deal with some 50,000 cases a year, consider the interests of both sides, including matters such as seniority, the employee's age, and whether it is more or less hopeful to attempt to restore the relationship between the parties. Hence the matters taken into account in this procedure coincide to some extent with those to be taken into account by a court when asked to decide whether the termination of the contract is "manifestly unreasonable." This parallelism of judicial and administrative procedures is criticized by Dutch writers. 561

A French Order of 1945, also requires the employer to obtain the consent of the employment office 562 to hiring and discharges in industrial and commercial undertakings. Except in industry and commerce no consent is required, but in some cases the employment office must be notified. In industry and commerce such consent is required even where the discharge, or termination of the contract by the employee, is based on faute grave of the other party. In such cases, however, the office must make its decision in three days, whereas normally it has a week to do so. If no answer is given within the required period, consent is deemed to have been given. If consent is refused, reasons must be given, and against the decision there lies an appeal to a higher administrative authority (Directeur Départemental du Travail) who hears a consultative committee in which both sides of industry are represented. An infringement of the provisions of this legislation is a criminal offense, but in radical contrast to the Netherlands, infringement in France has no effect on the validity of the contract or of its termination by notice. Another difference from the Dutch law consists in the exclusively economic (labor market) nature of the policies to be taken into account by the authorities who are not concerned with the social situation at all. Nevertheless, the employer commits an offense if he discharges an employee without the necessary authorization, whether he does so for economic reasons, for example, because he must reduce his personnel—or for other reasons, for example, because of a breach of discipline on the part of the employee. These rules have been developed by the somewhat complicated case law of the highest French courts.

No legislation of this kind exists in the other four countries, except in the case of lay-offs of large numbers of employees. In all

561 Molenaar, supra note 530, at 311.
562 Durand 187-98; E.C.S.C. High Authority, op. cit. supra note 518, at 212-14; Brun & Galland, op. cit. supra note 469, at 595-600.
countries the employer must notify the employment office of each case of a discharge or other vacancy, and in Belgium this includes a notification of the grounds on which the employee was dismissed. The office may make inquiries, and by negotiating with the employer sometimes produces a settlement where discharge was unjustified.

In Germany, Italy, France, and Luxembourg special provisions regulate “mass dismissals”; these provisions are partly contained in statutes and partly in collective agreements. No such legislation exists in Belgium or in the Netherlands. In the Dutch Extraordinary Decree of 1945 there is, however, a provision which prohibits the employer from reducing working hours to less than 48 per week, except in certain situations defined in the Decree. If he reduces the hours below 48, he nevertheless remains liable to pay the wages due for 48 hours of work.

The most elaborate provisions protecting the labor market against the consequences of sudden mass dismissals have been enacted in Germany. With exceptions they apply to each plant employing more than 20 employees and are directed at discharges of five or more in plants with less than 50 employees, of 10 percent or more than 25 employees in plants with at least 50 but fewer than 500 employees, and of at least 50 employees in larger plants, not counting managerial staff and not counting instantaneous dismissals which are not affected by this legislation. The employer must first notify the works council and consult with it on ways of avoiding hardship. Next, he must notify the labor exchange in writing, and submit a statement of the views expressed by the works council. The contracts of employment terminate no earlier than one month after this notification, unless the Regional Labor Office decides otherwise. On the other hand, the Regional Labor Office may extend the period as much as another month, and may also permit the employer to shorten working hours during the period. The decisions of the Regional Labor Office are made by a committee on which both sides of industry are represented and which is presided over by the president of the Regional Labor Office or his deputy. The purpose of these provisions is to “stagger” mass dismissals; the purpose of other provisions seeking to ensure that the works’ council is consulted and that no measures of this kind are taken without its con-

606 Boldt, supra note 524, at 39-40.
604 Horion, supra note 519, at 166; Molenaar, supra note 530, at 306.
sent is social rather than economic—that is, to protect the individual and not the labor market. The ultimate sanction for violation of the latter provisions may be the imposition on the employer of a duty to compensate employees who lose their jobs.

In Italy corresponding measures have been introduced by collective bargaining rather than legislation. A statutory provision was, however, enacted in 1949 which provides that the employer may engage labor only through the employment exchange and that a discharged employee has, for a year after his discharge, a prior right to be considered for re-engagement by his former employer. The inter-industrial collective agreement of April 21, 1950 (in force since October of that year) provides that an employer who wishes to reduce the number of his employees because of a contraction of business or because of a change in production methods must notify the regional organizations (union and employers’ associations) and the discharges are suspended for the two weeks following this notification. Within these two weeks negotiations take place to regulate the order of discharges, taking into account the economic interests of the enterprise on the one hand and such matters as seniority and family status of the employees on the other. If no settlement is arrived at, the employer may nevertheless, in accordance with the provisions of the agreement mentioned above, be liable to pay indemnities to the individual employees if he ignores the social considerations which it is incumbent upon him to observe. The essential features of the procedure applicable to mass dismissals are the need for notification and the postponement of their effectiveness. Special rules apply to small undertakings. If an employer starts to re-engage labor after a mass dismissal, he is bound by the rule: “last out—first in.”

In France the order of discharges in the event of mass dismissals is determined by collective agreement (and an agreement capable of “extension” must contain such provisions) or by a works rule (règlement intérieur) which, in the absence of a relevant collective agreement, must be issued by the employer, and must take account of seniority and family status. In practice much has been done to regulate these matters by collective bargaining, including agreements which provide for compensation.

566 Mengoni, supra note 536, at 278–79.
567 Id. at 251–52.
568 Code du Travail bk. I, tit. II, art. 31(g) (3).
569 Ordinance of May 24, 1945, art. 10, [1945] J.O. 2970 (Fr.).
570 Durand, supra note 533, at 217.
In Luxembourg the employer must notify the National Labor Office if he wishes to discharge more than 10 employees at a time and the discharges do not take effect until the end of the fourth week after this notification, a period which can be reduced, or extended up to six weeks by the Minister of Labor. Those discharged have a prior right to be re-hired—that is, a right to damages if they are not re-hired in preference to hiring others. The employer must, under statute, notify the workmen’s delegations, and, under collective agreements, the organizations on both sides, in the event of intended mass dismissals.

Certain categories of employees enjoy special protection in all the six countries. Most important among these are the members, and candidates for membership, of works councils and similar bodies, as has been indicated. Other provisions protect disabled persons, women during pregnancy or during the first few weeks after a confinement, sick employees and the like. 573

APPENDIX

SOCIAL SECURITY BENEFITS: A SKELETON SURVEY

A. BELGIUM

I. UNEMPLOYMENT INSURANCE

Comprises all employees. Contribution conditions (minima of contribution periods) must be fulfilled. Duration (exceptions apart) unlimited. Rate varies with age, sex, family status, the occupation of the wife, and the classification of the place of residence from the point of view of the cost of living. Special payments in case of short time work and of short time interruption of work. Financing: Contribution of 2 percent of wages and (up to 60,000 francs per year)
LABOR LAW AND SOCIAL SECURITY


2. SICKNESS, DISABILITY, AND MATERNITY BENEFITS

Covering all manual workers and salaried employees and members of family. Contribution conditions to be fulfilled. For insured and family: medical (including hospital, pharmaceutical, dental, maternity) service. For insured only: cash benefit, 60 percent of wages up to six months, then disability benefit of varying amounts without time limit. Maternity grant of 200 francs, and for insured women 60 percent of lost wages six weeks before and six weeks after confinement. Contributions: For manual workers 7 percent of wages, 3.5 percent paid by employer, 3.5 percent by worker; for salaried employees 6 percent, 2.75 percent paid by employee, 3.25 percent by employer, but not beyond 60,000 francs per year. National Unions of recognized Local and Regional Insurance Funds, and Auxiliary Insurance Fund coordinated by National Insurance Fund (Sickness, Disability).

3. FAMILY ALLOWANCES

Covering all employees. Payment either 12.50 francs per day for the first and second child, 17.20 for third, 21 for fourth and 27.80 francs for fifth and further children, or in monthly total amounts of 315 for first and for second, 430 for third, 525 for fourth child, 695 for fifth and further children, with special rates if father sick, or victim of accident, or if child an orphan. Payments continue until child at end of school age or he reaches age 21 in case of further education. Maternity grant: 1800 francs for first birth, 900 for second and each subsequent birth. Special payment of four francs per day for first and two francs for each subsequent child (or 100 and 50 francs respectively per month) if mother not gainfully employed. Local and mutual funds coordinated in National Fund for Family Allowances. Contribution: Employer pays 7.5 percent of wages. Considerable state supplement.

4. OLD AGE AND SURVIVORS' PENSIONS

Completely reformed in 1955. Separately organized for manual workers (National Fund for Retirement and Survivors' Pensions—Caisse Nationale des Pensions de Retraite et de Survie) and for sala-
ried employees (Various Funds). Contribution for manual workers 8.5 percent of which 4.25 percent paid by employer and 4.25 percent by employee; for salaried employees 10.25 percent of which 6 percent paid by employer, 4.25 by employee. Considerable state supplement. All employees covered. Old age pension for men from age 65, women age 60, provided they have retired from work. Under system inaugurated in 1955, which is being gradually introduced, amount of pension equal to 75 percent (in certain cases 60 percent) of \( \frac{1}{45} \) (in case of women \( \frac{1}{40} \)) of the aggregate of the remuneration received by the beneficiary during the years taken into account. This adapted to purchasing power (retail price index). Also widow's benefit.

5. ACCIDENTS

No system of social insurance, but absolute liability imposed on employers, as in U.S. workmen's compensation law, for accidents in course of employment including way to and from work and for prescribed industrial diseases, excluding civil liability. Covers all employees. Insurance against accident liability optional, but only possible with licensed insurance companies (of which there are 75) or one of the 16 licensed mutual insurance societies. In fact 99 percent of employers insured (state guarantee fund in case of insolvency of non-insured employers). Insurance against liability for occupational diseases in fact compulsory with Fonds de Prévoyance to which contributions payable. Insured employer exonerated, insurer directly liable to victim. Benefits: medical services including hospital, pharmaceuticals, and orthopedic care. Pension amounting in some cases to 100 percent, in others to 90 or 80 percent of last annual wage, maximum 120,000 francs. In case of fatal accidents or disease, funeral grant and pensions for widows, orphans and other relatives. Premiums payable by employers according to risk, e.g., in iron and steel industry, average 4.5 percent of wages, plus payment to cover occupational diseases fixed by decree, varying between 15 and about 20 francs per worker per year.

B. FRANCE

1. GENERAL OBSERVATIONS

a. Organization

(a) Local, Regional, and National Social Security Funds linked in National Federation of Social Security Organizations, dealing
with all branches of insurance except old age and survivors' pensions. (b) Regional Old Age Pensions Funds. (c) Local Family Allowances Funds, linked in National Union of Family Allowances Funds.

b. Financing

For all branches of social security except industrial accidents and diseases and family allowances, global contribution of 16 percent of wages (up to 660,000 francs per year) of which 10 percent paid by the employer, 6 percent by the employee; for family allowances, 16.75 percent of wages, paid by employer; for accidents and diseases, variable rates in accordance with degree of industrial risk.

c. Coverage

All employees without ceiling, provided they have fulfilled contribution conditions.

2. UNEMPLOYMENT

No statutory unemployment insurance, but unemployment assistance paid by municipal authorities, and, since January, 1959, a scheme of unemployment insurance agreed between unions and employers' associations which may be declared binding on all employers and employees. Contribution: 1 percent of wages, 0.8 percent paid by employer, 0.2 percent by employee. Payment up to nine (in certain cases 12) months of 35 percent of last relevant wages, a maximum of 80–90 percent which is constituted of payments out of agreed insurance plus public unemployment assistance.

3. SICKNESS, MATERNITY, AND DISABILITY INSURANCE

Medical services including hospital, maternity, pharmaceutical, dental. For insured, wife, children and certain other family members in the household. No time limit as long as insured remains in insurance. Expenses other than most maternity expenses not completely covered; maximum of 80 percent of doctor's and other charges covered, and in the majority of cases a lower percentage. Sickness benefit in cash up to three (in certain cases up to four) years; on principle one half of "basic wage," in case of three children, two thirds, reduced in case of hospitalization. Payable to women six weeks before, eight after confinement. In case of disability, i.e., reduction of working capacity by at least two thirds, full medical expenses and pension of (depending on nature of case) 30,
40 or up to 80 percent of average of last 10 years wages to age 60 when old age pension begins.

4. FAMILY ALLOWANCES

Covers entire working population and those who for acknowledged reasons refrain from working. Basic allowance for each family with at least two children under 16 (if apprenticed, 17, or if studying or incapacitated, 20) 22 percent of basic wage plus 33 percent for each further child, plus certain additional payments to make up for former tax advantages. Basic salary fixed regionally in accordance with cost of living. Paid monthly. Where only one member of family gainfully employed (e.g., husband) further payment ranging in accordance with number and age of child or children, from 5 to 50 percent of basic wage. (This payable also where only one child, in some cases where no child in the family.) Prenatal allowances for pregnant women, and maternity grants (twice basic salary for second, and four-thirds basic salary for each additional birth). Also other benefits such as rent subsidies and removal subsidies.

5. OLD AGE AND SURVIVORS' PENSIONS

Present system inaugurated in 1945, but transitional systems continue for older pensioners. Under definitive system entitlement from age 60 for all those having insurance record of at least 15 years and from age 65 for those having record of more than five and less than 15 years. Percentage of basic wage (meaning here average of last 10 years) up to 660,000 francs per year, with allowances for devaluation of the franc. The percentage varies according to contribution record from 20 to 40, plus increments for spouse, children etc. If contribution record less than 15 years but more than 5 years, calculation in terms of percentage of contributions paid (rente as distinguished from pension). Special and supplementary allowances have to be paid on large scale by government. Also death (funeral) grant, and widows' and widowers', but no other survivors' pensions.

6. INDUSTRIAL ACCIDENTS AND DISEASES

Financed from employers' contributions varying according to size and nature of enterprise. Covering all employees with regard to accidents arising either out, or in the course, of employment (par le fait ou à l'occasion du travail) or with regard to one of the
diseases “recognized,” i.e., prescribed as occupational diseases for the occupation of the particular employee. Benefits in kind: medical (as in case of health insurance) and rehabilitation services. In case of temporary incapacity, payment of 50 percent of basic wage for first 28 days, subsequently two thirds. Basic wage calculated on basis of last monthly earnings. In case of permanent incapacity permanent pension varying with degree of disablement, age, etc. In case of fatal accident or disease: costs of funeral, widows', orphans' and other special survivors' pensions. The civil liability of the employer is excluded, but not that of third parties.

C. Germany

1. Unemployment Insurance

Comprises generally speaking all employees except the most highly paid salaried employees. Amount: regressive percentage of wages during last 13 weeks before loss of job (90 percent for lowest, 55 percent for highest point of wage scale). Duration varies in accordance with contribution record. Minimum: 78 days, maximum 468 days. Besides: payment of wage supplement in case of short work week (up to 52 weeks). Where no insurance, unemployment assistance with means test. Organization: Federal Institute for Labor Exchanges and Unemployment Insurance. Contributions: two percent of wages up to a maximum of 175 DM a week (750 DM a month), borne 50 percent by the two parties to the contract of employment.

2. Sickness Benefit (Including Maternity Benefit and Death Grant)

Borne by local, regional and other sickness funds, comprising manual workers and salaried employees up to income 7,920 DM per year, granting insured and family medical and maternity services (including hospital) and cash benefit, in principle 50 percent of basic wage plus increments. Contributions vary among sickness funds; average 6.1 percent. Borne 50 percent each by employer and employee, except lowest wage earners, where employer pays all.

3. Family Allowances

40 DM for the third and each further child per month up to the age of 18 or, in case of full-time education, 25. Organization: Family Compensation Funds attached to Employers’ Mutual Insurance
4. PENSIONS (Rentenversicherung)

Completely reformed in 1957. Covering old age pension (from age 65), survivors' pension (widows', orphans'), disability (i.e., employability reduced by half or more) and unemployability. Covering all employees (and others). Organization: For manual workers (exceptions apart): State (Land) Insurance Institutes; for salaried employees: Federal Insurance Institute. Principal benefits: (a) rehabilitation, re-training, etc., (b) pensions varying with the average wages or salaries received during the 3 years preceding the first payment of pension, and with the number of years of contribution payments, plus certain increments. Percentages of various types of pensions different. Contribution 14 percent of wages of which employer and employee pay one half each (only of wages and salaries up to 9,600 DM).

5. ACCIDENT INSURANCE

That is, insurance against accidents in the course of employment and occupational diseases covering, among others, all employees. Includes accidents on way to and from work. Only such diseases as prescribed by order recognized as occupational. Organization: Employers Mutual Insurance Institutes (Berufsgenossenschaften): compulsory and statutory. Benefits: medical treatment (all stages, hospital, etc.), rehabilitation, occupational therapy, assistance in finding employment, pension up to two thirds of last annual wages, varying with degree of disablement, death grant, widows' and orphans' benefit in case of fatal accident or diseases. Mutual Insurance Institutes supervise safety measures in industry. Employer and his agents civilly liable for damages only if convicted by criminal court for intentionally causing accident (broader liability in case of road accidents), but liable to Mutual Insurance Institute (also to sickness fund, etc.) to refund moneys disbursed on proof of intention or negligence. Contributions paid to Mutual Insurance Institutes by employers alone, varying for each employer in accordance with rate of wages paid, number of employees and the "risk category" to which the plant belongs, i.e., the magnitude of the accident risk and risk of diseases. There may be incremental payments in case of bad accident record, and reductions in case of good accident.
record. The average was, in 1955, calculated at 1 percent of wages or salaries.

D. ITALY

I. GENERAL OBSERVATIONS

a. Organization


b. Financing

Two kinds of contributions: absolute and percentage. Unemployment, old age, disability, survivors' and tuberculosis insurance: absolute contributions (contributi base) paid by employer from 8 lire in case of wages up to 2,500 per week to 53 lire in case of wages of more than 27,700 per week, and percentage contributions (contributi integrativi) 14.70 percent of wages, of which 3.05 percent borne by employee, rest by employer. Health, maternity, orphans' insurance: no absolute contributions, 6.93 percent of wages paid by employer, 0.15 percent (for health insurance) by employee. Accident insurance: contribution approximately 3.70 percent paid by employer. Social Housing program: 1.15 percent paid by employer, 0.57 percent paid by employee. Family allowances and supplement for workers working shortened week: 33.9 percent of wages up to ceiling of 900 lire per day for men, 750 for women, paid by employer. (The percentage is only seemingly high, in view of the very low ceiling.) State subsidies to various branches of insurance.
c. **Coverage**

All employees.

2. **UNEMPLOYMENT INSURANCE**

Total unemployment: If contribution conditions fulfilled, basic benefit proportionate to contributions paid during last year, plus supplement of 200 lire per day and certain family increments, *e.g.*, children, spouse, etc. Maximum 180 days per year. If contribution conditions not fulfilled—only for localities and occupations prescribed by Minister of Labor, and subject to willingness to undergo re-training etc.—220 lire per day plus increments for 90 (in exceptional cases 180) days per year. Partial unemployment: for certain industries in case of reduction of hours below 40 per week two thirds of the wages which would have been payable for the 25th to 40th hour per week (no time limit), and, in case of temporary lay-off, normally up to one month (extension up to 13 weeks) two-thirds of 16 hours' wages per week. In addition: unemployment assistance in case of need. Re-training of unemployed under Ministry of Labor.

3. **SICKNESS, MATERNITY, AND FUNERAL BENEFITS**

Contribution conditions must be fulfilled. Comprises services of general practitioner, hospital, pharmaceutical and (within a financial limit) dental services for insured and family, subject to a time limit of (exceptions apart) 180 days per calendar year. Sickness benefits for up to 150 days amounting to 50 percent of average wage of last month or quarter, reduced if insured hospitalized. Special rule for tuberculosis: no time limit, cash benefit payable only during sanatorium treatment and for up to one year after, and fixed in absolute figures (with family increments), irrespective of wages earned. Maternity: medical, etc. services plus 80 percent of wages for three months prior to expected confinement and eight weeks after confinement. Funeral benefit in certain cases.

4. **FAMILY ALLOWANCES**

Payable to all employees while employed, or if sick up to 180 days (in some cases three months) amounting (in industry and trade) to 4,342 lire per month with respect to each child up to 14 (or 18 and in some cases 21, if living in the house and not gainfully employed) (in some cases this covers brothers, sisters, grandchil-
dren), 3,016 lire per month with respect to wife, unless in receipt of certain minimum income, or to husband, if incapable of self support, and 1,430 lire per month for each parent or other ascendant relative above a certain age and dependent on recipient of family allowance.

5. DISABILITY, OLD AGE, AND SURVIVORS' BENEFITS

Disability benefits, provided contribution conditions fulfilled, for persons whose earning capacity reduced by at least one third, of unlimited duration: full medical service and cash benefit depending on contributions paid in the past, plus increment for children, minimum 60,000 lire per year if beneficiary over, and 42,000 lire per year if under, 65. Reduced if beneficiary employed, in receipt of sanatorium treatment, or in receipt of industrial accident etc. benefits. Old age pension for men from age 60, women age 55, provided contribution conditions fulfilled, amount depending on contributions, with increments for children under 18 and subject to same minima as disability pension. Reduction of pension in case of gainful employment or treatment in sanatorium. Survivors' pension for benefit of widow or widower amounting to 50 percent of pension of deceased, for benefit of full orphan (in certain cases 20 in others 30 percent of pension of deceased), and (exceptionally) for benefit of parent. In certain cases no survivors pension payable, payment of lump sum to survivors on death of insured. Orphans' benefit consisting in educational and medical services for orphans administered by National Unit for Insurance of and Assistance to Orphans of Italian Workers, financed by employers' contributions and subsidies from various public funds.

6. INDUSTRIAL ACCIDENTS AND DISEASES

Contributions payable by employers in accordance with risk of industry, varying from 2 to 7.6 percent of wages, average 3.7 percent but payment of contribution not condition of benefit. Only undertakings covered which use certain kinds of machinery (including those driven by steam, electricity, internal combustion) or belong to defined branches of activity (e.g., building, transport, and many others), in fact comprising major part of industry. Diseases only covered insofar as prescribed as occupational for particular occupations. Industrial accident defined as violent event in the course of employment leading to physical or mental injury, fatal or otherwise.
Way to and from work not generally included. Medical services including orthopedic and rehabilitation. In case of temporary disability compensation of five-ninths of average daily wage during two weeks preceding accident or onset of disease until cure, or commencement of pension as below. In case of permanent incapacity, total or partial (i.e., at least 10 percent disablement in case of accidents, 20 percent in case of disease), pension amounting to percentage (55–100 percent) of the last annual wage of beneficiary within a minimum of 135,000 and a maximum of 300,000 lire, plus family increments and attendance supplement. Survivors' benefits for widow or widower, or, in certain cases, orphan children, or parents. Funeral benefits of varying amounts.

E. Luxembourg

I. General

One of the principal characteristics of the social security system: coexistence of two separate schemes of insurance, one for manual workers and one for salaried employees. These two schemes exist side by side in (1) health, maternity and funeral insurance, and (2) disability, old age and survivors’ pensions. The schemes of family allowances, industrial accident insurance and unemployment benefits are common for both categories.

2. Organization

a. Health, Maternity, Funeral Insurance

For manual workers: three regional sickness funds (Caisses Régionales de Maladie) acting through 15 local offices and (in the iron and steel industry) seven plant-level private sickness funds (Caisse de Maladie d'Entreprises), linked in Union of Sickness Funds. For salaried employees: One statutory Sickness Fund for Employees, and three employer-owned sickness funds (in the iron and steel industry).

b. Old Age, Disability, Survivors’ Pensions

For manual workers: Old Age and Disability Insurance Board (Etablissement d'Assurance contre la Vieillesse et l'Invalidité), part of the Social Insurance Office (Office des Assurances Sociales) which, for some purposes, acts through the Regional Sickness Funds (above). For salaried employees: Pensions Fund for Private Employees (Caisse de Pension des Employés Privés).
c. Industrial Accidents and Occupational Diseases

Accident Insurance Society (*Association d'Assurance contre les Accidents*), part of the Social Insurance Office (above).

d. Family Allowances

Family Allowances Fund (*Caisse de Compensation pour Allocations Familiales*) managed by the Old Age and Disability Insurance Board (above), and partly acting through the Regional Sickness Funds.

e. Unemployment Compensation

(There is no system of unemployment insurance proper): National Employment Office (*Office National du Travail*), acting for some purposes through its three local agencies, through the Regional Sickness Funds, and through the municipalities.

3. UNEMPLOYMENT COMPENSATION

No insurance. Financed 75 percent by state, 25 percent by municipalities. Covers all employees (manual and salaried), certain categories (e.g., seasonal workers, commercial travelers, agricultural workers) excepted, from age 16 to 65, provided unemployment involuntary, unemployed ready to accept work and employed for 200 days during last 12 months. No means test. For 26 weeks (in 12 months)—less in cases of foreign nationals—60 percent of normal wage or salary which is the basis for calculation of health insurance contributions, ceiling: 220 francs per day. Income from occasional work deducted, also other income above 25 percent of compensation. In certain cases also compensation for shortened working week. In addition re-training and other similar services.

4. HEALTH, MATERNITY, FUNERAL INSURANCE

Covers all manual workers and salaried employees, irrespective of wage or salary (and certain others). Financed out of contributions fixed by individual sickness funds, maximum (in case of manual workers) 6.75 percent, in fact 6 percent in case of Regional Funds, 5.4 percent in case of Plant Funds. Ceiling in case of manual workers 220 francs per day. Two thirds of contributions borne by employee, one third by employer. State supplement to administrative expenses. Contribution conditions must be fulfilled. Medical services for insured and certain members of his family (wife, chil-
children in the house up to 18 and in certain cases beyond, and other persons), including hospital, dental services, maternity care, and pharmaceuticals, with participation of insured in cost (in case of manual worker not beyond 25 percent). Time limit for hospital service. Funeral paid. Sickness benefits payable to insured or if in hospital, etc., to members of his family, normally 26 weeks, sometimes extended. Minimum 50 percent of wage or salary, can be increased by individual sickness fund up to 75 percent. Average 66% percent. Payment to family in case of hospitalization at lower rates. At end of sickness benefit period disability pension may begin. Maternity benefit: cash payments six weeks before and six weeks after confinement, up to 12 weeks for nursing mothers.

5. FAMILY ALLOWANCES

Covering all employees, financed by employers at varying rates of contribution, amounting in industry to 4.5 percent of wages (no ceiling). State supplement. Maternity grant 5,000 francs for first birth, 3,000 francs for subsequent confinements. For each child up to 18 (beyond in case of incapacity) 444 francs per month and more for fifth and further children. Adapted to cost of living index.

6. OLD AGE, DISABILITY, SURVIVORS' PENSIONS

Covering all manual workers and, under separate legislation, generally speaking all salaried employees, irrespective of wage or salary. Financed by contributions of 5 percent of wages from employers and 5 percent of wages from employees plus state supplement and supplement from municipalities. No ceiling for manual workers but ceiling of 159,600 francs per year for salaried employees. If contribution conditions fulfilled, on reduction of earning power through sickness etc. by two thirds in case of manual workers, and on permanent inability to exercise usual or equivalent occupation in case of salaried employees (invalidité) or, in case of manual workers on reaching age 65 (in certain cases 62, 60 or 58) and in cases of male salaried employees on reaching age 65 (in certain cases 60) and female salaried employees age 55, pension between minimum and maximum depending on contribution record, plus family increments. Treatment for certain diseases and support of family during treatment. Survivors' pension for widow, orphans, in certain cases other relatives. Payment of funeral.
7. INDUSTRIAL ACCIDENTS AND DISEASES

Covering all manual workers and salaried employees earning up to 90,000 francs per year. Financed by contributions (percentage of aggregate of wages and salaries in enterprise or plant in accordance with category of risk to which it belongs, and fixed periodically, subject, in case of salaried employees, to salary ceiling of 90,000 francs per year) paid by employers, plus state supplement. Industrial accident defined (as in France) as accident arising either out of, or in the course of, employment. List of recognized occupational diseases. Industrial accident includes way to and from work. Benefits: full medical treatment, payment of three-fourths of wages or salary for first 13 weeks as long as victim is incapable of work, beyond this a pension of 80 percent of wage or salary in case of 100 percent disablement, and correspondingly lower in case of partial disablement, plus family increments, funeral cost, survivors' pensions. Other services in kind including rehabilitation. Civil action for damages excluded (as in Germany) except where employer convicted for causing accident intentionally.

F. NETHERLANDS

I. GENERAL: ORGANIZATION

a. Health and Maternity Insurance: Medical Benefits

The local (or regional) General Sickness Funds (Algemene Ziekenfondsen) organized on a mutual basis, or by employers or by insurance companies, etc., linked in a (national) Council of Sickness Funds which has a number of regulatory and other powers. Sickness funds must be licensed by Minister of Social Affairs and Public Health.

b. Health and Maternity Insurance: Cash Benefits, Family Allowances, Unemployment Insurance

Twenty-six “joint industrial associations” (Bedrijfsverenigingen) combining employer and employee representative and licensed by the Minister. Employers compelled to be members. Fifteen of them operate through a “Joint Office of Management.” Central financial organ for family allowances: Family Allowances Compensation Fund. For unemployment insurance: General Unemployment Fund
c. **Disability, Old Age, Survivors’ Pensions, Industrial Accidents, and Occupational Diseases**

(Cash benefit) Social Insurance Bank (a public institution: _Sociale Verzekeringsbank_) acting through the 22 regional Labor Councils ( _Raden van Arbeid_) each of which consists of three employer and three worker representatives and a full time chairman appointed by the Minister.

d. **Coordinating and Supervising Organ: Council of Social Insurance**

Responsible to Minister. (Note: calculation ceiling for all contributions and all benefits: 19 florins per day.)

2. **UNEMPLOYMENT INSURANCE**

Covers all employees below age 65 not earning more than 6,900 florins per year. Two kinds of benefit: Short unemployment ("suspension") benefit for a minimum of 48 days (or more if rules of particular Joint Industrial Association so provide), and unemployment benefits proper for at least 78 days following upon the short unemployment benefit. Contribution conditions must be fulfilled. Amount: 60 percent to 80 percent of last wage (depending on age, sex, family status) up to 19 florins per day. Financing: Short unemployment benefit: equal contributions of employers and employees varying from industry to industry in accordance with risk (between 2 percent and 5.8 percent of wages payable by either side). Unemployment benefit proper: 1.2 percent of wages of which 0.4 percent paid by employer, 0.4 percent by employee, 0.4 percent by state. Calculation ceiling 19 florins per day. In addition unemployment assistance financed by state, paid by municipalities.

3. **HEALTH AND MATERNITY INSURANCE**

Sharp distinction between medical services and cash benefits. Covers, generally speaking, all employees earning up to 6,900 florins per year. Medical services also cover unemployed, pensioners etc., and cover the spouse, children up to 16 (in certain cases 27), and (if living in the same household) certain other relatives of the insured. Financing: Medical Services: 4.2 percent of wages (up to 19 florins per day) of which half paid by employer, half by employee. Cash benefit: contribution varying from industry to industry...
between 2 percent and 4 percent of wages up to 19 florins per day, of which one half but no more than 1 percent paid by employee, rest by employer. Medical services comprise those of general practitioner and specialist, and dental, hospital, sanatorium, midwifery services, and pharmaceuticals, etc. Sickness fund enters into standard contract with medical and other practitioners (generally speaking no full time employment by sickness fund), who are entitled to enter into such contract. Claimant must be registered with a sickness fund. No further contribution conditions. Hospital up to 70 days, but 90 percent of those insured have full coverage for small payment to sickness fund. Cash benefit: 80 percent of wage (up to 19 florins per day) and one-third of this (payable to family) if insured in hospital, for up to 52 weeks (in case of tuberculosis in some cases for three years). Maternity grant of 55 florins and maternity allowance of 100 percent of wage or salary (up to 19 florins per day) for six weeks before and six weeks after confinement.

4. FAMILY ALLOWANCES

Covering all employed persons and others, with respect to each child under 16 (in cases of incapacity or full time education up to 27) on ascending scale, 58 cents per day for first, 65 cents per day for second and third, 91 cents per day for fourth and fifth and 102 cents per day for sixth and further children. Financed by employer contribution of 5 percent of wage or salary up to 19 florins per day. Special supplement of 10 cents per child per day for employees earning less than 16 florins per day.

5. OLD AGE, DISABILITY, SURVIVORS' PENSIONS

Distinguish between the general old age insurance for the entire population (employed or not) in force since 1957, and the special old age, disability, and survivors' insurance for employees.

General insurance covering all persons resident or employed in the Netherlands between ages 15 and 64, irrespective of income or nationality. Financing: Contribution of (until 1962) 6.75 percent of total income, up to 7,450 florins annually, payable by insured and in case of employees deducted from wage or salary by employer and paid over by him. Right to pension from age 65: 972 florins annually for single person, 1,584 florins for married couple. Condition: Payment of contribution for 50 years, but, generally speaking, all those over 15 on January 1, 1957, deemed, subject to certain conditions, to have paid 50 years' contributions. Under final system 2
percent deducted for each year of non-payment. Amount of pension variable (adapted to wage index).

Special (additional) insurance of all employees over 14 earning up to 5,600 florins per year, or having previously earned less, reaching 5,600 florins but no more than 6,900 florins (persons earning more can join voluntarily and pay their own contribution), no one over 35 can enter insurance for the first time. Financing: weekly contribution from 25 to 60 cents, payable by employer, amount depending on age and sex of employee, 60 cents for man, 50 cents for woman over 21. Contribution condition: payment of 150 contributions for disability pension. Benefits: old age pension from age 65, pension in case of disability (i.e., reduction of normal earning capacity by two-thirds or more whether permanent or, if exceeding six months, temporary) amounts varying with number of contributions paid plus certain family increments. In case of disability also special medical services. Widows’ and orphans’ pensions depending on amount of contributions paid.

6. INDUSTRIAL ACCIDENTS AND DISEASES

(Special legislation applicable to seamen, agriculture, etc. not considered.) Normally (see above) through Social Insurance Bank, but employer may be authorized to insure through private insurance company or as self-insurer. Financing: contribution paid by employer in accordance with the “risk category” (there are 93) to which his plant belongs, percentage of wages up to 19 florins per day. Covers all employees against risk arising from (fatal or non-fatal) industrial accident, i.e., sudden event caused by external force and resulting in impairment of physical or mental integrity, in the course of employment, including during way to or from work, or from one of the prescribed industrial diseases. Benefits: medical, surgical, etc., treatment and re-training. In case of reduction of working capacity by at least 50 percent up to 42 days 80 percent of wages (up to 19 florins per day) (or one third of this if in hospital and without family). In case of total incapacity to work (after 42 days) for 12 months 80 percent of wages (up to 19 florins per day) and after that 70 percent. In case of partial incapacity proportionate reduction, further reduction in certain cases of hospitalization, but up to 100 percent in case a permanent attendant is needed. Fatal cases: funeral benefit and survivors’ pensions for widow (30 percent), orphans up to age 16 (15 or 20 percent), in certain cases widower and certain relatives, aggregate to be no more than 60 percent of wage (up to 19 florins per day).