Common Market Law Review **30**: 445–448, 1993.

EDITORIAL COMMENT

Are European values being hoovered away?

The United States of America is a rich country. The capitalist system and an extensive freedom of action brought great wealth to the nation. But the aversion to government control and to more detailed regulation of society also prevented this nation from taking sufficient account of those who are poor, uneducated, dull, or not gifted with charm or pushing power. Millions of Americans are living in poverty, many on the verge of starvation.

In the field of social legislation, Europe, although still leaving much to be desired, has a better tradition. A long list of detailed social security provisions have limited the freedom of action of industry and commerce. Through higher taxation, a certain amount of redistribution of wealth has taken place. Compared to the US, the rich in Europe are not as rich, but also the poor are not as poor. We are proud of these achievements. In our opinion, the quality of life is better in Europe than it is in the US, because our rich, though being less wealthy than the rich of the US, are rich enough to have a good life whilst also most European States undertake to ensure that the poor also have a decent living. It is sometimes said that the satisfaction people obtain from their income is influenced by a comparison with others. The smaller the difference between rich and poor, the less jealousy and discontent. Social legislation is one of the few fields in which Europe is a real world leader.

Once, after visiting the slums of Detroit, a politician of the state of Michigan was asked: "How can you justify the fact that in a rich state some people have to live in such poor circumstances? How can you tolerate there being no facilities to improve the situation: no retraining schemes for the unemployed, no reasonable schools for their children, and too little unemployment benefits?" He replied: "Of course we

could set up all sorts of programs to help the poor, but all programs must be paid for and the financing must largely come from our industry. Higher costs for social security would make the state of Michigan more expensive than the neighbouring states. Industry would move to Ohio or to Illinois and we would be left with an enormous problem of unemployment''. Is that an element of a single market? Does the freedom to move and to freely distribute ones's products from any place inside the market lead to states attracting industry by limiting the costs of social security?

In January 1993, it was reported in the press[1] that Hoover, an American company, had decided to close their factory in Dijon (France) and transfer their production to Scotland, mainly because the burden of social security provisions in Scotland is lighter than that in France. Trade unions are weaker, there are no minimum wages and fewer barriers to dismissal of personnel. France and the European Parliament[2] protested, but the rest of Europe still seems insufficiently aware of the enormous risk this kind of development entails for the most fundamental values in Europe. Social standards will go down if European States compete by means of offering less protection to the weaker members of society. Even trade unions will accept that lower social standards in industry are not quite as bad as having no industry at all. If pressure is strong, they will be forced to accept the breaking up of our social security system. Thus States risk forcing each other downwards to the level of the slums of Detroit.

The case illustrates the need for common European social standards. Under Community law as it stands this kind of transfer cannot be forbidden. In a free market, agents will choose their own place of production. Their choice will be strongly influenced by the costs and further conditions of labour. A single market requires some degree of harmonization, a social policy to establish at least minimum standards. It is of great importance that that policy should meet the high standard developed in Western Europe over more than a century. The integration of Europe must be to the benefit of the people. If a single market must be paid for by slums and poverty for a part of our population, then it is not worth the price.

1. *NRC-Handelsblad*, 29 Jan. 1993.
2. In a resolution adopted at its session of February 1993.

The drafters of the EEC Treaty were not unaware of these problems. The aim of harmonizing working conditions was implied in the Articles 117–122. But the Member States did not consider full harmonization necessary, believing that poorer, or cheaper, regions might have a competitive advantage in the social field, at least for a certain period. The market was expected to promote harmonization, especially because the trade unions in all the Member States would pressure the legislator towards the adoption of the highest standards. At that time, the trade unions were powerful. A further argument was that the free movement of workers would force the States with weaker social protection upward to the level of those with detailed social legislation. The best workers would move to the States with the better social legislation; in order not to lose their workers other States would have to upgrade their social protection. This presumption is reflected in Article 117 of the EEC Treaty in which the Member States believe that a development towards improved working conditions will ensue from the functioning of the common market.

Times changed; as the powers of the workers weakened, those of the employers increased. Gradually the risk appears that standards of social security will be lowered in order to compete with other Member States. It became clear that European minimum social standards were needed. In the Single European Act of 1986, Article 118B was added to the Treaty, in which the need was recognized for a dialogue between management and labour at the European level. In Article 118A the Member States also undertook to pay particular attention to encouraging improvements in the working environment and to harmonize the conditions as regards the health and safety of workers, while maintaining the improvements made. In particular, in paragraph 2 of Article 118A, the Member States decided that they would adopt "minimum requirements for gradual implementation". In other words, the Member States realized that not every Member State would be able to afford the best level of social protection, so that minimum requirements were set; moreover, since sudden changes in the level of social protection would be too expensive or impossible for some States, gradual implementation would be preferable. However, strong commitments for a minimum general level of social security throughout the Community were not made.

A real start for Community social legislation was to be made in the

Maastricht Treaty.[3] The agreement finally reached between eleven of the twelve Member States provides for the possibility of Community legislation for the improvement of the working environment and on working conditions. Community legislation does not necessarily lead to a uniform system. In the Agreement between the eleven, Article 2 thereof provides for Community legislation *to complement* the legislation of Member States and underlines in § 5 that the Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaty.[4] The agreement permits the rich regions of Europe to offer a better protection to their workers than weaker areas, thus granting industry in the weaker areas some competitive advantages to compensate for the disadvantages of the area. The importance of the Agreement is that the principle of a minimum standard has been accepted and thus the possibility has been opened to fight against lowering European standards for the sake of mutual competition.

What is special about the post-Maastricht situation is that the United Kingdom will no longer be involved in the Community's developing social policy based on the Agreement rather on the EC Treaty, and therefore the United Kingdom's failure to work towards harmonization with the other Member States will institutionalize the imbalance within the twelve Member States, leading to an institutionalized invitation to social dumping. The Hoover case demonstrates the close relationship between social legislation and free movement of goods, persons, services and capital. If one Member State can produce cheaper than all others at the expense of the workers, its products obtain a competitive advantage on an unacceptable ground. We must hope that the *Hoover* case will not be the beginning of a downward development but will awaken the conscience of Europe and mobilize a stronger defence of one of Europe's greatest achievements.

3. For a broader analysis of Community social policy in relation to the Maastricht Treaty, see the article by P. Watson in this Review at 481–513.

4. Note also in relation to Opinion 2/91, of 19 March 1993, on competence to sign ILO Treaty No. 170, that the Court assigns joint competence, specificially stating that minimum standards do not prevent individual Member States from choosing a higher level of protection. Further in joined cases C-72 & 73/91, *Sloman Neptun*, Judgment of 17 March 1993, not yet reported, firms in a particular Member State are granted the possibility of employing certain categories of non-nationals (from third countries) under less favourable conditions than their nationals, without contravening Article 117.