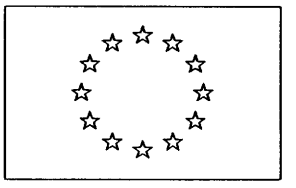
European Trade Union Information Bulletin



ISSUE 2 of 1997

The Fight Against Unemployment takes Centre Stage

The Luxembourg Council Presidency, in deciding to call a special meeting of the European Council specifically on the question of employment, has returned the fight against unemployment in Europe to centre stage. The summit meeting, which will be held in Luxembourg in November, will provide the political leaders of the Member States with an opportunity to take a significant step towards achieving the aim - set out in the 1993 White Paper on Growth, Competitiveness and Employment - of reducing unemployment in the EU by a half by the end of the decade.

Over recent years, persistent high levels of unemployment have become one of the main challenges facing the Union. The Amsterdam Treaty recognises the need to make full use of European level co-ordination in the battle to create more jobs by introducing a new chapter in the Treaty specifically related to employment. The decision to devote the special summit in November exclusively to the question of employment in Europe is further proof of a general desire to tackle the root causes of unemployment in Europe.

Obviously there will be no simple solution: a fact accepted by almost all European leaders. A balance must be struck between the need for greater labour market flexibility and the protection of workers' rights. Such a balance can be struck - a fact clearly illustrated by the recent Framework Agreement on part-time working adopted by the European-level social partners and featured in detail in this issue of the Bulletin. Equally, a balance between the requirements of monetary policy and the need for an economic policy which stimulates employment generation must be found. The November European Council meeting will provide an opportunity to re-launch European employment policy, and opportunity which must not be missed.

CONTENTS

EUROPEAN TRADE UNION INFORMATION BULLETIN
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BACKGROUND BRIEFING

Acquired Rights and Transfer of Undertakings

Commission Launch New Initiative

Background

In 1977 the European Community adopted a Directive designed to offer a degree of protection to workers in the event of a transfer of ownership of the business which employs them. Although the Directive has been in place almost twenty years, like many laws it has been subject to a variety of challenges before the European Court of Justice as far as its applicability in various specific situations are concerned. The results of these cases have helped to provide a clearer picture of the correct interpretation of the original 1977 provisions.

In September 1994, the European Commission published a proposal to amend the 1977 Directive in order to bring it into line with economic and legal developments since 1977. Amongst the proposals contained in the Commission draft were provisions to clarify the application of the Directive in cases of international transfers of undertakings and provisions to clarify the liability of both the transferor (the former owner of the undertaking) and the transferee (the new owner of the undertaking). The Commission draft also contained provisions (Article 1.1) which, they said, would clarify the application of the Directive in cases of the transfer of just one activity of an undertaking.

It was these latter provisions which proved controversial. The European Trade Union Confederation (ETUC) immediately attacked the Commission draft proposals, saying that they would further complicate the situation and claiming that they took no account of European Court of Justice case law. In particular they said that the wording of the Commission draft in relation to the definition of an "economic entity" (Article 1.1) could serve to reduce the existing protection offered to workers, especially in the weakest service activities such as cleaning, mainten-ance and food services.

The Commission draft attracted considerable opposition, not only from the European trade union movement, but also from the European Parliament. A Resolution was adopted with the support of all the political groups in the European Parliament in January 1996 calling on the Commission to amend its proposals in relation to the new definition of an "economic entity". The pressure from the European Parliament and the European trade union movement was successful and the Commission agreed to delete its proposed amendment to Article 1.1 and a new amended proposal was published in February 1997.

Still believing that further information on the Commission had previously agreed to publish a special Memorandum, which in itself would not be legally binding, but would serve to highlight some of the key decisions of the European Court in relation to the 1977 Directive. This Memorandum was published in March 1997. A third important development was the Decision handed down by the European Court (the Süzen judgement) on the 11th of March 1997 which appears to introduce further confusion in relation to the interpretation of the original 1997 Directive. The rest of this article briefly examines these three recent developments.

The Amended Proposal for a Directive

The main elements of the amended proposal for a Directive which was adopted by the European Commission on the 24th February 1997 are essentially the same as in the original 1994 draft with one major exception. The provisions remaining the same as in the 1994 draft are:

- The application of the Directive in cases where the decision leading to a transfer of an undertaking is taken by a multinational located outside the EU is clarified. The new text will emphasise that the requirements relating to information and consultation must be complied with "whether the decision leading to the transfer is taken by the employer or by an undertaking controlling the employer"
- Greater flexibility in the application of the provisions relating to the safeguarding of employees rights is allowed in the case where transfers are taking place in the context of liquidation proceedings in order to, wherever possible, ensure the survival of undertakings.
- The complex question of who is liable in respect of obligations arising from a contract of employment which fell due before the date of transfer is clarified by making both the transferor and the transferee "jointly and severally liable".

The one major change from the original 1994 draft is:

■ The proposed second paragraph of Article 1.1, which would have meant that the provisions of the 1977 Directive did not apply in cases where the transfer was limited to an activity of an undertaking has now been deleted.

The Commission Memorandum

The main aim of the Commission Memorandum is to clarify the application of the original 1977 Directive taking into account the various judgements of the European Court of Justice. One of the means by which this is achieved is a list of twenty questions and answers, which has been designed as a guide for employers and trade union representatives (see next page).

The Memorandum also sets out in detail, the Commissions interpretation of the scope of the original 1977 Directive along with the effect of European case law. The Memorandum does not take into account, however, the implications of the most recent decision of the European Court announced on the 11th of March 1997.

The Süzen Judgement

Although the Commission Memorandum attempts to clarify the scope and interpretation of the 1977 Directive, based on the various judgements of the European Court, the establishment of case law is a continuing process, and one recent decision, which was handed down after the Memorandum was completed, raises a number of new questions in relation to the application of the existing Directive.

The case revolved around Mrs Ayse Süzen who had been employed by a cleaning company, Zehnacker, to work on a school cleaning contract in Bonn, Germany. The school terminated the contract in June 1994 and the company dismissed the eight employees who had worked as cleaners at the school. Seven of these workers were re-employed by another cleaning company, Leforth, who were awarded the new contract for cleaning at the school. Mrs Süzen who was not re-employed, felt that she was part of the same "economic entity" which had been transferred to the new cleaning company and therefore should be protected by the 1977 Directive. In its judgement the Court said that the aim of the Directive was to ensure continuity of employment relationships within an "economic entity", irrespective of any change of ownership and irrespective of the detailed arrangements for that change. However, the question they had to address was whether, in this case, an economic entity had been transferred.

The Court ruled that in the absence of a transfer of assets or the taking over of an essential part of the workforce, the Directive was not applicable. The term "entity" thus referred to an organised grouping of persons and assets facilitating the exercise of an economic activity which pursues a specific objective. According to the Court, a transfer, within the meaning of the Directive, takes place if the economic entity maintains its identity. To determine whether the conditions for a "transfer of an entity" are met, the Court cited a number of factors which may be taken into account as individual aspects of the overall assessment required of the national court. It cited in particular the transfer of substantial tangible assets (such as buildings and movable property) or intangible assets, and the question whether or not the new employer has taken over a major part of the workforce in terms of numbers and skills.

Conclusions

The various developments over recent months in the field of transfer of undertakings illustrate a number of important points:

■ The fact that the Commission has now withdrawn its proposal to amend the definition of a "transfer of an economic entity" just shows how effective pressure from a united European trade union movement and other parties such as the European Parliament can be. If the original Commission proposals on Article 1.1 had remained it could have seriously weakened the rights of workers: their removal constitutes a modest victory for the preservation of employment rights throughout Europe.

■ The numerous judgements of the European Court of Justice in the interpretation of the 1977 Directive illustrate the importance of role of the Court in relation to the rules which determine the rights of workers.

■ As the use of short-term contracts and sub-contracting increases, the applicability of the existing law in cases such as that of Ayse Süzen will become even more of an important issue to workers and their representatives. Further work is clearly needed in order to determine the exact implications of the Süzen judgement for workers who find themselves in a similar predicament.

TWENTY QUESTIONS AND ANSWERS ON SAFEGUARDING YOUR RIGHTS

A GUIDE FOR EMPLOYEES' AND EMPLOYERS' REPRESENTATIVES CONCERNING THEIR RIGHTS AND OBLIGATIONS IN THE FIELD OF TRANSFERS OF UNDERTAKINGS

1) Does the Directive also apply to the transfer of an undertaking situated in the territory of a country which is not a Member State of the European Union?
The Directive applies to the extent that the undertaking to be transferred is within the territorial scope of the Treaty on European Union or a Member State of the European Economic Area (Norway, Iceland, Liechtenstein).

2) For the Directive to be applicable, must the undertaking exercise its activity with a view to making a profit?
The fact that an undertaking is engaged in non-profit-making activities is not sufficient to remove the undertaking from the scope of the Directive.

3) Which operations are excluded from the scope of the Directive?
The Directive specifically excludes operations involving sea-going vessels. However, France, Germany, Italy, Portugal and Spain have applied the principles of the Directive to sea-going vessels.

4) Who is covered by the Directive?
Anyone with a contract of employment or in an employment relationship on the date of a transfer. Public service employees are not covered by the directive insofar as they are not subject to the labour law in force in the Member States.

5) Who decides whether a person has a contract of employment or is an employment relationship on the date of a transfer
This question is subject to the jurisdiction of each Member State and the provisions of national law.

6) Does the Directive apply to employees who have left the undertaking by the date of transfer?
No, the provisions of the directive cover only employees in the service of the undertaking on the date of transfer.

7) After a transfer, who is responsible for existing obligations, the transferor or the transferee?
The transferee is liable for all the transferor's obligations, including those arising prior to the date of transfer. Except where national legislation provides for joint liability of the transferor and transferee after the transfer, the consequence of the transfer is to release the transferor from his obligations.

Joint responsibility has been adopted by France, Germany, Greece, Italy, the Netherlands, Portugal and Spain. If the new proposal to amend the 1977 Directive is adopted, joint responsibility will apply in all cases

8) Where an undertaking is transferred, which collective agreement applies, the transferor's or the transferee's?
The Directive requires the transferee to continue to observe the terms and conditions of any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force of another collective agreement. However, Member States may limit this period, provided it is not less than one year.

9) May conditions of employment be changed following the transfer of an undertaking?
The rights of employees arising from a contract of employment or employment relationship may not be changed because of a transfer. However, rights and obligations may be changed vis-à-vis the transferee subject to the same restrictions as applied to the transferor, provided that the transfer in itself is not the reason for the change.

10) May employees waive the rights accorded by the Directive?
No. Employees may not waive the rights conferred on them by the Directive, and those rights may not be restricted even with their consent and even if the disadvantages resulting from the waiver are offset by similar benefits.

11) Does the protection given by the Directive apply to benefits under non-statutory social security schemes?
No. The transfer of rights and obligations arising from an employment contract or employment relationship does not cover employees' rights to old-age, invalidity or survivor's benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes in Member States. However, Member States must adopt the measures necessary to protect the rights acquired or being acquired by employees and persons no longer employed in the business at the time of transfer.

12) May dismissals for economic, technical or organisational reasons take place on the transfer of an undertaking?
Yes. The Directive is limited to prohibiting dismissals where the only reason is the transfer.

13) What are the rights of the representatives of employees affected by a transfer whose term of office expires as a result of the transfer?
They continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.

14) What are the transferor's and transferee's obligations as regards providing information for the representatives of their respective workers?
They must provide information on the following points:
- the reasons for the transfer,
- the legal, economic and social implications of the transfer for the employees,
- measures envisaged in relation to the employees.

15) Is it compulsory to consult the employees' representatives in the event of the transfer of an undertaking?
Such an obligation exists if the transferor or transferee envisages measures in relation to their respective employees, e.g. a reduction in the size of the workforce.

16) At which point in time must they be informed and consulted?
The employees' representatives must be informed and consulted "in good time" and in any event before the transferee's employees are directly affected by the transfer as regards their conditions of work and employment.

17) Are there any derogations from the principles of informing and consulting employees' representatives?
Yes. Member States may limit these obligations to undertakings or businesses which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegial body representing the employees.

18) Does the Directive require Member States to provide for systems of employee representation even if there is no such representation in the undertaking under national law?
Yes. Member States must adopt all necessary measures for designating the employees' representatives who have to be informed and consulted pursuant to Article 6 of the Directive. It is for the Member States to determine the arrangements for designating the employees' representatives.

19) Are the obligations to inform and consult employees' representatives binding?
National law must provide for effective sanctions in the event of the employer's failure to inform and consult employees' representatives.

20) Is the protection accorded by the Directive the upper limit?
No. The Directive does not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

NEWS FROM EUROPE

European Parliament

The Future of the ESF

The European Social Fund should improve working skills and provide retraining for the unemployed. This is a view which was expressed by several MEPs and representatives of the European Commission during a debate which was organised by the Committee on Employment and Social Affairs on the 26th May 1997. Speaking on behalf of the Commission, Hywel Ceri Jones, Deputy Director General of DG V, stated that Europe had a two-speed labour market. The demand side was constantly running in the fast lane, requesting new skills from a labour market which could not keep up with the changes of modern society. As a result, social exclusion was increasing everywhere. Therefore, it was important that the European Union concentrated on improving labour skills and promoting retraining of the most disadvantaged groups.

The European Social Fund should become a job creating instrument by providing complementary solutions to national employment strategies.. This would require increased partnership with local authorities and non-governmental organisations, a simplification of ESF administrative practices and close monitoring in order to maintain the quality of ESF funded projects. First and foremost, local authorities should be closely involved in the planning and implementation of these projects.

Commissioner Padraig Flynn reminded the committee that despite economic growth, poverty had increased in Europe during the past few years. At present, one out of six households lives below the poverty line. Unemployment was twice as high as in the United States and three times what it was in Japan. Hence, promoting employment must remain a crucial aim of the Social Fund. The ESF should work in close cooperation with local authorities in order to improve the situation of the most disadvantaged groups. Referring to the IGC, Mr Flynn believed that the social dimension will be incorporated in the revision of the Treaty.

Special Employment Summit

Outlining the extra European Council summit meeting on employment, to be held in Luxembourg November 21-22, before the Economic Affairs Committee, the President of the ECOFIN Council, Jean-Claude Juncker told members that the purpose of the summit was to decide on concrete action to alleviate the unemployment problem. He continued, "if this summit like earlier summits only results in declarations, but few concrete measures, then it is a failure".

Among measures envisaged by Mr Juncker, deregulation and greater flexibility of the labour

NEWS FROM EUROPE

markets should only play a small part, as he felt that Europe's working population would not welcome a "Deregulation Summit". Instead he wanted the Summit to lead to the adoption of clear guidelines for European Employment Policy, which will form an integral part of the overall economic guidelines. According to Mr Juncker, such employment guidelines should be as concrete as possible so that the Council each year can quantify the progress towards achieving the goals set out in them, or the causes of non-attainment. As an example of the type of guidelines that he would like to see adopted, Mr Juncker pointed out that currently only 10% of the unemployed benefit from active measurers such as education or retraining, and that the EU could make it an objective to raise this to 30 or 40% over three years.

On the other hand, Mr Juncker continued, responsibility for the implementation of employment policy rests primarily at the national level. He hoped that the Summit would represent a shift from passive to active employment policy and stressed that it will be necessary to increase funding, both at European and at national level. He particularly emphasised increased use of the EIB and better use of the resources in the EU budget. To this effect, he told members that he had already held talks with the chairman of the Budget Committee, Detlev Samland MEP exploring ways to find "hidden money" in the budget that could be used for employment policy.

Equal Pay Code

Responding to the Commission Communication on equal pay for work of equal value, the European Parliament Committee on Employment and Social Affairs have welcomed the suggested Code of Practice and called for a wide-ranging information campaign to counter gender biased misconceptions. Reporting to the Committee on the Communication, Laura González Álvarez MEP said that despite the fact that the EU Directive on equal pay for men and women has been in place since 1975, women are on average still paid approximately 30% less than men.

The Commission is now proposing a code of practice that calls for "equal pay for work of equal value" for men and women. Laura González Álvarez, welcomed the proposal that the code of practice should apply to all employees, including apprentices or those working from home and part-time workers with inadequate contracts. An awareness and information campaign targeted at the social partners to dissipate gender biased misconceptions of the value of different jobs should be put in motion, as should research on 'gender-free' evaluation schemes. Finally, women are to be encouraged to be more active, and get involved in the collective bargaining process.

Legislation

Burden of Proof

At its meeting on the 27th June 1997, the Labour and Social Affairs Council reached unanimous political agreement on a common position regarding the proposal for a Directive on the burden of proof in cases of discrimination based on sex. This common position will be formally adopted at a forthcoming Council session. It will then be transmitted to the European Parliament for a second reading under the Co-operation procedure. The effect of the Directive would be to consolidate the jurisprudence of the Court of Justice by shifting the burden of proof in cases of discrimination based on sex; this means that instead of the plaintiff (worker) having to prove that there was discrimination, which in practice can give rise to insuperable problems, the defendant (employer) would have to justify the apparent difference in treatment. The common position states that:

"Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged by failure to apply to them the principle of equal treatment establish, before a court or other competent authority, facts from which it can be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no contravention of the principle of equal treatment."

The common position covers both direct and indirect discrimination. The latter is deemed to exist where a provision, criterion or apparently neutral practice disadvantages a substantially higher proportion of the members of one sex, unless it is appropriate and necessary, and can be justified by objective factors unrelated to sex. The Directive would apply to the situations envisaged by Art. 119 of the Treaty and those on equal pay, on access to emp-loyment and, insofar as discrimination on the grounds of sex is concerned, to the Directives on health and safety of pregnant workers and parental leave.

NEWS FROM EUROPE

Working Time

On the 15th July 1997, the European Commission published a White Paper on sectors and activities currently excluded from the Working Time Directive. The aim of the White Paper is to identify the best way of ensuring that all workers are provided with adequate health and safety protection with regard to working time. The White Paper is in three parts. The first part sets out the background and an analysis of the current situation. The second part sets out the options. In the third part the Commission sets out its views on the way forward in this matter, subject to comments received on this White Paper.

The White Paper has been prepared following informal consultations with the European-level social partner organisations. Currently about 5.5 million workers in the EU are excluded from the provisions of the 1993 Working Time Directive. Predominantly these are in the air, rail, road, sea and inland waterway transport, sea fishing and off-shore sectors and doctors in training. The White Paper puts forward three options for extending health and safety protection to excluded groups:

1. A non-binding approach
2. A purely sectoral approach
3. A differentiated approach
4. A purely horizontal approach.

The Commission itself favours option 3 - a differentiated approach - and are proposing:

- The extension of the full provisions of the Working Time Directive to all non-mobile workers.
- Extending to all mobile and off-shore workers the provisions of the Working Time Directive with regards to four weeks annual leave and health assessment for night workers, and providing a guarantee of adequate rest and for a maximum number of hours to be worked annually.
- Introducing or modifying specific legislation for each sector or activity concerning working time and rest periods for mobile and offshore workers.

Recognition of Qualifications

The European Commission has issued an amended proposal for a Directive which will establish a mechanism for the recognition of qualifications in respect of professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general system for the recognition of qualifications. The amendment proposal relates to the original draft directive published in April 1996 which creates a mechanism for the recognition of qualifications and effectively extends the new, simplified approach (introduced in Directive 89/48/EEC) to the various areas which were covered by the individual Directives of the sixties, seventies and early eighties.

The changes introduced in this amended version of the draft are mainly of a textual rather than a substantive nature. In particular they change the definition of "employment in a managerial capacity" which is central to the mechanisms contained in Article 4 which deals with the recognition of professional qualifications on the basis of professional experience acquired in another Member State. Also a new Article 13a states that not later than five years after the final implementation date (which is still set as the 1st January 1999) the Commission will report to the European Parliament and the Council on the state of application of the Directive in the Member States. It goes on "After undertaking the necessary hearings, the Commission shall submit its conclusions regarding any changes to the existing arrangements. If necessary, the Commission shall also submit proposals for improving the existing arrangements with the aim of facilitating freedom of movement, the right of establishment and the free movement of services"

European Trade Unions

Eurocadres - Employment

The Council of European Professional and Managerial Staff - Eurocadres - met with the Luxembourg Foreign Minister Jacques Poos in order to press the case for urgent action at European level on the problem of unemployment. A delegation from Eurocadres told Mr. Poos and other representatives of the Luxembourg Council presidency that the special Council summit on employment must live up to its expectations. "The creation of the single currency and the establishment of economic and monetary union would be endangered, if it was done at the expense of employment" they said. In order to meet the objective (set in the 1993 White Paper) of reducing unemployment by a half by the end of the decade, Eurocadres called for the following measures to be put in place:

NEWS FROM EUROPE

- Increased economic co-ordination, as recommended by the ETUC;
- European policies to support investment, particularly in areas of research and development and TENs;
- Initiatives to encourage the re-organisation of work, training and a reduction in working time, in co-ordination with the responsibilities and initiatives of the social partners;
- European instruments to monitor developments regarding employment and qualifications;
- Measures to remove the numerous obstacles to the free movement of people in Europe (recognition of diplomas and qualifications, transferability of pension rights etc...)

Michel Rousselot, president of Eurocadres, underlined the need to "put an end to the exclusion of professional and managerial staff from the directive on working time" adding that "if an incentive is given in the form of significant decisions taken at European level, professional and managerial staff in organisations and administrations would be better placed to mobilise technical innovation and social capabilities in favour of employment"

Social Dialogue

Representatives of the European level social partner organisations met on the 5th of July in Luxembourg on the fringe of the informal social council meeting. The two main items on the agenda were the proposed special summit on employment and the Commission Green paper on work organisation. After the meeting, the ETUC General Secretary, Emilio Gabaglio, expressed disappointment at what he called the "simplistic interpretation" of the employers organisation - UNICE - of the Commission Work Organisation Green Paper. Mr Gabaglio commented "It effectively throws into question the documents' two priorities: the need to strike a new balance between labour flexibility and employment guarantees for workers, and achieving a real partnership, which means recognising employees' rights to be kept informed and consulted at all times, and giving collective bargaining a key role at all levels". The ETUC General Secretary said that UNICE still seemed unable to take on board the basic principles of a policy of agreement, even though it was fundamental to successfully negotiated change in company work organisation.

On the subject of the special Employment summit, Mr Gabaglio said that it would only serve a purpose if it manages to translate the Amsterdam employment guidelines into concrete decisions. "The summit must take steps to give effect to the existing programmes based on the Essen strategies and President Santers' Confidence Pact for Employment. It must give them binding force by setting quantified objectives and a very firm timetable", he said. The best thing the EU could do for employment was to facilitate the early introduction of economic policy co-ordination backed up by new Community incentives to investment and harmonisation of tax provisions, he concluded.

Employment Strategy

The General Secretary of the European Trade Union Confederation, Emilio Gabaglio, has welcomed the decision of the new Luxembourg Presidency to call an extraordinary European Council meeting in the Autumn which will examine the question of employment. Mr Gabaglio said in his statement:

"One of the Luxembourg Prime Minister's in his country's Presidency of the Union was to hold a meeting with the ETUC. Behind the symbolism of this gesture, which I sincerely appreciate, lies a discernible intention by the Luxembourg Presidency to use Autumn's extraordinary Summit as an opportunity for beefing-up the flimsy co-ordinated European employment strategy. The President-in-Office has already revealed the tenor of his approach by claiming that he will not let it be turned into a deregulation Summit. Speaking for the ETUC, I gave Mr. Juncker every encouragement to work for substantial measures with short-term effects through investment promotion and tax incentives for jobs. I also stressed the importance of giving the trade union movement and business a full say in preparations for the extraordinary Summit, including through a tripartite consultative conference beforehand.

"As regards the way forward after Amsterdam, I said that the ETUC expects the Luxembourg Presidency to take steps to bring about an economic policy co-ordination Pact under Articles 102 and 103 of the Treaty. The Pact must compensate the Stability Pact for Monetary Union, which has already been fleshed out, so as to have monetary considerations counterbalanced by matching economic considerations."

FOCUS ON.....

PART-TIME WORKING

The European Commission have published a proposal for a Council Directive on part-time working. The proposal is based on the procedures set out in the Social Policy Agreement annexed to the Treaty. These procedures allow the European level social partner organisations to conclude framework agreements and request their implementation by a Council decision. As with the previous Directive introduced via this procedure - the Directive on parental leave - the Commission proposal does not seek to amend in any way the agreement. Therefore the proposed Directive itself is limited to merely presenting the text of the agreement (which is contained in an Annex) and providing details of implementation and transposition. The full text of the Framework Agreement is reproduced below, in the right-hand column. The notes in the left-hand column are designed to give Bulletin readers a clearer understanding of some of the technical terms used and some of the practical implications of the agreement.

EUROPEAN FRAMEWORK AGREEMENT ON PART-TIME WORK

PREAMBLE

The European strategy on employment encompasses the European Confidence Pact for Employment proposed during 1996 by Commission President Jacques Santer and the declaration adopted by the December 1994 Essen European Council and subsequent statements from the European Council including that adopted by the Amsterdam Summit in June 1997.

This framework agreement is a contribution to the overall European strategy on employment. Part-time work has had an important impact on employment in recent years. For this reason, the parties to this agreement have given priority attention to this form of work. It is the intention of the parties to consider the need for similar agreements relating to other forms of flexible work.

Recognising the diversity of situations in Member States and acknowledging that part-time work is a feature of employment in certain sectors and activities, this agreement sets out the general principles and minimum requirements relating to part-time work. It illustrates the willingness of the Social Partners to establish a general framework for the elimination of discrimination against part-time workers and to assist the development of opportunities for part-time working on a basis acceptable to employees and workers.

The December 1996 Dublin Declaration on Employment calls for a renewed examination of ways to increase labour market flexibility. One of the key ways identified of achieving this end was by making social security systems more "employment friendly"

This agreement relates to employment conditions of part-time workers recognising that matters concerning statutory social security are for decision by the Member States. In the context of the principle of non-discrimination, the parties to this agreement have noted the European declaration of the Dublin European Council of December 1996, wherein the Council inter alia emphasised the need to make social security systems more employment friendly by "developing social protection systems capable of adapting to new patterns of work and of providing appropriate protection to people engaged in such work". The parties to this agreement consider that effect should be given to this declaration.

This Framework Agreement has been adopted in the context of the procedures set out in the Agreement on Social Policy which allows the Social partners to adopt such agreements and for them to be implemented by means of a Council Directive.

ETUC, UNICE and CEEP request the Commission to submit this framework agreement to the Council for a decision making these requirements binding in the Member States which are party to the Agreement on social policy annexed to the Protocol on social policy annexed to the Treaty establishing the European Community.

The Social Policy Agreement attached to the Treaty Establishing the European Community allows for implementation by Member States by law or via an agrement between the national Social Partner organisations, provided such an agreement meets the minimum requirements set out in the Directive.

The parties to this agreement ask the Commission, in its proposal to implement this agreement, to request that Member States adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of 2 years from its adoption or ensure that the Social Partners establish the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreement, have up to a maximum of one additional year to comply with this provision.

Without prejudice to the role of the national courts and the Court of Justice, the parties to this agreement request that any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to them for an opinion.

The full text of Article 4 of the Social Policy Agreement is as follows:

4.1 Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.
4.2 Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered in Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.
The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 2(3), in which case it shall act unanimously.

Article 2(3) relates to areas such as social security provision, unfair dismissal and collective representation. The rights of part-time workers are not listed in Article 2(3) and therefore any legislative proposal is subject to qualified majority voting.

I GENERAL CONSIDERATIONS

Having regard to the Agreement on social policy annexed to the Protocol on social policy attached to the Treaty establishing the European Community, and in particular article 3, 4 and 4.2 thereof.

Whereas article 4.2 of the Agreement on social policy provides that agreements concluded at Community level may be implemented, at the joint request of the signatory parties, by a Council Decision on a proposal from the Commission.

Whereas, in its second consultation document on flexibility of working time and security for workers, the Commission announced its intention to propose a legally binding Community measure.

Whereas the conclusions of the European Council meeting in Essen emphasised the need for measures to promote both employment and equal opportunities for women and men, and called for measures aimed at "increasing the employment intensiveness of growth, in particular by more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition".

Whereas the parties to this agreement attach importance to measures which would facilitate access to part-time work for men and women in order to prepare for retirement, reconcile professional and family life, and take up education and training opportunities to improve their skills and career opportunities for the mutual benefit of employers and workers and in a manner which would assist the development of enterprises.

The detail of how the general principles set out in the Framework Directive will be put into practice in individual Member States is largely left up to the Governments and Social partner organisations in the Member States themselves.

Whereas the agreement refers back to Member States and Social Partners for the modalities of application of these general principles, minimum requirements and provisions, in order to take account of the situation in each Member State.

Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Whereas the Social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be conferred a special role in the implementation and application of this agreement.

The signatory parties have agreed to the following :

II CONTENT

The stated purpose of the framework agreement reflects the principle objectives of the two main social partner organisations: the trade union demand for greater protection and equal treatment for part-time workers, and the employers' demand for increased flexibility.

Clause 1 : Purpose

The purpose of this framework agreement is :

A. to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;
B. to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.

Clause 2 : Scope

The application of the provisions of the agreement has a relatively wide scope, covering all part-time workers, irrespective of the number of hours worked. However provision does exist in Clause 2.2, after consultation with the Social Partners, to exclude part-time workers who work on a casual basis.

1. This agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.

2. Member States, after consultation with the Social Partners in accordance with national law, collective agreements or practice, and/or the Social Partners at the appropriate level in conformity with national industrial relations practice may, for objective reasons, exclude wholly or partly from the terms of this agreement part-time workers who work on a casual basis. Such exclusions should be reviewed periodically to establish the objective reasons for making them remain valid.

Clause 3 : Definitions

Part-time workers are defined simply in relation to full-time workers. The comparison can either be based on a weekly basis or as an average of any period of up to one year. Therefore part-time workers who worked "normal full-time hours" in certain weeks but reduced or no hours at other times would still fall under this definition.

1. For the purpose of this agreement, the term "part-time worker" refers to an employee whose normal hours of work, calculated on a weekly basis or an average over a period of employment of up to one year, are less than the normal hours of work of a comparable full time worker.

2. For the purpose of this agreement, the term "comparable full-time worker", means a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or similar work/ occupation, due regard being given to other considerations which may include seniority, qualifications/skills.

3. Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Clause 4 : Principle of non-discrimination

1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time unless different treatment is justified on objective grounds.

"pro rata temporis" literally means "in proportion to the time done. Thus the principle implies that remuneration and other benefits should be in proportion to the time worked.

2. Where appropriate, the principle of pro rata temporis shall apply.

3. The modalities of application of this clause shall be defined by the Member States and/or Social Partners, having regard to European legislation, national law, collective agreements and practice.

The agreement makes great use of the concept of "objective grounds" and "objective reasons", but gives no indication of what might constitute an objective reason. This is perhaps understandable in that the idea of objectivity specifically relates to a concrete situation rather than a general concept. Thus "objective" grounds and reasons have to be examined in the context of a particular situation by the parties concerned.

4. When justified by objective reasons, Member States after consultation with the Social Partners in accordance with national law or practice and/or Social Partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in clause 4.1

Clause 5 : Opportunities for part-time work

1. In the context of clause 1 of this agreement and of the principle of non-discrimination between part-time and full-time workers,

Both governments and social partners are given the task of identifying and reviewing obstacles which may limit the opportunities for part-time work and, where appropriate, eliminating them. More specifically, Member States **and** Social Partners are required to identify and review obstacles of a legal or administrative nature, and Social Partners are given the additional task of identifying and reviewing obstacles within collective agreements.

A. Member States, following consultation with the Social Partners in accordance with national law or practice, should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them.

B. The Social Partners, acting within their sphere of competence and through the procedures set out in collective agreements, should identify and review obstacles which may limit opportunities for part-time work, and, where appropriate, eliminate them.

2. A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination in accordance with national law, collective agreements or practice, for other reasons such as may arise from the operational requirements of the establishment concerned.

3. As far as possible, employers should give consideration to:

A. Requests by workers to transfer from full-time to part-time work that become available in the establishment.

B. Requests by workers to transfer from part-time to full-time

work or to increase their working time should the opportunity arise.

Access of part-time workers to vocational training opportunities is specifically mentioned in the agreement, along with measures to promote the access of part-time workers to work at all levels in the enterprise. These provisions attempt to avoid a situation where part-time working is limited to the lowest-skilled, lowest-paid jobs in an enterprise.

C. The provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice-versa.

D. Measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility.

E. The provision of appropriate information to existing bodies representing workers about part-time working in the enterprise.

Clause 6 : Provisions on implementation

Clause 6.1 is an important one, emphasising that the provisions set out in the agreement are minimum provisions and therefore can be improved upon within Member States.

1. Member States and/or Social partners can maintain or introduce more favourable provisions than set out in this agreement.

2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of this agreement. This does not prejudice the right of Member States and/or Social Partners to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances, and does not prejudice the application of clause 5.1 as long as the principle of non-discrimination as expressed in clause 4.1 is complied with.

There is a strong link between provisions on part-time working and equal opportunities between men and women due to the fact that, currently, the majority of part-time workers are women. Many of the existing rights of part-time workers have resulted from legal judgements in sex discrimination cases.

3. The present agreement does not prejudice the right of the Social Partners to conclude, at an appropriate level, including European level, agreements adapting and/or complementing the provisions of this agreement in a manner which will take account of the specific needs of the Social Partners concerned.

4. This agreement shall be without prejudice to any more specific Community provisions, and in particular, Community provisions concerning equal treatment or opportunities for men and women.

5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practice.

6. The signatory parties will review this agreement five years after the date of the Council Decision, if requested by one of the parties to this agreement.

Brussels, 6 June 1997

The agreement was signed by the following:

On behalf of the ETUC by Fritz Verzetnitsch, President, and Emilio Gabaglio, Secretary-General.

On behalf of UNICE by Frànçois Perigot, President, and Zygmunt Tyszkiewicz, Secretary-General.

On behalf of CEEP by Antonio Castelano Auyanet, President, and Ytte Fredensborg, Secretary-General.

EUROPEAN PUBLICATIONS

infoBASE EUROPE

The infoBASE EUROPE service is produced by the same team that have been producing the European Trade Union Information Bulletin for the last fifteen years. Indeed the infoBASE EUROPE database and on-line service were based on the themes and sources that are used to prepare the Bulletin.

The service consists of two related elements. The first is a computerised database which currently contains almost two thousand individual records covering all the major developments in European industrial relations and social policy since January 1993. The core of each record is a 250 - 300 word summary of the development in question which is accompanied by full source information and a variety of search mechanisms. Policy initiatives, legislative proposals, action programmes and funding calls in the sphere of European social policy are all covered in detail. The database is updated ten times each year, each update containing approximately 50 new records. The database will run on almost any Windows or Mac computer and provides an unrivalled resource.

The second element is an on-line service - infoBASE EUROPE Flash - which provides full details of all major European developments in areas of interest to social partner organisations on a daily basis. Flash postings can be accessed via the infoBASE on-line server and downloaded in seconds. Alternatively the records can be received on a weekly basis via internet e-mail.

The services are available - either individually or collectively - on an annual subscription basis. Both services are currently only available in English. A selected sample of Flash postings can be viewed on the Ecu-notes WWW site (http://www.ecu-notes.org/). Full details of the services and subscription rates can be obtained from:

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E-mail: infobase@mboelma.demon.co.uk

European Trade Union Institute

The research arm of the ETUC - the European Trade Union Institute - has just published two new works which will be of interest to all social partner organisations:

The European Trade Union Yearbook 1996 brings together contributions from 22 writers on important developments in European industrial relations during 1996. In the leading article, former Commission President Jacques Delors asks the question, "have we betrayed the European economic and social venture?" In his article, Mr Delors is critical of some recent developments, saying that since 1992 co-operation among the states of Europe has weakened, to the detriment of solidarity and a sense of mutual responsibility.

The Yearbook also examines key developments in such areas as employment and labour market policy and developments in Central and Eastern Europe. Annexes provide a chronology of major events during 1996 and an analysis of the implementation of the 1989 Social Policy Action Programme. The Yearbook is available in English at a price of BEF 800.

Social Protection in Europe : Facing Up To Changes and Challenges is a 450 page compendium of articles which were originally prepared a Conference on Social Protection in Europe which was held last November. The various sections of the book deal with the relationship between employment and social protection, the financing of social security systems, unemployment benefits and health care provision. The concluding chapter contains a discussion of future prospects and possible solutions to the problems which are currently arising and a summary of the panel discussion held at the end of the conference. The book is available in English, priced BEF 800.

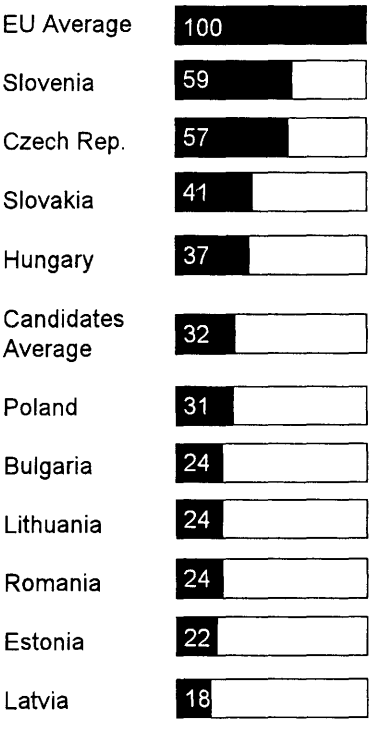
Further details of both books can be obtained from the ETUI Publications Department 00 32 2 224 05 13 or by contacting:

European Trade Union Institute
Boulevard Emile Jacqmain 155,
1210 Brussels, Belgium.

EUROPEAN STATISTICS

GDP in the EU Candidate Countries

A recent Eurostat Report examined the gross domestic product of countries which have applied for membership of the European Union. The figures - which relate to 1995 - relate to per capita GDP in terms of purchasing power and are in the form of an index with the EU average set at 100.



Source: Eurostat.

Comparable figures for Cyprus are not available.

The same Report showed annual rates of GDP growth in 1995 varying between 7.1% in Romania (and 7% in Poland and Slovakia) and -0.8% in Latvia. Cyprus achieved an annual rate of growth of 5.8% during the year in question. The average rate of annual GDP growth in candidate countries was 5.2% and this compares with an average increase of 2.4% achieved by the 15 EU Member States.

Industrial Production 2nd Quarter of 1997

Industrial production in the EU rose by 1.1% in March to May compared with the previous three months according to a new Eurostat Report. This confirms the upswing seen in the previous few months. Production was up by 1.3% in the USA and 1.2% in Japan. Among industrial activities, production rose most in motor vehicle manufacturing (3.0%). All ten Member States with available data recorded a rise except the UK (-0.2%). Largest rises were Spain's 2.0% and Italy's 1.6%.

Production Trend Index
Changes (%) Dec '96 -Feb '97 to Mar-May '97
Member States with available data

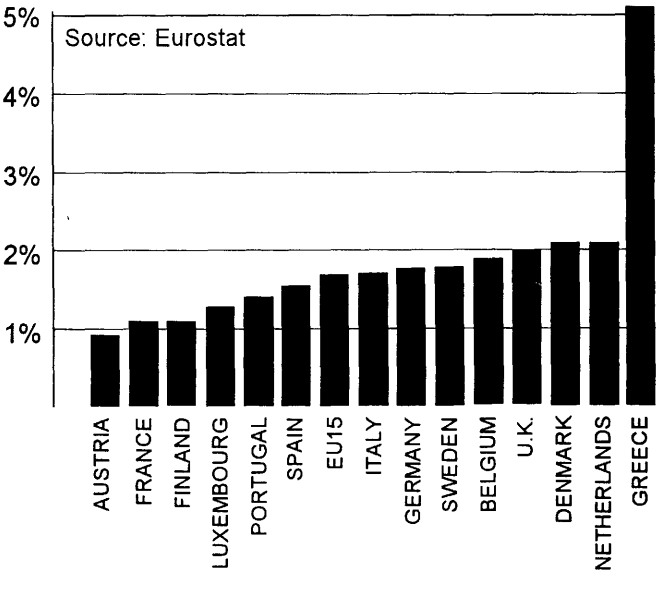
Spain	2.0	Netherlands	0.8
Italy	1.6	Germany	0.7
Finland	1.2	Greece	0.2
Belgium	1.2	United Kingdom	-0.2
France	1.2		
EU	1.1	USA	1.3
Denmark	0.8	Japan	1.2

Source: Eurostat, August 1997

Inflation in EU Member States - July 1997

The average level of inflation in EU Member States increased slightly to 1.7% in July compared with 1.6% in June. Inflation has now returned to the level recorded earlier this year after falling in April and May to 1.5%. The inflation level is still considerably less than that recorded in the same period last year (July 1996 = 2.4%).

Annual Rate of Inflation July 1996/7
(Figures for Austria are provisional, figures for Ireland not available)



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