



CORE ANALYSIS

# Worker participation and Europe in the long 1970s: a crisis of integration and a crisis of capitalism

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## Abstract

The mood amongst workers in Western Europe as the 1960s ended was one of frustration and anticipation. From the streets of Paris in May 1968 to the factory floors of Turin in the autumn of 1969, social movements of workers and students demanded a real say over their daily lives and the institutions that shaped them. These calls for economic democracy were picked up by trade unions, national politicians and, eventually, the European Commission. In 1973, having published proposals that included plans for 'worker participation', the Commission wrote that if employees did not have a voice, the Commission's proposals would not 'satisfy the requirements of society today'. However, the Commission's interpretation of industrial democracy was criticised by trade unions and socialist politicians, buoyed by the militancy of the workers, for not going far enough. As the Commission tried to persuade labour representatives that the European project was taking their demands seriously, another critique of worker participation crystallised on the right. As Keynesianism lost credibility in Member States, and a neoliberal discourse emerged around the need for Europe to be 'competitive' and 'flexible', employer groups pushed back against worker participation and undermined a labour movement that had posed a genuine threat to capital's interests. This paper tells the story of one component of the Commission's plans: the proposed Fifth Company Law Directive. Using archival material from EC institutions and employer lobby groups, it argues for an understanding of company and labour law harmonisation that takes seriously the political economy of Western Europe during the 'Long 1970s'.

**Keywords:** company law; labour law; economic democracy; European integration; neoliberalism

## 1. Introduction

In 1975, the Commission of the European Communities (EC) published a 'green paper' on the need for a comprehensive system of employee participation in EC law.<sup>1</sup> This system was to be implemented through three proposed measures: a Statute for the European Company, a Fifth Directive to coordinate the structure of large public companies and a Third Directive on the merger of public companies, which included the safeguarding of employees' acquired rights.<sup>2</sup> Of

<sup>1</sup>European Commission, Commission Green Paper on 'Employee participation and the company structure in the European Community' (COM (75) 570, 12 November 1975).

<sup>2</sup>Article 12 of the 1978 Third Directive refers to the protections set out in the Directive on acquired rights in the event of mergers (Council Directive 77/187/EEC of 14 February 1977, OJ L 61), which came to be negotiated in tandem with the Third Directive. The 'Third' and 'Fifth' Directives refer to the chronology of the harmonisation measures proposed by the Commission following the First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the

course, the Commission said, a common market requires a common legal form for the businesses operating within it – this would be an ‘essential part of the basic structure’.<sup>3</sup> However, it was also the ‘democratic imperative’ to give workers a voice in the decision-making processes of their employers.<sup>4</sup> A project that tries to create a European company, or a system of company law, must ‘present advantages for the workers . . . and not exclusively for the owners of capital’.<sup>5</sup>

Both the Statute for a European Company and the Third Directive became law. However, the original proposal for the Statute looks quite different to the Regulation in force today. The original 1970 proposal provided for obligatory two-tier board structures with employee representatives, but this was abandoned by the time the Regulation eventually became law in 2001.<sup>6</sup> The proposed Fifth Directive, the focus of this paper, was effectively abandoned during Council negotiations in 1984. To the Commission officials who originally worked on the proposal, this would have been a surprise. Their tone, as seen in archival materials showing correspondence and official positions, was one of certainty. In a 1973 report, the Commission wrote ‘we cannot conceive of a company law that meets the requirements of our current society if workers cannot participate equitably’.<sup>7</sup> To institute a system of company law in the EC without including worker interests was, to the officials in the internal market Directorates-General, categorically unthinkable.

This paper is a case study on the proposed Fifth Directive which, essentially, was an attempt to bring a German-style system of ‘co-determination’ (*Mitbestimmung*) to Member States.<sup>8</sup> If the Directive had passed, large public companies would have had to change their board structure to a two-tier model consisting of a management board and supervisory board, the latter of which would be partially made up of employees or their representatives. This was the Commission’s response to the ‘democratic imperative’ of the time. However, the demands being made on the ground were really about industrial or economic democracy and been growing in volume in EC Member States since the ‘great contestations of the 1968s’.<sup>9</sup> The Commission thus offered a very different interpretation of economic democracy compared to, say, the students and workers of Paris and Turin.

In a way, this makes complete sense given the main task of the Commission was to fulfil the objectives of the founding treaties, namely *economic* integration.<sup>10</sup> Nevertheless, the Commission saw no contradiction in building out a common market for goods and services whilst simultaneously extending some benefits to workers. In effect, the Commission officials were promoting a vision of how states ran their economies in the post-war era. Corporatism, as I use it in this paper, relied on large firms working alongside powerful trade unions in promising consistent wage growth in exchange for productivity gains. The Fifth Company Law Directive, as

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second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, OJ L 65.

<sup>3</sup>*Ibid.*, 7.

<sup>4</sup>*Ibid.*, 9.

<sup>5</sup>Historical Archives of the European Union (HAEU), BAC-042/1988\_1513, report authored by Gérard Lyon-Caen, commissioned by DG Internal Market, ‘Contribution à l’étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes’, 1969, 20.

<sup>6</sup>Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), OJ L 294.

<sup>7</sup>HAEU, CEUE\_INTE-867, Information Note from Commissioner Finn Gundelach, ‘Représentation des travailleurs au sein des organes des sociétés’, 29 March 1973, 167.

<sup>8</sup>Codetermination may be synonymous with Germany, but codetermination exists, in some form, in the laws of many other European countries today, such as Austria, Czechia, Denmark, Finland, France, Hungary, Luxembourg, the Netherlands, Norway, Portugal, Slovakia, Slovenia and Sweden. For a detailed account, see S Deakin, ‘Industrial Democracy and Inequality’ in The European Trade Union Institute and The European Trade Union Confederation, *Benchmarking Working Europe 2021: Unequal Europe* (ETUI 2021) 157.

<sup>9</sup>AD Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (First edition, Oxford University Press 2022) 6.

<sup>10</sup>Eg, Tariff elimination and non-tariff barriers to trade, Arts 12–17, 30–5, Consolidated Version of the Treaty Establishing the European Community, 25 March 1957.

an embodiment of corporatism, came under initial pressure from the left – predominantly trade unions and Socialist Group MEPs who were riding high on the success and militancy of the post-68 labour movement. A ‘corporatism vs socialism’, as I label it in this paper, defined the debate on the Fifth Directive from the years following the publication of the proposal in 1972 until roughly 1978 when there was still a left-wing majority in the European Parliament. Or, to put it another way, the Commission’s official and internal correspondence shows that, on the issue of worker participation, it was predominantly a left-wing audience that it felt it had to convince.

However, during these years when the Commission was focused on getting labour on board, the background economic conditions that upheld corporatism had changed. The oil crisis of 1973 set off a chain of events that slowly undermined a Keynesian consensus – which prescribed an activist role for the state in running the economy. As governments in Western Europe began tightening the money supply, the inflation that followed the 1973 oil shocks was used as an excuse by right-wing parties and employer groups to attack the demands of an increasingly powerful and militant labour movement. At the beginning of the decade, governments and industrialists were happy to concede ‘participation’ so as to keep worker control or ownership at bay. But as the years wore on, and businesses demanded flexibility in order to kick start profits in Europe again, the Commission’s corporatist vision lost out. Or, to put in the terms I use in the paper, as the Commission officials were focused on meeting the socialist critique of worker participation expressed by left-wing forces, they were becoming out-flanked by an emerging right-wing discourse.<sup>11</sup> I show how the right-wing critique crystallised from the mid-1970s onwards through tracking the opposition of employer groups and the large businesses they spoke on behalf of. The Commission failed in its attempts to assure the left that worker participation would actually empower labour and was then beaten down by new ideas from the right, as well as by institutional and governmental power shifts. In 1979, in the year of the first directly elected European Parliament, a right-wing majority was established for the first time in this institution, emptying much of the EC of any real socialist influence. And so, as the 1980s began, worker participation in Europe was watered down and eventually abandoned in Council negotiations, thus marking the first victory for the neoliberal resistance in Brussels and restarting integration in its image.

The bulk of the evidence used in this paper comes from the Historical Archives of the European Union, as well as the Commission and Council’s own archives. In collecting the views of the employer groups, I mostly relied on the archives of the Confederation of British Industry (CBI), as the umbrella group for all Member State business associations does not keep an archive (UNICE as it was then known, *Union des Industries de la Communauté européenne*, now BusinessEurope). Fortunately, the CBI has kept a record of UNICE’s official publications as well as correspondence between the member groups.

The paper unfolds as follows: in the next Section 2, I take some space to better define the terms used throughout, such as neoliberalism, corporatism, etc., as well as to position my argument in relation to other accounts related to company law and European integration. After that, in Section 3, I first describe the political and economic context of the insistent calls for economic democracy in Western Europe from 1968 onwards before introducing the Fifth Directive in the first part of Section 4. The rest of that section is used to elaborate on the Commission’s justifications for worker participation and the resistance it came up against from socialist forces. As mentioned, whilst the Commission was in dialogue with the left, a new right-wing discourse emerged, the background of which I discuss in the first pages of Section 5. I then turn to the arguments used by the employer groups and show how they turned away from the corporatist ideals of post-war Europe. Before concluding, I describe the defeat of the Fifth Directive, first in

<sup>11</sup>As I hope it comes through in the paper, my understanding of the Commission’s orientation is that certain figures did genuinely believe in the potential of its worker participation plans, and by extension saw themselves as allies or partners to left-wing MEPs and trade unions. However, this goodwill could only go so far as the background economic conditions undermined the power of the wider worker movement of the decade.

Parliament and then in Council negotiations, where discussions never advanced past technicalities and the file was effectively abandoned.

## 2. Debates and definitions

The aim of this paper is to demonstrate that the main actors in the debate about worker participation in Europe were influenced by changes to the economic conditions of the time.<sup>12</sup> It is thus a departure from the conventional story about the harmonisation of company law during the long 1970s. The dominant narrative is that early company law harmonisation in the EC has a pre- and post-1973 story, with the turning point being the accession of Ireland, the United Kingdom (UK) and Denmark. According to this logic, these states and their national economies (predominantly the UK) exhibited a system of company law and labour relations that was simply incompatible with the continental vision that had dominated the Commission's plans prior to 1973.<sup>13</sup> The archives do show that British industrialists were concerned with the imposition of a foreign company law. For example, in 1973 the Confederation of British Industry lobby group (CBI) discussed the Fifth Directive proposal with Chairman of Cadbury-Schweppes Ltd, Harold Watkinson, and claimed the Directive was 'grounded in the conditions and practices of the former EEC countries' and lamented the lack of recognition of the 'British context'.<sup>14</sup> However, remarks about a clash of legal cultures were often followed by political and economic arguments.<sup>15</sup> It must also be noted that co-determination was not seen to be merely a German imposition on British company law. Although the publication of the Bullock Report in 1977 was perhaps the most significant endorsement of employee participation in British industrial policy,<sup>16</sup> when the UK Companies Act was being amended in 1973 (under Edward Heath's Conservative government), board seats for workers were a possible addition to the legislation.<sup>17</sup> This was in response to calls for greater involvement for workers, independent of what rules may be coming out of the EC. As well, as McGaughey has shown, the history of worker participation, broadly conceived, in the UK extends as far back as the 1850s; the country may have had the 'world's first pure board level co-determination law outside universities' with the Port of London Act 1908.<sup>18</sup> Although the 1840s revolutionary fervour in Germany and the UK had quite different sources – the latter arising from Irish republicanism and the Great Famine – the overlap in timelines show that UK industrial relations was not nearly as unique as some employers would suggest.

<sup>12</sup>Not entirely influenced of course – it is not my intention to reduce the debate entirely to material interests, rather to show that this is a factor that must be accounted for.

<sup>13</sup>See J Dean, 'Ideal Type Organisations and Company Law in Europe' 23 (2012) *European Business Law Review* 461; V Edwards, *EC Company Law* (Clarendon Press 1999).

<sup>14</sup>By 'former EEC countries' it is safe to assume the author meant the original six Member States that formerly made up the EC, Modern Records Centre (MRC), University of Warwick, MSS.200/C/3/COM/3/2, Letter from E M Felgate (CBI) to Watkinson, 26 April 1973.

<sup>15</sup>For instance, in that same 1973 meeting report, the CBI argued against dual boards on the basis that the performance of 'management is quickly reflected in the share price' in Britain and so an extra layer of control, which the supervisory board provides, was unnecessary.

<sup>16</sup>The Bullock Report was the result of the work carried out by the Committee of Enquiry into Industrial Democracy, a group established under Harold Wilson's Labour government in December 1975, chaired by historian Alan Bullock. The majority report, signed by Bullock and six other committee members, advocated for the right to representation on company boards for employees of large companies. The minority report, authored by the three representatives of industry on the committee, proposed a second company tier that workers may have input on, The Committee of Enquiry into Industrial Democracy, 'Report of the Committee of Inquiry on Industrial Democracy' (1977) Cmnd 6706.

<sup>17</sup>MRC, MSS.200/C/3/EMP/2/83, Meeting of the CBI Employment Policy Committee, 12 September 1973.

<sup>18</sup>In the 1850s, the UK government decided to intervene in university governance and give voting rights to 'fellow' employees, E McGaughey, 'Votes at Work in Britain: Shareholder Monopolisation and the "Single Channel"' 47 (2018) *Industrial Law Journal* 76, 81, 86.

The clash of legal cultures thesis has been taken a step further by some, with claims that national differences at the legal level can also be viewed as a clash of capitalisms.<sup>19</sup> Here, Germany's 'coordinated market economy', as in the varieties of capitalism literature, came up against Britain's 'liberal market economy'.<sup>20</sup> The varieties of capitalism typology has been criticised for leaving little room for historical explanation or conflict over distribution.<sup>21</sup> This holds true for its application to company law harmonisation. By presenting the story of harmonisation as one perspective on company law coming out on top over another, these authors neglect the fact that during these years different political actors were vying for the future of the European project. The liberal interpretation presents the Commission's failure as inevitable and frames the eventual victory of the Anglo-American model in the decades following as the result of a consensus around what was considered regulatory best practices.

The archives tell a different story. They show that, for instance, what was acceptable for UNICE in 1973 was radically different to what they argued for in 1980 (see Section 5.B). The archives also show that there was a moment in 1978 when it seemed like the three main actors in the debate at the time – the Commission, Parliament and Industry – had reached some form of compromise and the Commission was on the verge of success (Section 4.C). In other words, the long 1970s in the EC were a time and space of enormous contestation – the Anglo-American company law model that would eventually define European harmonisation was not an inevitability.<sup>22</sup> The idea of contestation is also important to the understanding of neoliberalism which runs throughout this paper. I follow David Harvey in thinking of neoliberalism as a political project of transformation which sought to restart capital accumulation (following 1970s profit crisis) in a very different image to the decades that had come before, the so-called 'golden years' of capitalism.<sup>23</sup> Those decades had been fruitful but as I describe in the next section, it also meant that employers had to live with powerful unions who could, once inflation took hold, mount hugely disruptive protests. As I depict in Section 5.B, industry groups tried a vast array of critiques during the lifecycle of the Fifth Directive but eventually realised that neoliberal notions of 'competitiveness' and 'flexibility' had gained a new currency in a new era of monetary discipline.

As Gregoire Chamayou shows, employers were very open about the need to impose an 'insecurity' back on to the worker, reminiscent of the Great Depression, to restore the power of industry over labour.<sup>24</sup> The need to reintroduce fearfulness among workers echoes Marx's writings on the importance of a reserve pool of unemployed for capital accumulation.<sup>25</sup> As John Grahl puts it, if capitalists are the predators, and their hunting too successful, 'the decline in the available prey reacts on the predators whose own numbers decline, allowing the prey population to recover'.<sup>26</sup> In other words, crisis is an important part of capitalist development, replenishing the stock of unemployed workers enough for accumulation to restart. The positions and correspondence of the European industry groups I detail below (Section 5.B) make similar references in the context of worker participation. For instance, in 1984 a report from the International Organisation of Employers spoke of the need to undermine the power of labour, which was said to be pursuing 'goals which go far beyond economic and social benefits'.<sup>27</sup>

<sup>19</sup>M Gelter, 'EU Company Law Harmonization between Convergence and Varieties of Capitalism' in Harwell Wells (ed), *Research Handbook on the History of Corporate and Company Law* (Edward Elgar Publishing 2018) 333.

<sup>20</sup>See PA Hall and D Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press 2001).

<sup>21</sup>W Streeck, 'Varieties of Varieties: "VoC" and the Growth Models\*' 44 (2016) *Politics & Society* 243.

<sup>22</sup>See S Vitols, 'European Corporate Governance: Is There an Alternative to Neo-Liberalism?' in VA Schmidt and M Thatcher (eds), *Resilient Liberalism in Europe's Political Economy* (Cambridge University Press 2013) 257.

<sup>23</sup>D Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005) 16.

<sup>24</sup>G Chamayou, *The Ungovernable Society: A Genealogy of Authoritarian Liberalism* (Andrew Brown tr, Polity Press 2021) 19.

<sup>25</sup>K Marx, *Capital: A Critique of Political Economy* (Volume 1, Penguin Books 1976) 781–94.

<sup>26</sup>J Grahl, 'A New Economics, 104 (Mar/Apr 2017) *New Left Review* 138.

<sup>27</sup>MCR, MSS.200/C/Aug2000/554, Report of the International Organisation of Employers, 31 October 1984.

It is also important to understand the notion of 'competitiveness' in relation to the political project of neoliberalism. Whilst global competition from the US and Japan did indeed squeeze profit levels in the demise of the post-war order, it was also a key strategy in the playbook of European employers' attacks on labour, with industry representatives arguing that they could no longer operate at the same level globally if they did not enjoy the flexibility of American or Japanese firms.<sup>28</sup> The power of the competition discourse goes back to Hayek and his argument that competition represents a process of discovery in market societies.<sup>29</sup> However, as Will Davies puts it, 'to argue for competitiveness is to argue in favour of inequality . . . a society that celebrates competitiveness cannot be surprised if the outcomes are then highly unequal'.<sup>30</sup> In other words, competitiveness is about winners and losers and, in the context of worker participation in Europe, employer groups were determined to reassert this imbalance.

The breakdown of the tacit agreement between capital and labour in the post-war decades also refers to the breakdown of 'corporatism' – a term I rely on heavily in the paper to describe the Commission's vision of worker participation at the EC level. The Commission's belief in an ability to simultaneously satisfy the interests of labour and capital maps onto Keane and Offe's interpretation of corporatism, which is the exclusion of 'excessively political demands' and the introduction of 'state-supervised and informal modes of bargaining'.<sup>31</sup> However, corporatism emphasises the 'decisional structures of the state' and the translation of the interests of capital and labour into these structures.<sup>32</sup> In its proposed system of industrial relations from the 1970s, the Commission would involve itself only in establishing a framework, rather than mediating discussions alongside representatives of capital and labour.<sup>33</sup> In that sense, corporatism is not a perfect description but it is good enough in that the Fifth Directive takes its cues from the best example of corporatism from that time, the German social market economy.<sup>34</sup>

Although the debate on the Fifth Directive would come to be dominated by the power employee representatives would grant to labour, co-determination was a key institution in the German post-war social market economy.<sup>35</sup> Germany's 'ordoliberal' capitalism required a broad consensus, and strong constitutional framework, to achieve the stability needed for continued accumulation.<sup>36</sup> The state's role is indirect and merely 'enables' industry to succeed.<sup>37</sup> It is thus consistent with this view of the state that co-determination would be part of the social market

<sup>28</sup>R Dukes and W Streeck, *Democracy at Work: Contract, Status and Post-Industrial Justice* (Polity Press 2023) 57.

<sup>29</sup>FA Hayek, 'Competition as a Discovery Procedure' 5 (2002) *Quarterly Journal of Austrian Economics* 9.

<sup>30</sup>W Davies, *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of Competition* (Revised Edition, SAGE 2017) 41.

<sup>31</sup>From John Keane's introduction to C Offe and J Keane, *Contradictions of the Welfare State* (Hutchinson 1984) 27.

<sup>32</sup>PC Schmitter, 'Still the Century of Corporatism?' 36 (1974) *The Review of Politics* 85, 86.

<sup>33</sup>However, the Commission did develop a short-lived (1974–78) series of Tripartite Conferences on social spending in the context of the pressure placed on public finances by the 1973 oil crisis, Andry (n 9) 215–24.

<sup>34</sup>Interestingly, however, the Commission did establish a mechanism for 'social dialogue' in 1985, bringing labour and capital together to discuss 'macro-economic problems' and 'new technologies', Bercusson, *European Labour Law* (2nd edn, Cambridge University Press 2009) 132.

<sup>35</sup>Which is not to say that co-determination began at this point, nor that it was a top-down, state-led initiative. In fact, the opposite is true for both; the history of worker consultation in Germany has its roots in the industrial transformation of the region, and before co-determination was ever codified, its legal basis was in collective agreements. For a detailed account see E McGaughey, 'The Codetermination Bargains: The History of German Corporate and Labour Law' 23 (2015) *Columbia Journal of European Law* 135; on co-determination as an institution of West Germany's postwar capitalism, B van Apeldoorn, *Transnational Capitalism and the Struggle Over European Integration* (Routledge 2002) 74.

<sup>36</sup>Ordoliberalism refers to the economic philosophy developed by the Freiburg school of economics in the 1930s and 1940s. It is based on the idea that free markets can only operate in a stable regulatory framework, and it is the state's role to establish this framework and intervene no further – the so-called economic constitution, or *Wirtschaftsverfassung*, van Apeldoorn (n 35) 75; for a seminal article from the Freiburg school, see W Eucken, 'Die Wettbewerbsordnung und ihre Verwirklichung' 2 (1949) *ORDO: Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft* 1.

<sup>37</sup>W Streeck, 'German Capitalism: Does It Exist? Can It Survive?' in C Crouch and W Streeck (eds), *Political Economy of Modern Capitalism: Mapping Convergence and Diversity* (SAGE Publications, Limited 1997) 38.

economy in that it ensured a ‘class compromise’ produced highly skilled and loyal workers who, in turn, could count on high wages and a strong welfare state.<sup>38</sup> This is an important clarification to make early on because it is easy to look back on the Commission’s plans for worker participation in Europe with a degree of romanticism, especially considering how poor the European Union’s (EU) subsequent record has been in empowering labour. It is also an important clarification to understand the political project of the Commission officials who advocated for worker participation – their vision for Europe was not one where the worker would be the main beneficiary. Their vision was a corporatist one, in which it was possible to create the single market and economic growth whilst also extending some gains to labour.

There are three further clarifications I want to make here. The first is on the Commission itself – in the paper, I refer to the Commission as the author and correspondent of much of the material and assign it an agency of sorts. In reality, however, the people responsible for the writings were the officials working under the Directorate-General for the Internal Market, which was tasked with drafting the Fifth Directive and managing its passage through the institutions. The Commissioner responsible for DG Internal Market from 1973 to 1977 was Finn Olav Gundelach, the first Dane sent to Brussels after the 1973 accession. He was a lifelong civil servant in Danish foreign policy, playing a significant role in the Kennedy Round of the General Agreement on Tariffs and Trade before arriving in Brussels.<sup>39</sup> Belgian Étienne Davignon took over in 1977 and had a similar career to Gundelach prior to the Commission, working in the Ministry of Foreign Affairs after leaving university.<sup>40</sup> Karl-Hein Narjes took over the internal market post in 1981 but came from party politics, having represented the German Christian Democrats in the Bundestag since 1972.<sup>41</sup> One key figure was Fernand Braun, who was Director-General for Internal Market from 1973 onwards and comes up repeatedly in the archives as a staunch defender of the Fifth Directive. From Luxembourg, Braun was active in socialist politics in his early 20s and had a career as a journalist. Interestingly, he was considered for the role of editor-in-chief of the newspaper *Tageblatt* but was regarded as ‘too far to the left’ by the unions.<sup>42</sup> He was to succeed the former president of the Luxembourg Socialist Workers’ Party as editor-in-chief, Michel Rasquin, but it was through Rasquin that Braun ended up at the Commission; Braun followed Rasquin as cabinet secretary when the latter joined the Commission in 1958. Braun said that he joined Rasquin ‘out of affection for him’ but also to ‘contribute to the European project’.<sup>43</sup>

Braun’s background is particularly insightful as it captures something about the time and the possibilities for the EC. I want to reassert here that the long 1970s were a period of contestation, and Braun demonstrates the different forces grappling over what integration would look like. Contributing to the European project for someone like Braun would not have automatically included a blind commitment to the promise of the single market. For the socialists contributing

<sup>38</sup>The history of co-determination extends far into the 19<sup>th</sup> century, and initially the impetus came from sympathetic Prussian industrialists. The struggle for freedom of association for workers and improvements in health, welfare and participation schemes also developed in tandem – the latter often being offered as a means of appeasing calls for recognised trade unions. Nevertheless, the trade union movement did begin to see works councils and codetermination as a source of worker power from the beginning of the 20<sup>th</sup> century. For the famous labour lawyer Hugo Sinzheimer, codetermination was a means of subjecting the economy to democratic control during the Weimar period. Co-determination would not have been welcomed by the first generation of ordoliberalists, who advocated a strong state that would only intervene to ensure the ‘free market’ was protected from those with vested interests. McGaughey (n 35) 13–24; SJ Silvia, *Holding the Shop Together: German Industrial Relations in the Postwar Era* (ILR Press 2013) 44; W Bonefeld, ‘Freedom and the Strong State: On German Ordoliberalism’ 17 (2012) *New Political Economy* 633.

<sup>39</sup>E Bjøl, ‘Finn Gundelach’, *Dansk Biografisk Leksikon* (2011).

<sup>40</sup>European Commission and others, *The European Commission 1973–86 – History and Memories of an Institution* (M Dumoulin et al eds, Publications Office 2014) 519.

<sup>41</sup>*Ibid.*, 521.

<sup>42</sup>HAEU, INT765, Interview with Braun, Fernand, 8 December 2003, 3.

<sup>43</sup>*Ibid.*, 4.

to the EC, whether that be in the Commission, Parliament or trade union groups, integration still held the possibility of worker empowerment.

Moving on to the final two brief clarifications. The first is on the framing of a 'long 1970s' – this is as much a practical choice as a theoretical one.<sup>44</sup> It is practical in the sense that it aligns with the events leading up to the publication of the first proposal of the Fifth Directive, from the spring of 1968 onwards, to the demise of the proposal in 1984, which coincides with the decisive arrival of neoliberalism in Europe (Mitterrand's U-turn on a Keynesian revival, for example).<sup>45</sup> The 'long 1970s' is also practical in that it is recognised in similar histories of the time. As Aurélie Andry puts it in her study of the left's interaction with the European question at this time, the long 1970s were years of 'profound and accelerating dislocations' in which 'the world – and western Europe in particular – seemed to be at a crossroads'.<sup>46</sup> The final clarification is on the Marxist and Marx-influenced language and sources used in the paper. This choice followed from what I set out to achieve with this paper – linking the background economic conditions to the tactics and rhetoric of the actors involved in the debate on the Fifth Directive. In relation to the strategies of the employer groups in particular, I required an understanding of political economy that properly accounted for the power that industry representatives were fighting to regain over an emboldened labour movement.

### 3. Post-May 1968, Fordism and economic democracy

Before turning to consider the Fifth Directive and worker participation in detail, I want to first describe the political mood of the years prior to the proposal's first publication in 1972. In May 1968, a student occupation at Paris Nanterre University erupted into the streets and, in response to the police's violent crackdown, the student protests were picked up by workers, who called a general strike.<sup>47</sup> The students took aim at the authorities that provoked them – university administrators and politicians – and the workers on factory floors who were subject to strict top-down measures were able to unite in solidarity. In the mix of capitalist critiques that came out of this alliance, the protesters argued capitalism left no room for personal development or self-actualisation. Waged labour and the crumbs it provided for the worker were detrimental to 'autonomy, spontaneity ... openness ... the search for interpersonal contacts'.<sup>48</sup> This translated into demands for greater involvement in the decision-making of the company, or even worker-ownership and self-management.<sup>49</sup> The form that production took in post-war years, also known as 'Taylorism',<sup>50</sup> was said to reduce workers to their tasks on the factory floor, which were typically unskilled and monotonous.<sup>51</sup> As well, the types of firms that dominated Western Europe (but less

<sup>44</sup>Although there is no specific intellectual history on the use of the 'long 1970s', it likely comes from the *Annaliste* approach to historiography and the concept of the *longue durée*, most popularised by Fernand Braudel. For an account, see C Jones, 'Olwen Hufton's "Poor", Richard Cobb's "People", and the Notions of the Longue Durée in French Revolutionary Historiography' 1 (2006) *Past & Present* 178.

<sup>45</sup>In 1981, Mitterrand implemented his programme for government with nationalisations and welfare expansion but was forced to reverse path in subsequent years, first by freezing spending and wage increases, then with two rounds of currency devaluation in order to heed calls for monetary stability, J Birch, 'François Mitterrand's Austerity Turn' (*Phenomenal World*, 20 February 2021) <<https://www.phenomenalworld.org/analysis/mitterrands-austerity-turn/>> accessed 25 November 2025.

<sup>46</sup>Andry (n 9) 6 and 7.

<sup>47</sup>Prior to the 1960s university students were too much of a minority to articulate anything with much fervour. For example, one in seven young people in Italy were attending university as the 1960s ended, as opposed to one in twenty in the previous decade, T Judt, *Postwar: A History of Europe since 1945* (William Heinemann 2005) 391–4.

<sup>48</sup>L Boltanski and È Chiapello, *The New Spirit of Capitalism* (Gregory Elliott tr, New updated edition, Verso 2018) 97.

<sup>49</sup>Not to say that such demands were the focal point of the May '68 protests, but economic democracy was certainly part of the conversation. For example, passages from Debord's *The Society of the Spectacle* were graffitied on walls around Paris at the time; for passages on industrial democracy, see G Debord, *The Society of the Spectacle* (Zone Books 1994) 114–17.

<sup>50</sup>After Frederick Taylor, an engineer turned industrial manager who put his ideas for increasing shop floor productivity into the 1909 book *The Principles of Scientific Management* (Norton 1967). For a general discussion, see CR Littler, 'Understanding Taylorism' 29 (1978) *The British Journal of Sociology* 185.

<sup>51</sup>See H Braverman, *Labor and Monopoly Capital* (NYU Press 1998).

so the UK) in the Fordist decades were perceived as parochial, with a private, family-owned structure where career progression would depend as much on who you know as how you perform.<sup>52</sup> Fordist production systemised and expanded many, but not all, of the ideas of Taylorist factory organisation – repetition of specialised tasks and strict supervision, for example – and applied them to large-scale manufacturing.<sup>53</sup> The anti-capitalist fervour of the protests, combined with the specificity of its critique of waged labour as dehumanising, set the groundwork for increased calls for economic democracy throughout Europe as the 1970s began.

A similar story was unfolding in Italy as the 1960s came to an end. In 1968, student protests in Turin would signal the beginning of a period of intense unrest with students identifying with the workers (and *operaismo*) from the outset, who saw in university administration an illegitimate authority akin to the shop floor manager.<sup>54</sup> For example, workers for the Pirelli rubber company were so effective in their action that the government intervened on the strikers' behalf, after over a year of disputes that ended in November 1969.<sup>55</sup> This autumn became known as *l'autunno caldo* (the hot autumn) and marked a wave of industrial action across Northern Italy. Once again, autonomy was the central demand of both the students and striking workers.

The fragile agreement between capital and labour that characterised Fordism – whereby industrial relations were shaped by an understanding that increased productivity would be tied to wages – also meant that when calls for economic democracy intensified, workers were in a strong enough position to genuinely (or so it was perceived) challenge their bosses. As Grégoire Chamayou unearths through careful archival work (though in the context of the US) workers brought widespread disruption to the shop floor as tensions reached a high point in the late 1960s. In addition to levels of work stoppages not seen in decades, workers also felt powerful enough to challenge the existence of management altogether, giving rise to calls for control over production.<sup>56</sup> Germany's social market economy and its experience with co-determination meant that the labour movement had an immediate site of focus during these years, and unions were successful in extending parity on supervisory boards in Germany beyond the coal and steel sector, where previously only one-third of board seats were reserved for employee representatives.<sup>57</sup> In 1972, German Chancellor Willy Brandt called for co-determination to be brought to the European level.<sup>58</sup> The early 1970s had also seen a number of legislative acts on works councils throughout the Member States, as well as new collective agreements.<sup>59</sup> Beyond the EC, workers in

<sup>52</sup>Boltanski and Chiapello (n 48) 60–4.

<sup>53</sup>The extent to which Fordism takes its cues from Taylorism has been the subject of some debate, but most agree that the monotony of work under Fordism can be traced to Taylor in that both sought to narrow the worker and their task as much as possible; for an overview, see D Watson, 'Fordism: A Review Essay' 60 (2019) *Labor History* 144, 147–8.

<sup>54</sup>*Operaismo*, per Mario Tronti, was a call for the worker and their struggle to be the centre of Marxist theory and politics once again; following his and Antonio Negri's break with the Italian Communist Party (PCI), Tronti saw the struggles in Turin factories, for example, as the motor of history, not the strategic decisions of the PCI, M Tronti, *Workers and Capital* (David Broder tr, English-language edition, Verso 2019) 'Lenin in England'; on the protests in Turin, see Judt (n 47) 414.

<sup>55</sup>Judt (n 47) 415.

<sup>56</sup>Chamayou (n 24) 11.

<sup>57</sup>As McGaughey explains, German unions, particularly in the coal and steel sector, were more focused on industrial democracy than nationalisation of enterprises given their experiences under Nazism. Co-determination came about in the coal and steel sector as a result of negotiations between management and unions over how to demonopolise the industry. Collective agreements were reached in December 1947 and only became codified in State law with the 1951 *Montanmitbestimmungsgesetz* (The Coal, Iron, and Steel Codetermination Act), which followed cross-party support and trade union strike action. As calls to broaden codetermination became louder from the *Deutsche Gewerkschaftsbund* (DGB, General German Trade Union Federation) at this time, industry was recovering and could mount some resistance. The compromise was the 1952 *Betriebsverfassungsgesetz* (The Works Constitution Act), which did make Works Councils obligatory but only secured one-third employee representatives outside coal and steel, McGaughey (n 35) 33–7; Silvia (n 38) 43–82.

<sup>58</sup>Andry (n 9) 150–5.

<sup>59</sup>The German Works Constitution Act 1972, the Dutch Works Councils Act 1971, and 1970 national agreements in Belgium, Italy and Denmark, *ibid.*, 150.

Czechoslovakia had also launched calls for economic democracy but in reaction to a very different set of circumstances in the context of the Prague Spring of 1968.<sup>60</sup>

At the regional level, in its report following the April 1973 congress in Bonn, the EC's various socialist parties advocated for economic democracy, including co-determination, on the basis that employees are as integral to the health of the company as its capital, as well as depending on the company for their material wellbeing.<sup>61</sup> The discussions resembled the debate amongst unions, between radical communist and moderate Christian groups, in relation to the Fifth Directive with French and Italian socialists viewing co-determination as a conciliatory second choice to actual worker ownership of the firm.<sup>62</sup> This political climate, where worker participation was almost seen as a practical compromise between the demands of capital and labour, explains why the Commission appeared so matter-of-fact when presenting the case for the Fifth Directive. In the present imagination, a delegation of workers influencing (not to mention controlling) the board of their employer seems radical, but to the Brussels policy maker of the 1970s, this was discussed with almost a sense of inevitability. As the Commission wrote in its 1975 explanatory Green Paper, 'the time is ripe for the reform of certain social institutions, *companies included*, to take account of some important evolutions'.<sup>63</sup> The strength of the Commission's messaging echoes the demands of the worker movement in Western Europe at this time, which was primed for a paradigm shift. Here the Commission was paying heed to their demands – 'important evolutions' – but translating them into something palatable for the primary targets of the single market project, the large businesses who stood to benefit.

Amongst EC Member States, as Aurélie Andry points out, there was a radicalism and momentum on the left that, ultimately, failed to come together to transmit a cohesive vision for European integration.<sup>64</sup> For instance, nationalisation of the UK's largest companies was on the table for a Labour Party that came to power in 1974, and François Mitterrand would claim in 1971 that to be a member of the Socialist Party, one must be 'willing to break with ... capitalist society'.<sup>65</sup> In West Germany, the SPD establishment came under challenge by a party membership of Young Socialists, or *Jusos*, who pushed for central planning and worker control of industry.<sup>66</sup> Worker control almost became a reality in Sweden when economist Rudolf Meidner headed a commission that in 1976 proposed a model of profit sharing that would eventually result in workers becoming the largest shareholders in the companies they worked for.<sup>67</sup> The European left also had a degree of institutional power in the mid-1970s – the Socialist Group made up a third of the European Parliament in 1975, six of the nine Member States featured socialists in their

<sup>60</sup>Following the election of reformist Alexander Dubček as First Secretary of the Communist Party, the State planned to grant more autonomy to businesses and, as part of the measure, legislated for workers' councils but in a top-down manner, as a means to create a dedicated pool of enterprise managers. However, the trade unions fought back and seized on the moment to call for collective management and veto rights. Before the Dubček government could implement the legislation, the Soviet Union invaded Czechoslovakia and, after months of civilian resistance, Dubček was replaced by Gustáv Husák who then began dismantling Dubček's reforms. For a detailed account of the worker movement during this time, see V Fišera, *Workers' Councils in Czechoslovakia, 1968–9: Documents and Essays* (St Martin's Press 1978).

<sup>61</sup>'Employees must be represented in the company's management bodies. Where a supervisory board exists, workers and employers must be represented on it on the basis of equal rights and votes'. Bonn document was prepared by socialist parties of the EC and quoted in Andry (n 9) 152.

<sup>62</sup>*Ibid.*, 153.

<sup>63</sup>European Commission, Commission Green Paper on 'Employee participation and the company structure in the European Community' (COM (75) 570, 12 November 1975) 9, emphasis added.

<sup>64</sup>Andry (n 9) 6.

<sup>65</sup>F Mitterrand, 'Congrès d'Épinay' (François Mitterrand, *Le Verbe en Images*, 13 June 1971) <<https://fresques.ina.fr/mitte/rrand/fiche-media/Mitter00088/congres-d-epinay.html>> accessed 30 October 2025.

<sup>66</sup>Andry (n 9) 173.

<sup>67</sup>See R Meidner, 'The Rise and Fall of the Swedish Model' 41 (1998) Challenge 69.

governments, and the Commission DGs were headed by a number of left-wing figures, including the president, with Roy Jenkins assuming the role from 1977.<sup>68</sup>

Andry argues that another Europe was possible at this point, were it not for the inability of left-wing parties and worker representatives to transcend minor ideological differences and national borders. However, we must also consider the constitutional structure of the EC which, as Ruth Dukes explains, was drafted based on the belief that supranational law need only focus on the single market – according to this view, unions had enough power within Member States to ensure profits benefited labour as much as capital.<sup>69</sup> Given the almost total lack of means for labour to effectively influence the European project, and despite the best intentions of some Commission officials, industry representatives, employer groups and right-wing politicians had, and continue to have, a much easier task.<sup>70</sup> This can be understood another way, in that perhaps the constitutional structure of the EC made it easy for employers to undermine the power of labour at a time when labour was at its most threatening. This understanding of the EC's constitutional foundations is perhaps most famously described by Fritz Scharpf as a bias towards negative market integration over positive.<sup>71</sup> In this sense, negative integration meant the *removal* of barriers to trade and was provided for in the founding treaties of EC law, the implementation of which only required the approval of the European Court of Justice. By contrast, 'positive integration' required unanimity amongst national governments (at least prior to the Maastricht Treaty) and often looked a lot like market intervention – the Fifth Directive being a good example – making its obstruction far more likely. However, this was a bias and not a total block on positive integration; otherwise, the Commission would have been completely uninterested in bringing worker participation to the EC level. Present politics and the EC/EU's overall record on labour protection would suggest it was always going to be difficult, but the wider political context – one in which actual economic democracy was a clear and consistent demand in various, often quite diverse, social movements – left the Commission with little choice but to react. In the next section, I provide the details of the Fifth Directive and the Commission's reaction to the mood of May 1968.

## 4. Corporatism vs socialism

### A. First proposal and immediate reception

The Commission was already planning for a harmonised system of company law in the 1960s (though on more technical matters) and, in 1969, published an initial study on the prospect of some form of employee participation at the EC level.<sup>72</sup> Conducted by Professor Gérard Lyon-Caen of the Panthéon-Sorbonne law department – at one point a French Communist Party member and regular contributor to the journal of the trade union *French Confédération Générale du Travail*<sup>73</sup> – he wrote that company law has been integral to capitalist development by allowing multiple investors to benefit from a shared ownership in a single legal entity.<sup>74</sup> It follows, then, that capital accumulation in the EC would be aided by harmonised company board structures. In one sense, this was the primary purpose of the Fifth Directive, to create uniformity across the structures of large public companies throughout the then six Member States. Creating a company law regime that fosters the growth of large European firms aligns with Laurent Warzoulet's understanding of

<sup>68</sup>Though Jenkins was undoubtedly on the right of the British Labour Party.

<sup>69</sup>R Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press 2014) 159.

<sup>70</sup>Hence the 'authoritarian liberalism' that has defined the European project since its inception, MA Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021).

<sup>71</sup>F Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press 1999) 45.

<sup>72</sup>HAEU, BAC-042/1988\_1513, 'Contribution à l'étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes', 1969.

<sup>73</sup>J-P Le Crom, 'Notice LYON-CAEN Gérard [LYON-CAEN Gérard, Georges]' *Le Maitron* (6 February 2012).

<sup>74</sup>HAEU, BAC-042/1988\_1513, 'Contribution à l'étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes', 15.

the Commission's plans as 'neomercantilist'.<sup>75</sup> The label fits in the sense that company law harmonisation was pursued as part of a wider industrial vision for a new, distinctly *European* market. However, as the Commission's plans for employee participation show, this was also a European social market inspired by Germany's post-war success and the belief in a corporatist promise of bringing gains to both capital and labour.

In the pre-1972 proposal discussions, the Commission first justified targeting large public companies (*sociétés anonymes*) because they were understood to be the only corporate form with cross-border activities at the time, as well as the economically most important and legally most sophisticated.<sup>76</sup> The Commission also considered another form of employee participation besides co-determination, a 'social' board operating alongside the traditional company boards or legislating a framework for workers and employers to decide on the most appropriate arrangement. In both cases, the unions were critical and at least demanded the rights that follow from having actual seats on the board.<sup>77</sup> The Commission also had to ensure that it did not undermine industrial relations in the Member State where it was strongest and so, by instituting co-determination, it could support such a system where it already existed and introduce it 'as minimally as possible' in the other Member States.<sup>78</sup> Though we might view the Commission's efforts with some scepticism, officials were adamant that co-determination was the best way to 'present advantages for the workers ... and not exclusively for the owners of capital'.<sup>79</sup> The Commission did refer to this as 'economic democracy', the dominant call of the labour movement of the time, and argued that its set of company law proposals would signal 'decisive social progress, which the [EC] has not yet brought to workers'.<sup>80</sup> So whilst I interpret the Commission's ideology as one heavily shaped by German corporatism and its system of industrial relations, it is clear that those advocating for this system of worker participation were fully convinced of its merits and chances of success.

As such, the first proposal for a Fifth Directive on the structure of public companies was published in 1972 and embodies many of the hallmarks of Germany's system of co-determination.<sup>81</sup> The Directive would have compelled each Member State to introduce the two-tier board system, as found in German law.<sup>82</sup> In contrast to the 'classical form' where the company has a single administrative body, alongside a general meeting of shareholders, the two-tier structure consists of a management and a supervisory organ which, respectively, are tasked with the day-to-day running of the company versus its long-term objectives. This dual-board model, with the provision that the supervisory board must be made up of at least one-third

<sup>75</sup>L Warloutzet, *Governing Europe in a Globalizing World: Neoliberalism and Its Alternatives Following the 1973 Oil Crisis* (Routledge 2018) 67.

<sup>76</sup>HAEU, BAC-042/1988\_1513, 'Contribution à l'étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes'.

<sup>77</sup>HAEU, BAC-042/1988\_1839, Confédération européenne des syndicats libres response to Commission questionnaire, 18 March 1970, 44.

<sup>78</sup>HAEU, BAC-042/1988\_1513, 'Contribution à l'étude des modes de représentation des intérêts des travailleurs dans le cadre des sociétés anonymes européennes', 37.

<sup>79</sup>*Ibid.*, 20.

<sup>80</sup>HAEU, CEUE\_INTE-867, Information Note from Commissioner Finn Gundelach, 'Représentation des travailleurs au sein des organes des sociétés', 29 March 1973, 167.

<sup>81</sup>Proposal for a Fifth Directive to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, as regards the structure of sociétés anonymes and the powers and obligations of their organs, COM (72) 887 final, 27 September 1972.

<sup>82</sup>It is worth noting that, first of all, codetermination is entirely possible without a two-tier board structure, see n 7 for a list of European countries that feature such laws. Secondly, it can be said that the two-tier board became cemented as an institution in German company law under Nazi reform in 1937, as a way of empowering the executive board to the detriment of the supervisory board and shareholders, the latter of whom had an anonymous power that could supposedly disrupt national-socialist management, T Kuntz, 'German Corporate Law in the 20th Century' in H Wells (ed), (Edward Elgar Publishing 2018) 216.

employee or employee representatives, would be the source of controversy during the lifecycle of the Directive.<sup>83</sup> The scope of the Directive would also come under criticism, from those on the side of labour in this instance, with the proposal stipulating that only firms employing at least 500 people would be affected.<sup>84</sup>

The proof of the Commission's corporatist vision comes through in how rhetorically firm it was in arguing for a company law that extended the benefits of the single market beyond 'companies and the holders of capital' and yet how little power the proposal would really have granted labour, with only one-third of board seats going to workers and limiting the scope of the Directive.<sup>85</sup> This was picked up by the committees responsible for the file in the European Parliament – Social Affairs and Legal Affairs. Both committees thought the Directive did not go far enough in empowering labour, in particular that the scope was narrow not only in terms of how many employees should make up the threshold but also the usefulness of such a measure.<sup>86</sup> Instead, the committees pushed for a threshold of 100 employees, as well as the incorporation of references to company capital and annual turnover. To prevent boards being 'weighted against employees', the committees also thought both employees and shareholders should get one-third of seats with the final third 'co-opted' by the two groups, ie, they would decide the final third in tandem.<sup>87</sup> To further ensure shareholders were prevented from pursuing policies that would increase profits without considering how firms affect 'the whole of society through their business policy', the committees wanted a further board seat for a layperson who would represent the 'public interest'.<sup>88</sup> The unions also expressed disappointment about a proposal that, according to the European wing of the World Confederation of Labour (representative group for Christian trade unions), was an attempt to integrate workers into 'structures of European capitalism'.<sup>89</sup> For the British Trade Union Congress, support would come but only if board parity was assured.<sup>90</sup> As we can see, the initial resistance to the proposal came from the workers and their representatives, ie, the Commission's corporatism was contending with the labour movement on the ground and in the Parliament.

Within the trade unions, there was also a deep fracture between some socialist/communist unions and other, typically Christian, trade unions. The socialist/communist unions demanded access to information and right of consultation and bargaining but saw no merit in being complicit in the profit-making activities of their employers. Some in the trade union movement also feared employee participation being used to undermine the union's position as the focal point of worker organising. Instead, 'control' would take the place of 'participation' with ownership moving away from private hands. Less radical proposals typically centred on veto powers and legally protected access to information. This division is evident in the Commission's 1975 meeting with two different Belgian unions to discuss the directive.<sup>91</sup> The *Fédération Générale du Travail de Belgique* (FGTB) saw workers on company boards as an existential threat to trade unions in general – integrating unions into company decision-making processes would be the first step in making unions obsolete.<sup>92</sup> Even still, the FGTB thought the basis of the Directive – union influence over economic decisions – was sound but feared that, without universal adoption, certain EC regions may be economically disadvantaged. The *Confédération des Syndicats chrétiens* (CSC) said the FGTB position was a

<sup>83</sup>Art 4(2).

<sup>84</sup>Art 4(1), Socialist MEPs would attempt to lower this threshold, see Section 4, part C.

<sup>85</sup>Employee Participation and Company Structure in the European Community COM (75) 570, 12 November 1975' 9.

<sup>86</sup>HAEU, BAC-042/1988\_0421, European Parliament Legal Affairs Committee Working Document on the Proposal for a Fifth Directive, 19 June 1974, 238.

<sup>87</sup>*Ibid.*, 239.

<sup>88</sup>*Ibid.*, 240.

<sup>89</sup>HAEU, BAC-042/1988\_817, Position Paper of the Organisation Européenne de la C.M.T., 28 April 1971, 116.

<sup>90</sup>*Ibid.*, 119.

<sup>91</sup>HAEU, BAC-042/1988\_0372, Meeting Reports of Gundelach and Mr Debunne (FGTB), and Gundelach and Misters Silon and Desmet (CSC), 23 and 30 September 1975, 61.

<sup>92</sup>*Ibid.*

minority amongst European trade unions.<sup>93</sup> The CSC were firmly in favour of worker representation but said there would be no gains for workers without board parity. The CSC also argued the terminology of worker participation did not best capture the demands of unions and would rather have joint partnership or democratisation of the economy.

As will be set out in detail below in Section 4, the initial response from employer groups was quite tame and focused on the Commission's interpretation of the legal basis for a system of employee participation, as well as references to supposedly insurmountable national differences in industrial relations. However, it is important to note at this point that worker participation was, for industry representatives, not in itself objectionable.

### ***B. 'A confused debate' and the green paper***

At this point, with the proposal struggling to get support from all sides, but predominantly from socialist MEPs and trade union groups, two years on from publication in 1974, the Commission thought it best to clarify a 'confused' debate with the 'dualist system . . . under attack' (referring to the two-board company model) and began work on a 'green paper'.<sup>94</sup> The resulting document is the perfect encapsulation of the Commission's corporatism, initially written by Commission DG Internal Market official Bob Coleman,<sup>95</sup> with claims that its plans would bring real gains to workers but with the caveat that the overall objective remained an improved European market. Internal Market Commissioner Finn Olav Gundelach also said at this time that pushing the Directive through whilst the EC was expanding would have been rash and complicated.<sup>96</sup> The green paper was not published with a view to creating a new draft proposal from the Commission's side as the 1972 proposal was still, in 1975, before Parliament committees as well as the Economic and Social Committee.<sup>97</sup> The delay was first initiated so that the preparatory work for the Statute for a European Company could be completed and, following that, so that the green paper could be finalised. In a meeting in which the green paper was presented to the European Parliament's Legal Committee in February 1976, the rapporteur for the Fifth Directive, West German Socialist MEP Manfred Schmidt, did not believe it was necessary for the Commission to withdraw the original proposal.<sup>98</sup> There was no suggestion that the Fifth Directive was not viable, with even conservative committee members calling for progression.<sup>99</sup>

In the green paper, the Commission felt it had to justify the proposal in the context of different national regimes, as well as the political and economic climate in Europe.<sup>100</sup> On the reasons for a Fifth Directive, the green paper argued a common market is not so common when the limited liability company with large share capital, increasingly the dominant actor in the market, is subject to different national laws.<sup>101</sup> The question of employee participation was partly linked to this then, in that cross-border deals, incorporations and expansions would all be made easier if the company structure was the same, including worker involvement. However, 'the creation of a common market for companies is not an end in itself, and including workers on company boards was a way to better improve the 'living and working conditions of the Community's citizens'.<sup>102</sup>

<sup>93</sup>*Ibid.*, 63.

<sup>94</sup>HAEU, BAC-042/1988\_0338, DG Internal Market meeting notes with Gundelach, 13 May 1974, 84.

<sup>95</sup>HAEU, BAC-042/1988\_0339, Handwritten first draft of Green Paper, August 1974.

<sup>96</sup>HAEU, BAC-042/1988\_1495, Speech before EP Legal Affairs Committee, 26 March 1976, 507.

<sup>97</sup>The consultative body of the EC/EU that is made up of representatives from industry, labour and civil society, not to be confused with the Parliament's Committee on Economic and Monetary Affairs or Committee on Employment and Social Affairs.

<sup>98</sup>HAEU, BAC-042/1988\_0421, Fernand Braun Note on EP Legal Committee session on Green Paper, 27 February 1976, 166.

<sup>99</sup>Specifically, UK Conservative MEP Michael Norman Shaw, *ibid.*, 168.

<sup>100</sup>HAEU, BAC-042/1988\_0369, Explanatory Note on Green Paper Draft, 24 July 1975, 14.

<sup>101</sup>European Commission, Commission Green Paper on 'Employee participation and the company structure in the European Community' (COM (75) 570, 12 November 1975) 9.

<sup>102</sup>*Ibid.*

The economic crises that defined Western Europe at this time brought into sharp focus the need for a new regime of industrial relations and the need for the EC to extend the benefits of the single market beyond ‘companies and the holders of capital’ and guarantee that employees have sufficient legal standing in the companies they work for, in any EC Member State.<sup>103</sup>

In presenting the issue of employee participation in general, the Commission did not think it was fighting an uphill battle – it was operating in the context of a ‘broad consensus that . . . participation is desirable’.<sup>104</sup> At the time of writing of the green paper, the Commission predicted that the desire for further democratic control over industry would only increase in coming years, due in part to recent gains made by collective bargaining:

The desire of employees to increase the degree of control which they have over the industrial and commercial environment in which they live and upon which they depend has been a relatively constant feature of the development of industrial relations in all Member States. Employees and their organisations everywhere have insisted upon increasing recognition being given to the human aspects of the production process. There is no reason to believe that this insistence will weaken. On the contrary, higher levels of general education in particular are likely to lead to its strengthening.<sup>105</sup>

Implicitly acknowledging the political situation post-1968, the Commission also pointed out that domestic legislation in the community was increasingly acknowledging the importance of providing employees with some form of voice (but crucially of course, not handing over control to workers), suggesting that the EC was just following the lead of its Member States.<sup>106</sup> This all points to the further enmeshing of the state and employees in the activities of companies, the Commission argued, highlighting the need for consistent rules across the Member States on how workers participate in firms. On top of that, the important gains made through collective bargaining have been sector- or region-specific and depend on workers power which occurs under specific conditions – installing workers on boards may guarantee workers a voice across space and time. On the ‘fundamentally unpersuasive’ argument that company law is not the forum to further worker interests, the Commission said the traditional interpretation of the relationship of workers and employers as a purely contractual one is no longer workable.<sup>107</sup> The company is ‘an enterprise in which labour and capital combine in their own and society’s interests’, and so the law must account for how workers, managers and shareholders interact with one another.<sup>108</sup>

In response to a negative opinion from the Economic and Social Committee of the EC, which felt that the Commission had not sufficiently demonstrated the value of the two-tier German model over the single board system,<sup>109</sup> the Commission suggested a transition period where Member States could choose between a unitary or dual board model (with seats for employee representatives in both). However, the Commission still struggled to get socialist parliamentarians on side, like West German rapporteur in the Legal Affairs Committee MEP Manfred Schmidt.<sup>110</sup> In 1976, he repeated calls for company size to be measured with reference to turnover and capital instead of just number of employees. Internally, the Commission criticised Schmidt for using the proposal to consolidate power for workers, as opposed to trying to create cooperation between

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<sup>103</sup>*Ibid.*

<sup>104</sup>*Ibid.*, 21.

<sup>105</sup>*Ibid.*, 23.

<sup>106</sup>*Ibid.*, 36.

<sup>107</sup>*Ibid.*

<sup>108</sup>*Ibid.*, 36.

<sup>109</sup> Archives of European Integration, THE EESC Bulletin No 4.5/1974 April–May.

<sup>110</sup> HAEU, BAC-042/1988\_1493, Note prepared for Gundelach by Braun on issues in EP Legal Committee, 17 December 1976, 286.

capital and labour.<sup>111</sup> Nevertheless, officials from the Commission redrafted the controversial articles with MEP Schmidt's consent – demonstrating the power of socialist voices still at this stage – and sent the working document to the Legal Affairs Committee in April 1978.<sup>112</sup>

In a meeting with the Legal Affairs Committee in 1976, Commissioner Gundelach said that, on the one hand, a harmonised company law regime would help with the 'unequal distribution of wealth' across Member States as firms begin operating across borders.<sup>113</sup> Nevertheless, these multinationals have become embedded in a 'world market which is establishing itself nearly as a force of nature'.<sup>114</sup> With companies showing an ability to escape and operate outside of national law, control can only be established at the European level (given the absence of any forthcoming international cooperation). Gundelach also remarked that 'the shareholder is, as everybody round this table knows, not the God in the company'.<sup>115</sup> Fernand Braun, who worked under Commissioner Gundelach as his Internal Market Directorate General, wrote at this time that the feeling in the Commission is one of conviction about the benefits of worker participation on the road to achieving 'stable if limited growth in a relatively unstable, competitive economic environment'.<sup>116</sup>

The amended text stated that Member States may choose between a mandatory system of dualist board structures or optional dualist and unitary systems for a transition period of five years. The Commission did not depart from the original 500-employee threshold but said this number was up for discussion. Article 3 on powers and duties of the organs was expanded upon, including an explicit obligation that all board members carry out their activities 'having regard to the interests of the shareholders and the employees'.<sup>117</sup> Article 4 still specified a minimum of one-third employee representatives but added that the shareholders' general meeting elect a maximum of two-thirds. For Member States permitting the temporary use of single board systems, a new sub-section, chapter II A, was added.<sup>118</sup> Much of the provisions from the dualist 1972 proposal still applied to the alternative unitary boards, including rules on employee participation, right to information and decisions on important questions. The amended text also included the four temporary solutions set out in the green paper: unitary system with worker participation, unitary system with an independent representative institution, dualist system with worker participation, or dualist system with a representative institution. The amended text provided that a system of worker participation shall only be installed with the agreement of a majority of employees. Nonetheless, the goal of the Directive remained the same with dualist models being obligatory at the end of the transition period, with employee representatives sitting on the supervisory board.

### C. Defeat in the parliament

By the time the Legal Affairs Committee met in April 1979 to vote on the rapporteur's report, Schmidt had blindsided the Commission (in its interpretation), proposing amendments which the Commission felt were 'completely the opposite of that so laboriously elaborated . . . since 1972'.<sup>119</sup> His report sought parity for workers on supervisory boards, as well as lowering the threshold to 200 employees and including criteria based on turnover.<sup>120</sup> Schmidt also wanted worker

<sup>111</sup>*Ibid.*

<sup>112</sup>HAEU, BAC-042/1988\_818, Working Document prepared by the Commission for use in EP Legal Committee, 21 April 1978, 3.

<sup>113</sup>HAEU, BAC-042/1988\_1495, Speech before EP Legal Affairs Committee, 26 March 1976, 508.

<sup>114</sup>*Ibid.*, 509.

<sup>115</sup>*Ibid.*, 510.

<sup>116</sup>HAEU, BAC-042/1988\_0423, Speaking notes prepared by Braun for Gundelach EP Legal Affairs Committee appearance, 22 September 1976, 74.

<sup>117</sup>HAEU, BAC-042/1988\_1495, EP Legal Affairs Working Document prepared by rapporteur Schmidt, 6 March 1979, 10.

<sup>118</sup>*Ibid.*, 29.

<sup>119</sup>*Ibid.*, 57.

<sup>120</sup>HAEU, BAC-042/1988\_1495, EP Legal Affairs Working Document prepared by rapporteur Schmidt, 9 January 1979, 141.

representatives to have veto rights when it came to significant, economic decisions. Thanks to the poor attendance of Liberals, Christian Democrats and Conservatives at the meeting, Schmidt's report was adopted.<sup>121</sup> DG Internal Market's Fernand Braun, in conversation with German Christian Democrat MEP Hermann Schwörer after the meeting, discussed the possibility of reinstating the Commission text at the upcoming plenary session of the European Parliament in May 1979. If the Christian Democrats were to be the ones to counter Schmidt's amendments, however, the Commission would have to manage in the background given the group's weak performance to date. As the Commission's 1978 post-green paper text was not officially a new proposal to replace the one from 1972, the Commission's amendments would have to be presented by the Christian Democrats in opposition to the Schmidt report. Braun also said that the Commission would need to petition other centre and right-wing groups to support its text against a Socialist-Communist alliance, demonstrating that the location of struggle in 1978 was still between pro-worker forces and the Commission, ie, industry resistance was still in the background.

All the while, the 1976 Decision and Act concerning the election of the representatives of the Assembly by direct universal suffrage entered into force in July 1978,<sup>122</sup> leading to the first elections of the European Parliament in June 1979. This gave the Commission and Legal Affairs Committee a deadline because a new Parliament would, for the Commission, mean a whole new landscape to navigate. It would also mean, for the then members of the Legal Affairs Committee, their last chance to influence and possibly even approve the amended Fifth Directive. At the May 1979 plenary session, it was originally the Commission's plan to put forward its amendments through the Christian Democrats, as the more flexible and workable approach in comparison to the Schmidt report. The Commission's strategy was complicated by learning of the Conservative group's intention to block the report completely, sending it back to a new Legal Affairs Committee following elections. The Commission then pressured the Christian Democrats to work with the Socialists to pass a compromise resolution. The outcome was a report that adopted the Commission's approach except for the composition of supervisory boards and management boards at the end of the transition period, with the Commission committing to equal participation for workers. When it came to the vote, the Conservatives claimed a quorum had not been reached and so the matter was automatically sent back to committee.<sup>123</sup> At this session, Commissioner Davignon reportedly urged the Parliament to adopt the proposal to show citizens that their 'rights are better protected within the European Community than they would be if the Community did not exist'.<sup>124</sup>

In the new, directly elected European Parliament, the Socialists won the most seats but were now up against an overall right-wing majority, for the first time in the Parliament's history. The compromise on board parity that had been previously reached was now under attack and, in deciding the new rapporteur in the Legal Affairs Committee, German socialist MEP Hellmut Sieglerschmidt lost out to Dutch liberal Aart Geurtsen.<sup>125</sup> Given the heightened tension, the Commission proposed that the Committee deliver a provisional opinion on the non-contentious articles so that the proposal could be expedited. The centre-right members were reluctant and the Commission did not push the issue for fear of alienating them.<sup>126</sup> At the September 1979 plenary session, it was decided that the directive should be referred back to committee, with Geurtsen arguing that the new, directly elected Parliament must consider it in full. The Legal Affairs

<sup>121</sup>HAEU, BAC-042/1988\_1493, Note from Braun to Étienne Davignon, 2 May 1979, 46.

<sup>122</sup>OJ L 278.

<sup>123</sup>HAEU, BAC-042/1988\_0409, Commission note on timeline of proposal to date, 24 October 1979, 7.

<sup>124</sup>MRC, MSS.200/C/3/EMP/2/85, Note prepared by Imperial Chemicals Industries Ltd and sent to the CBI, follows meeting ICI had with British Conservative MEP Amédée Turner, 5 October 1979.

<sup>125</sup>Geurtsen was a member of the Dutch House of Representatives before becoming an MEP in 1979; he was part of the *Volkspartij voor Vrijheid en Democratie* (VVD), a liberal party historically but now supporting the far-right *Partij voor de Vrijheid* (PVV) in the current government.

<sup>126</sup>HAEU, BAC-042/1988\_1493, Note from Braun to Davignon, 7 September 1979, 27.

Committee asked the Economic and Monetary Affairs Committee to draft an opinion, with German Christian Democrat Philipp von Bismarck appointed as rapporteur.

There was a marked shift in momentum between 1978 and 1979. The ascendancy of the right was hinted at when the Conservative group, in the 1978 Parliament, changed tack and tried to block the Fifth Directive outright. In the years prior, outright resistance was a fringe position which, as I describe below, was not considered an option by industry representatives until the decade reached its end. Before then, the spirit of '68 and the demand for economic democracy lent weight to the trade unions and socialist politicians who found people in the Commission sympathetic to, if not supportive of, the cause of workers in Western Europe. The Commission's corporatist interpretation of economic democracy came up against the radicalism and institutional power of the left before 1978. In the years that followed, both parties would likely have come to regret their inability to compromise.

## 5. Corporatism vs neoliberalism

### *A. The turn to monetarism and a right-wing consensus in Europe*

As the Commission tasked itself with answering its left-wing critiques in the Parliament, around the time of the 1975 green paper and afterwards, another counterweight was forming. As the next sub-section details (Section 5.B), employers and industry representatives eventually settled on a message and tactic with which to attack the Fifth Directive (and, importantly, also the Vredeling Directive on information and consultation for workers in the context of multinational companies).<sup>127</sup> However, prior and parallel to this, governments in Western Europe were beginning to, one by one, depart from the Keynesian consensus. As the oil crisis of 1973 tested the ability of states to aim for near full employment, the intellectual seeds of another paradigm had been sown a few years prior. Milton Friedman published 'The Role of Monetary Policy' in 1968, which claims that every economy has a 'natural' rate of unemployment, whereby the drop in unemployment that comes just after a rise in inflation is only temporary and will merely return to its 'natural' level.<sup>128</sup> The implication being that unemployment reduction programmes are pointless, and so the state need only control the money supply to achieve stability.

Within Europe, coordinated monetary policy was first put on the EC agenda at the Hague EC summit in late 1969 and the Werner Report of the following year, with Member States seeking a European response to US hegemony and global monetary instability.<sup>129</sup> However, the monetarist turn really began in earnest in West Germany with interest rate hikes following the 1973 oil crisis and in 1974, when the Bundesbank began making its monetary targets public.<sup>130</sup> In France, Prime Minister Raymond Barre assumed office in 1976 under the liberal, pro-European Giscard d'Estaing and set about following the German model through controlling the franc and implementing a series of austerity reforms.<sup>131</sup> Around the same time, the Christian Democrats in Italy, with the support of the Communist Party, announced a reform package of monetary stabilisation and austerity following a run on the lira and conditions attached to a 1974 loan from the IMF.<sup>132</sup> Although in the UK the rise of monetary policy is associated with Margaret Thatcher's

<sup>127</sup>See Section 5 B for detail.

<sup>128</sup>M Friedman, 'The Role of Monetary Policy' 58 (1968) *The American Economic Review* 1, 8.

<sup>129</sup>K Dyson and K Featherstone, *The Road to Maastricht: Negotiating Economic and Monetary Union* (Oxford University Press 1999) 2.

<sup>130</sup>An explicit endorsement of the monetarist policy of promoting price stability above all else, through controlling the supply of money in the economy, K R McNamara, *The Currency of Ideas: Monetary Politics in the European Union* (Cornell University Press 1999) 153.

<sup>131</sup>*Ibid.*, 130.

<sup>132</sup>*Ibid.*, 133.

election in 1979, the Sterling crisis from three years earlier had already forced the Labour government to adopt monetary targets.<sup>133</sup> The real test for the emerging monetarist consensus came when François Mitterrand's Socialists rose to power in 1981. Over the next two years, following Mitterrand's reversion to Keynesian expansion and a programme of industrial nationalisation, France was hit with three exchange rate crises and capital flight, and Mitterrand was eventually forced to reverse course and prioritise deflation.<sup>134</sup> As European governments implemented monetarist policies in turn, the ideas took hold in European institutions. The McCracken Report, published by the OECD in 1977, argued that inflation reduction must be the priority of economic policy and slow growth must be sustained so that wages do not rise.<sup>135</sup> In 1975, the Commission tasked a group of economists with preparing a report on monetary cooperation, and the so-called OPTICA group advocated a position that intervention can and should only impact price inflation.<sup>136</sup>

In relation to the question of European integration at a more general level, it was also during these years that a new 'emergent transnational capitalist class', which contained both globalist and Europeanist factions, turned their attention towards the EC and what it may mean for their place within a newly globalised capitalism.<sup>137</sup> Before the collapse of Bretton Woods (and US adherence to the gold standard), free but stable exchange rates and the development of the GATT regime meant production started becoming more internationalised in the years leading up to the first oil crisis in 1973.<sup>138</sup> The accompanying crisis of profitability, productivity and demand required a 'spatial fix' of investment and offshoring into new markets.<sup>139</sup> Despite these developments, European industry remained distinctly European, and sectors like cars and electronics were increasingly threatened by new products from Japan.<sup>140</sup> A perception then emerged amongst European capitalists that the region was in decline and so, as the EC's activities extended into new areas such as industrial relations, another vision was offered whereby, under the shadow of economic crises, industry claimed it could only become 'competitive' again through a single market actually realised, as well as a labour force that was better attuned to the needs of European business (in other words, disempowered). This was a far cry from the terms of the debate being had between the Commission and its socialist critics on the Fifth Directive, which was defined by the *degree* of power that workers should be granted. During the years of corporatism vs socialism, 1972–1979, the turn to monetarism and perceived global threats to European industry were providing the basis for a new anti-labour discourse to emerge, one that sold EC Members States on the absolute need for flexibility and competitiveness.

<sup>133</sup>A Davies, 'The Evolution of British Monetarism: 1968–1979' 104 (2012) University of Oxford Discussion Papers in Economic and Social History 19.

<sup>134</sup>One response could have been to introduce capital controls but that would have been at the expense of the European Monetary System, McNamara (n 130) 137–8; H Zimmermann, 'From the Werner Report to the Start of EMU' in M Segers and S Van Hecke (eds), *The Cambridge History of the European Union: Volume 2: European Integration Inside-Out*, vol 2 (Cambridge University Press 2023) 297.

<sup>135</sup>Described here, RO Keohane, 'Economics, Inflation, and the Role of the State: Political Implications of the McCracken Report' 31 (1978) World Politics 108.

<sup>136</sup>Commission of the EC, 'OPTICA Report '75, Towards Economic Equilibrium and Monetary Unification in Europe II/909/75-E Final' (1976).

<sup>137</sup>van Apeldoorn (n 35) 3.

<sup>138</sup>The 1944 Bretton Woods Agreement required signatories to guarantee the convertibility of their currency into US dollars, with the dollar then convertible into gold at a fixed rate. The General Agreement on Tariffs and Trade (GATT) provided for the reduction or elimination of tariffs and quotas. According to van Apeldoorn, in contrast to what came later once financial capital was free from constraints, the globalisation of production was at this point tempered by the protection afforded to national welfare systems, *ibid*, 53.

<sup>139</sup>D Harvey, 'The Spatial Fix – Hegel, Von Thunen, and Marx' 13 (1981) Antipode 1.

<sup>140</sup>van Apeldoorn (n 35) 68.

### B. A new discourse emerges

As mentioned above, the industry opposition to the 1972 proposal rarely focused on the potential economic harm of worker participation. Employer groups first tried to question the legal basis of the Directive, with the Permanent Conference of Chambers of Commerce and Industry of EEC (Eurochambres) claiming that the referral to the 'coordination of safeguards' in Article 54(3)(g) could not include worker participation and was instead about the balance between capital and labour.<sup>141</sup> Around the same time, the Union of Industrial and Employers' Confederations of Europe (UNICE, now known as BusinessEurope) also questioned the Commission's legal interpretation, reasoning that the 'others' or third parties referred to in Article 54(3)(g) could not be understood to include workers.<sup>142</sup> The Commission responded that the company is 'an enterprise in which labour and capital combine in their own and society's interests' and so it makes perfect sense to include workers in company law measures.<sup>143</sup> Either employer groups accepted this argument or realised strategically something else was necessary.

Industry groups also questioned the feasibility of harmonisation on company structures – which does give some credit to the conventional story about the failure of worker participation during these years.<sup>144</sup> In 1973, just a few months after the UK's accession to the EC came into effect, a JB Bransbury – legal advisor to Courtaulds Ltd – gave a speech in which he claimed that the laws of Member States derive from 'two entirely different wellsprings'.<sup>145</sup> Contrary to the claim that a clash of legal cultures explains the Commission's failures, employer groups on the continent expressed similar reservations about harmonisation. For example, the UNICE position in 1973 was that companies themselves are best placed to determine whether a dual-board model would work for them.<sup>146</sup> Interestingly, the Italian delegation of UNICE, *La Confederazione Generale dell'Industria Italiana* or Confindustria, was stronger on the subject of harmonisation and, in its minority opinion report, argued company law should only be harmonised to the extent that it would facilitate an 'integrated financial market'.<sup>147</sup> Another 'cultural' objection was expressed by Sir John Nicholson – a British member of the Economic and Social Committee – who reported on a meeting of the Committee's 'study group' in 1973.<sup>148</sup> Revealing a 'private conversation' that he had with a Commission spokesman, Nicholson said the Commission official accepted his view that harmonisation would have to overcome the difficulty of aligning the 'aspirations of the orderly German and the unruly British workers'.<sup>149</sup>

In offering these objections, industry groups often said they would rather that a system of works councils be put in place instead of dual boards with employee representatives. The Association of British Chambers of Commerce said as much in 1973, suggesting that a 'Works Committee' could approve some management decisions and so 'express a view as to the more

<sup>141</sup>The full wording is: 'by co-ordinating, to the extent that is necessary and with a view to making them equivalent, the guarantees demanded in Member States from companies within the meaning of Article 58, second paragraph, for the purpose of protecting the interests both of the members of such companies and of third parties'. HAEU, BAC-042/1988\_817, Permanent Conference of Chambers of Commerce and Industry of EEC observations on proposed 5<sup>th</sup> directive, 29 June 1973, 4.

<sup>142</sup>*Ibid.*, UNICE observations on proposed 5<sup>th</sup> directive, 2 October 1972, 125.

<sup>143</sup>European Commission, Commission Green Paper on 'Employee participation and the company structure in the European Community' (COM (75) 570, 12 November 1975) 35.

<sup>144</sup>See the discussion in the below section for a detailed engagement.

<sup>145</sup>Courtaulds was a leading manufacturer of fibres at the time, MRC, MSS.200/C/3/COM/3/2, Speech for 'commerce and industry group weekend Cambridge', 7 April 1973.

<sup>146</sup>MRC, MSS.200/C/3/COM/3/2, UNICE observations on fundamental points of proposed 5<sup>th</sup> directive, 2 October 1973.

<sup>147</sup>*Ibid.*

<sup>148</sup>Nicholson was a company director with three firms at this time, Ocean Steamship Co., Barclays Bank Ltd. and Royal Insurance, MRC, MSS.200/C/3/COM/3/2, Letter from Nicholson to S. Wigdor of the CBI, 12 April 1973.

<sup>149</sup>*Ibid.* on the fallacy that industrial relations in the UK have been historically defined by an adversarial relationship between labour and capital, see above Section 2 and McGaughey (n 18).

fundamental aspects of management without being directly involved in it'.<sup>150</sup> The Aims of Industry, a British corporate lobby group, issued a press release the same year arguing against employee representatives on boards in favour of works councils.<sup>151</sup> Part of the reason being that, again, the German system features trade unionists different from their British counterparts, who might be 'Communists, Trotskyists and Maoists whose avowed intention is to cause industrial strife to bring down society' as the group put it in a separate document addressed to the British Secretary of State for Trade and Industry at the time, Conservative MP Peter Walker.<sup>152</sup>

In the early objections to the Directive, the idea of worker participation was in itself agreeable, but industry groups said worker representatives on boards were not the best way forward. The Aims of Industry, which had and continues to have links to the British Conservative Party,<sup>153</sup> wrote in 1973 that works councils would be better for 'improving communication and participation'.<sup>154</sup> In an internal memo of the Confederation of British Industry (CBI, the member organisation for the UK in UNICE) from the same year, the authors even found worker representatives 'acceptable for certain limited purposes' and were 'in favour of increased participation'.<sup>155</sup> As in the Commission, there was a sense that it was a matter of 'when' not 'if' worker participation would become a reality. Due to the 'obsessed' mindset members of the CBI observed in Commission officials like Fernand Braun during a 1973 visit to Brussels, German-style co-determination might be worth accepting.<sup>156</sup> Otherwise, Braun and Brussels colleagues might push for 'union ownership'. The Parliament's Conservative Group remarked something similar in 1974 and spoke in favour of the 'greater involvement' of employees but feared 'employee control'.<sup>157</sup> Confindustria (the Italian industry group) found the idea of promoting participation perfectly legitimate but said the proposal in question was 'unrealistic'.<sup>158</sup>

The feeling that participation was a necessary evil worth enduring still persisted in 1975. Another British representative on the Economic and Social Committee, Matthew Wylie, wrote then that 'some form of worker participation is going to come, whether we like it or not'.<sup>159</sup> However, the publication of the Green Paper brought alarm to others. Within UNICE, the response was to accept the benefits of a system of participation that would 'make possible better cooperation between employers and employees' but argue against 'institutionalisation'.<sup>160</sup> For UNICE the ideal system of participation would 'promote understanding by all employees that their contribution to the enterprise results in the creation of wealth for the community at large'.<sup>161</sup> It was on this basis that 'UNICE would be very willing to collaborate actively'.<sup>162</sup>

One argument that industry never departed from throughout the lifespan of the Directive was the Commission's inability to account for the differences in 'socioeconomic conditions' between the Member States. UNICE warned the Commission in 1973 that the 'social realities of each EEC country cannot be overturned' and so intervening in the relationship between workers and

<sup>150</sup>MRC, MSS.200/C/3/COM/3/9, Memorandum of the Association of British Chambers of Commerce's Commercial Law Committee, 3 April 1973.

<sup>151</sup>MRC, MSS.200/C/3/COM/3/2, Aims of Industry press release, 21 May 1973.

<sup>152</sup>*Ibid.*, Aims of Industry recommendations for British Secretary of State for Trade and Industry, May 1973.

<sup>153</sup>See S Mustchin, 'Right-Wing Pressure Groups and the Anti-Union "Movement" in Britain: Aims of Industry, Neoliberalism, and Industrial Relations Reform, 1942–1997' 40 (2019) *Historical Studies in Industrial Relations* 69.

<sup>154</sup>, MSS.200/C/3/COM/3/2, Aims of Industry press release, 21 May 1973.

<sup>155</sup>MRC, MSS.200/C/3/COM/3/11, CBI Sub-Committee for European Social Affairs summary of draft interim recommendations, April 1973.

<sup>156</sup>MRC, MSS.200/C/3/COM/3/2, CBI Advisory Working Party on Europe note to members, 16 April 1973.

<sup>157</sup>Archives of the European Commission, INV 1/2023 135 (133), European Parliament Conservative Group, 'The European Community: our common cause', September 1974, 12.

<sup>158</sup>HAEU, BAC-042/1988\_817, UNICE observations on proposed 5<sup>th</sup> directive, 2 October 1972, 137.

<sup>159</sup>MRC, MSS.200/C/3/INT/3/223, Letter from MJG Wylie to CBI, 12 December 1975.

<sup>160</sup>MRC, MSS.200/C/3/INT/3/224, UNICE Note on Green Paper, 3 June 1976.

<sup>161</sup>*Ibid.*

<sup>162</sup>*Ibid.*

management would be an unwelcome imposition.<sup>163</sup> Industry groups also demanded a degree of flexibility, which the Commission responded to in the 1975 green paper. When the notion of flexibility was discussed in the early part of the decade, it was so that businesses and Member States could adapt to dual boards and co-determination, as Eurochambres set out in 1973.<sup>164</sup> UNICE began to take on a more critical tone in 1975 (but prior to the Green Paper's publication) and argued that the Commission's attempts at harmonisation would have the exact opposite effect, increasing the 'already excessive divergences' and 'endanger still more the pursuit of Community objectives'.<sup>165</sup> When the Parliament was debating the Green Paper suggestions in 1978, including a transition period after which dual boards would become obligatory, UNICE brought up the flexibility argument again and said it would be open to employee participation if the Directive was reviewed five years after implementation.<sup>166</sup>

With the publication of the Green Paper, and the Commission's suggestion that the Directive be applied with a transition period before its original participation model comes into effect, UNICE countered that the options presented must derive from arrangements that already exist in Member States, echoing the 'national differences' critique.<sup>167</sup> In discussing the 1979 amendments put forth by Socialist MEP Schmidt, UNICE tried to undermine Schmidt's approach by arguing that none of his arguments had 'been taken up in the Member States'.<sup>168</sup> To legislate for participation 'might upset the present balance in industrial relations'.<sup>169</sup> In addition, UNICE argued, there were Member States in which 'employers have made a big effort to start a dialogue with labour on a voluntary basis' and the Directive would just halt this progress. The argument that participation was not a live issue in Member States would have surprised the Commission, which had already concluded by 1974 that 'except apparently for Italy, employee participation certainly remains a live political issue'.<sup>170</sup> The Commission's assessment of the Italian workers' movement was also misplaced; the 1970s were a time of unprecedented 'growth and power' for trade unions.<sup>171</sup> By the end of the decade, many collective agreements included rights to information and consultation.<sup>172</sup>

At this point, as previously described, the file was in the hands of Socialist MEP Manfred Schmidt and the Parliament's Legal Committee. The Commission had provided the Committee with a working document that included amendments taken from the Green Paper, most significantly a 5-year transition period in which companies could choose from a variety of board structures. UNICE felt that this was a decent starting point for legislating but warned against any imposition of a strict model of employee participation, even with the flexibility found in the transition period.<sup>173</sup> Even UNICE's highly qualified objections provoked the CBI, its British member organisation, who could not support the conclusion that the Commission's amendment provided a 'starting point for discussion'.<sup>174</sup> The CBI remarked that it would have to reserve its

<sup>163</sup>MRC, MSS.200/C/3/COM/3/2, UNICE observations on fundamental points of proposed 5<sup>th</sup> directive, 2 October 1973.

<sup>164</sup>MRC, MSS.200/C/3/COM/3/9, Eurochambres Observations on proposed 5<sup>th</sup> directive, 29 June 1973.

<sup>165</sup>MRC, MSS.200/C/3/COM/3/11, UNICE Council of Presidents resolution on worker co-determination, 21 January 1975.

<sup>166</sup>MRC, MSS.200/C/3/EMP/2/84, UNICE draft comments on Commission working document prepared for EP Legal Affairs, 30 November 1978.

<sup>167</sup>MRC, MSS.200/C/3/EMP/2/85, UNICE position, 13 December 1979.

<sup>168</sup>*Ibid.*, UNICE note on Schmidt MEP report, 31 August 1979.

<sup>169</sup>MRC, MSS.200/C/May2001/882, Draft UNICE position, 15 November 1983.

<sup>170</sup>HAEU, BAC-042/1988\_0337, Commission note on 'Employee Participation: Current Political Trends in the Member States', 2 October 1974, 15.

<sup>171</sup>S Leonardi, 'Employee Participation and Involvement: The Italian Case and Trade Union Issues' 22 (2016) *Transfer: European Review of Labour and Research* 81, 87.

<sup>172</sup>It is true, however, that the unions were less enthused by German-style co-determination and more interested in self-management, Leonardi (n 171).

<sup>173</sup>MRC, MSS.200/C/3/EMP/2/84, UNICE draft comments on Commission working document prepared for EP Legal Affairs, 30 November 1978.

<sup>174</sup>*Ibid.*, CBI Memorandum on proposed 5<sup>th</sup> directive, 3 January 1978.

position at this time due to ‘hardening employer attitudes’ and despite ‘feelings against *any* legislation [being] very strong’, it may have to align with UNICE for fear of a rigid version of the Directive.<sup>175</sup> Following the 1977 Bullock Report, the CBI had resigned itself to accepting some form of legislation on worker participation, but in the years following, the opposition of British industry became absolute. The CBI’s strategy was to push for voluntary codes of conduct instead.<sup>176</sup>

From the industry side, they had identified their counterpart in the debate on the Fifth Directive to be the Commission and its corporatism, as opposed to trade unions and socialist politicians, the traditional foe of capital. Employer groups and right-wing representatives were then caught off guard by Schmidt’s series of labour-friendly proposals. UNICE did not read Schmidt’s actions as being in good faith and instead felt he was merely trying to ‘get the European Parliament to valorise the extreme claims of some trade unions, with a view to reintroducing them into the political discussion’.<sup>177</sup> By this time, in September 1979, the Parliament had failed to vote through Schmidt’s report and so the new directly elected Parliament would have the chance to revisit the proposal, and UNICE already saw the likely outcome, with the new right-wing majority being able to refer the proposal back to committee. According to Commission official Robert Coleman, the issue had become ‘political . . . with Conservatives (mainly UK) taking a firm non-legislative line’ and the overall complexion now ‘much less dirigiste than previously’.<sup>178</sup>

Within UNICE, the reference point for the Commission on the industry side, there is hardly any mention, in the early years of the proposal, of the lack of flexibility in the Directive harming the abilities of management or a company’s chances of making profits. Such a critique – which I identify with neoliberalism as a project of wrestling power away from labour – only comes up, for the first time, in a letter from Henry Fisher of the Bank of England to Commissioner Gundelach in 1975.<sup>179</sup> To go ahead with a dualist board system with worker representatives, he wrote, would be mindless, given how employee representatives would only impede efficiency and capital allocation. In contrast to the Commission’s view of companies having to operate within the confines of their social and political environment, Fisher wrote that ‘their function is to produce and market goods and services in competition with other companies . . . and to make profits’.<sup>180</sup> In 1976, the chairman and managing director of Pfizer UK wrote to a British member of the Economic and Social Committee in response to the Commission’s Green Paper.<sup>181</sup> He feared the Directive would give rise to worker representative parity on company boards, which would ‘risk . . . paralysing the enterprise as a business organisation’ and would ‘fundamentally modify’ shareholders’ property rights.<sup>182</sup> The persistent calls for flexibility eventually brought results because, by the time the Directive was in Council, the German government was decidedly unenthusiastic as the ‘introduction of too much flexibility [made the] draft Directive pointless’.<sup>183</sup> UNICE itself rolled back on its demand for a flexible Directive in 1983, stating that ‘no directive could be flexible enough to meet the different needs’ of Member States.<sup>184</sup>

One industry tactic that appears sporadically in the early years of the proposal, but then solidifies and ramps up in the 1980s, was to create a fear, in the minds of EC law-makers, of European firms falling further behind Japan and the US, another signal that the post-war

<sup>175</sup>*Ibid.*

<sup>176</sup>MRC, MSS.200/C/3/DDG6/37, CBI’s Social Affairs Directorate Summary of views to date, December 1982.

<sup>177</sup>MRC, MSS.200/C/3/EMP/2/85, UNICE note on Schmidt MEP report, 31 August 1979.

<sup>178</sup>*Ibid.*, CBI Memorandum on meeting with Bob Coleman, 19 October 1979.

<sup>179</sup>HAEU, BAC-042/1988\_0372, WP Cooke Bank of England Letter to Gundelach (Fisher’s views in enclosed memorandum), 5 September 1975 72.

<sup>180</sup>*Ibid.*, 77.

<sup>181</sup>MRC, MSS.200/C/3/INT/3/223, Letter from F Goulding of Pfizer to C Henniker-Heaton of CBI, 19 February 1976.

<sup>182</sup>*Ibid.*

<sup>183</sup>MRC, MSS.200/C/Dec 1998/8102, Meeting note of CBI, VNO, BDA and UNICE, 28 October 1983.

<sup>184</sup>MRC, MSS.200/C/May2001/882, Draft UNICE position of 5<sup>th</sup> directive, 18 November 1983.

economic order had finished (at least in the eyes of industry). In an exchange of views with Commissioner Gundelach in 1975, the head of Shell Petroleum's legal department, JH Diephuis, made exactly this point about the proposed Directive.<sup>185</sup> Two Dutch multinational groups, Unilever NV and Akzo NV, both told the Commission about the impact the proposed Directive would have on their operations, firstly in the sense that non-EC employees would operate under a different corporate structure and, secondly, Dutch law had adapted over time to accommodate multinational groups and the Directive would threaten this unique situation.<sup>186</sup> Also around the time of the Commission's green paper, the *Bundesverband der Deutschen Industrie* (Federation of German Industry) cautioned against parity on supervisory boards, warning that it would strangle the abilities of German and European businesses.<sup>187</sup>

It took a number of years before the competitiveness argument took hold and neoliberal consensus would emerge. In 1982, UNICE met with some member industry groups and figures from multinationals like BASF (*Badische Anilin- und Sodafabrik*, now the world's largest chemical producer), British Petroleum, Shell and Philips. Contrary to UNICE's earlier stance of accepting the basic premise of employee participation, now all representatives agreed to maintain a strong opposition.<sup>188</sup> In pointing out which critique of the Commission's plans to emphasise, the representative from British Petroleum suggested UNICE focus on the 'competitiveness of Community companies'.<sup>189</sup> This meeting was called to discuss the so-called Vredeling Directive and the arguments about competitiveness and efficiency appear to become ubiquitous once the Vredeling proposal was published in 1980.<sup>190</sup> In short, the Vredeling Directive would have required large multinationals to inform and consult employees on decisions that would affect them. It is also at this point that non-European companies and employer representative groups took an interest in Brussels, given that Vredeling specifically targeted multinationals and would apply to non-EC businesses with subsidiaries in Member States. The arguments against Vredeling now appear in opposition to the Fifth Directive, with the result being that for the Fifth Directive to have any chance of success, the arguments laid against Vredeling would also have to be overcome in relation to the Fifth Directive.

The terms of the debate on the Directive, from industry's point of view, around the time of the 1975 Green Paper were either to push for an acceptable version of the legislation or to contend with parity on boards, or even profit-sharing schemes. An internal note from the CBI from 1982 demonstrates how far the debate had shifted. Instead of strategising on what form the Directive would take, the CBI was now deciding how best to make the case for voluntary systems of participation.<sup>191</sup> It had used this tactic in the context of a British push for participation legislation in 1978 and rearticulated it in relation to both the Fifth and Vredeling Directives. In opposing the Directives, the CBI said it had to critique on the basis of 'principle and impracticability', point to developments around voluntary arrangements 'though quietly admitting that more needs to be done', and emphasise the 'traditional non-legislation nature of UK industrial relations'.<sup>192</sup> UNICE

<sup>185</sup>HAEU, BAC-042/1988\_0372, Letter from JH Diephuis to Gundelach, 9 October 1975, 18.

<sup>186</sup>Until 2020, Unilever was divided into two with headquarters in both the Netherlands and the UK; it has since been unified as Unilever PLC. *Ibid.*, Letter from EW Meier and CAV Aalders to Gundelach, 3 July 1975, 19; Letter from JN Goudswaard and CTC Heyning to Gundelach, 13 October 1975, 26–8.

<sup>187</sup>*Ibid.*, Letter from Dr Hans Dichgans to Gundelach, 12 September 1975, 68.

<sup>188</sup>MRC, MSS.200/C/3/DDG6/37, CBI meeting notes at the VNO, the Hague, 16 December 1982.

<sup>189</sup>*Ibid.*

<sup>190</sup>Named after Dutch socialist and Commissioner Hank Vredeling. Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings [1980] OJ L/297; see further Warloutzet (n 75) 67–74; Andry (n 9) 242–52; F Petri, 'Demanding Democracy in the Workplace: The European Trade Union Confederation and the Struggle to Regulate Multinationals' in J-H Meyer and W Kaiser (eds), *Societal Actors in European Integration: Policy-Building and Policy-Making 1958–1992* (Palgrave Macmillan UK 2013).

<sup>191</sup>MRC, MSS.200/C/3/DDG6/37, CBI Social Affairs Directorate, staff proposals for CBI action, June 1982.

<sup>192</sup>*Ibid.*

had adopted this approach once the Vredeling proposal was published and had remarked towards the end of 1982 that it must credit its hard-line approach for the right-wing amendments passed in Parliament.<sup>193</sup> The BDA said at a meeting between UNICE and national organisations that all must maintain this opposition as the Directive entered Council negotiations, a stage 'likely to be the most decisive'.<sup>194</sup> At a meeting convened by Imperial Chemical Industries in 1983, which counted amongst its participants Unilever, Ford Motor Company, British Petroleum, IBM and Shell, it was suggested that individual companies could undermine calls for legislation by taking action at the firm level and introduce some ad hoc mechanisms for involving workers.<sup>195</sup> This would answer a British government that was opposed to legislation but 'still too ready to say that nothing was happening voluntarily'.<sup>196</sup>

In 1984, the US Industry Coordinating Group made a statement on the proposed Fifth Directive, evoking a clear neoliberal agenda as globalised capitalism became a reality.<sup>197</sup> The Group said that if the EC wanted to pursue growth and reduce unemployment, it would first have to enhance 'productivity and competitiveness . . . to the levels at which they will match . . . Finland and Japan'. For companies to be competitive, the Group wrote, the EC must improve the 'operating flexibility' of firms and their 'speed of response to market changes'. In the same year, the British government put out a call for views on the Commission's proposed Fifth and Vredeling Directives. The British Bankers Association warned of 'damaging the competitive position of the Community'.<sup>198</sup> British Insulated Callender's Cables (now Balfour Beatty) spoke of the 'likely weakening of our competitive position'.<sup>199</sup> The Boots pharmacy chain predicted the directives would 'lead to delays in decision-making and thus affect the competitive position of the company'.<sup>200</sup>

Before Vredeling and before the end of the 1970s, my sense from looking at the archives is that industry took little interest in what went on in Brussels. Some even looked on in disgust, such as the secretary of Coats Patons Ltd (now Coats Group, the largest thread manufacturer in the world). In a letter to the CBI deputy director in 1980, he remarked:

We find within the commercial ranks of our own and other businesses a growing measure of disillusionment about the operations of the Community in relation to business. Whether it is in respect to consumerism or competition or company law, or accounts, or these areas of worker involvement . . . if this is what the Community is about, business should have no part of it . . . The momentum of Commission regulation of business shows no signs of slackening, if anything the reverse.<sup>201</sup>

Before signing off, he joked that 'by the end of the decade we might even be able to take the Commission to the European Court for restricting free competition'. One of the points UNICE made repeatedly was that worker participation was better left to national legislatures, with the strongest calls for harmonisation coming from the European Trade Union Congress.<sup>202</sup> At the

<sup>193</sup>*Ibid.*, CBI meeting notes at the VNO, the Hague, 16 December 1982.

<sup>194</sup>*Ibid.*

<sup>195</sup>*Ibid.*, CBI meeting notes, 14 February 1983.

<sup>196</sup>*Ibid.*

<sup>197</sup>The Group comprised of the Chamber of Commerce of the US, the Council of American Chambers of Commerce-Europe and Mediterranean, the National Association of Manufacturers, the National Foreign Trade Council and the US Council for International Business, MRC, MSS.200/C/Dec 1998/8102, Statement of the US Industry Coordinating Group, 30 March 1984.

<sup>198</sup>MRC, MSS.200/C/Aug2000/554, BBA response to government's consultative document, March 1984.

<sup>199</sup>*Ibid.*, Letter from BICC executive deputy chairman H G De Ville to Tom King MP, Secretary of State for Employment, 22 March 1984.

<sup>200</sup>*Ibid.*, the Boots Company PLC submission to Departments of Employment and of Trade and Industry, February 1984.

<sup>201</sup>MRC, MSS.200/C/3/DDG6/37, Letter from secretary John Risk to Bryan Rigby, CBI deputy director, 20 October 1980.

<sup>202</sup>Meeting Organised by the European Parliament Liberal Group, which included both UNICE and ETUC, MRC, MSS.200/C/3/EMP/2/85, UNICE meeting report, 20 June 1980.

1982 meeting between UNICE, member organisations and multinational companies, the representative from BDA (German employers group) greatly feared the knock-on effects of losing the 'participation debate'.<sup>203</sup> It would mean amending German law and, for him, 'once you start on this you never know where it will end'. As such, it was crucial to 'continue to act at European level'. In 1984, the International Organisation of Employers issued a report on participation in general. The fight against participation was really a fight against workers, their representatives and post-68 demands, which 'now pursue goals which go far beyond economic and social benefits ... they claim a voice in moulding society as a whole'.<sup>204</sup> And so, 'if union claims in this field (worker participation) become excessive, the free market economy system may be jeopardized'.

The development of industry groups' rhetoric from when the Fifth Directive was first proposed in 1972 to when it was eventually defeated in 1984 provides a contrast to the attitudes of the other debate participants – the Commission and labour. Whilst these latter groups were fighting to impose their fixed views, employer groups were mobilising as new right-wing ideas and parties were on the rise. Initially, employer resistance proceeded on the basis that participation was acceptable or inevitable. However, as the Commission and left-wing parliamentarians struggled to push the file forward, industry was able to use the momentum of monetarism and newly elected right-wing governments to undermine the Commission's certainty. As I show in the next section, the neoliberal language of the industry resistance was taken up by an ascendant right-wing and used to defeat the Fifth Directive in both Parliament and Council.

### ***C. Parliamentary elections, a new majority and the death of the fifth directive***

In the previous two sub-sections, I paused my retelling of the story of the Fifth Directive to detail the rise of neoliberalism in the turn to monetarism and the emergence of a new discourse amongst employer groups. I showed that inherent to both developments was a desire to undermine a worker movement that had become institutionally powerful in post-war Western Europe and newly radical from the late 1960s. As previously mentioned, the Fifth Directive was now in the hands of the European Parliament which consisted of a right-wing majority for the first time. It's also important to note that, by the time the newly elected European Parliament voted to refer the Fifth Directive back to committee in September 1979, only Denmark – of the then nine Member States – could say it was headed by a non-liberal or right-wing government.<sup>205</sup> For the present analysis, this includes Helmut Schmidt's SPD-led government which, under his tenure, was the first Member State to begin the turn to monetarism, an integral part of the emerging neoliberal consensus in Europe. Schmidt became Chancellor in 1974, the same year that the Bundesbank began announcing its monetary targets. Throughout his Chancellorship, Schmidt was ardent in his commitment to economic stability but was also heavily constrained by the independence of the Bundesbank and liberal coalition partners. By the time the government collapsed in 1982, the SPD had agreed to severe welfare cuts and accepted responsibility for the highest levels of unemployment seen in decades.<sup>206</sup> Over the course of the 1970s, an ascendent right-wing was able to inflict real damage to the Fifth Directive in the Parliament with Dutch liberal Aart Geurtsen and German Christian Democrat Philipp von Bismarck taking over the files in the Legal Affairs and Economic and Monetary Affairs committees, respectively.

Both Geurtsen and von Bismarck attempted to dismantle Socialist MEP Manfred Schmidt's pre-election redraft, with Geurtsen wanting to raise the threshold to companies employing at least 2000 employees and remove mandatory board seats for employee representatives.<sup>207</sup> According to

<sup>203</sup>MRC, MSS.200/C/3/DDG6/37, CBI meeting notes at the VNO, the Hague, 16 December 1982.

<sup>204</sup>MRC, MSS.200/C/Aug2000/554, IOE Notes on the role and influence of trade unions in Western Europe, 31 October 1984.

<sup>205</sup>Liberal meaning economically liberal and so against most forms of market intervention.

<sup>206</sup>F Scharpf, *Crisis and Choice in European Social Democracy* (Cornell University Press 1991) 156.

<sup>207</sup>HAEU, BAC-042/1988\_0427, Legal Affairs Committee Draft Report, 21 December 1979.

British Conservative MEP Amédée Turner, also on the Legal Affairs Committee, Shell and Unilever were in direct contact with Geurtsen and likely knew of his planned amendments.<sup>208</sup> Von Bismarck wanted to protect a company's 'right [to] entrepreneurial decision-taking' by including a provision that, regardless of how Member States adopted the Directive's minimum standards, employees would not occupy more than half the board seats.<sup>209</sup> And, in such situations where a deadlock might arise, the ultimate decision would rest with the shareholder representatives. To legislate otherwise would be to ensure that 'the exercise of freedom is largely eliminated' and undermine the ideals of a liberal system based on the 'ownership and competition of the market economy'.<sup>210</sup> Geurtsen's own Liberal group colleagues dissented in the Legal Affairs Committee vote, and the Christian Democrats (or the European People's Party as it had just become known) withdrew their support.<sup>211</sup> However, Von Bismarck's suggestion was approved by party colleagues, and although the threshold did not rise to 2000 employees, it was increased to 1000. Socialist and Communist groups did not have the numbers to resist the amendments during the plenary vote, and the proposal was sent to Council, apart from a last-minute amendment that stated parity should eventually become the rule (with details to be worked out during Council negotiations).<sup>212</sup>

To go back to 1975 for a moment, in its green paper on worker participation, the Commission pre-emptively argued against the neoliberal interpretation of its plans.<sup>213</sup> On the claim that the market produces sufficient information for the shareholder to know whether a company is being effectively managed or not, the Commission wrote that such markets did not exist for small and medium-sized companies and relying on the market does not provide shareholders with the opportunity to pressure management for better long-term performance. There was also the problem of the small, individual shareholder versus the large institutional shareholder and the varying degrees of access each have to market information. Nevertheless, the Commission conceded the industry claim that employers were already struggling to contain organised labour. Business decisions must be based on 'innovation and ... efficiency' which encourages investment, according to the industrialists.<sup>214</sup> Bringing worker representatives into the equation would shift the focus to the 'preservation of existing structures' which would be a repellent to investment.<sup>215</sup> At the same time, the Commission also suggested that the available evidence on this would suggest the contrary, that industrial conflicts – and thus unattractive investment conditions – are more prevalent in areas and sectors where workers are not represented within the company. Building on this, the green paper also rejected the 'traditional' understanding of efficiency as measured by return on investment and said efficiency must be accounted for 'from the point of view of society as a whole'.<sup>216</sup> Using this calculation, a system of industrial relations that breeds confrontation is not efficient.

As the decade came to a close, however, the individuals who carried the flag for corporatism within the Commission had either left or were coming under internal pressure. In 1981, Luxembourgish liberal Gaston Thorn succeeded British Labour politician Roy Jenkins as European Commission president, and social democrat Finn Gundelach's internal market portfolio was given to German Christian Democrat Karl-Heinz Narjes. Within the halls of the Commission,

<sup>208</sup>MRC, MSS.200/C/3/EMP/2/85, Letter from Amédée Turner, 24 September 1979.

<sup>209</sup>HAEU, BAC-042/1988\_0433, Committee on Economic and Monetary Affairs Draft Opinion, 30 May 1980, 167.

<sup>210</sup>*Ibid.*, 171.

<sup>211</sup>HAEU, BAC-042/1988\_1493, DG Internal Market report on meeting of Legal Affairs Committee, 24 and 25 November 1980, 5.

<sup>212</sup>HAEU, BAC-042/1988\_1494, Communication from Commissioner Narjes on reaction to Parliament Resolution, May 1982, 241.

<sup>213</sup>European Commission, Commission Green Paper on 'Employee participation and the company structure in the European Community' (COM (75) 570, 12 November 1975) 32.

<sup>214</sup>*Ibid.*, 39.

<sup>215</sup>*Ibid.*

<sup>216</sup>*Ibid.*

the Directorate-General on Employment and Social Affairs added more woe by issuing a critical opinion of the new Fifth Directive proposal in December 1982, signalling an ideological clash within the institution for the first time in relation to worker participation.<sup>217</sup> The Directorate-General on Employment, which was handling the Vredeling Directive, accused DG on Internal Market and Industrial Affairs of not following through on an agreement made to ensure that workers of subsidiaries were included in the calculation of the number of employees a company had. DG on Employment said the amended proposal now contained a number of loopholes that would allow Member States and holding companies to avoid implementing participation schemes. This included the compromise on the 1000-employee threshold, which meant the proposal would only impact less than one percent of public limited companies in the EC at the time.<sup>218</sup>

In July 1983, the Commission eventually announced that it had adopted the amended proposal for the Fifth Directive.<sup>219</sup> It is notable that in the information memo published, the Commission justified the Directive according to the 'efficient operation of public limited companies ... at a time when all undertakings must realize their full potential'. The outcome being 'a greater level of protection for shareholders and a greater degree of confidence by investors'. The only mention of what the Directive would mean for workers is that it 'creates the conditions for harmonious industrial relations'.<sup>220</sup>

The Council of Ministers Experts Working Group met for the first time on the amended proposal in October 1983.<sup>221</sup> Amongst the representatives, Greece was the most supportive and the UK the least. Owing to the UK's strategy of obstruction – according to the Commission reports, the delegation attempted to derail discussions by questioning the reason for harmonisation at all – the Working Group initially tried to leave the controversial parts of the Directive aside and work through it article by article. However, they did not get very far with the Working Group chairman, after the sixth meeting in October 1984, being 'unable to give any assurance re future meetings'.<sup>222</sup> It was later confirmed that progress on the Fifth Directive proposal would be dependent on the more controversial Vredeling Directive, which was indefinitely postponed in May 1986.<sup>223</sup> Two further versions of the Fifth Directive were drafted in 1990 and 1991 but only as part of Commission efforts to remove obstacles preventing takeover bids of companies. The Commission was amending the Second Company Law Directive, on establishment and company capital, and so two articles of the Fifth Directive on shareholder voting rights had to be changed to ensure consistency.<sup>224</sup> The amendments did not reignite the debate on worker participation, and the fate of the proposal remained the same – unofficially abandoned. Right-wing MEPs took up the industry critique of the Fifth Directive to great effect and sent forward a proposal to the Council that was emptied of any pro-worker potential. In the Council, the UK was unsurprisingly the most obstructive, but by this stage, in 1984, there was virtually no socialist counterweight amongst the other Member State governments. The defeat of the Commission's hopes for a European system of worker participation was complete with the help of an emergent neoliberal consensus.

<sup>217</sup>HAEU, BAC-042/1988\_1494, DG Internal Market note from Braun to Director General Digembe, 23 December 1982, 3.

<sup>218</sup>DG Internal Market, and Fernand Braun specifically, replied that the Commission had already discussed and informed Parliament of its acceptance and that to reopen the debate would undo a lot of work, *ibid.*

<sup>219</sup>HAEU, BAC-042/1988\_1497, Commission Information Memo press release, July 1983, 48.

<sup>220</sup>*Ibid.*, 50.

<sup>221</sup>HAEU, CEUE\_THOR-DAVI\_596, DG Internal Market report of first working party meeting, 10 November 1983, 57.

<sup>222</sup>*Ibid.*, DG Internal Market report of working party meeting, 18 October 1984, 161.

<sup>223</sup>HAEU, PE2-21755, Written question no 792/85 of Sylvester Barrett MEP to the Commission, 12 March 1985, 4; Andry (n 9) 244–5.

<sup>224</sup>Second Amendment to the proposal for a Fifth Council Directive based on Article 54 of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs (COM (90) 629 final), 11.1.1991; Third Amendment to the proposal for a Fifth Council Directive based on Article 54 of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs (COM (91) 372 final), 20.11.1991.

## 6. Conclusion

From the time the Fifth Directive was cast aside and European integration was ‘relaunched’ in the years leading up to the 1992 Maastricht Treaty, the EC was said to be in the midst of its period of ‘Eurosclerosis’.<sup>225</sup> During these years, however, industry victories in halting the Commission’s plans for worker participation meant that European capital could shift its focus away from blocking corporatist-inspired initiatives and begin trying to *positively* influence the integration project. A sign of this shift can be seen in the agreement that Margaret Thatcher secured in the European Council in 1985 which committed Member States to reduce the ‘administrative and legal constraints’ of businesses in the EC.<sup>226</sup> This period was also marked by a fragmentation within the capitalist class between industry representatives who pushed for protectionist policies that would support businesses that operated regionally and those who sought a more neoliberal agenda, due to their global operations.<sup>227</sup> Van Apeldoorn argues that the neoliberal fraction eventually won out in the context of the perceived need, or messaging around, the rigidity and power of labour.<sup>228</sup> In the 1984 International Organisation of Employers report quoted above, the European membership told the authors they were now happy with the ‘balance between the power of trade unions and the power of employers’ but that when such power is ‘jeopardized’, as it potentially would be through worker participation, ‘organisations must work towards restoring such balance’.<sup>229</sup> It was through this effort to ‘maintain capitalist class hegemony’, in Van Apeldoorn’s words, that the different fractions could unite and neoliberal market encasement became the primary objective, as eventually found in the 1987 Single European Act.<sup>230</sup> This solidified the neoliberal transformation of European capitalism, with mutual recognition extended to trade and capital mobility, and the introduction of qualified majority voting in the Council extended to issues related to the single market but not for initiatives on worker protection or social rights.<sup>231</sup>

The failure of the Commission to advance its programme of worker participation, in particular the Fifth and Vredeling Directives, can be seen as the death of socialist and corporatist visions for European integration. The story of neoliberalism and Europe may have reached its apex with the Single European Act and the 1992 Maastricht Treaty, but the mobilisation of industry and right-wing politicians in the late 1970s and early 1980s demonstrated that pro-capital victories were possible, much to the surprise of some industry representatives. During these years, the Commission persisted with its worker-friendly agenda despite the now persistent objections from UNICE and its member organisations. In 1979, the CBI met with Commission official Robert Coleman who caused great alarm when he indicated that the upcoming Vredeling Directive would not only be compatible with existing OECD guidelines on informing employees, these would in

<sup>225</sup>Eurosclerosis was said to have begun with the Empty Chair crisis of 1965 and came to an end with the successful 1986 Single European Act negotiations, A Awesti, ‘The Myth of Eurosclerosis: European Integration in the 1970s’ n° 353-354 (2009) *L’Europe en Formation* 39; W Streeck, ‘From Market Making to State Building? Reflections on the Political Economy of European Social Policy’ in S Leibfried and P Pierson (eds), *European social policy: between fragmentation and integration* (Brookings Institution 1995) 389.

<sup>226</sup>This agreement was a precursor to the White Paper on completing the Single Market, MRC, MSS.200/C/Aug2000/554, Letter from Department of Trade and Industry (individual author unclear) to K Edwards of the CBI, 26 April 1985.

<sup>227</sup>van Apeldoorn (n 35) 117.

<sup>228</sup>*Ibid.*, 144.

<sup>229</sup>MRC, MSS.200/C/Aug2000/554, IOE Notes on the role and influence of trade unions in Western Europe, 31 October 1984.

<sup>230</sup>Single European Act [1987], OJ L 169.

<sup>231</sup>S Gill, ‘A Neo-Gramscian Approach to European Integration’ in AW Cafruny and M Ryner (eds), *A ruined fortress?: neoliberal hegemony and transformation in Europe* (Rowman & Littlefield 2003) 63; A J Menéndez, ‘The “Terrible” Functional Constitution of the European Union: “Sound” Money, Economic Freedom(s) and “Free” Competition’ in M Goldoni and MA Wilkinson (eds), *The Cambridge Handbook on the Material Constitution* (Cambridge University Press 2023) 361.

fact be the 'starting point'.<sup>232</sup> As established above, UNICE was largely amenable to worker participation in the early years of the Fifth Directive, but once the 1980s arrived, industry, the Parliament and the Member States had mostly left corporatism behind, leaving the Commission to fight a lonely battle.

The 'victories' that the Commission would later achieve on behalf of workers can be understood in the context of its failed corporatist position. The European Works Council Directive, for example, has been described as 'voluntarist' on account of the discretion it provides Member States in its implementation and the burden it places on workers to request a council, as opposed to obliging states or employers.<sup>233</sup> Dukes identifies the same shortcomings in the 2002 Information and Consultation Directive and the 2001 Directive on employee involvement under the European Companies Statute.<sup>234</sup> During the 'long 1970s', the range of possibilities for integration was up for debate: the Commission first had to contend with a worker movement that was riding high following waves of action and demanded actual economic democracy. It failed to contain this dispute as it played out in the Parliament pre-1979. All the while, the tone of debate was changing in Europe as Member States turned to monetarism to fight inflation, with its 'natural' levels of unemployment dealing a blow to labour. Global competition also gave industry a reason to decry the power of labour in Europe, providing the script for a concerted critique of Commission plans for worker participation. The Vredeling Directive was a catalyst for industry backlash, and the stance of employer groups became one of outright resistance. The Commission was unable to stem this tide of critique, and the Fifth Directive made it out of Parliament stripped of any potential to undermine the rise of neoliberalism. When Council negotiations began in late 1983, any hope of a resurgent left in Europe had died a few months prior when Mitterrand decided to stay in the European Monetary System and pursue a package of austerity reforms. Through tracing the lifecycle of the proposed Fifth Directive, we can see how the neoliberal backlash to the Commission's plans for a corporatist system of worker participation emerged. The 'success' of halting these proposals would come to define the Commission's tentative initiatives in the future, as well as inspiring industry groups to not only resist integration but also to pursue it in their own neoliberal image.

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<sup>232</sup>MRC, MSS.200/C/3/EMP/2/85, CBI note on various Brussels meetings, including with Bob Coleman, 19 October 1979.

<sup>233</sup>Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 254; Dukes (n 69) 166.

<sup>234</sup>Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80; Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294.