COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 511 final

Brussels, 5 December 1991

FIRST REPORT

ON THE APPLICATION OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

(PRESENTED BY

THE COMMISSION OF THE EUROPEAN COMMUNITIES

TO THE EUROPEAN COUNCIL, THE EUROPEAN PARLIAMENT AND

THE ECONOMIC AND SOCIAL COMMITTEE)

IMPLEMENTATION OF THE CHARTER

1. The Charter, as a European act, merely states and notes the rights which were the subject of deliberations in the European Council in Strasbourg in December 1989. In itself, it has no effect on the existing legal situation.

   This is why the draft Charter, as presented by the Commission on 27 September 1989[1], referred to an action programme with a set of related instruments and called for a mandate from the European Council relating to the most urgent aspects of implementation of the principles set out in the Charter which could be covered by the provisions of the EEC Treaty in the social field.

   Under the terms of point 28 of the Community Charter of the Fundamental Social Rights of Workers, the European Council invites the Commission to submit as soon as possible initiatives which fall within its powers, as provided for in the Treaties, with a view to the adoption of legal instruments for the effective implementation, as and when the internal market is completed, of those rights which come within the Community's area of competence.

   The Commission of the European Communities' response to this invitation was the action programme relating to the implementation of the Community Charter of Basic Social Rights for Workers[2], drawn up under the responsibility of Mrs Papandreou.

   It features 47 separate initiatives, not all of which come within the jurisdiction of the Council of Ministers.

   For its part, the European Council called upon the Council "to deliberate upon the Commission's proposals in the light of the social dimension of the internal market and having regard to national and Community responsibilities"[3].

THE REPORT ON APPLICATION OF THE CHARTER

2. Under the terms of points 29 and 30, the Community Charter of the Fundamental Social Rights of Workers stipulates that the Commission shall establish each year, during the last three months, a report on the application of the Charter by the Member States and by the European Community.

   Point 30 states that the report shall be forwarded to the European Council, the European Parliament and the Economic and Social Committee.

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(1) See point 31 of the draft.
(2) COM(89) 568 final, Brussels, 29 November 1989.
(3) Presidency Conclusions, European Council, Strasbourg, 8 and 9 December 1989.

This is the first such report presented by the Commission. It has been updated to 1 November 1991 and comprises two parts, the first setting out what the Community has achieved and the second what has been done by the Member States.

The concluding chapter discusses the difficulties which have already been noted by the European Council.

PART ONE:

APPLICATION BY THE EUROPEAN COMMUNITY OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

INTRODUCTORY REMARKS

3. This first part is concerned essentially with the work done by the Commission on implementing the Community Charter of the Fundamental Social Rights of Workers in the fields in which the Commission has jurisdiction. It is necessary to underline that the social dimension of the European space features in a range of other proposals on such matters as the European company, the mutual recognition of certificates and diplomas, the right of residence, labour protection, in the framework of technical rules and standardisation, pension funds, and the social provisions of directives on public contracts.

   Therefore, this report is restricted to the initiatives announced by the Commission in its action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers[1].

4. The Commission wishes to point out that, in its initiatives presented under the above action programme and aimed at improving workers' living and working conditions, it regards the following three principles as cardinal:

   - the principle of subsidiarity, having regard to the specific nature of the social sphere, whereby the type of action has to be matched to the subject matter (e.g. harmonisation, coordination, convergence, cooperation, etc.), and giving due consideration to known needs and to the potential added value of Community action;

   - the principle of the diversity of national systems, cultures and practices, where this is a positive element in terms of the completion of the internal market.

   - the preservation of the competitiveness of undertakings, while conciling the economic and social dimensions. In each initiative a balance must be sought and reached.

   This is the essential background to the Commission's action programme, which seeks to establish a sound base of minimum provisions, having regard on the one hand to the need to avoid any distortion of competition, and on the other to support moves to strengthen economic and social cohesion and contribute to the creation of jobs, which is the prime concern of completion of the internal market.

5. The method adopted by the Commission for implementing these initiatives features a broad measure of prior consultation of the Member States and of the social partners (within the context of the advisory committees or the social dialogue).

   Regarding the social dialogue, the Commission would stress the positive contribution made by the social partners in the implementation of the Social Charter, with the adoption of five joint opinions since the adoption of the Charter in the fields of education, training and the labour market:

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(1) COM(89) 568 final, Brussels, 29 November 1989

- Joint opinion on the creation of a European occupational and geographical mobility area and improving the operation of the labour market in Europe;

- Joint opinion on new technologies, work organization and adaptability of the labour market;

- Joint opinion on education and training;

- Joint opinion on the transition from school to adult and working life;

- Joint opinion on modalities of access to training.

By 1 November 1991, the Commission has now presented virtually all the initiatives announced in the action programme (cf. Table in Annex II). The few remaining proposals shall be presented shortly to the Council and the European Parliament. The Commission which committed itself to present all 47 initiatives contained in the action programme before the end of 1991 has fulfilled its commitment.

6. Express mention needs to be made here of the important roles played by the European Parliament and the Economic and Social Committee.

   The European Parliament has consistently made the point that the social dimension is a fundamental condition of completion of the internal market, and despite Parliament's criticism of certain specific aspects of its proposals, the Commission can only endorse Parliament's view that: "The European Community is now putting forward two new blueprints for the [European social] model's future legal developments: the Community Charter of the Fundamental Social Rights of Workers and the forthcoming European Citizens' Statute, which is expected to be unveiled as part of Political Union in parallel with the reforms of Economic and Monetary Union"(2).

7. The Economic and Social Committee has played a constructive role, particularly in the phase leading up to the adoption of the Charter, and its opinions make a positive contribution to the progressive and consistent implementation of social policy.

8. For its part, the Council has adopted various proposals for instruments presented by the Commission under the action programme (cf. Annex II). However, the Commission has to express its disappointment at the slow rate at which the Council has been taking decisions on a number of proposals.

9. The structure of the first part of this report follows that of the Charter and the action programme (the same structure is followed in the second part for most of the Member States in their national reports).

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(2) European Parliament, Social Affairs, Draft report on the European labour market after 1992, Part XI: The European social model, EP 151.130/XI of 30 May 1991.

A table setting out the progress and current status of the Commission's various initiatives is appended to the report.

LABOUR MARKET

10. The action programme relating to the implementation of the Charter adheres, with a few exceptions, very closely to the structure of the Charter proper.

One of these exceptions is the inclusion of an additional chapter devoted to the labour market, and introducing the various initiatives described in the subsequent chapters.

The Community's top priority has always been to create jobs and reduce unemployment.

It is to this end that work undertaken under the structural Funds is submitted to joint evaluation with the Member States. Since 1989, the "Employment in Europe" report has given a precise analysis of economic and labour market prospects. The third report - for 1991 - was adopted by the Commission on 17 July 1991. This report is important in that it confirms the fact that the employment situation at the beginning of the 1990s is much more difficult than it was at the end of the 1980s. In the meantime, the Commission decided, on 18 December 1990, to set up three Community initiatives under Council Regulation EEC/4253/88 concerning equal opportunities for women (NOW), handicapped persons and certain other disadvantaged groups (Horizon) and new qualifications, new skills and new employment opportunities (Euroform)(1).

A network of national employment coordinators has been set up with the dual role of devising a settled procedure for discussion on certain employment-related subjects and involving national authorities in the work of collecting information.

11. There are also a range of programmes seeking to enhance the effectiveness of Community and national measures designed to help specific groups or regions. Typical of these are the LEDA (local employment development action) programme and the ERGO action-research programme, which is designed to identify successful programmes and projects which benefit long-term unemployed adults and young people, and SPEC (support programme for employment creation), which was launched in 1990 and is designed to deal with changes resulting from completion of the internal market.

12. Finally, the Commission has sought to encourage the free movement of workers by improving the machinery for providing people in the Member States with information on job vacancies in other Member States.

The second part of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community concerns "clearance of vacancies

(1) OJ C 327 of 29.12.1990, p. 3.

and applications for employment". In other words, it lays down the arrangements for a system of job vacancy clearance and for cooperation between the central employment services of the Member States and the Commission with a view to facilitating worker mobility within the Community.

The shortcomings and limitations of the system, known as SEDOC (European System for the International Clearing of Vacancies and Applications for Employment) have become evident over the years, which is why, on 5 September 1991, the Commission adopted the proposal for a revision of the second part of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community[2].

One of the aims of this exercise is to provide a guarantee to job seekers looking for work in a different Member State of the provision by the central employment service in their country of residence of a service of a standard and rapidity at least equivalent to the kind of service they would obtain if they were to move to the Member State where they are seeking work.

EMPLOYMENT AND REMUNERATION

13. In its action programme relating to the implementation of the Community Charter, the Commission took the view that "faced with the considerable development of very varied forms of employment contracts other than those of an open-ended type, there should be a Community framework ensuring a minimum of consistency between these various forms of contract in order to avoid the danger of distortions of competition and to increase the transparency of the labour market at Community level".

    Hence, in application of the Charter and as announced in its action programme, the Commission has proposed a set of fundamental provisions in respect of certain employment relationships. This is a general approach, paralleled by specific instruments to meet three specific needs:

    - to improve the functioning of the internal market and to make the labour market more transparent within the context of economic and social cohesion (legal basis Article 100a of the EEC Treaty);

    - to improve living and working conditions for workers (legal basis Article 100 of the EEC Treaty);

    - to protect the health and safety of workers at work[1] (legal basis Article 118a of the EEC Treaty).

14. The Commission takes the view that there can be no question here of casting doubt on the need for these particular forms of employment

(2) COM(91) 316 final, SYN 359, Brussels, 5 Septembre 1991; OJ C 254 of 28.09.1991, p. 9.

(1) COM(90) 228 final - SYN 280 and SYN 281 of 13 August 1990.

relationship, which are held to be essential in terms of a coherent strategy for growth and jobs. The point here is to define a number of basic provisions which on the one hand respect the need for businesses to be flexible, and on the other take into account the aspirations of workers, allowing for the wide range of situations in the Member States and the bargaining autonomy of the two sides of industry.

To avoid a disproportionate level of administrative expenditure, the Commission has proposed that the two directives concerning approximation of Member States' provisions in respect of the above employment relationships in terms of working conditions (Article 100) and distortions of competition (Article 100a) should not apply to employed persons whose average working week is less than eight hours.

15. Of the three proposals, only that based on Article 118a has so far been adopted by the Council of Ministers - on 25 June 1991(2).

Work on the proposal based on Article 100a is progressing slowly, and very little progress has been made on the proposal based on Article 100 of the EEC Treaty. This latter proposal has been rejected by the European Parliament.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

16. It its communication on its action programme relating to the implementation of the Community Charter, the Commission announced its intention of submitting a proposal for a Council Directive on the reorganization of working time.

In recent years, there has been an increasing trend towards dissociating individual working time from plant operating hours in most of the Member States. Thanks to this tendency, which has helped to increase capacity utilization and improve access to services with longer opening hours, firms are free to adapt to changing market conditions and to make more flexible use of productive equipment while at the same time cutting unit production costs. This same phenomenon also enables workers to organize their working time to suit their personal social and cultural needs and aspirations. By, in many cases, allowing variations around an average working time laid down in collective agreements, the trend towards reduced working time has helped to dissociate plant operating hours and individual working time.

17. This is why the proposal for a Council Directive concerning certain aspects of the organization of working time(1) contains a basic set of minimum provisions regarding minimum daily and weekly rest periods, and minimum conditions regarding shift work, night work and

(2) Council Directive of 25 June 1991 (91/383/EEC) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship. OJ L 206 of 29.7.1991, p.19

(1) COM(90) 317 final - SYN 295 of 20 September 1990.

health and safety protection for workers subject to changes of rhythm in their working hours.

Discussions in the Council have not yet led to the establishment of a common position.

18. On 28 November 1990, the Commission adopted a proposal for a Directive on provision of a form of proof of an employment relationship(2).

The essential aim behind this proposal is to create a balance between the interests of workers in being aware of the essential nature and content of their employment relationship and that of businesses searching for new and more flexible forms of employment relationships geared to the needs of a modern economy. The proposal for a Directive thus makes a contribution to improving the transparency of a labour market which is undergoing change with potential for altering the situation of workers in the kind of employment relationship which generally falls outside the traditional pattern.

Apart from the renewed potential for "black work", we are now witnessing the emergence of new forms of distance work, work experience schemes and mixed employment-training contracts, more flexible forms of part-time and full-time working and, in more general terms, the development of new forms of work which tend to obscure the situation of large numbers of workers, making it confused, uncertain and unstable. As a result, conventional concepts of what is meant by workers, employed persons, working time, etc. are no longer covered by conventional labour law.

Under the proposal for a Directive, all workers should know for whom and where they are supposed to be working and what the essential conditions of the employment relationship are.

This Directive was adopted on 14 October 1991(3).

19. On 18 September 1991, the Commission adopted a proposal for a Directive amending Directive 75/129/EEC concerning the approximation of Member States' legislation on collective redundancies(4).

Fifteen years of Directive 75/129 and the impact of the internal market on business restructuring have made it necessary to amend the original Directive. With transnational business restructuring gathering pace on the eve of completion of the internal market, redundancies are increasingly being decided at a higher level of business than that of the direct employer, i.e. by a company exercising control over a group, whether it be situated in the same Member State as the employer or in an entirely different one, or by the central management of a multiple-branch undertaking, with the actual employer being located in a different Member State entirely.

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(2) COM(90) 563 final, 8 January 1991.

(3) Council Directive 91/533 of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288 of 18.10.1991, p. 32

(4) OJ L 48 of 22.2.1975, p. 29.

The proposal for a Directive widens the field of application of the existing Directive as regards redundancies decided by such decision-making centres, but ensures that such centres supply employers with all the information they need to inform and consult workers' representatives and notify the competent public authority of the plans. The proposal also seeks to extend workers' rights as regards information and consultation to cases of redundancy resulting from a court decision. In the approach chosen by the Commission, the proposal offers more flexibility for small businesses by stipulating that Member States do not have to provide for worker representation in establishments employing fewer than 50 workers.

20. The need to refocus Community attention on the immigration issue was brought out at the Hanover European Council of June 1988, which called on the Commission to draw up a report on the social integration of migrant workers.

The European Council of 8 and 9 December 1989 called in turn for an inventory of national positions on immigration with a view to preparing the ground for a discussion of the matter in the Council.

As regards the social and legal situation of immigrants from non-member countries in each of the Member States, the report on the "social integration of migrants from non-member countries residing permanently and legally in the Member States"(5) gave a first indication of the legal and de facto situation of immigrants.

A second report entrusted by the Commission to a group of experts and entitled "Policies on immigration and the social integration of migrants in the European Community"(6) made a major contribution to a more in-depth look at this question. The European Council of 14 and 15 December 1990 took note of this latter report and asked the General Affairs Council and the Commission to "examine the most appropriate measures and actions regarding aid to countries of emigration, entry conditions and aid for social integration...". In addition the Commission adopted a Communication to the Council and the European Parliament on immigration on 11 October 1991(7).

FREEDOM OF MOVEMENT

21. On 28 June 1991, the Commission put forward a proposal for a Council Directive concerning the posting of workers in the framework of the provision of services(1).

The Commission's aims behind this proposal were to have the Council ensure that Member States coordinate their laws to establish a core of rules and regulations affording minimum protection. Such rules and regulations would have to be complied with in the host country by employers sending workers to work temporarily on the territory of the Member State in which the services are rendered.

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(5) SEC(89) 924 final of 22 June 1989.
(6) SEC(90) 1813 final of 28 September 1990.
(7) SEC(91) 1855 final
(1) COM(91) 230 final - SYN 346; OJ C 225 of 30.8.91, p. 6.

The importance of this proposal will be clear to all, especially as its scope extends to undertakings established outside the Community.

Such undertakings are likewise subject to this core of rules and regulations in respect of their workers carrying out temporary work on the territory of a Member State.

22. Under the section of the action programme dealing with freedom of movement, the Commission undertook to submit a communication on supplementary social security schemes.

The lack of coordination, the diversity and multiplicity of supplementary schemes and the fact that they are increasing in importance over statutory social security schemes make it a very complex matter to organize the transferability of rights in the event of worker mobility between the Member States.

This is why the Commission adopted, on 17 July 1991, a "Communication on supplementary social security schemes"(2), which takes the form of a consultation and information document intended by the Commission to set in motion a Community-wide debate on supplementary retirement pension schemes.

The analysis proposed by the Commission is presented in terms of the freedom of movement of workers and the coordination of social security matters pursuant to Article 51 of the EEC Treaty.

The communication is not intended to make any kind of value judgement on existing national systems, but merely to present an inventory of problems posed by supplementary schemes in respect of worker mobility.

The basic objective is to ensure that transfrontier worker mobility is no more of a problem than mobility within a single Member State.

In other words, the point of the transferability of supplementary pension rights is to get rid of obstacles to the free movement of workers caused by the absence of Community provisions protecting such workers from the loss of their rights.

23. a) On 27 November 1990, the Commission adopted a communication to the Council on the living and working conditions of Community citizens resident in frontier regions, with special reference to frontier workers(3).

Since the first communication on frontier populations (COM/85/529 final), the impetus imparted by the completion of the single market has prompted the Commission to submit to the Council a variety of ideas on the specific situation of frontier populations.

b) The Commission will pronounce on the revision of Commission Regulation 1251/70 when the Council has completed its deliberations on the amendment of Regulation 1612/68/EEC.

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(2) SEC(91) 1332.
(3) COM(90) 561 final.

SOCIAL PROTECTION

24. Solidarity with the disadvantaged sections of the population is primarily a matter for the Member States.

However, since the mid-1970s, the Community has become involved in these matters too. The two Poverty programmes 1975-1980 and 1984-1988 were joined by the Council Decision of 18 July 1989 establishing a new Community programme for the economic and social integration of the least privileged (1989-1994).

There is a very real danger, if we are not careful, that the internal market will make certain sections of the population more vulnerable.

Faced with the persistence of various forms of social exclusion, the Member States have tried to tackle the problem by instituting various forms of guaranteed resources for the worst-off.

25. In the Resolution passed on 29 September 1989 by the Council and the Ministers for Social Affairs meeting within the Council on the fight against social exclusion, the ministers showed how much importance they attached to supplementing economic development policies by policies of guaranteed resources geared to the situation in the various Member States.

The same desire for solidarity prompted the proposal for a Council Recommendation on common criteria concerning sufficient resources and social assistance in the social protection systems(1).

The aim behind this draft Recommendation is to get the Member States to recognize a general subjective right to a guarantee of sufficient, stable and reliable resources and benefits, and to organize the ways and means of implementing that right.

26. At the same time, and with a view to promoting a move to harmonization in the levels of social protection, the Commission has proposed, pursuant to its stated aims in the Social Charter action programme, a strategy for the convergence of Member States' social protection policies.

This strategy, set out in the proposal for a Council Recommendation of 27 June 1991 on the convergence of social protection objectives and policies, sets out to be flexible, progressive and based on a voluntary approach on the part of the Member States(2).

A strategy of this kind implies the definition at Community level of common objectives as regards the convergence of social protection policies, and sets out to advance the national social protection systems in accordance with the Community's general objectives.

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(1) COM(91) 161 final of 13 May 1991; OJ C 163 of 22.06.1991, p. 3.
(2) COM(91) 228 final of 27 June 1991; OJ C 194 of 25.07.1991, p. 13.

This convergence strategy must be seen not so much as an isolated measure, but rather as part of a wider move towards economic and social integration and the prevention of social exclusion.

INFORMATION, CONSULTATION AND PARTICIPATION

27. In presenting its proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings for the purposes of informing and consulting workers[1], the Commission set out to give priority to transnational situations, while at the same time bearing in mind the principle of subsidiarity as regards the regulatory level and the role of the two sides of industry.

    Thus, the proposal has no effect on internal information and consultation procedures within the Member States regarding national undertakings, which remain subject to the legislation and practices of the Member States. The proposal covers only European-scale undertakings and groups of undertakings.
    In this field, more so perhaps than in others, it is important to stress the respect shown for the social partners' bargaining autonomy.

    The joint opinion adopted in March 1987 within the framework of the social dialogue involving the ETUC, UNICE and CEEP was taken into account not only in terms of the minimum requirements set out in the proposal in respect of information and consultation of workers, but also in terms of the conditions for the setting up of a European Works Council. Here, it is primarily up to the social partners to decide on the nature, composition, functions and powers of any such council, along with its rules of procedure. Only where it proves impossible to reach agreement do the prescribed minimum provisions need to be applied.

28. The Community instrument on equity-sharing and financial participation by workers, announced in the Commission's action programme, takes due account of the latest developments and of present policies in this area within the Community[2]. It relates essentially to participation by employees in their companies' profits and asset formation and to equity-sharing, and seeks to cover neither all aspects of general capital formation policies nor measures aimed at the population at large or specific categories outside the occupational context.

    The choice of the Council Recommendation instrument is justified by the nature of the subject, for which a non-binding instrument appeared to be more suitable[3].

    There is a wide disparity in the types of financial participation schemes currently in operation in the various countries. Their

(1) COM(90) 581 final, Brussels, 25 January 1991.
(2) COM(91) 259 final, Brussels, 3 Septembre 1991.
(3) Proposal for a Council recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation); OJ C 245 of 20.09.1991, p. 12.

legal and tax statuses differ widely, ranging from cash bonuses and profit-sharing and other forms of deferred participation to special equity-sharing schemes, such as the free distribution of shares to employees or the offer of shares on preferential terms, through share purchase option schemes available to all employees or just to executives, to share-holding trusts or company buyouts.

The Recommendation is principally concerned with company-internal collective, continuing and participatory schemes (with direct or indirect involvement) based on company results.

The draft Recommendation's designated objective is to encourage wide-ranging usage of the various forms of employee participation in company profits and trading results, either by profit sharing or by equity-shareholding or by a combination of the two.

EQUAL TREATMENT FOR MEN AND WOMEN

29. Substantial progress has been made since the first action programme on equal opportunities for women in 1982.

A number of directives are already in place and form a complex fabric of legislation which, when incorporated into national laws and regulations, guarantees the formal equality of men and women.

However, there is still some way to go before formal equality becomes de facto equality.

The Commission's aim is to make the transition from equal treatment to equal opportunities, which explains why the third medium-term Community action programme on equal opportunities for men and women, adopted by Commission on 17 October 1990, places less stress on the legal side and more on facilitating access to the labour market, improving the quality of employment, reconciling working life and family responsibility and improving the status of women in society.

The Council adopted its Resolution of 21 May 1991[1], recognizing "the need to adopt an overall integrated approach allowing the policies on equality to be given full effect".

30. Based on Article 118a of the EEC Treaty, the proposal for a Directive concerning the protection at work of pregnant women or women who have recently given birth constitutes an individual directive within the meaning of Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work[2].

Its aim is to improve the standard of protection of pregnant women or women who have recently given birth, regarded as a risk group within the meaning of the above Framework Directive, without causing any deterioration in their working conditions and more particularly

(1) OJ C 142 of 31.5.1991, p.1.
(2) OJ L 183 of 29.6.1989, p.1.

their situation on the labour market. The measures contained in this proposal relate to leave arrangements, duration of work and employment rights on the one hand, and working conditions, including exposure to agents liable to affect their health, on the other. It also contains a particular reference to the burden of proof in case of a dispute.

This proposal for a Directive is in response to a major and specific need; on a number of occasions, the European Parliament has underlined the urgency of this initiative as contributing significantly to the promotion of health and safety of workers at work.

The Council arrived at a common position on 3 December 1991.

31. Reconciling childcare and child education obligations with parents' employment and training is essential if there is to be true equality of opportunity for men and women.

In all the Member States, demand for childcare facilities exceeds supply, with the lack of good-quality and affordable facilities constituting a major obstacle to women finding jobs and playing their full part in work and vocational training.

The Commission intends to take steps to encourage childcare facilities and has already drawn attention to the fact that finance is available in this field under Community support frameworks.

However, going beyond specifically targeted measures, the Commission has sought to draw up Community guidelines for a comprehensive policy on the part of the Member States on childcare, along with a programme for the consistent and gradual application of this policy. This resulted in a proposal for a Council recommendation on child care[3], adopted by the Commission on 4 July 1991 and presented to the Council on 8 July 1991.

VOCATIONAL TRAINING

32. Community action programmes in the field of vocational training have made enormous progress since 1987 in the wake of the adoption of the COMETT programme. The adoption in the meantime by the Council of a series of other action programmes demonstrates the importance attached throughout the Community to vocational training as an instrument of economic and social policy.

These programmes have been consistently supported by the European Parliament and the Economic and Social Committee and now form a complex fabric which is, however, still somewhat lacking in coordination.

To deal with this shortcoming, the Commission put forward a memorandum on the rationalization and coordination of vocational training programmes at Community level[1].

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(3) COM(91) 233 final, OJ C 242 of 17.09.1991, p. 3.
(1) COM(90) 334 final, Brussels, 21 August 1990.

The element common to all programmes such as COMETT, EUROTECNET, ERASMUS, LINGUA, TEMPUS, PETRA, IRIS, FORCE and the exchange of young workers programme is that they centre on the development of training measures, be they initial or continuing.

In addition, there are other Community programmes which comprise training elements or have implications for training policy(2).

33. The action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers pointed out that "the challenges faced by the Community as a whole with the creation of the internal market, against a background of continuing technological, social and demographic change, makes concerted action in the training field indispensible".

The aim of the memorandum is precisely this: to establish an overall framework of reference which can be used in future in locating and managing all Community initiatives and actions in the context of the development of the common vocational training policy based on Article 128 of the Treaty and in ensuring a well-coordinated approach to the development of Community measures designed to improve the quality of human resources in the Community and in the wider Europe. This framework is intended to streamline the Commission's different training initiatives, and also to enable the Commission to ensure the necessary interrelationships and coordination with other Community policies which contribute to the general objective of improving the skills of people throughout the Community, so as to master economic, technological, social and cultural change.

34. Taking account of the challenges in respect of vocational training and the need to promote a European dimension, more particularly by offering the chance of international exchange schemes to young people undergoing initial vocational training (other than at university level) and to young workers, the Commission proposed consolidating and extending the PETRA programme to include an exchange programme for young workers(3).

In so doing, the Commission was not only responding to the right to training for young people as laid down in the Charter, but also taking account of the European Parliament Resolution of 16 February 1990 on Community education and training programmes, which deplored the fact that "young people do not have equal opportunities in this area since existing Community programmes are geared mainly to university students rather than young people at school or following vocational training courses, who are in the majority"(4).

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(2) cf. a full analysis in the memorandum on the rationalization and coordination of vocational training programmes at Community level is given in COM(91) 334 final.

(3) Proposal for a Council Decision amending Decision 87/569/EEC concerning an action programme for the vocational training of young people and their preparation for adult and working life: COM(90) 467 presented to the Council on 15 November 1990; OJ C 158 of 17.6.1991, p. 329 and C 181 of 12.7.1990, p. 175.

(4) OJ C 68 of 19.3.1990. p. 175.

On 22 July 1991 the Council formally adopted Decision 91/387/EEC, based on Article 128 of the EEC Treaty, which had ben approved at the Luxembourg Council on 25 June 1991.

This decision, amending Decision 87/569/EEC concerning an action programme for the vocational training of young people and their preparation for adult and working life (PETRA), becomes operational from 1 January 1992 and comprises a three-year programme with ECU 177.4 million funding(5).

HEALTH AND SAFETY PROTECTION FOR WORKERS

35. Although the Community has for some time had a set of binding provisions giving a wide measure of protection for the health and safety of workers at work, the action programme implementing the Charter included a series of new proposals for binding instruments covering fields where the safety problem is of some concern.

In addition to other proposals for directives on the safety and health aspects of working conditions and empolyment, the action programme includes ten proposals for individual directives, most of which come under framework Directive 89/391/EEC. They deal with improved medical assistance on board vessels, fishing vessels, physical and industrial agents, asbestos, transport activities, temporary and mobile work sites, and the industrial sectors of the extractive industries, covering drilling, quarrying and open-cast mining.

All these sectors are characterized by high accident and risk rates.

The other two initiatives concern occupational diseases and the creation of a health and safety agency.

36. As regards occupational diseases, the Commission has updated its Recommendations of 23 July 1962 and 20 July 1966(1) establishing a European schedule of occupational diseases and setting out the principles for compensation.

In its Recommendation of 22 May 1990 concerning the adoption of a European schedule of occupational diseases, the Commission stated that, after a period of three years, it intended to look into whether binding legislative provisions were needed, and placed the emphasis on preventing occupational risks with a view to encouraging measures to reduce workplace nuisances(2).

37. With regard to the proposal for a regulation on the establishment of a health, hygiene and safety agency, the Commission has presented the final proposal on 30 September 1991(3).

(5) OJ L 214 of 2.8.1991, p. 69.
(1) OJ No 80 of 31.8.1962 and No 147 of 9.8.1966.
(2) OJ L 160 of 26.6.1990, p. 39.
(3) OJ C 271 of 16.10.1991, p. 3.

38. Of the many and varied proposals presented by the Commission under the action programme implementing the Social Charter and included in the chapter dealing with the health and safety of workers, the proposal for a Directive amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work is the only one to have been adopted by the Council of Ministers(4), at the same time as it adopted the proposal for a directive on temporary workers (cf. supra, p. 13).

39. The proposal for a Council Directive on the minimum health and safety requirements for improved medical treatment on board vessels is the most advanced of them. The Social Affairs Council met in Luxembourg on 25 June 1991 and approved a generally favourable line on adoption of a common position by qualified majority. The text as it emerges from the Council has to go to the European Parliament for second reading, with Parliament normally delivering its opinion within three months of the date on which the Council adopts its common position. The common position was adopted on 1 October 1991.

40. The other proposals for directives on such matters as temporary or mobile work sites, the extractive industries, safety and/or health signs at work and fishing vessels have reached different stages in the process. Some have yet to be subjected to in-depth examination by the Council, while others have recently been adopted by the Commission.

THE ELDERLY

41. The substantial increase in elderly and very old people between now and the end of the century has made the problem of integrating such people into society acute throughout the Community, not to mention the economic and social implications of the ageing process.

Enacting legislation would not have been the appropriate response given that different Member States have different approaches, cultures and traditions.

However, population ageing, the shift in the ratio of the working to the non-working population and the change in family structures are likely to have major social and economic implications. This is why the Commission has presented a communication on the elderly, together with a proposal for a Council Decision on Community actions for the elderly(1).

42. In the wake of this measure, the Council adopted a decision dated 26 November 1990 on Community actions for the elderly(2).

Among the wide range of measures proposed for the elderly, those encouraging sharing of experience are particularly important. The Council also adopted its Decision proclaiming 1993 to be the European year of the elderly and of solidarity between generations.

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(4) OJ L 206 of 29.6.1991, p. 16.
(1) COM(90) 80 final, Brussels, 24 April 1990.
(2) OJ L 28 of 02.02.1991, p. 29.

DISABLED PEOPLE

43. There are something like 30 million people in the Community who are affected by a physical, sensoral or mental handicap. The European Community has set itself the task of integrating these people economically and socially within the general context of improving the quality of life of all Community citizens.

The Community's original contribution to national efforts was to concentrate on technical exchanges of experience; this has now shifted to a comprehensive and consistent policy centred on a number of Community instruments in favour of disabled persons.

On the basis of a Commission report, the Council adopted, on 12 June 1989(1), its conclusions on the employment of disabled people, the aim being to give such people equal opportunities as regards access to vocational training and jobs by stimulating the participation of all parties concerned.

Going beyond the Community Charter of the Fundamental Social Rights of Workers, the Council of Ministers adopted, on 31 May 1990, a resolution on the integration of children and young people with disabilities into ordinary systems of education.

44. An important stage was reached on 18 April 1988 with the adoption by the Council of the second Community action programme covering the period 1988-1991(2), known as HELIOS (Handicapped people in the European Community Living Independently in an Open Society). Its aim was to follow up and build on the activities of the previous programme, stressing the promotion of independent living for the disabled.

Thanks to the advances and progress made in previous programmes, the situation of disabled people has been improved significantly, but it is important not to let up in these efforts in a period of major upheaval and difficult economic and social conditions.

Being able to draw on bases and criteria established for strengthening and pursuing a comprehensive and consistent policy for the school, economic and social integration of the disabled, and with heightened attention and appropriate measures, the Commission is now proposing the adoption of a five-year programme, known as HELIOS II.

45. A fresh action programme is particularly necessary as the disabled continue to be generally disadvantaged in terms of educational, employment and leisure conditions(3). Estimated at some 10% of the

(1) OJ C 173 of 8.7.1989, p.1.
(2) OJ L 104 of 23.4.1988, p.38.
(3) Proposal for a Council Decision establishing a third Community action programme to assist disabled people - HELIOS II (1992 to 1996), presented by the Commission on 8 October 1991, OJ No C293 of 12.11.91, p. 2

total population of the Community, handicapped people have tended to be more affected by the structural changes which have taken place over recent years. Economic and social changes have put a large number of people into a difficult - not to say dramatic - situation, and the positive aspects of past measures are sufficient justification for setting out on a new programme. HELIOS II thus has to contribute to the economic and social cohesion of the Community and help to optimize positive measures in favour of the disabled.

46. Since 1989, a variety of directives adopted by the Council have included provisions regarding workers with a mobility handicap(4). These concern the design of workplaces, accessibility, internal mobility arrangements and sanitary facilities. However, although Community regulations cover certain risks run by handicapped workers at the place of work, they do not cover the journey to and from work.

This is why the Commission set out to fill the gap by adopting the proposal for a Council Directive on minimum requirements and safe transport to work of workers with reduced mobility(5).

For this category of persons, access to the place of work by public transport is often fraught with difficulties and plays an important part in determining whether or not a person obtains and keeps a job. As a result, occupational integration is directly linked to the development of transport and infrastructure facilities which help to make disabled workers more mobile.

The aim of the proposal is not to modify all means of transport to make them accessible to workers with a mobility handicap, but to ensure that such workers can travel in safety and thus to help them integrate into the work process.

CONCLUSION

47. In the context of the completion of the Single European Market, the European Councils of Hanover, Rhodes and Madrid held that equal importance should be attached to social and economic aspects and that both should be developed in a balanced manner.

On a number of occasions, both the European Parliament and the Economic and Social Committee have expressed similar opinions and given voice to their concerns.

At the European Council held in Strasbourg on 8 and 9 December 1989, eleven Heads of State or Government adopted the Community Charter of the Fundamental Social Rights of Workers.

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(4) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183 of 29.6.1989, p.1); Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (OJ L 393 of 30.12.1989, p.1).

(5) OJ C 68 of 16.3.91, p. 7.

Almost two years on, the Commission has presented nearly all the proposals envisaged in its programme of work in compliance with the principle of subsidiarity, but the Council of Ministers has failed to live up to expectations.

Admittedly, the Council has in some cases been unable to act because other Community bodies have failed to keep up the pace and deliver their opinions within the time required by the Treaty.

48. Nonetheless, on 1 November 1991 the conclusions of the Presidency presented at the European Council held in Luxembourg on 28 and 29 June 1991 are undoubtedly an apt way of concluding this report:

> "The European Council notes that the progress made in the completion of the internal market has not been accompanied by comparable progress in the field of social policy. It emphasizes that the Community, the Member States and the representatives of employers and employees should play a role in the implementation of the principles contained in the Social Charter according to their respective responsibilities."
>
> "It requests in particular that the discussions begun in the Social Affairs Council on the Commission's action programme for implementing the Charter should be intensified so that the necessary decisions can be reached at an early date, having regard for the specific situation and practices of each Member State."

49. The Commission had already stressed "the wide gap between the powers available under the current legal bases and the ambitions set out in the Charter and the new constraints arising from completion of the internal market"(1).

This has caused the Commission to propose a revision of the social chapter of the Treaty.

As pointed out in its working document on the Intergovernmental Conference(2), there are a number of arguments which plead in favour of modifying and extending the scope of Community's social policy:

a) First, there is the very nature of the process of European integration: the establishment of a single economic and social area in which economic and social advances are made in step;

b) The Community Charter of Fundamental Social Rights for Workers ... reflects the urge to establish and build upon a platform of fundamental rights shared by all the Member States;

c) Completion of the internal market and economic integration have clearly shown the need (given the transnational nature of the

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(1) Commission's initial contributions to the Intergovernmental Conference on Political Union, SEC(91) 500 final, Brussels, 30 March 1991, p. 84.
(2) op.cit. p. 85

problems involved) for Community action in areas which have hitherto not been very sensitive or whose importance has been disputed;

d) More generally, at micro economic level, consideration for the social dimension is increasingly becoming an integral part of management, and this contributes to added value and to competitiveness;

e) The extension and/or redefinition of the Community's powers in the social fields is/are not incompatible with the current trends towards decentralization of collective bargaining to be seen in the Member States.

The Commission has also stressed that, with a view to ensuring that the economic and social dimensions progress at the same rate, "qualified majority voting should be extended to certain fields, notably some of those covered by the Charter"(3).

(3) op.cit. p. 86

PART TWO:

APPLICATION BY THE MEMBER STATES OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

NATIONAL REPORTS

INTRODUCTORY REMARKS

As was mentioned in the introduction (cf. supra p. 2), point 29 of the Charter stipulates that "the Commission shall establish ... a report on the application of the Charter by the Member States and by the European Community".

For the most part, these reports, which set out Member States' positions on each of the principles in the Charter, follow the form of the questionnaire sent to the Member States by the Commission and annexed to this report.

It was decided to organize the work by following the chapter layout in the Charter. With two exceptions, all the Member States adopted this model. The United Kingdom pointed out that it had not signed the Charter, but produced a report describing the general framework of rights, protection and freedoms in the social area. The German report places stress on the political developments in the Federal Republic of Germany.

BELGIUM

FREEDOM OF MOVEMENT

1. There are no restrictions other than those justified on grounds of public order and public health which prevent any worker of the European Community from having freedom of movement in Belgium.

   It should nevertheless be pointed out that, in accordance with the provisions of the Act of Accession of Spain and Portugal to the European Economic Community, the citizens of these two countries will have not have freedom of movement until the end of the transition period(1).

2. The only restriction to freedom of movement for workers is provided for in Article 48(4) of the Treaty (positions of authority) on access to employment in the public service.

   The government has issued the necessary instructions on the application of Article 48(4) in accordance with the decisions of the Court of Justice of the European Communities.

   Generally speaking, it can be said that Belgian legislation complies with the principles of freedom of movement for workers and equal treatment, including the provisions of Regulation 1612/68.

   It would therefore not appear to be necessary to take any measures to improve the situation in these areas.

3. A Community citizen who is employed in Belgium may be joined by his spouse and his children under the age of twenty-one years or dependent children even if they are not nationals of a Member State of the European Community.

   The spouse and children referred to in the previous paragraph also have free access to employment.

EMPLOYMENT AND REMUNERATION

4. Belgian law does not have particular provisions which prevent certain categories of people from being free to choose and engage in an occupation, apart from the regulations governing each occupation.

5.a Remuneration levels are normally laid down in a collective agreement for the sector concerned. These agreements lay down the salary scales depending on the worker's age, seniority, qualification level and job.

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(1) However, account should be taken of Council Regulation (EEC) No. 2194/91 of 25 June 1991 on the transitional period for freedom of movement of workers between Spain and Portugal, on the one hand, and the other Member States, on the other (OJ L 206 of 29 July 1991, p. 1).

If no collective agreement has been reached for the sector concerned or if no scale has been established for the job, the remuneration level is established by the parties. However, the parties have to comply with the collective agreements reached at the National Labour Council which guarantee workers an average monthly minimum income regardless of their occupation (Collective Labour Agreement No 43 of 2 May 1988 and Collective Labour Agreement No 33 of 28 February 1978).

b Collective agreement No 35 of 27 February 1981 states that these workers are entitled to a mean monthly income calculated prorata on the basis of the amount of time worked in the company and is proportional to the average monthly minimum income of a full-time worker. This agreement also stipulates that a part-time worker must receive remuneration which is proportional to that of a full-time worker for the same work or work of an equivalent value.

c Remuneration may be withheld by the employer only in the cases of which a limitative definition is given in Article 23 of the Law of 12 April 1965 on the protection of remuneration. Moreover, the total deductions may not exceed one-fifth of the portion of each remuneration paid in cash, after the amounts required by tax legislation and legislation on social security have been deducted.

As regards the seizing and transfer of remuneration, the Code Judiciaire (Legal Code) lays down the limits within which the remuneration may be seized or transferred for a creditor of the worker concerned, the aim being to ensure that the worker and his family have a minimum income. The proportion which can be seized and transferred increases progressively by income, for each calendar month.

6. Any citizen of the European Community who is resident in Belgium or the frontier zone and any migrant worker who is properly established in Belgium may register as a job seeker with the public employment offices.

Citizens of other European countries may seek employment by means of the SEDOC service of their home country which sends their file to our SEDOC branch office.

The employment offices look for jobs on the labour market and then inform job seekers of any vacant posts; the job seeker does not pay for this placement service.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7.a Article 19 of the Law of 16 March 1971 on work stipulates that the amount of time worked may not exceed eight hours per day or 40 hours per week. Lower limits may be set by collective agreement. For this reason, in most sectors the amount of time now worked per week does not exceed 38 hours.

Apart from the structural and ad hoc derogations from the normal limits on the duration of working time provided for by the labour law, collective agreements may change working time by introducing flexible working hours or new working arrangements. Flexitime makes it possible for the working time to be exceeded within certain limits and also makes it possible for the working hours to be varied in line with the requirements of the company concerned. The new working arrangments make it possible for the company's operating time to be adapted by permitting derogations from a number of laws on working time (the duration of work, rest on Sundays, public holidays); these new working arrangements may be introduced only if they have a positive effect on employment in the company.

b There are three other types of work contract mentioned in Articles 7 and 11 (ter) of the Law of 3 July 1978 on work contracts:

- the fixed-term contract, a clause of which indicates when the contract will end;

- a contract for a clearly-defined piece of work, which is terminated when the work for which the worker has been employed is completed;

- the replacement contract which is concluded to replace a worker whose contract has been suspended. This type of contract, which may not last more than two years, may depart from the rules on contract duration and the period of notice.

It is possible to employ workers part-time in each of these types of contract. The over-arching principle is that part-time workers should have the same rights as full-time workers in proportion to the amount of time worked.

The amount of time worked must be no less than three hours per day or one-third of the working week of full-time workers.

c The provisions on collective redundancies apply to companies with more than 20 workers. Collective redundancies are deemed to have taken place if, over a period of 60 days, at least ten workers are made redundant in companies with between 20 and 100 workers, 10% of the staff are made redundant in firms with between 100 and 299 workers, 30 workers are made redundant in firms with at least 300 workers. Royal Decree of 24 May 1976 on collective redundancies and Collective Agreement No 24 of 2 October 1975 stipulate that workers and the competent authorities must be informed and consulted, in principle 30 days before workers are made redundant. Moreover, provision is also made for the payment of an allowance to workers who have been made redundant as part of a collective redundancy.

8. The legislation on the annual leave of salaried employees is also applicable to members of the social security schemes for manual workers, miners and similar workers and sailors in the merchant navy.

The duration of leave is proportional to the amount of time worked. This is calculated on the basis of the number of days of actual work and of days of inactivity taken as such for the leave year, i.e. the calendar year preceding the leave year. Twelve months of work or the equivalent number of days in the leave year produce an entitlement to 24 days of leave in the following year (for those who work a six-day week) or 20 days (for those who work a five-day week). Additional days of leave may be provided for by collective agreement.

The holiday pay of manual workers is paid by the Caisse de vacances to which the employer is affiliated. It is equivalent to 14.80% of the remuneration in the leave year used to calculate the social security contributions.

The holiday pay of salaried employees is paid directly by the employer. It is equivalent to the normal remuneration in respect of the days of leave plus a supplement of one-twelvth of 85% of the gross remuneration of the month in which the leave is taken for each month worked or each equivalent month in the leave year.

The annual leave of sailors in the merchant navy is governed partly by the legislation on annual leave and partly by collective agreements. Miners and employees working under subsidised contracts have a special leave system.

As regards the weekly day of rest, the Law of 16 March 1971 stipulates in Article 11 that it is prohibited to make people work on Sundays. This ban is a public order measure accompanied by penal and administrative sanctions.

Provision has been made for derogations for certain companies or for the execution of certain types of work.

In all cases in which workers are employed on Sundays, the rules provide for compensatory rest to be granted in the six days following the Sunday on which the work was done.

9. The working conditions of salaried employees are defined in various provisions, including the following:

- collective agreements for the sector or company concerned which may determine certain working conditions, notably the duration of the working week and the minimum remuneration level;

- the employment regulations, a written document which the employer must draw up and communicate to his workers. This document sets out certain working conditions which are specific to the company, notably working hours, dates on which the company is closed, the type and place for the payment of remuneration, etc.;

- lastly the work contract which sets out working conditions specific to the worker concerned.

The hierarchy of the various provisions defining working conditions is as follows:

- the mandatory provisions of the law;
- collective agreements which have become obligatory;
- collective agreements which have not become obligatory but to which the employer is a signatory or is affiliated to an organisation which is signatory to the agreement;
- the written work contract;
- the employment regulations;
- the complementary provisions of the law
- the verbal individual agreement;
- practice.

SOCIAL PROTECTION

10.a Social protection for workers is basically funded by contributions from employers and employees.

These contributions which are used to fund the classes of insurance (sickness and invalidity, unemployment, old age and premature death, family allowances and annual leave) are collected together by a central body - the Office National de Sécurité Sociale (National Social Security Office), which distributes the sum total of these contributions between the various bodies which provide insurance services. These five classes of insurance together constitute what is known in Belgian positive law as "social security" in the strict meaning of the term. Nevertheless the regulations on occupational accidents and diseases, a secure existence and even those on the disabled are included in social security in a broader sense.

The various classes of social security are managed on a joint basis by public bodies.

However, although these bodies manage the various branches they do not generally regulate social security, since the establishment of social policy remains the prerogative of the Minister concerned, who is assisted by the specialised units in his department.

Workers (in the broad sense of the term) in the private and public sectors are governed by one social security law, although there are certain subdivisions and features which are specific to each type of employer and occupation. The way of applying the system will not always be identical for the two types of workers or even within one sector. It is therefore easy to understand that the permanent employees of the municipalities, provinces and the State do not need to be covered by unemployment insurance in the same way as their temporary colleagues in the same (public) sector. Thus in the private sector a worker who is paid solely by gratuities is not subject to deductions in the same way as a worker in the metallurgical industry or a policeman, for example. However, differences between public and private sector workers are gradually being narrowed, in terms of social security (e.g. health care) and working conditions (remuneration, safety at work, social plan, etc.).

b The links between the right to social security and a particular working environment are becoming less and less rigid and this right is being extended to the whole population. Whereas social security used to be mainly concerned with protecting employees when their capacity to work is reduced, it can be seen that protection from the financial consequences of certain events (unemployment, the birth of a child) has been given and certain services (health care) have been granted to people who could certainly not be considered to be employees. Thus students and disabled people may obtain family allowances for their children, and students who do not find work when they have completed their studies are entitled to unemployment benefits after a certain period of time. In the same way, insurance for health care, retirement pension and survivor's pension for employees are accessible to all people.

In this way, the whole population can be covered in a compulsory or voluntary manner, against the various hazards concerned.

In the meantime there has been an improvement in the quality of protection against risks which has led to fairer redistribution of national income. Benefits have been linked to variations in the consumer price index, thereby ensuring that they retain their purchasing power. Certain social benefits are linked to changes in the general well-being of society. This means that the employee is not only protected from being in need but he is also guaranteed a certain standard of living.

c Reference should be made to the various laws on assistance which are designed to ensure that each person is given a minimum level of protection, regardless of whether or not he is involved in the production process. To a certain degree this has already been achieved by means of the legislation on disabled people, the law on guaranteed family allowances and the right to a minimum level of subsistence or income.

The system of guaranteed family allowances provides means-related benefits for children who are not covered under the family allowances system for employees or under the family allowances system for the self-employed.

Every Belgian (or stateless person, refugee or a person covered by the regulations on freedom of movement for workers within the Community) who is actually resident in Belgium, but who does not have sufficient means and is not in a position to obtain them by personal effort or in any other way, is entitled to a minimum income.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. Under Belgian legislation freedom of association in the occupational sphere is governed not by specific texts but by provisions applicable to all kinds of associations.

There is complete freedom to establish trade union groups. Prior authorization, registration or approval are not required apart from in a few rare cases, such as the payment of unemployment benefits by a trade union organization. There is one particular legal form: the Union Professionnelle (professional association). However, the use of this legal form is optional and does in no way affect the rights and obligations concerned.

Trade unions have a right of association, even at international level.

The trade unions have complete freedom of operation and action. The management and liquidation of organizations other than professional associations or non-profit-making associations are governed by the organizations' own rules.

The authorities do not intervene to appoint managers, monitor revenue and its allocation, or influence the organizations' programmes or their activities.

Lastly, certain functions have been granted to the trade unions in the social area, regardless of their legal status.

However, these functions have been granted only to trade unions which are considered to be "representative". For example, the 1968 Law on collective labour agreements and joint committees gave the representative organizations (i.e. those which are organized on a national basis and are represented in the Conseil central de l'économie (Central Economic Council) and the Conseil national du travail (National Labour Council) and have at least 50 000 members) the right to be a party to legal proceedings:

a) in all disputes resulting from the application of legislation;

b) to defend the rights of their members arising from collective labour agreements concluded by the trade unions.

Every workers is free to join or not to join an organization pursuant to the Law of 24 May 1921 on freedom of association.

People are free to choose their union. There are no official trade unions or trade unions supported by the authorities. Workers also have the right not to belong to such organizations.

Although the opportunities and advantages given by law to trade unions and workers belonging to trade unions might be considered to encourage trade union membership, no sanctions or harm result from the decision not to join such organizations.

12. Collective labour agreements can be concluded either within or outside joint bodies but usually the former is the case. Belgian law has established a hierarchy of these joint bodies and hence also of the collective agreements concluded by them.

1. A collective labour agreement concluded at the National Labour Council covers all branches of economic activity in the country.

2. A collective labour agreement concluded in a joint committee normally covers all persons and companies that fall within the scope of the committee, except in cases where the agreement limits its own scope.

3. A collective labour agreement concluded in a joint sub-committee has the scope laid down by the decree which established the sub-committee. A supervisory role may be taken by the overall committee.

4. A collective labour agreement concluded outside a joint committee applies only to the contracting parties. These are generally company-level agreements.

There are certain rules governing the form and publication of a collective labour agreement. It must be drawn up in writing, bear various signatures and certain compulsory formulations. The agreement must also be submitted to the Ministry of Employment.

When the agreements are concluded by a joint body, it is necessary to inform the people affected, which is done by an announcement in the 'Moniteur belge'.

When the collective agreement is made compulsory by Royal Decree, it is published in full in an annex to the Decree and in the two national languages.

A collective labour agreement is defined as "an agreement concluded between one or more organizations of workers and one or more employers, which determines the individual and collective relations between employers and workers within companies or a branch of economic activity and which regulates the rights and obligations of the contracting party".

The Law of 5 December 1968 gave considerable legislative freedom to the parties concerned: the two sides of industry are permitted to solve all problems of industrial relations. These collective labour agreements may therefore also cover the area of social security, for example.

The only restrictions on the freedom of negotiation concern the hierarchy of sources: clauses which conflict with the binding provisions of legislation and royal decrees and those which are contrary to clauses in the agreements concluded at a higher level are considered to be null and void.

13. Under Belgian law strikes are neither recognised <u>per se</u> nor defined in law.

However, the freedom to strike is seen as legitimate, provided that the freedom and rights of other persons and the legal provisions and regulations which may restrict the exercising of this freedom are respected.

Nevertheless, there are a number of relevant texts:

a. The Law of 19 August 1948 on the provision of public services in peace-time stipulates in Article 1 that:

"the joint committees provided for by the Law of 5 December 1968 on collective labour agreements and joint committees shall determine and define, for the companies under their jurisdiction, the measures or services to be guaranteed in the event of a collective and voluntary cessation of work or in the event of collective redundancies in order to meet vital needs, to carry out certain urgent work on machines or equipment, to perform certain tasks in cases of "force majeure" or an unexpected need, etc.";

The purpose of the legislation is to limit possible damage by strikes to the fundamental interests of the country.

b. There are a number of regulations referring to strikes and designed to protect workers who participate in them or suffer from them from the disadvantages normally resulting from the lack of provision of services during the strike.

These texts treat days of strike action as days of work for the purposes of social security, in a broad sense of the term. In most cases, the strike has to be recognised by the trade union organizations.

c. There are also regulations on the commencement of strike action, providing for a prior conciliation procedure. They include the following:

- the Regent's Decree of 12 March 1946 which lays down the conditions and procedure for obtaining unemployment benefits in the event of a strike or a lock-out;

- the Law of 5 December 1968 on collective labour agreements and joint committees and its executory decision of 6 November 1969.

  The Law of 5 December 1968 stipulates in Article 38(2) that the tasks of the joint committees and joint sub-committees include "preventing or solving any dispute between employers and workers". The Decree of 6 November 1969 adopted pursuant to this Law deals with conciliation in Chapter III and stipulates that the joint committee may set up a conciliation committee within the joint committee.
  The conciliation committee comprises a chairman, secretary and an equal number of workers' and employers' representatives.

  A meeting of the conciliation committee is called by the chairman, normally within 7 days of the date on which a request was presented by the party to an existing or potential conflict who was the first to take action. Minutes are written of all conciliation meetings.

- the numerous collective labour agreements concluded in joint committees (the majority of which have been made binding by Royal Decree pursuant to Article 28ff. of the Law of 5 December 1968) which include clauses that provide for a conciliation procedure prior to the start of the strike. This procedure may be laid down by an internal regulation of the joint committee.

d. Lastly, the Law of 11 July 1990 (Moniteur belge of 28 December 1990) approved the European Social Charter and its Annex signed in Turin on 18 October 1961. The Law incorporates these texts into Belgian legislation, in particular Article 6(4) of this Charter, which stipulates that the contracting parties recognise:

"the right of workers and employers to take collective action in the event of a conflict of interests, including the right to strike, subject to any obligations resulting from collective agreements in force."

14. There have been major controversies over the right to strike in the civil service.

The traditional view is that strikes are prohibited because of the need to provide continuity of public services and the principle that the general interest, for whose protection the civil service was set up, must take precedence over the individual interests of the worker. Article 7 of Royal Decree of 2 October 1937 on the rules governing State employees stipulates that "State employees may not cease performing their duties without prior authorization", in the same way that Article 112 provides for the compulsory dismissal without notice of those who stop work and do not return for more than 10 days without a valid motive."

However, no legal text formally states that civil servants do not have the right to strike. Strikes are considered to be a fact of life: legally speaking it is not of the least importance whether or not a strike is organized or recognised by the representative trade union organizations, but for political purposes this suffices for no disciplinary action to be taken against the strikers. Absence from work is treated as non-activity and hence is not paid. In practice, only minor disciplinary sanctions may be imposed depending on the nature of the service and the rank of the person concerned, unless the strike has given rise to behaviour which is liable to penal sanctions. The offence of "conspiracy of civil servants to prevent the implementation of laws or decrees" (see Article 233 of the Penal Code) has never been invoked in the event of a strike. Article 16(3) of the Law of 4 January 1975 on discipline in the armed forces stipulates that "military personnel may not strike in any way".

VOCATIONAL TRAINING

15.a Following the Belgian institutional reform, the responsibility for vocational training has been transferred to the communities, which have drawn up their own rules in this area.

The following regulations govern access to vocational training:

- the Decree of the Executive (regional government) of the French-speaking community of 12 May 1987 (Article 3);

- the Decree of the Executive of the Flemish community of 21 December 1988 (Article 81);

- the Decree of the Executive of the German-speaking community of 12 June 1985 (Article 3).

In all three communities, vocational training is open to any person who is registered as a job seeker with a public employment office. In addition, the following people can take vocational training:

- workers who take such training at the request of their employers;

- workers who take training outside of working hours (French-speaking community's definition) or after 6pm or on Saturdays and Sundays (Flemish and German-speaking communities' definition).

The French-speaking and German-speaking communities have delegated the task of vocational training to FOREM, and the Flemish community has assigned it to VDAB.

b There is no discrimination on grounds of nationality for access to vocational training courses.

c The above-mentioned decrees stipulate that the aim of vocational training is to provide in-service training or to develop further existing work-related knowledge or abilities.

To this end, the conditions of access to training are extremely generous (see above). In addition, the courses organised in the vocational training centres are constantly being adapted to the needs of the labour market. Moreover, employers may apply to the competent sub-regional employment service asking it to admit one or more of their workers to a training centre managed by the vocational training office for the community in question (FOREM or VDAB). After a detailed examination of the application in order to evaluate correctly the real needs, a specific programme of training is drawn up in cooperation with the company in question.

EQUAL TREATMENT FOR MEN AND WOMEN

16.a The Belgian constitution has two articles (Article 6 "Belgians are equal in the eyes of the law" and Article 6 bis "there must be no discrimination in the enjoyment of rights and freedoms granted to Belgians") which may be cited in this context.

Belgian legislation has been supplemented by international legislation and texts of limited scope so that it now guarantees equal treatment for men and women in the area of employment.

Mention should be made of the following measures:

- Collective labour agreement No 25 of 17 October 1975 (made binding by Royal Decree of 9 December 1975) guarantees the principle of equal remuneration for male and female workers;

- Title V of the Law of 4 August 1978 on the redirection of the economy guarantees the implementation of Directive 76/207 in Belgium; Title V affirms the principle of equal treatment for men and women as regards working conditions and access to employment, training, promotions and access to a professional occupation;

- in order to apply the principle of equal treatment in the sphere of social security, many amendments have been made to existing rules on the various classes of social security (family allowances, unemployment insurance, sickness and invalidity insurance, retirement pension, survivor's pension and annual leave).

b the Royal Decree of 14 July 1987 on measures for promoting equal opportunities for men and women in the private sector calls on companies to take positive action in favour of women by means of equal opportunity programmes drawn up for a given branch of economic activity or a given company. Under the terms of the Royal Decree of 27 February 1990 on measures to promote equal opportunities between men and women in the civil service, each public service must draw up a plan for equality of opportunity.

c In recent years many measures have been taken to help workers of both sexes to reconcile their occupational and family commitments.

Achievements in this area include the following:

- total or partial career breaks lasting between 6 months and five years; more flexible arrangements apply to career breaks for the birth of a child;

- the extension of maternity leave;

- leave in special circumstances without loss of salary, in particular for family reasons (birth, marriage, adoption);

- leave in emergencies which allows workers in the private sector to take unpaid leave for a maximum of 10 days per annum in unforeseeable circumstances requiring the worker's attention (e.g. child's illness) unrelated to work;

- leave in emergencies or unforeseen circumstances in the family (for the civil service);

- various measures to facilitate part-time work;

- measures to make it easier for people who have interrupted their career to bring up children or care for their parents or spouse to return to the labour market.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. Belgium's current legislative framework does not offer a system of information, consultation and participation for workers in companies established in two or more Member States. The draft directive on the establishment of a European works council will make it possible to have consultations of this nature.

18. Information, consultation and participation of workers takes place in the conseil d'entreprises (works council) for companies with more than 100 workers, and in the committee for occupational health and safety and the improvement of the working environment for companies with fewer than 50 workers, and, if there is no such committee, by the trade union delegation.

The head of the company must provide the works council with information on productivity and general data on the operations of the company (Article 15 of the Law of 20 September 1948 on the organization of the economy and Royal Decree of 27 November 1973 on the economic and financial information to be given to works councils.

The works council gives its opinion and may submit suggestions on any measures which could affect the organization of work, working conditions and the output of the company (cf. the above-mentioned Article 15).

Moreover, collective labour agreements concluded in the National Labour Council (which therefore apply to all workers) stipulate that the works council must be informed or consulted in a certain number of areas. For example collective labour agreement No 9 of 9 March 1972 concluded in the National Labour Council, which coordinates the national agreements and collective labour agreements on works councils, provides that the works council must be informed and consulted in any matters relating to employment in a company, in particular when the structure of the company is to be modified.

Mention should also be made of Collective Labour Agreement No 24 of 2 October 1975 concluded in the National Labour Council on the procedure for informing and consulting workers' representatives on collective redundancies and Collective Labour Agreement No 39 of 13 December 1983 concluded in the National Labour Council on informing and consulting the works council about the consequences for the staff of the introduction of new technology.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19.a The provisions on occupational hygiene for workers, safety at work and protection of the health of workers are coordinated in the General Regulations on occupational safety.

Experience has shown that Community Directives on health and safety at work refine or supplement the provisions of the Belgian General Regulations and only rarely do they introduce innovations.

Moreover, the provisions of the Belgian General Regulations are often more restrictive than those of Community Directives.

Nevertheless, depending on the individual case, the application or imminent implementation of the Community Directives does improve the protection of workers at work in various areas:

1. As regards the social directives (Article 118 A of the Treaty of Rome), the expected improvements will be in the following areas:

   - the scope: it will be possible to take measures for persons other than employers, for example, the self-employed who perform activities at the workplace or who coordinate activities at the workplace;

   - the possibility for workers to leave their workplace or a dangerous area in the event of a serious danger;

   - a more systematic and complete approach to all matters relating to the protection of workers including the obligations of employers and workers, and information, training and consultation procedures;

   - the removal of all precise technical specifications of a binding nature from existing regulations.

2. As regards the economic directives concerning the availability of machines, equipment and plant (Article 100 A of the Treaty of Rome), it is probable that the main functional requirements coupled with increasing reliance on a large number of European standards should make it possible to provide workers with equipment that improves their level of safety at work.

19.b Belgium is acknowledged as a long-time believer in consultation of the two sides of industry, especially in the area of the health protection of workers.

This consultation takes place in national bodies and individual companies.

- A council for safety, hygiene and the improvement of the workplace has been set up at national level under the Ministry for Employment and Work.

  This committee comprises representatives of the most representative organizations of employers and workers, occupational physicians and civil engineers not employed by the authorities, experts competent in the areas concerned and officials of the various competent authorities for health and safety at work.

  It is responsible inter alia for issuing an opinion on proposals for new provisions in the area of health and safety at work and the protection of the health of workers and for studying all problems in these areas.

- National occupational committees for safety, hygiene and the improvement of the workplace have also been set up. They are active in the main branches of economic activity, such as the construction industry, the diamond, glass, wood and steel construction industries, the chemicals industry, the ceramics industry and firms involved in agriculture, horticulture and forestry.

  These committees have members from the most representative employers' and workers' organizations, experts in occupational safety and health for the appropriate branch of economic activity and officials from the competent authorities.

  Their remit includes making proposals to the Committee for occupational safety and hygiene and the improvement of the working environment for amending or supplementing the rules on health and safety in the sector in question.

- The National Labour Council is a joint body which, where appropriate, may issue an opinion on the proposals for laws or royal decrees in the area of health and safety at work.

- The joint committees draw up collective labour agreements, which may include certain provisions on the safety and health of workers.

- In compliance with the Law of 10 June 1952 on the health and safety of workers and the health conditions at the workplace, employers who normally employ an average of at least 50 workers must set up a committee for occupational safety and hygiene and the improvement of the working environment, which must meet at least once per month.

  The members of these committees are elected for a period of four years from the lists of candidates put forward by the organizations representing workers.

  The basic task of these committees is to study and to propose to the employer any ways of actively promoting measures to ensure that work is carried out in the best possible conditions of safety, hygiene and health.

In order to carry out this task, the Committee must issue opinions and draw up proposals on: the policy for preventing occupational accidents and diseases; the annual action plan produced by the head of the company; any amendments to it; its application; and the results produced.

The Committee is also responsible for drawing up an opinion in advance on all new projects and measures which, directly or indirectly, in the short or long term, may have consequences for the safety, hygiene or health of workers, and on any planned measures for adapting working techniques and conditions to the worker.

However, the decision on whether or not to adopt a given safety or health measure is the sole responsibility of the employer and does not concern the Committee, which has a purely advisory role.

PROTECTION OF CHILDREN AND ADOLESCENTS

20. The reply to this point is included in the reply to question 23.

21. Workers under 21 years of age and employed on a part-time basis are guaranteed a mean monthly minimum income under Collective Labour Agreement No 33 of 28 February 1978.

This minimum income is determined as a percentage of the income guaranteed to workers aged 21 years and over. The rates are as follows: 92.5% at the age of 20, 85% at the age of 19, 77.5% at the age of 18, 70% at the age of 17 and 62.5% for those aged 16 and under.

This Agreement applies to all branches or activities which are not covered by a joint committee or which are covered by a joint committee which has not yet been formally recognized.

22. The Law of 16 March 1971 provides for various special measures to protect workers under the age of 18 years.

Working hours of workers under 18 are subject to the same limits as for other workers. However, when daily working time exceeds 4½ hours, they must be given a rest of half an hour and if their working time exceeds 6 hours, they must be given a rest of one hour.

Night work, which is work done between 8pm and 6am, is prohibited for young workers. However, these limits are reduced (10pm - 5am; 11pm - 6am) for workers aged 16 years and over when they are engaged in work which by its very nature cannot be interrupted or delayed, or are working shifts.

Lastly, there must be gap of at least 12 hours between the end of one working day and the beginning of the next, no exceptions being permitted to this rule.

23. Initial training for young people, which was extended to the age of 18 years in 1983, makes it compulsory for them to attend school on a full-time basis up to the age of 15 or 16 years and then at least part-time up to the age of 18 years. So young people are no longer obliged to attend school full-time after the age of 15/16 years provided that they have completed (not necessarily successfully) the first two years of secondary education. The scheme of part-time compulsory schooling is designed to give additional training of at least 360 hours per year to those under the age of 16 and at least 240 hours per year to those aged between 16 and 18 years.

A young person who has not yet completed his compulsory schooling and who chooses to leave full-time education may:

- follow a course with a reduced timetable or take training officially recognized as meeting the requirements of compulsory schooling. This part-time course or training may be supplemented by part-time work;

- conclude a contract for an apprenticeship in industry;

- take training organized as part of a small business apprenticeship.

Those who remain in full-time education until the age of 18 years may take options in the areas of technical education or vocational training.

A young person who has completed compulsory schooling and is registered as a job seeker may take vocational training courses organized by the public employment services.

ELDERLY PERSONS

24. There are three major pension schemes in Belgium:

- the public sector scheme which applies to civil servants;

- the scheme for the self-employed which applies to traders, skilled workers, farmers and members of the professions;

- the employees' scheme, which applies to all workers employed in Belgium under a "contrat de louage de travail" (work contract).

  In the case of the last scheme, a person earns the right to retire by calendar year at a rate of a fraction of real, notional and standard remuneration to the amount of:

  a) 75% for a worker whose spouse has terminated all occupational activity apart from authorized occupational activity and does not receive an allowance for illness, invalidity or involuntary unemployment under Belgian or foreign social security legislation, does not receive

benefit for a career break or a reduction in services or does not draw a retirement or survivor's pension under the pension schemes for employees, the self-employed, the public sector, the SNCFB (Belgian State Railways) or under a foreign pension scheme or a pension scheme applicable to the staff of an institution of public international law.

b) 60% for other workers.

The benefit is adjusted in two ways in order to ensure that it remains adequate:

1. The pension is linked to changes in the consumer price index;

2. The remuneration levels used to calculate the pension are adjusted by applying a coefficient. The remuneration for a given year is multiplied by a coefficient obtained by dividing the consumer price index at which current pensions are paid by the total of the monthly consumer price indexes for the year under consideration. In addition, on 1 January of each year these remuneration levels are upvalued by a coefficient determined by the King of Belgium.

25. In order to guarantee a decent standard of living to elderly persons, men aged 65 years or over and women aged 60 years or over who would not receive a pension may nevertheless receive the income guaranteed to the elderly provided that they actually live in Belgium.

This benefit is completely free, as no contributions have to be paid in order to receive it, it being paid for by the State in accordance with the Law of 1 April 1969.

The person applying for the pension must be a Belgian, but his or her spouse does not have to be a Belgian.

The following are given equivalent treatment:

- stateless persons and refugees;

- nationals of a country with which Belgium has concluded a reciprocal convention in this area;

- nationals of a Member State of the European Community.

The guaranteed income for the elderly is calculated on the basis of a flat-rate amount and may not be granted until a person has been means-tested.

Persons who receive the guaranteed income for the elderly need not pay contributions for sickness and disability insurance.

Like widows, invalids, pensioners and orphans, these people pay preferential rates for routine health care and prescriptions.

DISABLED PERSONS

26. The legislation of 16 April 1963 on the social rehabilitation of disabled persons, regardless of the type or origin of their disability and regardless of their status, includes a number of measures to provide them with training or occupational rehabilitation and to make it possible for them to retain or return to work.

A basic principle of this legislation is that use should be made, wherever possible, of standard methods; special methods should be used only when they can be justified by the nature of the handicap.

Thus, in the area of vocational training, in addition to the apprenticeships in small businesses, industry and the centres for intensive vocational training for the unemployed, the above-mentioned rehabilitation legislation provides for a special form of apprenticeship for the disabled which could be called in-service training in the sense that it does not (yet) provide theoretical training. There are also 31 vocational training centres for the disabled in which the training provided is more tailored to individual needs and lasts longer than in the above-mentioned centres for the unemployed.

In order to make it more attractive to employ or retain disabled staff, the legislation provides for the following incentives:

- a contribution to the remuneration and the social security charges for a maximum of one year for a disabled worker who is employed in a new post; this is a flat-rate payment which is designed to cover the employer's loss of earnings during the period of adaptation of the new worker;

- the refund of the cost of adapting the workplace (including workplace design or access to the workplace);

- the payment of the additional cost, attributable to the person's handicap, of working clothing or instruments;

- a contribution to the additional cost, attributable to the handicap, of transport for the disabled person to and from work.

It should also be pointed out that Collective Labour Agreement No 26 of 15 October 1975 stipulates that, on the basis of the principle of "equal pay for equal work", the disabled worker is entitled to the remuneration laid down by collective agreement and that the competent authorities are to reimburse the employer for the proportion of the remuneration corresponding to the reduced performance as a result of the handicap.

Lastly, approximately 20 000 workers are involved in sheltered work in Belgium. These workers are employed on work contracts, and their minimum remuneration is laid down by royal decree. A joint committee has recently been set up for the sector of sheltered industry.

The measures for the social integration of disabled people include the following:

- the possibility for disabled people with a degree of invalidity of 66% or more to telephone at a reduced rate, subject to compliance with certain conditions relating to income, age and cohabitation;

- exemption from radio and television fees for certain disabled people;

- reduction in the rate of income tax charged to persons with a degree of invalidity of at least 66%.

- exemption from car taxes for certain categories of seriously disabled people;

- consideration of a degree of invalidity of at least 66% for the award of subsidised housing benefits;

- a reduced rate for supplies of gas and/or electricity to most of those who receive disability allowances, subject to a limited consumption of gas and/or electricity;

- the issuing to certain disabled people of a special card which authorises unlimited parking of a vehicle used to transport a disabled person;

- on public transport, reduced rate for certain disabled people, free transport for the blind, free accompaniment of seriously disabled people by a guide, special public mini-bus service adapted to the needs of disabled people in the Brussels area for certain disabled people;

- facilities granted to disabled people who are capable of driving to enable them to obtain a driving licence;

- legal measures and regulations on the accessibility of public buildings and other public areas for disabled people.

DENMARK

FREEDOM OF MOVEMENT

1. This field is regulated by the Order issued by the Ministry of Justice on foreigners' stays in Denmark (1984, revised in 1985) which incorporates the provisions laid down in Council Regulation (EEC) N° 1612/68 on freedom of movement for workers within the Community and Commission Regulation N° 1251/70 on the right of workers to remain in the territory of a Member State after having been employed there. Under Article 189 of the EEC Treaty a regulation is directly applicable in all Member States. The incorporation of the provisions in the above-mentioned Order is thus only a practical measure and does not affect the direct applicability of the above mentioned regulations in Denmark.

2. It follows from the provision in the Order that EC nationals are granted a residence permit when they prove they have paid employment in Denmark or that they have established themselves as self-employed or are providing services. EC Nationals are granted residence permits as such, while non EC Nationals are granted residence and work permits. It normally takes less than one month to deal with applications for EC residence permits. In 1990 some 1 300 new EC-residence permits were issued, about 800 were renewed. In some 60 cases the conditions for issuing an EC residence permit were not satisfied.

3. Normally, no evaluation takes place of the character or nature of the work, and there is nothing to prevent a worker who has availed himself of his right to freedom of movement from occupying posts under the same conditions as nationals. However, reference should be made in this connection to the special rules concerning appointment of public servants; nationals from other EC countries can be employed only on terms similar to those applying to Danish public servants.

EMPLOYMENT AND REMUNERATION

4. In Denmark there is no legislation restricting, for certain groups of persons, the freedom of choice and the freedom to engage in an occupation, save for special provisions regulating specific occupations.

5. In Denmark there is no legislation and - as far as the Ministry of Labour is aware - no collective agreements contain provisions concerning fair or equitable wages. It is considered that the Government should not interfere in the question of wages. Wages are fixed by individual agreement - or by reference to a collective agreement between the employer or an employer organization for on one side and a trade union on the other. The wage fixed in the collective agreement is often a minimum which forms the basis of individual agreements. Formally, collective agreements are only binding on the parties, but in actual practice they often fix a wage level which is generally considered equitable. "Equitable wage" is not a widely used concept. In principle, there is no difference between fixed-term employment or open-ended employment as regards wage terms.

Persons employed for a job of seven or nine months' duration are employed under the normal pay and working conditions applying to such work. Employed persons receiving a wage subsidy or on employment projects also work under the pay and other working conditions fixed by collective agreement or applying to similar work.

Under the Administration of Justice Act property required to keep up a modest home and living standard for the debtor and his household may not be seized. This provision is supplemented by the rules laid down in the Social Assistance Act whereby employees and their families have a right to temporary assistance in certain cases.

6. The Act on the Public Employment Service and the Unemployment Insurance System, etc. ensures that the public employment services are open to all job seekers.

IMPROVEMENT OF WORKING AND LIVING CONDITIONS

7. In Denmark no special measures have been taken in relation to employment contracts. This is also true of temporary contracts. Thus the same rules apply to all types of contracts establishing an employment relationship. The labour market cannot be divided up on the basis of temporary or permanent (open-ended) contracts. In several major sectors/occupational fields the most common type of employment contract is for temporary work, but this does not mean that the employees cannot have a normal employment relationship.

   As regards procedures connected with collective dismissals, Denmark has implemented the Directive of 17 February 1975 on collective redundances (75/129/EEC) by adopting legislation in this field. The provisions of the relevant Act are summarized below.

   If an employer intends to proceed with collective dismissals he is required to open negotiations with the employees or their representatives as early as possible. The employer must provide the employees with any information relevant to the case and give written information on the grounds for the dismissals, the number of persons to be dismissed, the number of persons normally employed by the undertaking and the period during which the dismissals are expected to take place.

   If the employer still intends to proceed with the dismissals after negotiations with the employees are completed, he must notify the regional labour market board thereof. The dismissals may become effective at the earliest 30 days after submission of such notification.

   In the event of bankruptcy or winding-up proceedings, the Employees' Guarantee Fund will cover wage claims from employees up to a ceiling set at present at DKR 5 000. Payment is made when the claim has been filed and duly substantiated to the Fund.

8. Under the Holiday Act all employees in Denmark are entitled to annual holiday with pay or a holiday allowance corresponding to the wages earned. For public servants this right follows from an agreement in accordance with the Public Servants' Act.

   The Holiday Act and the agreement applying to public servants entitle employees to 30 days' holiday corresponding to 5 weeks. No conditions apply to holiday entitlement, but the right to the holiday pay or allowance is conditional upon qualifying for such through employment during the calendar year preceding the holiday year (the holiday year runs from 2 May to 1 May the following year).

9. There is no general requirement for employment contracts to be drawn up in writing in Denmark. However, in some fields there is a statutory requirement for a contract in writing. Terms of employment are mainly fixed by collective agreements supplemented by various collective agreements at company, regional, federation and central organization level.

SOCIAL PROTECTION

10. The Danish social security system comprises a number of general schemes which apply to all persons who have their permanent residence in Denmark. Early retirement pension, old-age pension and sickness insurance are financed out of taxation and pension and entitlement to benefits is not dependent upon prior employment or income.

    Only Labour Market Supplementary Pension (the so-called ATP-pension) and unemployment benefit are based on contributions from employees. Membership of an unemployment insurance fund is voluntary.

    If an employee is without a job, not entitled to unemployment benefit as a member of an unemployment insurance fund and does not have sufficient means to support himself or his family, assistance may be granted under the Social Assistance Act. Under this Act the public authorities are required to grant assistance to any person residing in Denmark who needs guidance or practical or financial assistance for himself or his family. However, if there is a need for permanent assistance to a person who is not a Danish national and who has not been living in Denmark for at least two years with a view to taking up permanent residence in this country, repatriation may be considered.

    The general rules on unemployment insurance are laid down in the Act on the Public Employment Service and the Unemployment Insurance System etc.

    The unemployment insurance system is voluntary and is administered by the unemployment insurance funds which are associations of private groups of employees or self-employed

persons. There are 39 state-recognised unemployment insurance funds with about 2 000 000 members. The unemployment insurance funds are closely related to the trade unions and other occupational organizations, but admission to an unemployment insurance fund is not conditional upon trade union membership.

In order to become state-recognised an unemployment insurance fund mustl admit members from one or more areas of occupation and have at least 5 000 members.

The unemployment insurance system is financed through membership contributions, employers' contributions and by the state. The membership contribution is an annual amount corresponding to eight times the amount of maximum daily cash benefits. The employer's contribution forms part of the labour market contribution which is 2½% of the VAT basis of the undertaking or similar.

To obtain unemployment benefit in the event of unemployment it is necessary to belong to an unemployment insurance fund. Persons between 16 and 65 years having their residence in Denmark (except Greenland and the Faroe Islands) may be admitted to an unemployment insurance fund if they are employed as an employee within the occupational field covered by the unemployment insurance fund; they must also have, during the ten weeks prior to their application for admission, been so employed, (for part-time employed persons at least 150 hours and not more than 300 hours) for more than 300 hours or be able to prove that they can obtain and actually do obtain such employment immediately following their admission, or have completed vocational training within the occupational field covered by the fund of at least 18 months' duration and file an application for admission within two weeks of completion of the training, or be self-employed (except on a temporary basis) to a significant extent, or participate in the self-employed activities of their spouse (on more than a temporary basis and to a significant extent) or be performing military service. Apprentices under the age of 18 years may not be admitted. Persons working part-time may normally be admitted to an employment insurance fund as part-time insured members. Members who do not have their primary income from paid employment or who cannot be considered to be seeking permanent employment must withdraw from the fund (except members undergoing training, members receiving voluntary early retirement pay and part-time pensioners). Members undergoing educational training, who for some reason are temporarily not seeking work, may retain membership and thus entitlement to unemployment benefit in the event of unemployment on completion or interruption of the educational training or on expiry of a short period during which they have for other reasons temporarily not been seeking work if they otherwise satisfy the conditions for entitlement to unemployment benefit. Persons receiving voluntary early retirement pay or part-time pension retain membership irrespective of these rules.

In connection with dismissal, temporary lay-offs, expiry of a work on fixed-term contract, etc. the employer is required to

pay members of an unemployment insurance fund unemployment benefit corresponding to the maximum daily/rate calculated in relation to the number of hours for which the member was employed. This applies only to members who have been working for the employer under a full-time employment contract for two weeks out for the preceding four weeks.

Entitlement to unemployment benefit is conditional upon one year's membership of a state-recognized unemployment insurance fund. Apprentices and others who have not satisfied the admission conditions and persons who have completed vocational training of more than 18 months' duration will, however, be entitled to unemployment benefit after one month's membership. Entitlement to benefit lapses when the member attains the age of 67 years. Entitlement is further conditional upon the member having been, prior to each payment of benefit, been employed as an employee or self-employed for at least 26 weeks out of the previous three years. For part-time employees the requirement is 17 weeks. Only employment in membership periods is taken into account. Special rules apply to members who perform self-employed activities as secondary occupation. The unemployed person must be registered as a job seeker with the public employment service and be available for work.

Unemployment benefit amounts to 90% of previous earnings (individual rate), subject to a maximum rate. For part-time employees maximum benefit amounts to two thirds of the benefit payable to full-time insured persons. A special lower rate applies to apprentices, persons who have completed vocational training of at least 18 months' duration and persons performing military service. Daily cash benefits are paid for six days a week. As a general rule, the amount of benefit is reduced when members perform paid or unpaid work. Any concurrent payment of pension relating to previous employment relationships is offset. As a general rule, unearned income does not affect upon the amount of unemployment benefit.

The Act also contains rules on holiday pay. Appeals against the decisions of the unemployment funds may, in principle, be made to the Directorate for the Unemployment Insurance System. Unemployment benefits are taxable as A income.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. In Denmark there is no legislation preventing employers from joining employers' organizations or employees from setting up trade unions. In accordance with case law, employers and employees also have a legal right to members of organizations relevant to the exercise of their occupation.

In the public sector, it is unlawful under the public administrative rules to impose membership of an occupational organization as a requirement for taking up or pursuing an occupation. In the private sector, it is unlawful to dismiss employees for failure to join a union or other organization.

12. Guidelines for the conclusion and renewal of collective agreements have been laid down between the social partners and may thus differ from one occupational field to another as negotiations take place between the individual federations or associations. Decision-making in negotiations and in the conclusion of collective agreements is, as in the case of any other agreement, left to the partners involved. However, the State supports the social partners' negotiations through the independent Conciliation Service which guarantees negotiations and ballots on the outcome.

13. Under the special machinery set up to resolve industrial disputes it is not, as a general rule, lawful to strike during the currency of a collective agreement (the so-called "peace clause").

    Work stoppages are, however, allowed where payments are suspended or where urgently required by virtue of considerations pertaining to life, honour or welfare. In all other cases attempts at conciliation are made before any stoppage.

    The conciliators appointed by the Minister of Labour may under certain specified circumstances call in the parties for the purpose of negotiations where the negotiations between the parties have failed to lead to the conclusion of an agreement. The conciliators are empowered to postpone industrial action where notice has been given twice in a two-week period.

14. Under the Public Servants' Act public servants have no right to strike. This also applies to the armed services and the police where most posts are filled by public servants.

VOCATIONAL TRAINING

15. In principle, all persons who have undergone compulsory basic education under the Danish national school act have access to vocational training subject in some cases to specific skills as regards the Danish language. The Minister for Education may lay down rules restricting access to training institutions in view of the related employment opportunities.

    Adult vocational training aims (1) to give vocational training and advanced training in line with technological development and labour market needs which maintains and improves the vocational skills of semi-skilled workers, skilled workers and other similar groups, and (2) to give introductory vocational training to make it easier for persons experiencing difficulties in obtaining or maintain their attachment to the labour market to find a job or start training. The training at (1) is open to persons having attained the age of 18 years who have or are seeking employment within the occupational field concerned. The training at (2) is open to persons having attained the age of 18 years who are experiencing difficulties in obtaining or maintaining their labour market attachment. Access to advanced

training for skilled workers is conditional upon the skilled worker having completed the related basic vocational training or having obtained similar occupational skills some other ways. Retraining is also available to the persons who form the target group for adult vocational training. No special measures have been initiated for foreigners, who have to satisfy the same conditions, with the exception of special language courses offered to immigrants in connection with participation in adult vocational training courses.

EQUAL TREATMENT FOR MEN AND WOMEN

16. The first Danish legislation on equal treatment for men and women was launched in 1921 with the Act on equal access for men and women to certain public posts and occupational fields. Since 1975 legislation has been introduced on equal treatment for men and women as regards access to employment, maternity leave, etc. on equal pay for men and women, on equal treatment for men and women in connection with appointment of members to public committees, commissions, etc. and on equal treatment for men and women in connection with appointment to boards in public administration.

Infringement of the equal treatment and equal opportunities legislation may be sanctioned by penalty and compensation. Furthermore, the Danish Equality Council may, at its own initiative or on request, investigate all matters in this field.

Reports are being prepared and studies undertaken, conferences organized, etc. to raise awareness about problems in this field. The Equality Council is at present carrying out a study on the interaction between family life and working life.

A number of measures have been initiated to alleviate some of the problems which arise in connection with the combination of family and working life, notably child care facilities and maternity leave with the State contributing to the financing.

In December 1986 the Danish Government presented its first action plan for equality which calls on ministries and other executive boards to work to promote equality within their respective fields of competence. The ministries submit annual reports to the Equality Council on initiatives to promote equality and the results achieved.

In addition, training measures have been initiated with a view to ensuring equality for women and integration on the labour market. Thus, special work introduction programmes for women have been organized and pilot projects are under way with special vocational training programmes for women.

The Government has set up an inter-ministerial child committee and one of its tasks is to consider initiatives to harmonize working life and family life. With a view to promoting the use

of flexible working time arrangements, in March 1990 the Administration and Finance Department sent out a guide on flexible working time to all state institutions.

The central labour market organisations on the private labour market extended their cooperation agreement from 1 April 1991 so as to ensure that "all matters which promote equal treatment of men and women in the individual enterprise" are dealt with by the enterprises' cooperation committees and may, if need be, be presented to the cooperation board.

INFORMATION AND CONSULTATION OF EMPLOYEES AND CO-DETERMINATION

17. Employees have a statutory right to co-determination, as employees in public or private limited companies with more than 35 employees have a right to elect a number of representatives corresponding to half the number of representatives appointed by the General Assembly. The same right applies as regards the board of the parent company in a group, but only to employees in subsidiaries in Denmark.

18. Where the right to information is concerned the most important employers' organizations and the public employers have concluded agreements with the employees' organizations concerning cooperation in enterprises with more than 35 employees. This affords employees information and discussion through a joint cooperation committee on a number of matters, such as the financial situation of the enterprise and its employment situation, the principles of its staff policy, training and retraining.

HEALTH PROTECTION AND SAFETY AT THE WORK PLACE

19. Legislation concerning safety and health and work was first introduced in 1873 with the Act on work by children and young people in factories and similar establishments. In 1889 the Act on protection against machinery was introduced and in 1901 the Act on work in factories and similar establishments and on public inspection. The scope of this Act was extended in 1913 with the Factories Act which was in force until 1955, supplemented by the 1906 Act on bakeries and the 1919 Act on the inspection of steamer boilers ashore and the 1925 Act on work by children and young people. In 1954 this legislation was replaced by three Acts on worker protection, viz. (1) the general Act, (2) the Act dealing with offices and shops, and (3) the Act dealing with agriculture.

At present, safety and health at work is regulated by the Working Environment Act of 1975. This is a framework Act which lays down basic principles and sets out few detailed rules. Accordingly the Act contains a number of provisions which empower the Minister of Labour and the Director of National Labour Inspection to lay down more detailed and revised rules in

individual fields in cooperation with the social partners. It was decided to introduce a framework Act for several reasons. Firstly, an act containing many technical details soon becomes obsolete. Secondly, a single act cannot provide solutions to all problems of the working environment in all types of undertakings without becoming too complex. Thirdly, thanks to the form of the framework act, the development of the working environment - and thus the drafting of the administrative regulations issued under powers conferred by the act - can be based on a balanced evaluation of considerations relating, on the one hand, to the constant improvement of safety and health at work and, on the other hand, to the enterprises' need to be able to plan and organize their operations properly.

The framework Act is supplemented by: (1) orders issued by the Ministry of Labour, (2) circulars issued by the Ministry of Labour, (3) orders issued by the National Labour Inspection and (4) guidelines issued by the National Labour Inspection. In addition, guides are published, both in connection with orders issued by the Ministry of Labour and the National Labour Inspection and separately. Notices (not in the form of rules) are used to inform the social partners about various matters, for instance, information about exemptions granted, campaigns, etc.

The Act aims to create a safe and sound working environment in line at all times with technical and social development in society and to form a basis so that ..... themselves can deal with safety and health with guidance from the labour market organizations and with guidance and supervision from the National Labour Inspection. The Act applies - with a few exceptions - to all work performed for an employer.

Where aviation is concerned the Act applies only to work on the ground and as regards the shipping and fishing industry only to the loading and unloading of ships, including fishing vessels, to work on board pleasure boats and the like.

The Act covers the following fields: general safety and health work in enterprises, Trade Safety Councils, general duties (employer, supervisor, employees, suppliers, repairers, planners, etc. and constructors), the performance of work, the design of the workplace, technical equipment, etc. substances and materials, rest periods and rest days, young persons under 18 years of age, medical examinations, etc. and rules on sanctions and penalties. A number of orders, circulars, guidelines, etc. have been issued under powers conferred by the Act. The Act is administered by the Ministry of Labour, a Working Environment Institute and inspection districts.

PROTECTION OF CHILDREN AND ADOLESCENTS

20. Under the Danish Working Environment Act a minumum age has been fixed for certain types of gainful employment. Thus, children

who have attained the age of 10 years may perform certain forms of gainful employment. Additional forms of employment may be performed by children who are more than 13 years old. Finally, there are special rules laying down the type of work that young persons between 15 and 18 years may perform and on the kind of exposure permitted in connection with such work.

21. There are no special statutory rules exist on the wages paid to young persons. As for adults, the wages of young persons are fixed mainly by collective agreements. Generally, special lower wage rates apply to young workers under the age of 18. The question may also be settled by individual agreement with the employer.

22. Under the Working Environment Act young persons under the age of 15 years are not allowed to perform paid work, except for work of a light nature for two hours per day. For young persons belonging to the household of the employer, this prohibition applies only to work with technical equipment, etc. which may constitute a risk to them. In agriculture the Minister of Labour may lay down rules on an age limit lower than 15 years. Finally, the working time for young persons under 18 years may not normally exceed the usual working hours for adults employed in the same occupational field. Young persons are not allowed to work more than 10 hours per week. The working time is a continuous period interrupted only by appropriate breaks for eating and resting. As regards evening and night work performed by young persons, the main rule is that young persons under the age of 18 years are not allowed to work after 10 p.m.

    The organization of vocational training is regulated on the basis of the Act on vocational training schools and the Act on vocational training. These rules are extensively based on cooperation between the public authorities and the social partners.

23. It is also possible for young persons to undergo basic vocational training (cf. point 15 above). This training is adapted to labour market needs, but also aims to satisfy the interest of society and of the individual trainee in obtaining basic vocational knowledge.

THE ELDERLY

24. Danish citizens become entitled to Danish old age pension by virtue of their residence in Denmark. Each year's residence between the age of 15 and 67 years gives a right to 1/40 of the full amount of pension. Entitlement to old age pension is not related to occupational activities.

    All persons who are nationals of a EC-Member State and who by virtue of residence in Denmark are covered by Regulation 1408/71 will thus be entitled to payment of a Danish old age pension calculated on the basis of the number of years' residence in Denmark. The full amount of the Danish old age pension is at

present DKR 4 663 per month; this amount is regulated once a year, the regulation percentage being based on prices developments. Where such pension, supplemented by pension from previous countries of residence, is insufficient, supplementary assistance may be granted in the form of a personal supplement to persons residing in Denmark.

25. Any person residing in Denmark has a right to free medical treatment and hospital treatment. This right is not conditional upon the exercise of paid employment.

DISABLED PEOPLE

26. Under the Social Assistance Act the public authorities are required to provide assistance to any person who is in need of support for the development or maintenance of his working capacity where this is considered necessary to enable the person concerned to support himself and his family. A vocational rehabilitation plan is prepared and a rehabilitation allowance is paid in connection with the implementation of the measures envisaged in the plan. In addition, special support may be granted for special expenses arising from the disablement and also for special expenses for training or other activities included in the plan.

    Within the framework of the Ministry of Labour a pilot project was initiated three years ago for bringing disabled persons into employment. Under this scheme, state support may be granted for the engagement of a personal assistant to the disabled person in order to improve the likelihood of his obtaining or maintaining employment. An evaluation will be carried out by the end of 1991 with a view to deciding whether this project should be a permanent measure.

    Furthermore, a special scheme has existed since the mid-seventies whereby disabled people who have difficulties in obtaining employment on the ordinary labour market have priority access to certain types of regulated public jobs for which they are suitable.

INDUSTRIAL RELATIONS IN DENMARK

27. In Denmark the social partners are themselves responsible for major fields connected with employees' working and living conditions. Accordingly, if they fail to reach agreement there is no legislation to fall back on. This does not mean that the state does not have any responsibility in the labour market policy field: however there is a certain division of tasks between the state and the social partners. The state refrains from using its powers as long as the labour market is functioning properly without legislation. As a result the organizations and their members hold more responsibility in relation to the schemes that they have themselves agreed upon

than they do in relation to schemes imposed upon them. Another characteristic feature of the Danish system is that the same matter may often be regulated at more than one level, viz. both at the level of legislation, of national collective agreements, the enterprise and finally, at individual level. The advantage of this system is its high degree of flexibility.

28. This system, which is based on the principle that the state should not intervene in matters of labour law, was developed towards the end of the last century and during the early years of this century. It was based on the establishment of large national organizations on both the employers' side and the employees' side. After a major industrial dispute in 1989 the workers' and employers' organizations acknowledged by mutual agreement each other's right to negotiate and conclude collective agreements on wages and other working conditions for their members. The agreement also comprised a set of rules relating to the right to strike and call a lockout. The state contributed to the system by establishing an institution for impartial and independent concilation in cases where the parties fail to reach agreement. The state further set up a special court, the Industrial Court, where expert judges have to deal with cases involving breach of a collective agreement. The principles of this system remain unchanged today, although the agreement has been renewed several times. Consequently there is still a strong tradition that questions concerning pay and working conditions are determined by the social partners themselves and not by the state. The role of the state is to provide the parties with the institutional framework for their discussions.

29. The Danish trade union movement is made up of a number of national unions, each covering a specific trade or occupational field. Some of these unions - with a membership of 1.42 million (1990) workers out of the total workforce of about 2.9 million (1989) - are affiliated to the Federation of Danish Trade Unions (LO). Other unions have joined the Federation of Public Servants' and Salaried Employees' Organization (FTF) and the Central Organisation of Academics (AC). More than 80% of Danish employees are union members.

The employers belong mainly to the Danish Employers' Confederation (DA) and the Federation of Employers in Agriculture (SALA), but there are also other employers' organizations. Although the membership rate on the employers' side is lower than on the employees' side, these central organizations of employers set standards and it is usually possible for a union to conclude an agreement with a non-member employer on terms similar to those laid down in the agreement with the Danish Employers' Confederation.

It should be mentioned in this connection that the public sector - i.e. the state and the counties and municipalities - now covers one third of the labour market, so the public employer is the biggest employer. Most fields within the public sector are regulated by collective agreements similar to those applying in the private sector.

30. As regards EC cooperation in the field of labour market and social questions, the social partners in Denmark are actively involved in the decision-making process all the way from the stage of the Commission initiative to the taking-up of the Danish position in connection with adoption in a Council meeting. The implementation of directives, etc. also takes place in cooperation with the social partners, in some cases in the form of collective agreements, subject to the state's principal responsibility.

FRANCE

FREEDOM OF MOVEMENT FOR WORKERS

QUESTION 1:

Articles 6 and 13 of Decree No 81-405 of 28 April 1981 transposing into French national law Directives 64/221 of 25 February 1964 and 68/360 of 15 October 1968 state that a residence permit may not be refused to a worker entitled to freedom of movement except on grounds of public order, public safety or public health.

QUESTION 2:

The French authorities ensure that the provisions guaranteeing the right of residence to workers from the European Economic Community are applied.

Access to all professions and occupations for EEC workers is accorded under the same conditions as those applied to French nationals.

However, subject to further progress on the equivalence of diplomas, the main obstacle to the free movement of workers still seems to be the non-recognition of vocational qualifications.

New initiatives

The most important new initiative to reinforce freedom of movement is the bill to introduce miscellaneous provisions relating to the public service, which is currently going though the adoption process. This bill provides for an Article 5bis to be added to the general statutes covering civil servants (Law of 13 July 1983), to allow access for Community citizens to certain bodies, job groups or jobs in the French public service.

This will be implemented by amending the specific statutes governing public service bodies, so that they specifically allow foreigners to apply for such jobs through the competition process and set out any restrictions concerning certain jobs within the bodies concerned.

QUESTION 3:

Article 10 of Regulation 1612/68, the provisions of which are incorporated into Article 1 §k) of Decree No 81-405 of 28 April 1981, gives the members of a worker's family the right to install themselves with that worker.

The family members installed with a worker from an EEC Member State thus enjoy equal treatment with French nationals, with specific reference to the arrangements for social assistance, housing assistance and loans, vocational training, grants, social protection, etc.

Recognition of diplomas

A clear distinction must be made between the recognition of diplomas for academic and occupational purposes.

In France, the State is not concerned with the academic recognition of diplomas, which is entirely the responsibility of higher education establishments.

However, the Ministry of National Education, through its National Academic Recognition Information Centre, encourages the mobility of students, teachers and research workers within the Community by providing them with information on studies and university courses abroad.

The recognition of diplomas for occupational purposes is covered by the Directive of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, which is currently being transposed by the departments responsible for supervising the regulated professions in question.

Furthermore, common training courses are set up by training bodies acting in partnership with up to three or four institutions in other Member States, either under Community programmes or on their own initiative.

The qualifications awarded on completion of these courses are awarded on a joint basis or on the principle of mutual recognition. They may then be recognised by employers' organizations (cf. Chamber of Commerce and Industry).

Frontier workers

The living and working conditions of frontier workers are improved by regulations providing for unemployment benefit, pursuant to Community Regulation 1408/71 (Articles 68 and 71 I a ii). A frontier worker without employment receives compensation from the country of residence according that country's legislation, as if he or she had been subject to this legislation when employed in his or her last job.

Where benefits are calculated on the basis of previous earnings, it is the wage received by the beneficiary for his or her last job which is taken (Fellinger judgment of 28 February 1980).

Consequently, a frontier worker living in France receives benefit from the ASSEDIC in accordance with French legislation and on the basis of the wage received for his or her last job.

Other measures now being introduced include the creation of European Citizens' Advice Bureaux to provide frontier workers on both sides of borders with information on working and living conditions in the country in which they work. An ECAB is already operating on an experimental basis to serve the border between Nord-Pas de Calais and Hainaut, making use of the Wallonian employment service and the French national employment agency (ANPE).

Other ECABs are currently at the planning stage, in the first instance for the Rhône Alpes-Northern Italy region.

Finally, there are also computerized systems for the exchange of information on vacancies between the employment services of :

- Wallonia and Nord-Pas de Calais
- Baden-Württemberg and Lorraine
- Saar/Rhineland-Palatinate and Alsace.

Such systems also exist between Italy (Piedmont) and Rhône Alpes, but still on a manual basis.

EMPLOYMENT AND REMUNERATION

QUESTION 4:

Apart from conditions relating to competence which apply to certain professions, there are no general provisions preventing access to employment for certain persons.

QUESTION 5:

Fair remuneration

The free determination of wages is a fundamental principle of French labour law. The employer is free to fix the form and amount of an employee's remuneration, who may then accept or reject the terms. However, this freedom is applied within a legal framework comprising limits established by legal and agreement-based guarantees.

The "minimum growth wage" guarantees the purchasing power of lower-paid employees. Instituted by the Law of 2 January 1970, it is an hourly wage linked to changes in the national consumer price index, thus guaranteeing its purchasing power. Furthermore, in order to ensure that the employees concerned benefit from the economic progress of the nation, the minimum growth wage is also increased in line with general economic development. The annual rise in its purchasing power cannot therefore be less than half the rise in purchasing power of the average hourly wage rate. As of 1 July 1990 the minimum growth wage stood at FF 32.66 per hour, giving a monthly remuneration (for 169 hours) of FF 5 519.54 gross and a minimum of FF 4 524.16 net.

All collective agreements applicable to specific sectors guarantee a minimum remuneration. So that this is realistic, in other words higher than the statutory guarantee provided by the minimum growth wage, the government has encouraged employers and employees to negotiate. The Commission Nationale de la Négociation Collective, which met on 8 and 26 June 1990, laid down the objectives to be achieved through sectoral negotiation by 1992:

- no agreement-based minimum wage to be lower than the minimum growth wage;
- classification scales taking account of technological change and new forms of work;
- career development prospects for all employees.

An initial review in June 1991 found that these objectives had already been partly achieved.

Wages of atypical workers

Atypical workers (those on fixed-term contracts as per Articles L 112-1 et seq. of the Labour Code or temporary work as per Articles L 124-1 et seq. of the Labour Code) must enjoy the same rights as the company's other employees. Their remuneration must be at least equal to that which other employees of the company with equivalent qualifications and employed in the same job would receive after a trial period. They are also entitled to benefits to compensate for the non-permanency of their employment. The end-of-contract allowance payable to employees with fixed-term contracts was increased to 6% of gross remuneration by the Law of 12 July 1990 on encouraging the stability of employment by amending the system of non-open-ended contracts. Similarly, temporary employees are entitled to an end-of-job allowance of 10%.

Part-time workers (Articles L 212-4-2 et seq. of the Labour Code), i.e. employees working reduced hours amounting to at least one fifth of the statutory or agreement-based working time, must receive a remuneration equivalent to that of their full-time counterparts calculated on a pro rata basis in accordance with their working time.

Witholding, seizure or transfer of wages

To ensure that workers retain the necessary means of subsistence for themselves and their families, French law places a limit on the withholding, seizure or transfer of wages. The amount remaining is sufficient to provide a minimum subsistence income for the employee and his or her family.

QUESTION 6:

Any person seeking paid employment can benefit from public placement services free of charge by registering with the national employment agency.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

QUESTION 7:

Duration and organization of working time

The statutory weekly working time is 39 hours, and 130 overtime hours per year may be worked by each employee at his or her discretion.

Since 1982, the duration and organization of working time has been the subject of a series of reforms forming part of a general movement towards flexibility and diversity of contract conditions in preference to a standardized statutory norm.

The Order of 16 January 1982 offers the following possibilities:

- exemption by an agreement covering the sector as a whole or the company concerned from the working time organization procedures laid down by the Decrees of 1937;

- organization of weekend shifts as an exemption, by agreement applicable to the sector or company, from the principle of Sunday rest;

- flexibility of working time organization during the week in connection with reducing working hours and limiting overtime.

The Law of 13 November 1982 made it compulsory for companies to hold negotiations at least once a year on the effective duration and organization of working time.

The Law of 28 February 1986 introduces provisions for the organization of working time (flexibility of working time, rest days) and makes them dependent upon sectoral negotiations. The Order of 1 August 1986 lays down similar provisions for intermittent work.

The Law of 19 June 1987 redefines and harmonizes certain procedures for organizing working time, including compensatory leave, flexibility and cycles. It permits continuous work on economic grounds and exemptions from the ban on night work for women in industry. Regarding implemention of these provisions, it gives priority to collective bargaining, whilst on the flexibility of working time and intermittent work it offers a choice between sectoral and company negotiations.

This Law has been supplemented on a number of points by the Law of 3 January 1991 on the promotion of employment through in-house training, aid to social and occupational integration and organization of working time, introduced pursuant to the third employment plan. Its provisions on working time include two parallel objectives:

- organization of working time to favour employment, by extending the duration of equipment use and encouraging improvements in job sharing;
- more control by employees over their working time, making it easier for them to reconcile the demands of their work with those of their family and social life.

Fixed-term contracts

Without detracting from the benefits of short-term contracts, which reflect the real need of companies to adapt employment to short-term economic fluctuations, the Law of 12 July 1990 amended the rules applicable to fixed-term employment contracts and temporary work in order to improve the monitoring and control of these forms of employment. As a result, they are permitted only for precise tasks and in specific cases set out in the Law. Such contracts may not have the objective or effect of employing the workforce needed for a company's normal, ongoing activities.

Furthermore, non-permanent workers may not be employed by establishments which have recently made workers redundant on economic grounds, and the previous ban on the temporary employment of workers in particularly dangerous jobs is extended to cover fixed-term contracts as well.

Stricter controls on the use of non-permanent labour also derive from the provisions on the duration and renewal of contracts. The maximum duration, including renewal, is in principle reduced to 18 months (from 24), with a number of specified exeptions. Furthermore, neither form of non-permanent contract may now be extended more than once.

To help prevent occupational accidents to atypical workers, the Law includes important provisions on safety, particularly increased safety training for such employees who are assigned to workplaces presenting specific hazards; the company must draw up a list thereof.

Generally speaking, vocational training for non-permanent workers has been improved.

Finally, the Law introduces penalties for infringements of the regulations on fixed-term contracts and increases those relating to temporary work and the illegal subcontracting and hiring out of labour.

Part-time work

The statutes governing part-time work provided by the Orders of 26 March 1982 and 11 August 1986 guarantee such employees a status comparable to that of full-time workers.

The Law of 3 January 1991 adopted pursuant to the third employment plan contains an important innovation, namely that workers now have a right to work part-time, whereas previously it was up to the employer to offer this possibility. The conditions for the implementation of this new right, particularly the procedures for the submission and consideration of applications, are left to negotiation between the employers and employees. After 1 January 1992 the government will study the outcome of these negotiations and take any necessary action.

Procedures for collective redudancies

Before effecting collective redundancies on economic grounds, the employer must consult the workforce representatives and respect certain time-limits. The workforce representatives may call in experts. These formalities differ depending on whether the number of employees involved over a 30-day period is less than ten, or ten or more.

Under the Law of 30 December 1986, the authorities no longer have to give permission to the employer for redundancies on economic grounds, but must merely be informed of plans.

Employers must take measures to limit the number of redundancies or to assist the redeployment of employees whose redundancy cannot be

avoided. Such measures include redeployment agreements allowing the employees concerned to receive a guaranteed level of income, together with training, over a period of six months.

Employees made redundant are entitled to a redundancy payment.

Bankruptcies

Under the terms of the Law of 25 January 1985, a company is subject to compulsory financial restructuring or liquidation proceedings when it can no longer meet its payments, i.e. where its liabilities cannot be covered by its available assets.

The current arrangements for the compulsory financial restructuring of companies are designed to safeguard the industrial potential and the jobs which go with it.

The works committee must be informed and consulted before the suspension of payments is announced, if compulsory financial restructuring proceedings are started against the company, before any decision on the continuation of activities and when a financial restructuring plan is being drafted. The person or persons which the committee appoints to represent it must be heard by the court.

The works committee may inform the court or public prosecutor of any facts indicating the suspension of payments by the company. The court adopts a financial restructuring plan or pronounces the liquidation of the company.

All employers must insure themselves against the risk of non-payment of sums due to their employees, including those seconded or employed abroad, in the event of compulsory financial restructuring or liquidation. The relevant scheme is operated by the Association pour la Gestion du Régime d'Assurance des Créances des Salariés (Association for the management of the insurance scheme covering debts to employees) and is financed by contributions from employers.

QUESTION 8:

Since the Order of 16 January 1982, employees have been entitled to 2½ working days of annual paid leave per month effectively worked for the same employer between 1 June of the previous year and 31 May of the current year, giving five weeks of annual leave.

Employees have a legal right to a weekly rest period of at least 24 consecutive hours. Except where an exemption is granted, this must be on Sunday. Decrees adopted in 1937 extended this right by providing in many cases for two consecutive rest days per week.

QUESTION 9:

Conditions of employment are not necessarily set out in a written document.

However, in some cases the law requires a written contract and specifies the clauses which must be included. This applies to all contracts other than open-ended full-time ones.

SOCIAL PROTECTION

QUESTION 10:

a) Generally speaking, social protection on a personal and compulsory basis is granted to employed and self-employed persons exercising a paid occupational activity. The members of the insured person's family may also be entitled to certain benefits (health insurance, survivors' pensions, etc.).

There are four main groups of statutory systems (general system for employees, special systems for employees, systems for non-agricultural self-employed workers, agricultural holders' scheme), each of which applies to a given socio-professional category or set of categories and provides protection against the various risks covered by French social security (illness, maternity, death, invalidity, accidents at work, old age, widowhood, dependants). Unemployment insurance is not included in the French social security system.

The general system is by far the largest, covering some 82% of insured working persons against illness and maternity (benefits in kind, i.e. reimbursement of the costs of medical treatment, hospitalization, medicines, etc.).

French social security is therefore organized on the basis of a group of statutory systems which are managed under the supervision of the competent authorities.

b) French social security, the objective of which is to guarantee a sufficient level of benefits to the individuals concerned (mainly workers), is financed primarily by contributions (90% in the case of the general system, with 27% and 73% funded by employees and employers respectively). These contributions are levied on occupational income (from paid employment or self-employment) and substitute incomes (retirement pensions, unemployment benefit, early retirement pensions).

However, certain special schemes covering only a small number of persons, are financed mainly by state contributions and transferred revenue. The agricultural system is also financed mainly by state subsidies, appropriated taxes and transfers.

c) French social security was originally linked to the exercising of an occupational activity, but has become more generalized in that the entire population now has access to social protection, at least as far as family benefits, sickness and maternity benefits in kind, and old age are concerned.

It should be noted in this connection that:

- the right to family benefits is not dependent on occupational activity;

- employed workers who do not meet the conditions of entitlement to sickness and maternity benefits under the general scheme (minimum 200 hours of paid activity per quarter or levied contributions for a period of six months on a salary of at least 1040 times the hourly minimum growth income) are covered - subject to explicit refusal on their part - by the "personal insurance" scheme, which provides them with benefits in kind equivalent to those under the general scheme;

- non-active persons not covered against illness and maternity as members of a worker's family may receive cover under the "personal insurance" scheme if they so wish;

- finally, persons who have previously been covered by compulsory social insurance may continue to be covered against the risks of invalidity, old age and widowhood by subscribing to voluntary insurance. The same applies to parents with dependent children in respect of pension insurance.

d) French legislation includes provisions to allow persons excluded from the labour market and having no means of subsistence to receive sufficient benefits and resources:

- regarding access to health care, the personal insurance contributions of the persons mentioned under c) may, where such persons do not have sufficient resources, be covered by social assistance or the family benefits scheme as appropriate;

- there are also a number of provisions to guarantee a minimum level of resources for the most deprived, namely the "minimum integration income" introduced by Law No 88-1088 of 1 December 1988 for all persons unable to work, the "old-age minimum" pursuant to Volume VIII of the Social Security Code, the handicapped adult's allowance pursuant to Articles L.821-1 et seq. of the Social Security Code and the single parent's allowance granted according to the conditions laid down in Articles L.524-1 et seq. of the same Code (FF 2 888 per month plus FF 935 per dependent child).

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

QUESTION 11:

Organizations wishing to operate under the Law of 21 March 1884 on trade unions must comply with a number of formalities. The founders of a trade union must provide the local authorities of the place where the union is established with its articles of association and the names of the persons responsible for administration or management. These few simple formalities are part of the "prior declaration" arrangements, which apply to the freedom of association. Their objective is to provide information and openness and they exclude any institutionalized control by the authorities.

French legislation does not therefore contain any obstacles to the formation of professional or trade union organizations by employers and workers of the European Community. The freedom to join or not to join a union is expressed in the preamble to the Constitution. Any discrimination resulting from the failure to respect this freedom is subject to penalties.

QUESTION 12:

Agreements may be negotiated at interprofessional, sectoral or company level.

Whatever the level of negotiation, only the representative trade union organizations may negotiate with the employers' organizations or groups or with one or more individual employers. Representative trade union organizations are:

- the organizations affiliated to one of the five confederations considered to be representative at national and interprofessional level;

- organizations which have demonstrated that they are representative at the level where negotiations are taking place (this is assessed on the basis of their membership and independence).

For an agreement to apply, it is sufficient for it to have been signed by an employer or employers' organization and by a union which is representative of the employees. Unanimous agreement of all negotiating parties is not essential.

However, agreements do not apply to all companies. To counter this situation, the Ministry of Labour may adopt an Extension Order to make a sector agreement applicable to all companies whose main economic activity is that of the sector and which are in the geographic area specified in the agreement. Extension of a sector agreement thus means that it applies to all companies in the sector, even where the employer is not a member of one of the employers' organizations which have signed it.

Negotiations may be entered into at any time at the initiative of the negotiators on subjects of their choice. However, negotiations on certain subjects are compulsory, at intervals laid down by the Law of 13 November 1982, as follows:

- at sector level: all employers' and employees' organizations which are party to a sector agreement must negotiate wages at least once a year and categories at least once every five years;

- at company level: wages and the duration and organization of working time must be negotiated every year in all companies with at least one union delegate; the procedures for applying the right of expression must be negotiated in certain companies.

QUESTIONS 13 and 14:

The right to strike

Paragraph 7 of the preamble to the Constitution states that the right to strike shall be exercised within the framework of the laws governing it. However, this framework of laws has been invoked only to a very limited extent.

- In the public sector, the imperative need for continuity of the public service has justified limitations and in some cases abrogation of the right to strike and the institution of a special procedure.

Legislation has been introduced to ban strikes by judges (Order of 22 December 1958), military personnel (Law of 13 July 1972), police officials (Law of 9 July 1966), staff of the external services of the prison administration (Order of 6 August 1958), officials of the state security police (Law of 27 December 1947) and staff of the Interior Ministry's transmission services (Article 14 of the Law of 31 July 1968).

Legislation also ensures that in the event of a strike a minimum radio and television service can be provided (Laws of 7 August 1974 and 26 July 1979) and limits the right to strike in the air navigation services (Law of 31 December 1984 and Decree of 8 July 1987).

A specific procedure must be followed, consisting of five days' advance notice to be given by one or more representative trade union organizations, and the obligation to negotiate during this period must be respected (Law of 31 July 1963).

- In the private sector there is only a single legal provision, which is that a strike does not terminate a contract of employment except in the event of serious misconduct by an employee; any dismissal in contravention of this principle is null and void. In view of this almost complete absence of legislation, the courts have developed a system of praetorian law applying to strikes.

Procedures for settling disputes

The Law of 13 November 1982 sets out the procedures for settling collective labour disputes.

In the event of a dispute, the parties may either take the matter to a conciliation committee which attempts to bring together the different points of view, call in a mediator whose job is to propose a solution which the parties are free to accept or reject, or ask an arbitrator to work out a solution which is then binding on both parties.

VOCATIONAL TRAINING

QUESTION 15:

1991 sees the 25th anniversary of the Law of 1966, which laid the foundations for a modern vocational training policy, and the 20th anniversary of the Laws of 1971, which allowed the joint agreement signed by both sides of industry in 1970 to be implemented fully.

The Law of 4 July 1990 on training entitlement constitutes a new stage in French legislation on vocational training law, introducing the principle of the right of members of the workforce to qualifications, whether or not they have a job.

The youth training entitlement system became operational, as planned, at the beginning of the 1989/90 academic year. The objective was to allow 100 000 job-seekers under 26 years of age to attend training courses leading to genuine qualifications.

Between the beginning of the individual training entitlement scheme (September 1989) and the end of April 1991, 200 000 persons had started a training course under the scheme.

Furthermore, it is estimated that around 10% of the young people entering the individual training entitlement scheme directly via a further education course, a course to prepare young people for working life, an alternance training contract, or some other adult vocational training course or course organized by the regional authorities were not accepted by the CNASEA (National centre for the improvement of agricultural holdings and structures) before 31 December 1990 following this first stage.

So that young people can be offered training courses taking account of their background, potential and available training possibilities, "skill assessments" are proposed.

Between October 1989 and December 1990, 94 603 skill assessments were carried out (duration between 6 and 16 hours).

A estimate based on an inter-regional survey shows that 80% of trainees at the qualifying stage opted for either commerce (35%), office jobs (25%) or hotels and catering (20%) (source: IREDU October 1990).

By the end of January 1991, 18 988 young people had obtained at least a partial certificate and 5 499 a full certificate for level V[1], giving a total of 24 487 young persons (source: DFP - January 1991 survey, metropolitan France).

Various provisions are already being considered with a view to introducing the following improvements:

(1) Excluding the certificates of vocational training obtained through qualification and apprenticeship contracts; these are included under individual training scheme courses, but numbers could not be obtained by this survey.

- diversification of training courses:

  To be achieved by extending the range of trades and completing measures aimed at integration, giving rise to a procedure for returning to training (courses on initiation into working life, themselves revamped, "solidarity" employment, measures under the minimum integration income system) and arrangements for acquiring genuine qualifications, e.g. apprenticeship and qualification contracts.

On the basis of existing training arrangements, the vocational training entitlement system is to be extended gradually to all workers (young, adults, employed and unemployed) who have not yet obtained a vocational or technical diploma through individual training leave.

The conditions are established for utilization of the various means likely to guarantee real access to qualifications, i.e. consultation and guidance, help with taking a decision, assessment of skills already acquired and access to training leading to recognised qualifications.

These procedures have already been applied to young job-seekers, whose needs are more urgent, but unqualified workers faced with an employment problem, in their company or on the labour market, are also a priority case regarding the right to qualifications.

The agreement of 18 March 1990 between the two sides of industry (responsible for administering individual training leave) and the State has opened up the training entitlement system to employees. The means thus made available are likely to lead rapidly to the doubling of the numbers of beneficiaries by taking in active workers without vocational qualifications.

The employers' contribution to the financing of individual training leave has gone up from 0.10% to 0.15% of their total wage bill. The State has allocated a budget of FF 500 million for individual training of employees in 1991. This means that as from next year a total of FF 1 000 million will be spent on this new mechanism.

One of the objectives of the Law of 4 July 1990 is to promote quality and innovation. The Law requires training programmes to be approved before agreements are signed by the State and also imposes stricter controls on training bodies.

It is necessary to improve training for instructors and for the persons responsible for training young people in companies, to increase the amount of general and technical education in training programmes and to make greater use of modern training methods, particularly the multi-media.

The recovery of the economy has revealed shortages of qualified labour affecting around 50% of industrial concerns. The measures introduced to provide qualifications for all those who are without, particularly through the individual training entitlement scheme, will remedy this situation.

However, technological change and increased international competition necessitate a more general improvement in the level of qualification of the working population as a whole, and it is for this reason that the apprenticeship system is being modernized and extended to higher levels of training. Large sums are also earmarked in the 1991 draft budget for the ongoing training of engineers in order to have an annual output of the qualified engineers needed.

France also now has to prepare itself for the emergence of new occupations - hence the schemes to provide new qualifications.

Support is given to companies and sectors to help them achieve three essential aims:

- to create optimum conditions for the negotiated modernization of the economy, integration of technological change and adaptation to increased competition on the markets;

- to encourage a fundamental change in the attitude of the various parties in the economy by involving employees in the implementation of negotiated modernisation;

- to help unqualified employees obtain a first qualification.

Priority tools in this connection are forecasting contracts and training development commitments.

The principles of State activity are based on four lines of concern:

- to ensure that contracts take the form of an agreement covering the company's training policy over several years;

- to ensure that the funding according to such an agreement represents a significant increase over the previous level of expenditure and normal practice within the sector;

- to improve the quality of the company's training plan;

- to make use of several levels of intervention, namely sectoral or interprofessional group agreements and individual agreements with specific companies, with contracts as a whole capable of being administered on a national or regional basis.

Since 1988 20 forecasting contracts have been concluded or are being prepared, covering a large part of French industry. State aid supplements the financial investment of the sectors to the amount of 50% of the cost of the studies. In 1988 this amounted to FF 15 million.

In 1990 the State allocated a total of FF 420 million to training development commitments, covering almost 400 agreements.
FF 218 million went on regional measures alone[2], including FF 3 million on accompanying measures (aid for advisory and consultancy services) benefitting 132 951 trainees in almost 5 500 companies, which themselves spent FF 330 million on these activities.

(2) The figures for the Languedoc-Roussillon region are not yet available.

The detailed figures for national agreements in 1990 are not yet available. In 1989 there were 302 agreements and 71 770 trainees, and the amount of FF 132 million was spent by the State.

Total contract policy expenditure in 1989 represented 1.7% of GDP.

Negotiations between the two sides of industry started on 5 February 1991 with the aim of bringing vocational training into line with the needs of the 1990s. Negotiations will take account of the possibilities opened up by the new administrative procedures and regulations, developments in French manufacturing industry and the modernization of companies. Training problems must be analysed at the local level closest to the emergence of needs.

The national interprofessional agreement on vocational training was concluded on 3 July 1991 and signed by all parties except the representatives of the Confédération Générale des Travailleurs.

The plan is to incorporate the main principles into legislation in the autumn of 1991.

The right to continuing training is a territorial one, i.e. any person from an EEC Member State resident in France and employed by a French company has the same rights to continuing training as a French employee in accordance with the provisions in force.

However, there is a problem as regards linking the regulations of the different Member States, particularly the question of how the legislation of the host country can take account of the rights which an employee has built up in his or her country of origin.

EQUAL TREATMENT FOR MEN AND WOMEN

QUESTION 16

I Occupation

Law No 83-635 of 13 July 1983 transposed Directive 207/76/EEC of 9 February 1976 into national law.

It enables action promoting equal treatment for men and women to be stepped up in various ways.

The law has set up a High Council for equal opportunities at work which is made up of representatives of the administrations that equal opportunities concern most, including the directorate for employment relations, representatives of trade union organizations, representatives of employers' associations and individuals with the right qualifications.

This Council was set up on 17 July 1984. It was chaired by the Ministry for Womens' Rights then by the Ministry for Social Affairs and Employment and is now chaired by the Secretary of State for

Women's Rights. It has an advisory role on documents relating to equal opportunities for women or conditions of employment and receives a report every two years taking stock on equal opportunities at work, listing action taken in this field by the ANPE (national employment agency), the AFPA (association for adult vocational training), ANACT (national agency for the improvement of working conditions), the Labour Inspectorate's departments and the National Commission for Collective Bargaining.

The law created several instruments for achieving its aims - respect for equal rights and equal opportunities for men and women:

- An instrument for diagnosing the situation in enterprises: a report on the comparative position of men and women which is obligatory in enterprises with more than 50 workers.

- An instrument for negotiation: the agreement on equal opportunities at work concluded by the enterprise or the branch

- Financial aid: contracts covering equal opportunities at work later complemented by contracts to make jobs open to both sexes, aimed particularly at small and medium sized enterprises and industries.

  The latter encourage diversification of the jobs occupied by women and facilitate their access to qualifications for jobs where they are under-represented.

  State aid for enterprises has two aims:

  to promote diversification of women's employment and to encourage them to obtain qualifications or jobs where they are in a minority (80% men).

New provisions were issued in 1989 to eliminate discrimination.

Law No 89-549 of 2 August 1989 made negotiation on measures to remedy any irregularities statutory. Negotiation mainly covers:

- Conditions of access to employment, training and promotion

- Working and employment conditions.

The negotiations take place between the trade unions and employers' organizations who have concluded a sectoral or professional collective agreement (Article L 123-3-1 of the Labour Code).

Law No 89-488 of 10 July 1989 made it possible for enterprises with fewer than 300 workers to conclude an agreement with the State to enable them to receive financial aid to examine how they stood with regard to equal opportunities at work and what could be done to restore equality for women and men (Article L 123-4-1 of the Labour Code). It also reinforced the process of bringing collective agreements into line with current legislation where there were clauses which did not provide for equal treatment.

II Social security

A. In general, equal treatment for men and women has been largely achieved and discrimination against women eliminated in social security

For wage earners, a general provision in Law No 89-474 of 10 July 1989 placed a ban on all discrimination in social security and continuing training for hospital personnel: Article 6 of this law created Article L 731-2-1 (which subsequently has become Article L 731-4) in the social security code which is intended to outlaw any discrimination between men and women in pension and welfare agreements, collective agreements and in the statutes, regulations and rates annexes of supplementary pension and welfare institutions.

This Article provides that - with some exceptions - clauses which do not comply with the principle of equal treatment for men and women and which are not deleted or duly amended before 1 January 1993 will be null and void as from this date.

Instructions for implementing this provision were issued to supplementary retirement and welfare institutions in a ministerial letter of 16 August 1989.

These provisions are applicable to agricultural workers pursuant to Article 9 of the above-mentioned law and the supplementary welfare and retirement institutions were informed thereof by a letter, dated 21 December 1989, from the Minister responsible for them.

For non-wage-earners not employed in agriculture a similar provisions should soon figure in a Bill on social security.

B. Any discrimination which still exists is mainly in favour of women

This is true of the reduction in some social security schemes (either statutory or supplementary) of the age of entitlement to pension rights for widows, the option of early payment of a pension after bringing up children or increase of the insurance period for bringing up a third child.

In this context it should be noted that full application of the principle of equal treatment would result either in the elimination of discrimination in favour of women - which might be regarded as a step backwards in social terms - or extension to men of the same provisions - the cost of which would be high.

III Specific cases

The rights of spouses of self-employed workers who have no occupational status

It should be stressed that French legislation provides very largely for equal treatment of the spouses of self-employed workers, both as regards the option of joining a social security scheme, acknowledgment of the work done and protection in the event of pregnancy and motherhood.

1) Crafts and industrial and commercial occupations are covered by Law No 82-596 of 10 July 1982 which greatly improved the status of the spouses of craftsmen and traders participating in the activities of the company by giving them the freedom to choose between three options:

   - paid spouses who enjoy the same social security rights as other paid workers (statutory insurance scheme),

   - associates who are regarded as entirely separate craftsmen or traders (self-employed workers' scheme),

   - helpers who, as they do not benefit from a statutory pension scheme, may join the self-employed workers' scheme on a voluntary basis to acquire their own pension rights.

   In addition, Decree No 86-100 of 4 March 1986 enabled the latter, under certain conditions, to contribute retrospectively for certain periods of activity previous to their joining the scheme on a voluntary basis.

   Law No 89-1008 of 31 December 1989 on the development of commercial and craft enterprises and the improvement of their economic, legal and fiscal environment granted spouses helping in one-man companies with limited liability the right to join a self-employed workers' pension scheme if they were not covered by the statutory scheme. The fifth indent of Article L 742-6 of the social security code was amended accordingly.

2) As regards the liberal professions, Article L 643-9 of the Social Security Code amended by Law No 87-588 of 30 July 1987 henceforth enables surviving spouses to add their own rights, irrespective of what social security scheme they were derived from, to their derived entitlements up to the limits established by Article D 643-5 of the Code.

   In addition, spouses helping members of the liberal professions were granted the possibility of acquiring their own old-age pension rights (with the scheme for the profession concerned) by Decree No 89-526 of 24 July 1989.

3) As regards lawyers, Article 5.III of Law No 89-474 of 10 July 1989 enacting provisions relating to social security and continued training of hospital personnel was complemented by Article L 724-6 of the social security code to enable spouses of lawyers helping in the practise to join the pension scheme for non-agricultural self-employed workers on a voluntary basis. A draft decree for implementing this provision is currently being prepared.

4) As regards sickness and maternity insurance for all self-employed workers in non-agricultural occupations, it should be noted that the above law of 10 July 1982 had introduced maternity allowance (intended to compensate partially for loss of earnings) and a replacement benefit (intended to make good the expenses incurred in replacing the self-employed workers at home or at work) both for women who were themselves engaged in

industry, commerce, the crafts or a liberal profession and were personally affiliated to the self-employed workers' scheme and for spouses helping their partners in the above activities.

Finally, Law No 89-1008 of 31 December 1989 cited above provides for maternity benefits to be extended to the unpaid spouse of the head of an enterprise, if this is a one-man, limited liability company. The law modifies Article L 615-19 of the social security code accordingly.

The policies pursued in the past few years aim at reconciling family and occupational commitments. Efforts have been made to increase and improve childcare facilities so that each family can choose how many children it wishes to have and how they are to be educated, particularly at preschool age. Diversity in the childcare facilities on offer to parents is one of the factors enabling them to choose freely.

The work undertaken in this field covers all forms of childcare for children of under 6 years, permanent childcare, temporary childcare and care for older children of preschool age.

The government is keen to develop various types of childcare by reintroducing contract nurseries, improving grants for child-minders and introducing childcare contracts.

Specific approaches are being examined in cooperation with the parties involved - local government, family allowance funds and family associations.

In addition, it should be noted that financial assistance is granted to parents who are in gainful employment and wish to have their child cared for at home.

A child care at home allowance, introduced by Law No 86-1307 of 29 December 1986 which has been in force since 1 April 1987, can be allocated, irrespective of the parents' means, to households (or to a single person of either sex) employing one or more persons at home to look after at least one child under three years old, if both parents (or the single parent) work.

This allowance is intended to cover the costs of the social welfare contributions (employers and employees) involved in employing somebody to care for children at home.

Child care at home allowance is part of an overall strategy aimed at offering positive help to the many families - which are indispensable for rejuvenating the population - encountering particular difficulties following the birth of their third child.

Parental leave

Any man or woman who can provide evidence of at least one year of service is entitled to parental leave of up to three years (one year being applied for initially, then extended twice) after the birth of a child or arrival at the home of an adopted child. Both the mother

and father and adoptive parents are entitled to parental leave which can be granted to both parents simultaneously or at different times. It can either take the form of complete stoppage of work, during which the employment contract is suspended, or part-time work with a free choice between 16 hours a week and 80% of full-time working hours. The latter disposition, which makes parental leave more flexible and replaces the previous concept of half-time work by part-time work, was introduced by provisions governing working hours of Law No 91-1 of 3 January 1991 on employment.

Parental leave is a right except in enterprises of less than 100 employees where the employer can refuse it if, after consulting the works committee or the staff delegates, he thinks that the absence of the worker would have consequences detrimental to the sound operation of the enterprise.

After the period of parental leave the worker returns to the same job or a similar job with at least equivalent pay. Half of the period of parental leave is credited for the purposes of any advantages accruing from seniority.

Parental benefit (a family benefit created in 1985 and extended to 3 years in 1986) can be paid to one of the parents who is not working after the birth of the third child, as long as this person has worked at least two years during the previous 10 years. Should the parent return to work he or she may work up to 50% of the normal working hours and receive 50% of the benefit after the 2nd birthday of the child, provided that the parent received the full benefit previously. This measure is intended to make it easier for the parent receiving benefit to return to work.

Postnatal leave

Any parent who does not fulfil the conditions for parental leave (at least one year's service) can ask for leave to bring up a child (Article L 122.28, Article L 122.30 of the Labour Code). There are no conditions of length of service or number of employees in the enterprise. Unlike other forms of leave, postnatal leave involves terminating the contract of employment but the worker retains priority if he wishes to return to the enterprise.

Leave for family events

Leave for the birth of a child

This comprises three days for each birth and adopted child. This leave can be taken by the mother in the special case of adoption provided that she does not take leave for adoption. These three days - either consecutive or not, as agreed between the employer and the beneficiary - must be taken when the event occurs unless a collective agreement offers more favourable conditions.

Please see the appended sheet for other leave for family reasons.

Provisions for workers when a child is ill

Where these provisions exist they are set out in collective agreements. Any agreements concluded after the law on equal opportunities at work of 13 July 1983 provide for leave being open to fathers and mothers. The interministerial committee for women's rights which met on 8 March 1991 has decided to create a working party to study "the problems arising in taking care of children when they are ill (...) and to examine what government can do to induce the two sides of industry to discuss this issue".

A study financed by the Secretary of State for Women's Rights is also being carried out on this topic. This is part of the follow-up to the activities of a working party of the High Council for Equal Opportunities at Work. This working party, which is partly made up of the two sides of industry, put out a report in 1989 entitled: "Gestion des entreprises et prise en compte des responsabilités familiales" (management of enterprises and family commitments).

Childcare facilities for children under school age

Children under three years old whose parents both work are taken care of:

- by nurseries (collective, family and parental) - 18%
- by approved child-minders - 26%
- by means which are not recognised officially: non-approved nurses, grandparents, family, neighbours - 56%

Of the facilities for occasional childcare, day nurseries currently offer approximately 37 000 places.

Parental nurseries have been set up on the initiative of parents or professional childcarers. Parents are more directly involved in running these, but they are relatively unstable institutions.

It is mainly the responsibility of local government to create childcare facilities. The responsibility for this policy is shared between the State (via regulations), the network of family credit institutions and local authorities (municipalities and départements) and sometimes enterprises and works councils.

Two instruments set up by the National Family Credit Institution have enabled a contractual policy to be developed: contract nurseries between 1983 and 1989 and then childcare contracts which, from 1989 onwards, cover all childcare facilities admitting children of up to 6. Since 1 January 1991 they have been extended to the overseas départements.

At present there are almost 220 000 places in childcare facilities as against 100 000 in 1980.

Nursery schools

Which take children between 3 and 6 years of age

- 80% of 3-year olds are at nursery school
- almost 100% of 4-year olds are at school.
- In the more special cases of isolated persons (or single parent families) the situation is largely covered by family benefit legislation.

They receive special benefits such as the family support benefit and the single parent benefit which are very high.

- Family income support, introduced by the law of 23 December 1970 and amended by the law of 22 December 1984, helps a surviving spouse, a single parent or the foster family to bring up any orphans whose charge they assume;

- Lone parent's allowance, introduced by the law of 9 July 1986, intends to provide temporary (means-tested), aid to widows, people who are separated de jure or de facto, who have been deserted or who are single and have to look after at least one child on their own.

Current regulations also allow single women who are heads of families and have to look after a child to receive housing benefit if certain conditions regarding means are met.

They may also continue to benefit from an increase in their tax allowance.

It should be stressed that the child care at home allowance is a measure which is chiefly of benefit to single parent families.

Finally, important provisions have been enacted to combat isolated women's unemployment by means of specific social and occupational integration measures (training or retraining).

LEAVE FOR FAMILY EVENTS

(Art. L-266-1 of the Labour Code)

Leave	Beneficiaries	Duration	Formalities	Effects on the the contract of employment
Birth	All workers	3 days	Evidence to be provided on request of company	Suspended on full pay
Marriage	"	4 days	"	"
Death of spouse	"	2 days	"	"
Death of child				
Marriage of child		1 day		
Death of father		1 day		
Death of mother				
Law of 19 January 1978 grants workers with at least 3 months seniority:				
Death of brother	The following are excluded: homeworkers, casual, seasonal and temporary workers	1 day		
Death of sister				
Military call-up				

Collective agreements may offer longer periods of leave or leave under other circumstances

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

QUESTION 17:

Given the principle of territoriality, national legislation cannot require multinational companies to set up a system for the information and consultation of employees in establishments situated outside France.

Nevertheless, a number of French groups have themselves found it necessary to introduce such arrangements. At the moment, eight groups have set up or are in the process of creating a system for informing and/or consulting their employees throughout Europe (BSN, Bull, Thomson Consumers Electronics, Airbus Industries, Carnaud, Rhône-Poulenc, Péchiney, Saint-Gobain). There is a certain degree of diversity in the systems introduced.

QUESTION 18:

The main characteristics of the workforce representation system in France are shown in the attached table, as the structures within companies are becoming more and more complex all the time.

French legislation also requires companies with more than one establishment to set up a central works committee as well as individual establishment committees. Groups of companies must also have a group committee.

Information and consultation of workers is based on the main functions of works committees, which are concerned with all economic and vocational questions. Furthermore, in some areas, their responsibility is laid down in the Labour Code. This applies to all the subjects mentioned in the third part of the question. However, transfrontier workers are not given special treatment, but are covered by the system of information and consultation concerning the situation and developments in respect of employment and qualifications.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

QUESTION 19:

Community Directives and labour law

The development of health and safety at work in Europe brought to light the fact that certain hazards were not specifically covered by French regulations and that regulations in some areas had become obsolete.

European law will therefore help to plug a number of gaps. The Directive on display screen equipment will, for example, ensure that more attention is paid to the working conditions of the employees concerned, whose number is rising steadily as a result of the

development of computer systems. The same applies to the Directive on biological agents, which establishes principles of prevention aimed at providing workers likely to be exposed to pathogenic biological agents with effective protection against possible infection.

European law will also play a part in the modernization of French regulations. This applies, for example to:

- risks connected with handling heavy loads;
- protection against the risks related to carcinogens;
- design and use of machinery, plant and personal protection equipment.

1991 is expected to see the adoption of a Bill amending the Labour and Public Health Codes to improve the prevention of occupational hazards, by transposing seven European Directives on health and safety at work.

Worker participation

Committees on hygiene, safety and working conditions (CHSCT), instituted by the Law of 23 December 1982, closely associate employees' representatives with the action to be taken in these areas.

These committees bring together employees' and employers' delegates. A company's committee analyses work situations and delivers opinions to the employer on all matters for which it is competent.

Eight years after the entry into force of this Law, the situation began to call for certain amendments to make its provisions more effective. Several measures in this direction are contained in the Bill to amend the Labour and Public Health Codes to improve prevention of occupational hazards. For example, the right to training for workforce representatives on the CHSCT will be extended to all companies. Provisions will allow committees to make wider use of experts in order to take action (preventive or otherwise), as is the case today, following a serious accident. The means to be provided for their operation will also be specified. Finally, the threshold for the compulsory creation of a CHSCT in the construction and civil engineering industries will be lowered to the statutory figure.

PROTECTION OF CHILDREN AND ADOLESCENTS

QUESTION 20:

The statutory minimum employment age is 16 years, with the following exemptions:

- young people who can provide evidence of having completed the first stage of secondary education may enter apprenticeships at the age of 15;

- young people of school age undergoing alternance training may, during the last two years of their compulsory school education, follow training courses on adaptation to working life in approved companies which have agreements with their school;

- children may be employed in agriculture from the age of 15 if they are entering an apprenticeship or if they have completed the first stage of secondary education. During the last two years of their school education (i.e. from the age of 14 in the case of pupils engaged in alternance training), children may attend basic or practical training courses in approved agricultural enterprises;

- young people aged 13 or over may do light work during school holidays (Law of 3 January 1991).

QUESTION 21:

In the same way as adults, young workers are covered by statutory and agreement-based guarantees regarding remuneration. However, young workers under 17 and between 17 and 18 years of age may be paid on the basis of the minimum growth wage reduced by 20% and 10% respectively. Similarly, some sectoral collective agreements provide for reductions in minimum wage levels as a function of age.

QUESTION 22:

Duration of work

Young people under 18 years of age may not work more than 8 hours a day or 39 hours a week.

In exceptional cases, exemptions may be granted by the labour inspector responsible up to a limit of five hours per week, subject to approval by the establishment's occupational physician.

Night work

Young workers under 18 years of age may not work between 22.00 and 6.00.

Exemptions may be granted by the labour inspector responsible for commercial and entertainment establishments. Exemptions in the hotel and catering industry have to be established by a Conseil d'Etat Decree; the bakery industry is covered by the Decree of 4 February 1988. In this case the young people concerned are entitled to 12 hours consecutive rest.

Public holidays

Young people under 18 years of age may not work in industry on statutory public holidays.

Paid leave

Workers under 21 years of age on 30 April of the previous year are entitled to 30 working days leave, whatever their length of service.

Vocational training

Vocational training for children and adolescents is by definition basic vocational training, which is the responsibility of the Ministry of National Education.

In very specific cases (seafaring trades, entertainment industry, circus school, etc.), the appropriate ministry is responsible for ensuring that the regulations in force are observed.

QUESTION 23:

The government's priorities in improving the link between training and employment are directed towards smoothing the transition to working life for young people.

A number of measures have recently been introduced in this connection:

- plans for the development of apprenticeship (creation of an apprenticeship delegation, involvement of industrial groups, improving the status of apprenticeship contracts);
- the launching of "Decomps chains" for engineer training.

Furthermore, to respond to the demands of economic competitiveness and allow young people to acquire a qualification facilitating their vocational and social integration, the Ministry of National Education has set up the following system:

1) Vocational secondary schools

As from the end of third year, pupils may be prepared for a vocational studies diploma (BEP) or certificate of vocational skills (CAP).

Young persons who have obtained a BEP or CAP may then study for a technical or vocational Baccalauréat, with the objective of entering working life.

2) Higher technological education (short courses)

a) University institutes of technology offer two-year courses. Students awarded the university diploma of technology (DUT) at the end of the second year may exercise a profession with supervisory responsibilities in the secondary or tertiary sectors.
b) Advanced technician departments offer more highly specialized courses than the university institutes of technology. After two years of study, a higher-level diploma in technology (BTS) is awarded, available in 87 specialized subjects.

c) Short-duration paramedical training offered by universities takes the form of a two or three-year course as appropriate, allowing successful students to practice speech therapy, orthoptics, hearing aid dispensing or psychomotor development.

3) University institutes of professional skills (IUP), due to open in 1991/92, represent a similar approach, attempting to tailor the training offered to suit the needs of the employment market.

Holders of a DUT or BTS will be able to enter the second year of an IUP.

Initially, these institutes will offer training, at Baccalaureat + 4 level, in five areas, namely consultant engineering, communications, administration, commerce and financial management.

4) Provisions for the integration of young people

It is part of a school's job to assist the vocational integration of all its pupils.

Such help is provided above all through the system for the integration of young people into the national education system (DIJEN).

The objective of this system is:

- to provide unqualified young people with a further possibility of gaining access to the national education system;

- to foster the occupational integration of young people holding a level IV diploma (level III under the European classification).

Agreements between school establishments and integrated training establishments (CEEFI) are currently being worked out to enable the education system to monitor young people with problems until recognition of a qualification acquired in a company (over a period of approximately two years).

THE ELDERLY

QUESTION 24:

a) The general social security system (the largest of the French systems, as already mentioned, covering employees in the private sector and certain public companies) guarantees a retirement pension from the age of 60 to any worker applying for it. There is no qualification period, a single quarter being sufficient to give entitlement.

The pension is calculated as a percentage of the average wage of the 10 best years, with a maximum of 50%, and as a function of the length of the person's working life, maximum 37.5 years (150 quarters).

To this pension must be added any pension from supplementary schemes (also compulsory), representing an average of 20% of

average career wage. Taken as a whole, former manual workers with a complete career (150 quarters) will have a retirement pension of around 80% of their last net wage. Percentages differ slightly for white-collar staff.

b) If the insured person has fewer than 150 quarters of contributions, pension rights are reduced proportionally. However, certain categories of insured persons laid down in Article L.351-8 of the Social Security Code (invalids, persons unfit for work and, in any event, all those aged at least 65) receive a pension at the full rate (50%) even if they do not meet the 150 quarter requirement.

Any person receiving this rate of 50% is entitled to the minimum pension, without being subject to means-testing (Article L.351-10 of the SSC). This amounts to FF 2 855 per month (as of 1 January 1991) for a complete career of 150 quarters. For shorter careers it is calculated on a pro rata basis.

In any event, an increased pension may be paid to insured persons who had low wages and/or very short careers covered by the system, subject to age and means-testing, first of all up to the level of the benefit paid to former employed workers (FF 1 270 per month) (Article L.814-2 of the SSC) and then, where applicable, to the "old age minimum" through a supplementary allowance from the National Solidarity Fund (FNS) amounting to FF 1 710 per month for a single person (Article L.815-2 of the SSC).

It is important to note that most of those whose pensions are increased to the level of the former employed workers' benefit are women.

Women are also the main beneficiaries of the supplementary allowance from the FNS. This allowance, which constitutes the second stage of the old-age minimum, actually supplements, as from the age of 65 (60 where the person concerned is unfit for work), basic contribution-linked entitlements in such a way as to provide all persons with a minimum annual income of FF 37 770 for a single person and FF 64 180 for a couple.

QUESTION 25:

a) Any person who has reached retirement age (65, or 60 for those unfit for work) but is not entitled to a pension (e.g. because he or she has not exercised an occupational activity in France) has the right, on submission of an application and subject to a means test, to a special allowance (Article L.814-1 of the SSC) equal to the above-mentioned former employed workers' benefit, which may also be boosted by the supplementary allowance from the FNS to reach the "old-age minimum".

The wife, widow or separated, abandoned or divorced wife of an employed or self-employed worker and any woman whose husband has disappeared is entitled at the same age to a mother's allowance (Article L.813-1 of the SSC) equal to the special benefit (and also subject to increase by the FNS supplementary allowance) if she has raised at least three children, subject to specific conditions.

French legislation also contains further provisions guaranteeing sufficient resources for the most deprived, i.e. the minimum integration income paid to a small number of elderly persons (Law No 88-1088 of 1 December 1988) and since 1 January 1991 amounting to FF 2 146 per month, and the handicapped adult's allowance (Articles L.821-1 et seq. of the SSC), the amount of which is the same as the old-age minimum, i.e. FF 2 980 per month.

b) Recipients of the special benefit are also entitled to sickness and maternity benefits in kind under the personal insurance scheme, their contributions being covered by the Special Fund managed by the Caisse des Dépôts et Consignations, which is responsible for the special benefit.

Elderly persons receiving the minimum integration income are subject to compulsory membership of the personal insurance scheme if they are not covered by any other compulsory social security system. Their contributions are covered by the local authorities (departments).

Elderly persons receiving the handicapped adult's allowance are covered by the general social security system (Article L.381-27 of the SSC) without payment of contributions.

In any event, all elderly persons not entitled to a pension, whether or not they apply for the special benefit (increased where appropriate by the FNS supplementary allowance), the minimum integration income or the handicapped adult's allowance, are entitled to social assistance according to the conditions set out in the Family and Social Assistance Code; more specifically, coverage of the costs of hospital treatment, accommodation (for the elderly and/or handicapped), personal insurance contributions and medical care at home - the latter subject to three years' residence in metropolitan France.

Furthermore, a mother's allowance is available to women who have raised at least five children and who are not entitled to old-age benefits or whose personal retirement pension is not more than the amount of this allowance.

The mother's allowance may be boosted by the FNS supplementary allowance. Both are subject to means-testing.

DISABLED PERSONS

QUESTION 26:

Law No 75-534 of 30 June 1975 constitutes the keystone of the social protection system introduced in France step by step to benefit the disabled and remains the general reference framework for the policy implemented in recent years to assist this group.

The Law makes school, occupational and social integration of the disabled a national obligation, with the aim of helping the people concerned eventually to achieve as much independence as they are capable of. They must therefore be permitted access, wherever they possess the necessary skills, to institutions open to the population as a whole or, failing this, gradual transfer from a protected environment to a less protected one.

1) Disabled children

1.1 Education

Disabled children and adolescents are subject to compulsory schooling, provided by either a normal or special education.

Where they are educated at a normal school, the State covers the costs of accommodation and initial vocational training.

The costs of accommodation and treatment at special and vocational training institutions and of associated treatment outside such establishments are covered in full by the sickness insurance schemes or, failing this, by social assistance. The child's family is not subjected to means testing in this connection.

1.2 Special education allowance

Where justified by the nature and degree of the child's disability, the family (or the person responsible for the child) receives a special educational allowance to cover part of the additional expenditure involved in the education of a disabled child. Two supplements may be added to the basic allowance, depending on the degree of the child's dependence.

1.3 Care of disabled children

Over the past fifteen years, the combined effect of demographic changes, improvements in medical and retraining techniques, the increasingly early assumption of responsibility by the State, the desire of disabled persons to remain within their own environment and the desire of the families of disabled children to remain more closely associated with measures to help the child, has led to substantial improvements in the initial framework established by the Law of 30 June 1975, affecting both the fundamental approach and practical aspects.

Thus, as far as disabled children are concerned, the regulations governing the technical conditions for the approval and operation of special education establishments and services (almost 2 000 establishments, with more than 118 000 children) have been reformed with the specific aim of encouraging the educational integration of handicapped children in a normal environment, by providing appropriate support and opening establishments to the external environment, with the children being monitored after leaving the establishment. This policy is accompanied upstream by a special effort on the part of the Ministry of National Education, in the context of the Law on school guidance of July 1989, to prevent the educational exclusion of children with problems

2) Disabled adults

2.1 Resources

In accordance with the Law of 30 June 1975, a minimum level of resources is guaranteed to any person who is 80% disabled or who cannot work because of his or her handicap. This is provided by the State in the form of the handicapped adult's allowance.

Disabled persons who require assistance for essential activities also receive financial compensation from the regional authorities.

Finally, persons whose working capacity is reduced as a result of a handicap are guaranteed sufficient resources through an income supplement from the State.

The amount of guaranteed resources varies depending on whether the recipient works in a normal or protected environment.

2.2 Employment of the disabled

To facilitate access for disabled people to the normal working environment, the Law of 10 July 1987 requires companies with at least 20 employees to reserve a minimum of 6% of jobs for disabled workers. Companies may also meet this obligation either by subcontracting work to protected establishments, by signing sectoral agreements or by paying a financial contribution to the AGEFHIP, the association appointed by the Law to manage the fund for the occupational integration of disabled workers.

For the benefit of adults who are unable to work in a normal environment, the government has made an effort in recent years to increase the number of places in protected working establishments. Today there are some 80 000 such places.

A multiannual programme to create 10 800 additional places in "help through work" centres and 3 600 places in protected workshops is currently under way. This four-year programme is the fruit of an agreement with the associations representing the disabled and their families, which has also brought about a reform of the resources provided to ensure that such persons receive a minimum income (more rationalized combination of guaranteed resources and the handicapped adult's allowance).

Apart from the number of places and the financial aspects, the programme also aims to give new impetus to the protected employment sector and adapt it to the change in the conditions of employment offered to the disabled, in such a way as to build real bridges between the protected, less-protected and normal environments.

This has recently been boosted and extended by the French Council of Ministers' announcement of 10 April 1991 of an employment plan for the disabled. The main elements of this plan

are to promote access to training for the disabled and improve their level of qualification, to give priority to the disabled when allocating "solidarity jobs", to develop links between protected employment structures and the normal environment by making it easier for "help by work" centres to second workers to ordinary companies, to encourage employment of the disabled in the public service, and to intensify AGEFIPH measures and increase its area of activity, etc.

The following measures have also been introduced to assist the integration or reintegration and the vocational development of handicapped workers:

1) Creation in each department of a technical committee for vocational guidance and redeployment (COTOREP), which is responsible for the overall situation as regards handicapped adults.

   It comprises qualified persons in the fields of employment, vocational training and problems specific to the disabled.

   It receives all applications concerning employment, training and social/financial aid for the disabled.

2) Creation of teams to prepare and monitor the redeployment of the disabled (EPSR); these number 88 (50 state and 38 private).

3) Improving the everyday life of the disabled

In addition to these measures to promote educational and occupational integration, measures to improve everyday life constitute one of the main aspects of the policy to promote the social integration of the disabled now being implemented by the authorities.

The promotion of social integration for the disabled in all its aspects can first of all be facilitated by technical equipment and aids, which represent a very effective and often indispensable supplement to personal aids. Part of the funds for social action in favour of the handicapped in the budget of the Ministry of Social Affairs are therefore earmarked for specific activities connected with access to technical aids, particularly the creation, at the initiative of associations for the disabled, of exhibition centres to provide information and advice for users, and the setting up of a national data bank on technical aids.

However, access to transport and general amenities remains the fundamental aspect of this social integration policy.

Thus, to provide access to transport for all handicapped persons and all those with reduced mobility such as the elderly, the Department for the Disabled and Victims of Accidents and the Ministry of Transport have organized extensive consultation with all parties involved in the transport sector, i.e. regional and local authorities, transport companies, operators, manufacturers and, of course, associations for the disabled.

As a result, on 21 February 1989 the two Ministries presented a dossier comprising around 60 measures covering the entire transport chain, from the departure of the handicapped person from home to arrival at destination. Some measures are new, others represent a continuation or improvement of existing arrangements.

The most important measures include fare concessions benefits granted by Compagnie Air Inter to persons accompanying handicapped people who need assistance when travelling; the speeding up of SNCF and RATP programmes to make their networks more accessible, including improvement of signs; a plan proposed by bus, coach and tram manufacturers to make all new vehicles fully accessible within five years; and finally, the procedures for granting and using the "Severely Handicapped" disc allowing holders to park their cars in urban areas have been redefined, so that the disc is now issued on a more individual basis, as part of the relaxing and simplification of the procedures to be complied with by handicapped persons in order to be able to claim entitlement to various advantages granted to holders of the disabled person's identity card.

Parallel to this action on transport, on 21 November 1990 the French Council of Ministers adopted an ambitious programme aimed at improving access to towns and the environment. There are five main aspects to the programme: extension of the regulations based on the 1975 Law to cover the sensory handicapped; creation of the conditions for implementation of the programme, e.g. checking of all building permits and basic training for all architecture students; onus on the State and authorities to set an example; all parties involved in building to be better informed and made more aware; reinforcement of the position and role of associations, with more scope for going to court.

The legislation provided for in this programme is currently being studied by the Senate.

IMPLEMENTATION OF THE CHARTER

QUESTION 27:

In France, since adoption of the Charter, its objectives although already achieved to a wide extent, have served as a reference for the reform of legislation and regulations and for collective bargaining.

GERMANY

INTRODUCTION(1)

The Basic Law of the Federal Republic of Germany stipulates that it is a democratic and social federal state. This provides the cornerstone for a welfare state system which protects the economically disadvantaged, guards against the major risks in life and works towards equality of social opportunity. This is translated into practice via the concept of the social market economy.

A social policy which is geared to a country's economic potential and yet independent of it not only demands a positive trend in the economy and the labour market, it also guarantees the long-term stability, reliability and financing of the social security system. These basic principles, rooted in law and politics, place Germany fully in line with the Community Charter, transcending differences in party politics and social groupings.

These basic principles now need to be applied as quickly as possible to the five new Länder. The economic, monetary and social union and unification Treaties have created the basis for a single welfare state in Germany. The task now, after unification, is to create social and economic unity and a uniform standard of living. In political terms and in the interests of the worker, this means social measures to smooth the transition from a planned economy to the social market economy.

AID FOR THE HARMONIZATION OF WORKING AND LIVING CONDITIONS

Labour market policy

It is, unfortunately, inevitable that there will be some unemployment and short-time working during such a period of upheaval. In May 1991 the jobless total in the new Länder (including East Berlin) was 840 000 and the unemployment rate was 9.5%. In addition, there were 1.9 million short-time workers, suffering an average loss of 56% of the working week. However, the rapid introduction of specific labour market instruments is already having an effect. The newly created public employment service already has about 19 500 employees; further posts have been approved and about 900 civil servants from the western Länder are acting as advisers. The service has been able to find some 40 000 jobs a month over the past few months, including job creation measures. By the end of May some 114 000 former unemployed were in job creation schemes.

The further vocational training encouraged by the employment offices has been a particular success. Since the beginning of the year 281 000 employees have begun advanced training, retraining or on-the-job training. DM 6.6 billion has been made available for further vocational training in the five new Länder in 1991, enough to benefit an average of about 350 000 employees a year.

The pre-pension allowance is also helping to take the pressure off the labour market. By the end of May about 141 000 workers were drawing this. Under the new provisions the unemployed in eastern Germany can now claim this money during the second half of 1991 if

(1) Period concerned: January 1990 - June 1991

they have reached the age of 55 (previously 57), taking the period for which it can be claimed up from 3 to 5 years. Over 100 000 employees will be able to benefit from this new scheme, receiving 65% of their most recent net salary. There were also 372 000 recipients of early retirement pensions, based on a scheme which applied in the ex-GDR until 2 October 1990.

The Federal Government has also decided to extend the particularly generous scheme of allowances for short-time work in the new Länder to the end of 1991; this will mesh short-time work in more closely with skill acquisition and further training measures.

The new Länder have special schemes for job creation measures which will apply until the end of 1992. They provide for the Federal Employment Office to grant providers of job creation measures subsidies of up to 100% of wage costs and of up to 30% of the wage bill for material costs. There are also interest-free loans. Including the "Gemeinschaftswerk Aufschwung Ost" ["concerted effort for economic recovery in the eastern Länder"] a total of DM 5.2 billion is available for job creation measures in 1991. This will give 280 000 workers fixed-term work in environmental protection and countryside conservation, the rehabilitation of industrial sites, social services and the sport and leisure sector.

Women in the labour market

Labour market adjustments in eastern Germany are causing excessive unemployment among women; at 11.1% the rate is about 3 percentage points higher than for men. Policy measures favouring women on the labour market are therefore particularly important. Women currently have an appropriate share of the number of places in further education and retraining - 60% - but at 36% their share of job creation measures is still too low. Increased public measures in favour of women are already beginning to bear fruit.

The European Social Fund

European Community financial aid via the three structural Funds - agriculture, social and development - carries considerable weight. It is important here for the content of Social Fund measures at the national level to be closely linked with measures aided by the other Funds.

Alongside the public employment service's measures which have already started up, federal initiatives and, in particular, labour market activities by the new Länder will be supported by the ESF with the aim of developing vocational programmes which exceed the scope of the Labour Promotion Law and improving the vocational training infrastructure. Higher standards of training are known to improve the attractiveness and the competitiveness of a region.

There are considerable difficulties with administration in the new Länder. In order nonetheless to set the planned measures in motion the Federal Minister for Labour and Social Affairs has proposed that

the new Länder make use of the "technical assistance" of tried and tested organization specialists, and has submitted applications for such assistance to the Commission. A joint coordinating group from the Ministry and the new Länder has been set up to implement the measures.

Employment law

The introduction of free collective bargaining in the ex-GDR on 1 July 1990 was successful. Collective agreements are now in place for practically the whole region. Some sectors already possess collective bargaining systems after the West German model. About 75% of the some 8 million employees are now covered by such agreements.

The objective remains to harmonize the different standards of living and conditions of employment in the eastern Länder. Parties to the collective agreements will have to take into account productivity trends, which are in turn dependent on the willingness of firms to invest and on improvements to the infrastructure.

Initially, then, a restrained wages policy is called for. On the other hand, the level of wages in the original Länder is a strong incentive to commuting or moving to work there. Pay policy is therefore in an explosive phase, with real pay increasing while productivity is still declining.

A further important concern is the election of works councils in the new Länder, where there is often too little knowledge of the worker representation law and of the electoral system, and where suitable candidates are not always forthcoming. Trade unions are trying to overcome this lack of information by providing training courses for staff representatives.

SOCIAL SECURITY

Trying to establish the same standard of living throughout Germany means gradually bringing the social security provisions in the new Länder up to the high level of the original Länder. With this in view the system of pension insurance will apply in the new Länder from 1992. Benefits and qualifying periods arising from the old systems providing additional and special security benefits - which are not known in the west - will be examined and transferred to the pension insurance system.

On 1 July 1991 three million east German citizens received a further pension increase of 15%, in line with current trends in wages and salaries in east Germany. The basic pension - granted after 45 insured years on an average income - is thus increased from DM 773 to DM 889 per month, which is 50.8% of the western level. This increase also applies to accident insurance and war injury pensions. The "social welfare bonus" for extremely low pensions is not affected by the pension increase.

POLICY MEASURES FOR THE HANDICAPPED

The Treaty establishing monetary, economic and social union created laws having effect from 1 July 1990 in the former east German territory for the integration of the handicapped, these being in line with the provisions of west German law. For example:

- a job creation law which included provisions for a complete range of services for vocational rehabilitation;

- a severely handicapped persons law, introducing, inter alia, special dismissal protection for the severely handicapped, the election of representatives for the severely handicapped to works councils, the quota system and equalizing levies for unfilled jobs for the severely handicapped.

Therefore, anyone who is physically or mentally handicapped or is at risk of becoming so has the right in the new Länder - in accordance with the preamble to the General Section of the Social Code - to the assistance needed:

1. to prevent, eliminate or ameliorate the handicap, prevent its worsening or alleviate its consequences, and

2. to guarantee the person a place in society suited to his/her desires and skills, particularly in working life.

This includes a full range of services for the vocational rehabilitation of all handicapped persons who need such assistance for their integration, in particular:

- services and institutions geared to providing all handicapped persons with the highest possible level of vocational skills, and

- for the severely handicapped, the special assistance provided for under the Severely Handicapped Persons Law.

Because of administrative preparations many social benefits under the new law were not in place until 1 January 1991. With the setting-up of new administrative bodies, severe handicaps are now being acknowledged and special passes issued which entitle the bearer to special privileges.

The Severely Handicapped Persons Law provides for financial assistance to employers (to provide specially adapted workplaces and job cost subsidies) to maintain and create jobs for the severely handicapped. In addition, a network of general facilities for vocational rehabilitation is being established. In east Germany a further 2 500 retraining places will initially be created in vocational promotion services, a further 1 800 places in vocational training establishments and a further 30 000 or so places in workshops for the handicapped.

A FORWARD-LOOKING SOCIAL POLICY FOR THE WHOLE OF GERMANY

The labour market: employment test-bed

The smooth economic upswing in West Germany continued at a faster rate, not least thanks to unification. The result was a high rate of economic growth, many more jobs and a decline in unemployment. The climate for this was created by the Federal Government's growth-oriented economic and financial policies and by widening of the scope of the active labour market policy.

These were the results:

- With an annual average 28 400 000 employed, 1990 saw the highest level of employment ever achieved since the Federal Republic came into being. Between 1983 and 1990 alone about 2.1 million extra jobs were created, which has much more than made up for the job losses in the early 19890s.

- At 1.88 million, the jobless figure in 1990 was 350 000 fewer as an annual average than in 1986. The unemployment rate was down to 5.1% (based on total gainfully employed figures, Eurostat method).

- Expenditure on the active labour market policy more than doubled from DM 6.9 billion in 1982 through DM 10.7 billion in 1986 to DM 17.7 billion in 1990.

- On 1 July 1989 a special programme to combat long-term unemployment with total funding of DM 1.75 billion came into force and it has already achieved some success (with some 60 000 applications approved for the 'employment aid for the long-term unemployed' component). There are also 'measures for special categories of long-term unemployed and other difficult cases'. Initially the programme received a total of DM 250 million for measures to be started by 31 December 1991. The 1991 Budget provides for the programme to be extended to the end of 1994 and receive a further DM 240 million.

- The social security function of the unemployment insurance system has been considerably expanded. The period in which unemployment benefit can be drawn can be up to 32 months depending on age and duration of contribution-linked employment.

  Complementing the Early Retirement Law, the end of 1988 saw the adoption of the Part-Time Working for Older Employees Law, which is a measure to ease the transition from working life to retirement.

Strengthening workers' rights

The Federal Government has strengthened workers' co-determination and participation rights.

- The revised and expanded version of the Codetermination Law stipulates that a group parent company, even one having no coal or

steel production of its own, remains in the special codetermination scheme for the coal and steel industries as long as the subsidiaries covered by the scheme together account for at least 20% of the group's real net output or employ more than 2 000 workers.

- The Worker Participation Law, amended in 1988/89, improves the rights of the works council to information and consultation during the planning and introduction of new technology, strengthens the rights of minorities in the works council elections and enshrines in law the senior staff's spokespersons' committees.

Extension of health protection at the workplace

The following are particularly significant developments in the dangerous substances sector, a subject which continues to hold the public interest:

- New concept for establishing pollutant limit values at the workplace in consultation between unions and management.

- Further classification of substances as carcinogenic, mutagenic and teratogenic and much strengthened work safety provisions.

- Extensive guidelines for university-level educational establishments.

- Much faster evaluation of "old substances" within the meaning of Directive 79/831/EEC.

- Almost total ban on the production, marketing or use of asbestos and materials containing asbestos.

The Federal Government has adopted a number of measures aimed at improving safety and medical care in small and medium-sized enterprises, e.g. by developing new care models. In addition, new forms of training have been worked out for safety representatives and quality standards have been developed for industrial medicine work.

For the new Länder a large number of model projects are being prepared to build up the work safety system there and to train work safety experts.

Industrial medicine was considerably strengthened in the Federal Republic when the Federal Industrial Medicine Institute was set up in Berlin.

Safeguarding pensions, stabilizing the "generation contract"

The underlying objective of the 1992 pensions reform was to bring about a lasting improvement in age-group solidarity and strengthen the confidence of the population in the long-term security of pensions. The keystone of the reform, adopted by a large majority of the Lower House, was the introduction of a self-regulating system linking contribution-payers, pensioners and the state. Bringing up a family will in future count for more under pensions law.

The main points of this reform are:

- Pensions insurance will be safeguarded in the long term as a wage- and contribution-related old age security scheme.

- Pensions and disposable employee income will develop in equilibrium; the existing net pension level of about 70% for a pensioner with 45 insured years on an average wage or salary will remain stable in the long term.

- The State will make an appropriate contribution to the extra burden on the system imposed by demographic changes.

- The family-related elements in pensions law will be expanded by extending the child care period to 3 years for births from 1992 on and by giving more weight to child-rearing and care in calculating pensions and benefits.

  At the end of 1990 some 3.45 million mothers born before 1921 were receiving a child care allowance of an average DM 73/month. In addition, at the end of 1990 some 1.9 million mothers/fathers born after 1921 were receiving a pension which was about DM 60 a month higher on average because of the recognition of child care years.

- The pensionable age will become more flexible. If a person retires early, his/her pension is reduced, if a person stays on after pensionable age, the pension is increased. Higher life expectancy can be expected to lead to a longer working life in the long run.

Viability and financing of health insurance scheme assured

The revision of statutory health insurance in 1989 has since had a positive effect. In 1990 the average rate of contribution was 12.6% - instead of the 14% or so if the trend had been continued without the health reform. The reform restricted payments from the statutory health insurance scheme to what was medically essential and also had the effect of reducing medical care shortcomings. Where there is provision for payment of the excess by the insured party, the less well-off are effectively protected by a "social and surcharge clause".

Where persons dependent on very considerable nursing care are cared for at home, the statutory health insurance scheme now takes on the provision of a home help for four weeks a year when the carer is unavailable. Since 1 January 1991 the range of services has been extended. Insured parties (persons who, because of their condition, are particularly in need of long-term care from third parties) may claim for up to 25 home-care visits per month or receive a lump sum of DM 400 per month.

Broad range of social benefits

Social welfare is fully guaranteed in the Federal Republic. The total of all social benefits is included in the social budget. In 1990 it was DM 703 billion in all, accounting for 29.4% of the gross domestic product. Social payments amounted to DM 11 270 per capita, with by far the most, 40.4%, going on old age and surviving dependants, 33.1% on health, 12.8% on married persons and the family and 8.4% on employment.

FINAL REMARKS

Both in terms of the material position of the worker and in terms of his/her legal position, the recommendations of the Social Charter have found full application in Germany. This also applies to the following points, not mentioned as such in the report:

- There is unrestricted freedom of movement of labour.

- Free choice of occupation is constitutionally safeguarded by the Basic Law.

- Free collective bargaining and freedom of association are keystones of the German social order and are also constitutionally safeguarded. The unions and management lay down wages and working conditions - in particular, fair pay - in freely negotiated collective agreements. The negotiated wage levels are the legal minimum.

- Labour promotion law stipulates that job-finding is a free service.

- The statutory minimum annual leave (which is in practice of no significance compared with annual leave arrangements negotiated by collective bargaining) is 3 weeks; it is intended to extend this to 4 weeks. Every worker has a basic daily rest period.

- Youth employment protection legislation forbids the employment of children and in all other respects meets the requirements of the Social Charter.

- Public social assistance is also part of the overall social security system. It plugs the gaps left by other social security systems and supports persons who would otherwise have insufficient means for subsistence. There is a legal right to social assistance.

GREECE

FREE MOVEMENT OF WORKERS

From 1.1.1988 workers from EEC Member States have been free to come to work in Greece without any obstacle apart from those resulting from considerations of public order, public security and public health. Such workers can work freely in Greece once they have found an employer to engage them and they do not need a residence permit or a work permit. All that is required of them is that they report to the competent police authority within eight (8) days of their arrival in Greece.

If their employment lasts for more than three (3) months they then require a resident's card confirming them to be residents of an EEC Member State and this they can obtain from the competent police authority.

In addition to the above, mention should be made of Presidential Decree 525/83 which concerns entry into and residence in Greece of self-employed EEC nationals (liberal professions) and which was issued in order to bring Greek legislation into line with the provisions of the Council Directives of the European Communities.

The existing legislation guarantees the free movement and employment of nationals of EEC Member States and no new initiatives have therefore been taken in this sphere.

EMPLOYMENT AND REMUNERATION

There are no specific provisions which prohibit certain categories of person from freely choosing and engaging in an occupation other than the provisions regulating each trade or profession.

Collective Agreements or Arbitration Awards, which have equal force, regulate salaries and wages in various branches and occupations and any extra payment for which provision is made.

In addition to the above collective arrangements a National General Collective Agreement (NGCA) is signed each year and determines the wages policy for that year. Furthermore, by the terms of Article 664 of the Civil Code an employer may not make any compensatory deductions from any wages due to a worker if such wages are necessary for the support of the worker and his family. This prohibition does not apply to compensatory deductions made to offset any loss or injury due to damage caused intentionally by the worker in the performance of his contractual duties. Wages which are not subject to compensatory deductions must be paid in full.

IMPROVEMENT OF LIVING CONDITIONS

From 1.1.1984 the weekly wage of workers in Greece corresponds to 40 hours' work (NGCA of 14.2.1984).

For workers with any contractual employment relationship with the public services, local government organizations or public corporate bodies the weekly wage corresponds to 37½ hours' work (Laws 1157/81 and 1476/84).

Decision 25/83 of the Second-Instance Administrative Arbitration Tribunal of Athens established the 5-day 40-hour week for the industrial sector, subject to certain conditions.

Workers in business establishments, food, fruit and vegetable, and butchers' shops within the area of the former capital administration have had a 5-day week since 1.2.1988.

Article 47 of Law 1892/90 concerning modernization, development and other provisions states that company collective agreements or arrangements between an employer and the workers' council may allow, for a period of up to three (3) months, an increase in the number of working hours to nine (9) per day and 48 per week and a reduction in the number of hours in the corresponding period thereafter. It also lays down that, throughout the combined period, which may not exceed six months, the average number of working hours shall be fifty per week.

In addition to open-ended and full-time contracts there are fixed-term contracts which, for those in the purely private sector, are subject to Articles 669-674 of the Civil Code, and, for those with a private-law employment relationship with the State, public corporate bodies or local government organizations, are subject to the provisions of Presidential Decree 410/88 and, additionally, to the Civil Code. There are also part-time contracts of employment which are subject to the provisions of Law 1892/90 and Presidential Decree 410/88.

With regard to information and consultation, in the event of collective redundancy, which falls within the competence of our department, the undernoted rules apply.

In accordance with Law 1387/83 (Articles 3 and 5):

Before an employer enforces a collective redundancy, he must consult the workers' representatives in order to investigate ways of avoiding or reducing the collective redundancy and its adverse effects.

The employer must: a) inform the workers' representatives in writing of the reasons for the intended collective redundancy, the numbers he wishes to dismiss, with a breakdown by sex, age and speciality, and the number of workers he employs and b) make available all information which would be of assistance in framing constructive proposals.

Copies of such documents are submitted by the employer to the Prefect and the Labour Inspector.

A period of twenty days is allowed for consultations between the workers and the employer, beginning with the employer's invitation to the workers' representatives to begin such consultations. The outcome of the consultations is given in a report signed by both sides and forwarded by the employer to the Prefect and the Minister of Labour.

From 1.1.1982 workers throughout Greece have been entitled to four weeks' leave, which increases by one day per year until, after three years, the upper limit of twenty-two (22) (five-day week) or twenty-six (26) (six-day week) working days is reached, no account being taken in the first case of the extra rest day in the five-day week.

The provisions relating to the above matters are contained in the Legislative Act of 19.5.1982 and in Laws 1346/83 and 1288/82.

Furthermore, Article 4 of the NGCA of 21/2/1990 lays down that workers who have completed 25 years' service or previous service are entitled to three days' leave in addition to the normal number, if they work five days a week, or four days if they work six days a week.

Young workers who are studying are also entitled to an extra 14 days' leave, in accordance with Law 1837/89.

Generally speaking, contracts need not usually be drawn up in writing (Supreme Court Decision 1054/76). The contract is the expression of agreement between the parties on the same topic. The individual contract of employment may contain provisions and conditions relating to the duties, functions etc. of workers provided such provisions and conditions are not contrary to the law, collective agreements etc., public order regulations, emergency legislation or good morals. There are exceptions to the normal rule that contracts of employment need not be in writing; employment relationships which require a written form of contract include part-time working, contracts of employment with the State, public corporate bodies, local government organizations, contracts of actors with theatrical promoters and contracts of safety technicians and works doctors etc.

SOCIAL PROTECTION

In the Greek social security system the body appointed to be responsible for implementation of general social policy is IKA, which is the main workers' insurance organization. The legislation on the operation of this insurance body (Emergency Law 1846/1951), in particular the provisions of Article 5 of that law, allow for the continuing operation of other workers' insurance funds (special funds) on the condition, however, that the insurance protection which they provide is equivalent to that which IKA provides for its insured persons.

This equivalent insurance protection relates to all the insurance risks covered by IKA (old age, disability, death, industrial accidents, illness).

The law also includes the undernoted provisions.

a) Workers who are insured either with IKA or with some other workers' insurance organization are entitled to sickness and maternity benefits in cash or in kind at least of the same type and extent as those provided for in the legislation on IKA.

b) Workers who are acquiring a right to a pension, the amount of which is at the lowest level laid down in the legislation on IKA (Article 29 of Emergency Law 1846/1951) as the minimum pension entitlement, receive that amount whether they are insured with IKA or any other workers' insurance organization.

The protection referred to above relates to benefits and pensions for old age or disability (whether due to illness or industrial accident) or death of a spouse.

The same minimum provisions set out in the legislation on IKA (Article 28 of Emergency Law 1846/1951) relating to acquisition of a right to a pension to be paid in the situations referred to above apply to all employees whether they are insured with IKA or with a workers' insurance organization (special workers' fund).

The above provisions are evidence of the steps taken by the State to guarantee an adequate level of social security protection for those in receipt of pensions.

The undernoted information concerns the organization of social protection to safeguard rights resulting from legislation:

Recent regulations in Law 1902/1990 applicable to the field of insurance confirm the public law character of the right to social insurance of all workers in Greece.

In accordance with the interpretative provision of Article 43 (3) of the above law, pension matters which may not be the subject of a collective agreement on employment include the direct or indirect change in the proportion of the worker's or employer's contribution, the transfer from the one to the other of liability in whole or in part for regular contributions or contributions in recognition of previous employment and the establishment of special funds or accounts from which periodic pension benefits or non-recurring payments are made at the employer's expense.

In addition, with regard to the insurance cover of all persons employed in Greece, such insurance is a compulsory requirement (Article 24 (1) of Law 1902/1990) irrespective of nationality, sex, age or religion (principle of the national scope of the insurance).

This placing on the same footing of foreign nationals and Greeks and foreign nationals working in Greece insures that they have the same insurance protection against the insured risks (accident, disability, sickness, maternity etc).

The above regulations apply to workers employed in the private sector and to those working in the broader public sector and who are insured with special private company funds (telecommunications, electricity, banks, etc).

There is no generalized system of protection for social insurance benefits provided by the Organization for Labour Force Employment (OAED) since the basic precondition for such benefits (unemployment, military service, family benefits, suspension, insolvency, maternity) is the nature of the worker (a subordinate employment relationship) and the payment of contributions either by employer or worker or only by the employer.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The legislation at present in force in Greece does not seek to prevent or impose penalties for the creation of trade union organizations by workers, on the contrary a number of provision underpin and encourage the unhindered practice of this right.

The provisions listed below refer to organizations which have as members workers who have a private-law subordinate employment relationship in the private or in the public sector.

More specifically, the basis for the principle of the right of collective organization of workers in Greece is found in Articles 12 and 13 of the Constitution (but with restrictions on the abuse of that right expressed in Article 25), Article 78 of the Civil Code and, in particular, in Articles 7 and 14 (1 and 2) of Law 1264/1982 and in International Conventions of Labour 87/1948 and 98/1949 which have been duly ratified by legislation.

A more detailed account of the situation is as follows:

- By the terms of Article 7 of Law 1264/1982 every worker who has worked for two months in the previous year in the undertaking or enterprise or branch of trade in which he is employed has the right to become a member of an organization in that undertaking or enterprise or branch of trade provided he satisfies the conditions for membership in the organization's articles of association.

  The same article gives trade union organizations the right to become members of the above mentioned organization.

  If a worker is refused admission to a trade union organization or if a trade union is refused admission to one of the organizations referred to above, an appeal can be lodged with the competent lower court which can order the admission of the appellant to the trade union organization.

- Article 14 (1 and 2) of Law 1264/1982 lays down that State bodies have a duty to take the necessary steps to ensure the unhindered exercise of the right to establish and independently operate trade union organizations and generally prohibits any interference whatsoever in the exercise of trade union rights including the right to establish trade union organizations and to call for penal sanctions in accordance with Article 23 of the same law.

  According to Law 1876/1990 trade unions and employers' associations and individual employers have a right and a duty to negotiate the terms of collective agreements.

The side exercising the right to negotiate has to inform the other side, in writing, of the place where the negotiations are to take place and of the subjects to be discussed. If the negotiations end

in agreement the agreement is recorded in writing and signed by the representatives of the parties. If no agreement is reached the interested parties can ask for a mediator to be appointed or can go to arbitration.

The mediator is selected by the parties from a special list of mediators and, if they cannot agree, he is chosen by lot.

The mediator invites the parties to discussions, interviews the parties in private, examines individuals or makes any other enquiries about the working conditions or financial situation of the undertaking.

If the parties, in spite of the efforts of the mediator, fail to reach agreement within 20 days, the mediator presents his own proposal which, if accepted by the parties, is signed and has the same standing as a collective agreement.

If the mediator's efforts are unsuccessful recourse can be had to arbitration under certain conditions.

The arbitrator is selected, by agreement between the parties, from a special list of arbitrators.

The arbitrator studies all the data collected at the mediation stage and, within ten days of assuming his duties, issues the arbitration award.

The conditions governing the exercise of the right to strike are set out in Articles 19, 20 and 21 of Law 1264/82 as amended by Articles 3 and 4 of Law 1915/90 and are as follows:

a) Strikes are organized by trade unions.

b) The right to strike may be exercised only if the employer or employer's association is given at least 24 hours' notice of the intention to strike and, in the case of workers with a private-law employment relationship in the wider public sector whose work is vitally necessary to maintain basic public services (Article 19 (2) of Law 1264/82 as amended by the changes in Article 3 of Law 1915/90), the strike call may not be put into effect until four full days after notification of the strikers' demands and the reasons underlying them.

c) A strike may be called by a trade union only by a decision of its General Assembly or Council, depending on the form and size of the trade union, in accordance with the specific provisions of Article 20 of the same law.

   A strike in demonstration of solidarity may be called only by the more representative third-level trade union organization.

   Staff associations as defined in Article 1 (3 a), indent cc' of Law 1264/82 may exercise the right to strike subsequent to a decision by secret ballot taken by a majority of the workers in an undertaking, public service, public corporate body or local authority. For workers in an undertaking, public service, public

corporate body or local authority, if there is no staff association or company guild or branch guild of which most of them are members, a decision to strike may be taken by the most representative Trade Union Federation in the area where they work.

d) The trade union organization which calls a strike must ensure that, for the duration of the strike, staff are present in sufficient numbers to guarantee the safety of the installations of the undertaking and prevent disasters or accidents and, with regard to trade union organizations of workers referred to in Article 19 (2) of Law 1264/82 as amended by the changes in Article 3 of Law 1915/90, they must in addition make available the staff required to maintain basic public services.

Article 21 of the above Law, together with Article 4 of Law 1915/90, defines the procedures relating to emergency staff and their manner of nomination.

If there is no agreement on the nomination of emergency staff the body responsible for finding a solution is the committee referred to in Article 15 of Law 1264/82 as superseded by Article 25 of Law 1545/85. This committee has three members, is chaired by a court representative and the other members are a workers' representative and an employer.

VOCATIONAL TRAINING

1) The undernoted provisions regulate the access to vocational training:

- Royal Decree of 6/6/52 on the education of trainee artisans.
- Law 709/77 Introduction of incentives for vocational training of the workforce and regulation of associated matters.
- Law 1346/83 Amendment of and supplement to the provisions of labour legislation and regulation of various matters.
- Law 1404/83 Programmes for training units of the Organization for Labour Force Employment (OAED) (Article 50).
- Law 1545/85 National system to combat unemployment and other provisions (Chapter E).
- Law 1566/85 Second-level education
- Law 1836/89 Promotion of employment and vocational training and other measures.
- Law 4009/89 Decision of the Minister of Labour. Definition of the conditions for OAED for cooperation with the agencies referred to in Article 8 (1 and 2) of Law 1836/89 in connection with the drafting of vocational training programmes etc.

It is clear from the above provisions that all young people in Greece, irrespective of their nationality, are entitled at the end of their compulsory schooling to have basic vocational training if they wish, either in lower secondary schools or in technical schools, in order to equip them for their future careers.

2) There are some new initiatives associated with the amendment of Article 6 of Law 709/77 and which the Directorate in the Ministry of Labour with responsibility for vocational training is already working on.

3) The OAED has no specific structures in this area except those in the recent Law 1890/90 which replaced Emergency Law 1262/82 and which provides for the retraining in new technologies of redundant workers from firms in financial difficulty and of staff from private undertakings. In addition, the OAED considers suggestions from associations and federations for retraining of their members in accordance with Law 709/77.

EQUAL TREATMENT FOR MEN AND WOMEN

Equal treatment for men and women in labour relations is guaranteed by the Constitution (Articles 4 (2) and 22 (1)), by the National General Collective Agreement of 1975 which laid down the principle of equal pay for male and female workers and which was supplemented in 1978 by ratification of International Labour Convention 100 'on the equal remuneration for men and women workers for work of equal value', and by Law 46/75.

Law 1414/84 on 'ensuring equality of the sexes in labour relations and other provisions' (Gazette A/10/2.2.84) forbids any discrimination on grounds of sex or marital status in relation to access to, content and implementation of programmes and systems of careers guidance, vocational training, apprenticeships, further training, retraining, training for a change of occupation, open retraining courses, refresher courses and information for workers (Article 2).

Access to all branches and levels of employment must be ensured irrespective of sex and marital status (Article 3).

Men and women are entitled to equal remuneration for work of equal value (Article 4).

Any discrimination, on grounds of the sex of the worker, with regard to terms and conditions of employment, vocational development or career advancement is forbidden (Article 5).

Termination of an employment relationship for reasons relating to sex is forbidden (Article 6).

Any employer who infringes the provisions of this Law is liable to a fine of Dr 20 000 to Dr 300 000 (Article 12).

The Organization for Labour Force Employment (OAED), the General Secretariat for the Equality of the two Sexes and other agencies have taken steps to intensify action to encourage the equal treatment of men and women, e.g. by drawing up programmes for the vocational training of unemployed women and for the return of women to the labour market. In this connection mention should be made of the Social Initiative NOW (transnational cooperation programmes).

Law 1483/84 'Protection and assistance for workers with family responsibility' (Gazette 153/A/8.10.84) makes provision for parental leave for workers of both sexes to allow them to take care of their children. Such leave is for a period of three months for each parent and is granted for each child between the end of maternity leave and the date when the child is two and a half years of age.

Parents are also allowed leave of absence in the event of sickness of the children or dependent members of the family, a reduction in working time of one hour per day if they have a child with a physical, psychological or mental impairment and, finally, they are entitled to leave in order to help their children's progress at school.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Provision is made in Greece for a system of information, consultation and participation of workers in decision-making relating to undertakings operating in Greece.

The conditions for the procedures for and implementation of the measures in question are set out in Law 1767/88 on workers' councils, which ratified International Labour Convention 135.

All undertakings with at least 50 employees come within the scope of this law. In undertakings without trade union representation the figure is reduced to 20.

Law 1767/88 gives workers the right, through their councils, to obtain information and to take decisions jointly with the management of the undertaking in relation to a number of subjects affecting the workers in the undertaking and to its economic activity and its programming.

a) In particular, Article 12 states that workers' councils:

1. Take decisions jointly with the employer on the subjects listed below, provided they are not already regulated by legislation or collective agreement or if there is no trade union organization in the undertaking:

   aa) formulation of the undertaking's internal regulations

   bb) regulations governing health and safety in the undertaking

cc) drafting of documentation on programmes for new working methods in the undertaking and on the use of new technology

dd) programming of retraining, ongoing training and further training of staff, especially after any introduction of new technology

ee) the manner in which the presence and behaviour of staff are monitored, it being a condition that their dignity be respected, e.g. with regard to the use for the purposes of such monitoring of listening devices or cameras

ff) programming of regular leave

gg) the reintegration, at workplaces suited to their abilities, of workers disabled as a result of an industrial accident in the undertaking

hh) programming and monitoring of cultural, recreational and social events and of social facilities.

2. Examine and propose methods of improving productivity from all factors of production.

3. Propose measures for the improvement of working conditions.

4. Nominate the members of the Health and Safety Committee from the workforce.

The agreement on the above matters is a written agreement and has regulatory force. Any disagreement which arises is resolved by a Prefectoral Committee in a reasoned decision.

b) By the terms of Article 13:

1) The employer is required to inform the workers' council concerning the matters listed below before any decisions related to them are implemented:

aa) any change in the articles of association of the undertaking

bb) total or partial transfer, extension or reduction of the undertaking's installations

cc) introduction of new technology

dd) changes or restructuring of staff, reduction or increase in the number of workers, and jobs suspended or to be worked in rotation

ee) annual programming of investments for health and safety measures in the undertaking

ff) any information which the workers' council requests and which concerns the matters referred to in Article 12 of this law

gg) programming of any overtime working.

2) Workers' councils also have the right to be informed of:

aa) the general economic trend of the undertaking and of the programming of production

bb) the undertaking's balance sheet and annual report

cc) the undertaking's operating results.

c) By the terms of Article 14, if there is no trade union in the undertaking, the workers' council is to be consulted by the employer:

aa) in cases of collective redundancies, insofar as provided for by the legislation in force at the time on the monitoring of collective redundancies

bb) in cases where consultation with the workers is provided for in general or specific legislation.

It should be pointed out that the operation of workers' councils under the above law is not intended to conflict with the aims, means and rights of the trade unions. On the contrary, the same law provides for cooperation with and the supply of information to the undertaking's trade union organization.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Community Directives concerning safety and health containing provisions more favourable than those at present in force in Greece

Greek legislation has not yet been brought into line with the following Directives:

1. Directive 88/642
2. Directive 89/391
3. Directive 89/392
4. Directive 89/654
5. Directive 89/656
6. Directive 90/270
7. Directive 90/269
8. Directive 90/394

With regard to Directive 88/642, the corresponding Greek law has already been prepared and is in the final stage of publication whereas the others are in course of preparation.

Worker participation in decision-making on health and safety

- At undertaking level

  . In accordance with Article 1 of Law 1767/88 workers have the right to elect and organize workers' councils to represent them in the undertaking if the number of workers is at least 20. Article 12 of the same law states that the role of the workers' council is to provide advice and information and its objective is to improve the working conditions of the workers in keeping with the development of the undertaking.

  . In accordance with Law 1568/85 workers in undertakings which have more than one hundred and fifty (150) employees have the right to establish a committee of workplace health and safety consisting of elected representatives from the undertaking.

- At prefectoral level

  Each Prefecture has a collective advisory body for the health protection and safety of workers at the workplace, known as the Prefectoral Committee of Health and Safety at the Workplace. The members of such committees always include two representatives of the most representative Trade Union Federation in the Prefecture.

- At national level

  Three representatives of the representative third-level trade union organization are members of the Council for Health and Safety at the Workplace. The role of the Council is to provide information and reports for the Minister of Labour on matters concerning health and safety (for Presidential Decrees, Ministerial Decisions etc.).

Finally, the parties to any collective agreement can make decisions jointly on matters concerning health and safety.

PROTECTION OF CHILDREN AND ADOLESCENTS

Article 2 of Law 1837/89 on the protection of young people, on employment and other matters states that young people must be at least 15 years of age before they can be employed in any capacity with the exception that young people under 15 may be employed in theatrical or musical performances or other artistic events provided such work is not harmful to their physical or mental health or their morals. The employment of young people under the age of 15 in such events has to be authorized by the competent Labour Inspectorate and is subject to the restrictions contained in the abovementioned article.

By the terms of Article 6 of Law 1837/89 the remuneration of young people is based on at least the lowest wage for the work in question, as laid down in the National General Collective Agreement, for the number of hours worked. Provisions containing more favourable working conditions and higher levels of remuneration are contained in collective agreements.

Article 5 of Law 1837/89 stipulates:

a) that young people who have not reached the age of 16 and young people studying in any kind of higher or lower secondary schools or public or private technical colleges recognized by the State may not work more than 6 hours per day or 30 hours per week and may not work overtime.

   For young people taking part in artistic or similar events the relevant provisions lay down further restrictions on working time depending on age (for young people between 3 and 15 years of age a maximum of two (2) to five (5) hours per day).

b) That young people must have a daily rest period of at least 12 hours, which must include the time between 10 p.m. and 6 a.m. This provision has the indirect effect of prohibiting night work for young people.

c) That young people attending school or university who are also working should be facilitated with regard to the time at which the employer requires them to arrive at work and to be at work.

In accordance with Article 4 of Law 1387/89 young workers, before being employed on any work, have to attend courses in out-of-school vocational guidance. These courses are designed and organized by the OAED which awards the young person a certificate for the course attended.

By the terms of Articles 6-9 of Law 1566/85 all young people, *irrespective of nationality*, are entitled at the end of their compulsory schooling to have basic vocational training if they wish, either in lower secondary schools or in technical schools, in order to equip them for their future careers.

THE ELDERLY

The provisions which ensure that every worker in the European Community enjoys resources affording him or her a decent standard of living were referred to in section D on Social Protection.

With regard to the protection system for persons who have reached retirement age but who are not entitled to a pension, the Greek government wishes to state that every Greek citizen is entitled to medical attention, pharmaceutical products and hospital treatment.

If the above services are not provided by the insurance organization the State assumes responsibility for them by issuing a certificate of financial need. Also, if the elderly person has particular problems with housing or because of a disability etc. he or she is entitled to an appropriate form of social assistance (housing or disability allowance) either as a lump sum or as an additional payment. Furthermore, if he or she is not entitled to a pension from some organization a non-insurance pension is provided.

The above benefits are in the nature of relief payments but they are not sufficient to cover the minimum cost of living.

DISABLED PERSONS

The measures which have been taken by the State for the social and vocational integration of disabled persons are as follows:

a) Law 1648/86 on the protection of war disabled, war victims and disabled persons requires that Greek undertakings or foreign undertakings operating in Greece which have more than 50 employees to recruit 4% of their workforce from the persons referred to in paragraph 1 and a further 3% from those referred to in paragraph 3 of Article 1.

   The public services, public statutory bodies and local authorities are required to recruit, without an entrance competition, persons protected by Law 1648/86 in the ratio of five such persons per 100 vacancies and, for vacant positions of messengers, night watchmen, cleaners, charwomen, doorkeepers, gardeners and waiters, in the ratio of one protected person per 5 vacancies.

b) Decision No 30052 of 24.1.91 of the Minister of Labour on the preparation of programmes relating to the contribution of the Labour Force Employment Organization (OAED) to the costs incurred by employers for basic ergonomic adjustment of workplaces to be used by disabled persons protected under Article 4 (1) of Law 1648/86.

c) Joint Decision No 30993 of 27.3.91 of the Ministers of Finance and Labour on the preparation of programmes for subsidizing private undertakings, organizations and local authority and public utility undertakings, cooperatives of trade groupings and associations thereof which employ disabled persons under the compulsory recruitment procedure (Article 2 of Law 1648/86) and in general for subsidizing employers recruiting disabled persons.

IMPLEMENTATION OF THE CHARTER

The fundamental social rights contained in the Social Charter correspond to the individual and social rights included in and safeguarded by the Greek Constitution. These constitutional rights do not confer on the individual citizen a right of action against the State to guarantee a particular social right but serve as a marker for the Greek State, indicating the general direction to take in order to protect such rights by means of appropriate legislation.

In practice there are laws and presidential decrees which ensure the protection of all social rights.

IRELAND

FREEDOM OF MOVEMENT

Restrictions preventing freedom of movement

There are no restrictions other than those justified on grounds of public order, public safety or public health which would prevent any worker of the European Community from moving freely.

New initiatives

There are no new initiatives required to guarantee the right of residence to workers who, in exercising their right to freedom of movement, engage in any occupation or profession.

There are no obstacles to the exercise of the right to freedom of movement where the qualifications of EC nationals are regarded as comparable.

There are no new initiatives to reinforce the rights to freedom of movement and equal treatment in all types of occupation of profession and for social protection purposes.

Measures to encourage family reunification, recognition of qualifications

No specific measures exist to encourage family re-unification on the recognition of diplomas etc.. However Ireland is actively involved in participating in European actions on these questions. The question of frontier workers is not a problem for Ireland. Under SEDOC bilateral links are developed with the Member States to which Irish workers go.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Measures covering duration and organization of working-time

A labour market survey published in 1989 showed that the average number of hours worked by full-time employees in industry in Ireland was 41 hours.

The Framework Agreement on Hours of Work negotiated under the Programme for National Recovery (1987-1990) provided for a reduction of working hours by one hour in cases where the normal working week is at or above 40 hours. This reduction in working hours has generally been implemented throughout the economy.

The question of a further reduction in working hours was discussed in the recent negotiations between the Government and the Social Partners on the Programme for Economic and Social Progress but agreement was not reached on the issue. The Programme states that the ICTU have indicated that they will, in the event of negotiations for a further Agreement on Pay and Conditions, be seeking a general reduction in working time in the context of international developments and the economic and social situation in Ireland.

While hours of work are in practice negotiated by collective bargaining, certain minimum statutory provisions are laid down in the Conditions of Employment Act, 1936 and the Shops (Conditions of Employment) Acts, 1938 and 1942. These Acts are designed to regulate working hours in the context of industrial shift work and in shops, hotels, etc.

Under the Conditions of Employment Act, 1936, continuous process shift-work and licensed shift-work must conform to the following conditions:

(a) no shift may exceed nine hours in duration;
(b) an interval of at least 15 minutes must be allowed between 3 and 4 hours after the commencement of each shift;
(c) a worker must not work two consecutive shifts, and 8 hours must elapse between each spell of shift-work;
(d) hours worked per week must not exceed 56 hours for continuous process shift work and 48 hours per week in any period of 3 consecutive weeks in the case of licensed shift-work.

Shift-work is unlawful unless on continuous process or under licence. This restriction does not apply to industrial work done in or about the printing or publishing of newspapers. Continuous process work is defined as industrial work that normally requires to be carried on without intermission or to be carried on for periods of not less than 15 hours at a time without intermission, eg.: brewing, manufacture of glass, sugar, etc. Other shift-work must be licensed by the Minister for Labour.

The 1936 Act also provides that workers on day work in industrial undertakings may not continue work after:

(i) 8 pm or any ordinary working day
(ii) 1 pm on any short day
(iii) 9 hours work has been completed on any ordinary day
(iv) 48 hours work has been completed in any week.

Overtime is subject to the following limitations: 2 hours per day, 12 hours per week, 36 hours per 4-week period and 240 hours per annum. Permits allowing longer periods of overtime are granted by the Minister for Labour.

A worker employed on day work may not work for more than five hours without an interval of at least half an hour. All workers in an industrial undertaking must get this interval at the same time, and industrial work must not be carried on during such interval. The Minister for Labour may grant a permit to an employer exempting him from this provision. A worker must get an interval of at least half an hour immediately before he/she commences to work overtime which will last more than one and a half hours.

The Shops (Conditions of Employment) Acts, 1938 and 1942 regulate and control the conditions of employment of workers in wholesale and retail shops, warehouses, hotels (Dublin City only), licensed premises and refreshment houses (restaurants, cafes or tea shops). The Act specifies the following maximum hours of work: 11 hours per day, 56 hours per week in hotels and 48 in other shops.

Overtime may be worked within the following limits:

Hotels: 66 hours in any week or 244 hours in any four consecutive weeks or 2 900 hours in any year.

Other shops: 60 hours in any week or 216 hours in any four consecutive weeks or 2 600 hours in any year.

The Act also makes provision for meal intervals.

The Minister for Labour has given a commitment in the recent Programme for Economic and Social Progress (negotiated between the Government and the Social Partners) to review the legislation and to identify the options which may be required.

Regular part-time working has, in recent years, become a permanent feature of the Irish labour market (increasing from 42 500 to 70 000 workers between 1975 and 1989). In response to this situation the Minister for Labour, following consultation with the Social Partners, introduced the Worker Protection (Regular Part-Time Employees) Act, 1991. This Act is designed to extend the benefits of the following Acts to regular part-time employees:

Holidays (Employees) Act, 1973
Maternity Protection of Employees Act, 1981
Minimum Notice and Terms of Employment Act, 1973 and 1984
Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990
Redundancy Payments Act, 1967 to 1990
Unfair dismissals Act, 1977
Worker Participation (State Enterprises) Act, 1977 and 1988.

Regular part-time employees are defined as those who normally work eight hours per week and have thirteen weeks continuous service. Prior to the introduction of this legislation a threshold of 18 hours per week existed in order to be covered by these Acts, with the exception of the Holidays Employees Act, 1973, which required that 120 hours per month be worked.

Most labour legislation offers protection to employees who have "contracts of service". Agency workers do not come within this definition. The Minister for Labour has undertaken, in the Programme for Economic and Social Progress, to examine the position of agency workers.

Rights governing annual paid leave and weekly rest periods

The Holidays (Employees) Act, 1973 provides that an employee who works at least 1 400 hours (1 300 hours if under 18) in leave year, i.e. 1 April to 31 March, is entitled to three weeks paid leave, unless he changed his employment during that year. An employee who has not worked the required total hours in the leave year, or who changed his employment in that year, is entitled instead to paid leave at the rate of three quarters of a week for each calendar month during which he worked at least 120 hours (110 hours if under 18).

As mentioned in the response to Question 7 above, with effect from 6 April 1991, the Workers Protection (Regular Part-Time Employees) Act, 1991 extended to regular part-time employees, on a modified basis, the benefits of the Holidays (Employees) Act, 1973. Regular part-time employees are defined as those who are in continuous employment of the employer or not less than thirteen weeks and who are normally expected to work not less than eight hours per week. Under the 1991 Act regular part-time employees are entitled to annual leave at the rate of six hours per 100 hours worked and proportionately less where fewer hours are worked. The 1973 Act provides for entitlement to eight public holidays. All regular part-time employees are now entitled to public holiday on the same basis as full-time employees.

The Minister for Labour has undertaken in the Programme for Economic and Social Progress to review the legislation relating to holidays.

While the legislation sets down minimum statutory entitlements, in practice, annual leave entitlements are usually negotiated by collective bargaining and the average annual entitlement would be approximately four weeks. The question of a weekly rest period is again generally a matter for negotiation, other than the minimum hours set down in the Conditions of Employment Act, 1936 and the Shops Acts, 1938 and 1942 (see Appendix).

Defining conditions of employment

The conditions of employment of Irish workers are defined in a variety of ways. Minimum statutory entitlements are laid down in a number of labour laws relating to holidays, dismissal, maternity leave, notice, redundancy etc. In addition, many workers have entitlements set down in a written contract of employment or a collective agreement negotiated with the employer.

The Minimum Notice and Terms of Employment Act, 1973 provides that an employee covered by the Act may require his or her employer to furnish a written statement containing all or any of the following particulars:

(a) date of commencement of employment,
(b) the rate or method of calculation of remuneration,
(c) the length of the intervals between the times at which remuneration is paid, whether weekly, monthly or any other period,
(d) any term or conditions relating to hours or work or overtime,
(e) any terms or conditions relating to
    (i) holidays and holiday pay
    (ii) incapacity for work due to sickness or injury and sick pay, and
    (iii) pensions and pensions schemes,
(f) the period of notice which the employee is obliged to give and entitled to receive is determined by his or her contract of employment, or (if the contract of employment is for a fixed term) the date on which the contract expires.

An employer is obliged to provide the above details within one month of a request to do so.

SOCIAL PROTECTION

Organization of social protection system

Social Security Services in Ireland are organized under the general control of the Minister for Social Welfare. The Department of Social Welfare is responsible for administering the State's statutory and non-statutory social security services. The primary function of the Department is one of income maintenance and it provides cash benefits for people at certain stages of their lives or when contingencies such as sickness or unemployment arise.

Services are divided into two categories: Social Insurance and Social Assistance. The range of services provided covers all of the internationally recognized branches of social security, e.g. old age/retirement pension, widowhood, sickness, unemployment maternity and employment injury. It also administers the family support schemes of Child Benefit and Family Income Supplement.

In addition to cash benefits, benefits in kind such as dental and optical benefit, free travel and free electricity for the elderly and the disabled are provided.

Social Insurance Contributions

All employees, irrespective of their level of earnings are compulsorily insured from the age of 16 years to 66 years. Insurance contributions are earnings-related but the percentage of salary payable varies according to the nature of employment. Entitlement to various benefits is subject to being insured in an appropriate contribution category. Since April 1988 self-employed persons have also been liable for social insurance contributions which entitle them to certain long-term benefits.

Social Insurance Benefits

Entitlement to a Social Insurance Benefit depends on the claimant having a certain standard of pay-related social insurance (P R S I) contributions recorded.

Subject to appropriate statutory conditions (but without regard to the recipient's means) the following flat-rate insurance benefits are available: disability benefit, invalidity pension, unemployment benefit, maternity benefit, widows' pension, deserted wifes' benefit, orphans' allowance, treatment benefit and a death grant. Pay-related benefit is payable with disability benefit, unemployment benefit and injury benefit to persons whose employment is insurable at certain rates of insurance contribution. The cost of the flat-rate and pay-related benefits is met by pay-related social insurance contributions from employers, employees and the self-employed with the balance of the expenditure being paid by the Exchequer.

Occupational Injuries Benefit

The Insurance services also provide for payment of benefits in respect of injury, disablement or death, as well as medical care resulting from an occupational accident or disease. These benefits are available to employees, irrespective of age.

Social Assistance Schemes

Social assistance is paid to those who do not satisfy the contribution conditions necessary for receipt of social insurance benefits, or to people who have exhausted their entitlement to insurance benefits. To qualify for social assistance, the claimant must satisfy a means test. Supplementary Welfare Allowance is usually payable where the person has no means or insufficient means to meet essential needs and where the conditions for receipt of disability benefit and unemployment benefit/assistance are not satisfied. The allowance is a safeguard measure that ensures that the person receives a basic income maintenance entitlement.

Child Benefit is payable without a means test in respect of children under 16 years of age and children between the ages of 16 and 18 who are in full-time education or physically or mentally handicapped.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Laws governing formation of professional organizations or trade unions

The relevant position in the Constitution in relation to freedom of association is Article 40.6.1. In this Article the State guarantees liberty for the exercise, subject to public order and morality, of, inter alia, "the right of citizens to form associations and unions". The Article provides that laws may be enacted for the regulation and control in the public interest of the exercise of this right. Article 40.6.2 provides that laws regulating the manner in which the right of forming associations and unions may be exercised shall contain no political, religious or class discrimination.

The right to join associations, unlike the right to form associations is not guaranteed by the Constitution. Although the power of the Oireachtas (Parliament) to regulate freedom of association is limited, trade unions may themselves impose restrictions on the right to join. A trade union is not obliged, constitutionally or otherwise, to accept every applicant into membership. A number of legal cases have established that there is no constitutional right to join the union of one's choice. Some categories of workers i.e. members of the Defence Forces and of the Garda Siochana (Police) are forbidden by law to join ordinary trade unions and to resort to industrial action to effect changes in their terms and condition of employment. The courts established the principle that the freedom or right to associate necessarily implied a correlative right not to join any trade union or a particular trade union. This, in effect, made the post-entry closed shop illegal in Ireland.

Procedures for negociating and concluding collective agreements

The principle of free collective bargaining forms the basis of the industrial relations system in Ireland. The terms and conditions of employment of the majority of workers are governed by collective agreements arrived at through the process of collective bargaining at local level between employers or employers' associations and one or more trade unions. Certain basic rights covering such matters as hours of work, minimum notice, dismissal and holiday entitlements are provided for in legislation. The terms of collective agreements are not legally binding in keeping with the informal system of collective bargaining in Ireland. However, under the Industrial Relations Act, 1946, it is open to the parties to an agreement to register the agreement with the Labour Court and thereby give it legal effect. The coverage of the agreement may be extended to employers and workers in the same industry even if they were not parties to the negotiations provided the Labour Court is satisfied that the parties to the negotiations are substantially representative of the class, type or group of workers to whom it applies.

An employer is not legally obliged to bargain with a trade union and may refuse to recognize it for this reason. However the Irish courts have held that a dispute concerning union recognition is a dispute for the purpose of allowing strike action to be taken. A trade union may, under the Industrial Relations Act, 1969, also unilaterally refer a recognition dispute to the Labour Court agreeing to be bound by its decision. The Labour Court generally recommends that the employer and trade union agree to negotiate a collective agreement, even where the trade union in dispute has not secured a majority of the employees in membership.

Regulation governing the exercising of the right to strike and provision of conciliation, mediation and arbitration procedures

Irish statute law does not provide a positive right to strike; rather it provides a system of immunities to ensure that in certain circumstances, trade unions holding negotiation licences and their members are legally protected if they institute industrial action. The legality of trade unions and their immunity from both criminal and civil conspiracy in the event of a trade dispute were guaranteed by the Trade Disputes Act, 1906. This Act was repealed and substantially re-enacted in the Industrial Relations Act, 1990. The 1990 Act protects against liability in relation to conspiracy, peaceful picketing, inducement of breach of the contract of employment or interference with the trade, business or employment of another, provided, in all cases, that the act is done by a person "in contemplation or furtherance of a trade dispute". The Trade Union Act, 1941 made it obligatory for any body of persons which wished to carry on negotiations for the fixing of wages or other conditions of employment to hold a negotiation licence granted by the Minister for Labour. The conditions which a body had to fulfil in order to be granted a licence have been amended by the Trade Union Act, 1971 and the Industrial Relations Act, 1990.

The principal conditions are as follows:

(i) it must be registered as a trade union under the Trade Union Act with the Registrar of Friendly Societies or, in the case of a foreign-based union, it must be a trade union under the law of the country in which its headquarter's control is situated;
(ii) it must have a minimum of 1 000 members;
(iii) it must give notice of its intention to apply for a licence 18 months before doing so;
(iv) it must deposit with the High Court a sum of money ranging from IRL20,000 to IRL60,000 depending on its membership.

Foreign-based unions are not required to register with the Registrar of Friendly Societies in order to obtain a negotiation licence. However, a foreign-based union must have a controlling authority, every member of which is resident in the State of Northern Ireland, which has power to make decisions in relation to issues of direct concern to members of the trade union resident in the State or Northern Ireland. Apart from this, a foreign-based union must satisfy the same conditions to obtain a negotiation licence as Irish-based unions.

The principle of free collective bargaining forms the basis of the industrial relations system in Ireland. This system assumes freedom for workers to organize and to bargain with the employer while the State's function is to provide the necessary legislative and institutional supports. The principal dispute-settling bodies provided by the State are the Labour Relations Commission and the Labour Court.

A. **The Labour Relations Commmission**

Set up in 1991 under the Industrial Relations Act, 1990, the LRC has overall responsibility for the promotion of good industrial relations. It is guided by a tripartite board with employer, trade union and independent representatives appointed by the Minister for Labour.

The main functions of the Commission are:

(a) to provide a conciliation service which assists parties to a dispute to resolve it where direct negotiations between the trade union and management have failed;
(b) to provide an advisory service whose function is to assist in identifying the underlying problems which may give rise to ongoing industrial relations unrest and help work out solutions to such problems;
(c) to provide a rights commissioner service which assists in the resolution of disputes involving individual workers;
(d) to conduct or commission research on industrial relations;
(e) to review and monitor industrial relations developments;
(f) to prepare and offer guidance on codes of practice on industrial relations issues which are drawn up in consultation with trade unions, employers' organizations and other interested parties. The terms of a code of practice are not legally binding. However, courts of law and industrial relations bodies may take account of any provisions of a code of practice which they deem to be relevant in determining any proceeding before them.

B. The Labour Court

Set up in 1946, the Labour Court is a court of last resort in dispute resolution. It is an independent tripartite body with an equal number of members nominated by employer and worker organizations and with its Chairman and Deputy Chairmen appointed by the Minister. Disputes must first be referred to the Labour Relations Commission. Once the Commission is satisfied that no further efforts on its part will help resolve the dispute the parties may refer the dispute to the Court which will issue a recommendation.

Regulation governing the civil service, the Defense Forces and the Police in relation to the right to strike

Civil service employees enjoy the same rights regarding strike action as other trade union members.

Members of the Defence Forces and of the Garde Siochana are forbidden by law to join ordinary trade unions and to resort to industrial action to effect changes in their terms and conditions of employment.

VOCATIONAL TRAINING

Organization of vocational training

In Ireland primary responsibility for training rests with employers. However FAS, the Training and Employment Authority, encourages firms through its Training Advisory Service to provide training for their employees. It also operates a Levy Grant Scheme for Companies above a defined size in certain industries, e.g., Textiles, Chemical and Allied Products, Food, Drink and Tobacco, etc., whereby these Companies are entitled to net a grant payable to them of up to 90% of their training levy due to FAS, and pay it the balance, if they provide training of a satisfactory standard for their employees.

In addition to apprenticeship training courses, FAS also runs a range of training courses geared towards various categories of people, mainly unemployed people, young people seeking their first job and mature people (mainly women) interested in returning to the workforce. It also provides training under the Industrial Restructuring Training Programme for small and medium-sized enterprises in order to help improve their competitiveness in the context of the Single European Market.

No new initiatives have been taken to offset or ban discrimination on grounds of nationality with regard to access to vocational training. EC nationals have access to vocational training on the same basis as Irish nationals.

The State through FAS provides a certain amount of training for persons in employment. In addition there are in existence many private-sector agencies which proved training on a fee-paying basis for individuals or persons referred by their employers.

As indicated above, primary responsibility for training rests with employers. However, FAS, which is a public body, also provides training. The Board of FAS is composed of representatives of Government, employers and trade unions and thus its policies are formulated by representatives of these three sectors.

EQUAL TREATMENT FOR MEN AND WOMEN

Legislation governing the principle of equal treatment for men and women

The Anti-Discrimination (Pay) Act, 1974 established the right to equal remuneration where women employed by the same employer in the same place of employment are doing "like work" with men.

The Employment Equality Act, 1977 makes it unlawful to discriminate on grounds of sex or marital status in relation to access to employment, conditions of employment (other than pay or occupational pension schemes), training or work experience or in the matter of opportunities for promotion or regrading.

Grievances under equality legislation can be pursued by any person in proceedings before Equality Officers, the Labour Court and in certain circumstances, the Civil Courts.

The Employment Equality Agency was established under the Employment Equality Act, 1977. It has both an investigative and overseeing role and was conferred with three main functions

- to work towards the elimination of employment discrimination
- to promote equality in employment opportunity and
- to keep under review the 1974 and 1977 Acts.

Initiatives to implement equal treatment

A number of positive action initiatives have been undertaken to promote equal treatment for men and women as follows :

A. Following the 1984 Government Policy statement on equality of opportunity in employment in the public sector, a programme of positive action has been set in place in State Sponsored Bodies which included the appointment of Equal Opportunities Officers and the participation by these officers in networks, and the adoption of equal opportunities policy statements by individual organizsations. The Minister for Labour set in place a system of monitoring progress on achievement of equal opportunities in the Public Sector.

B. The Minister for Labour's Equality Focus Award Scheme, sponsored by the Employment Equality Agency and the EC in co-operation with the Institute for Personnel Management, was introduced in 1990. This scheme is intended to encourage employers to implement positive action initiatives and to give recognition to the efforts which companies are already taking. Implementation of the Resolution on the Protection of the Dignity of Women and Men

at Work is well in hand. The Federation of Irish Employers and the Irish Congress of Trade Unions have issued guidelines on sexual harassment. The Employment Equality Agency provide advice and assistance in this area.

C. FAS, the National Training and Employment Authority introduced a Positive Action Programme in 1990. This Programme aims to promote actively the elimination of traditional patterns of occupational segregation by encouraging more women to enter non-traditional areas of work and, more generally, to promote women's full participation at all levels of the labour market. The 1990 Programme was successful in achieving its main targets and in initiating a sound planning basis for the development of effective positive action programmes in FAS in the future.

D. The Employment Equality Agency through its publications, seminars and conferences raises awareness of employment equality issues. The Agency has also issued a code of Practice on Equality of Opportunity in employment and are preparing a Model Equal Opportunities Policy for publication this year.

E. Most public sector organizations and the civil service provide for flexible working hours, job sharing and career breaks. A number of public-sector organizations have creche facilities or are examining the question of establishing such facilities. There is a commitment in the Programme for Economic and Social Progress that the Government will continue to encourage the provision, on a progress basis, of child care services for workers in the public service, with the State providing physical facilities and staff paying the running costs.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Legislation covering information, consultation and participation of workers within companies established in two or more member States

There is no legislation covering information and consultation of workers in the private sector including transnational companies. However employee involvement is widely developed throughout the private sector on a voluntary basis.

Measures relating to information, consultation and participation of workers

The Worker Participation (State Enterprises) Acts, 1977 to 1991, provide for employee involvement in a range of state enterprises. The Acts provide for board-level representation in 11 bodies, and for sub-board level participation in 35 state bodies. In relation to sub-board participation, the Act (1988) is not prescriptive, but provides a framework within which each organization can introduce and develop arrangements which suit its own needs and existing industrial relations practices. It provides that each participative agreement should provide for:

- a regular exchange of views and information between management and employees;
- the giving in good time by management of information about decisions which are liable to have a significant effect on employees' interests;
- dissemination to all employees of information and views arising from the participative arrangements.

The Worker Protection (Regular Part-Time Employees) Act, 1991, extends the legislation to cover regular part-time employees.

The protection of employment act, 1977 provides that, where an employer is planning a collective redundancy, the employees' representatives must be supplied with specific information regarding the proposed redundancies and must be consulted at least 30 days before the first dismissal takes place. This consultation must include discussion of the basis on which employees are selected for redundancy.

The European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 are aimed at safeguarding the rights of employees in the event of the transfer of ownership of undertakings or businesses which entails a change of employer. These regulations provide that the transferor and the transferee must inform the representatives of their respective employees of the reasons for the transfer and of the legal, economic and social implications for the employees. In addition, details of any measures envisaged which may affect the employees must be discussed with representatives of the employees with a view to obtaining their agreement to these measures.

HEALTH PROTECTION AND SAFETY AT THE WORK PLACE

Impact of Community Directives

The Safety, Health and Welfare at Work Act, 1989, incorporates most of the provisions of the "Framework" EC Council Directives 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. This relates to matters such as scope, employers obligations, protective and preventive measures, worker information, consultation and participation of workers and workers' obligations. Prior to the introduction of the 1989 Act only certain sectors or activities were subject to statutory provisions. These include manufacturing industry, construction, mining and quarrying and the use, storage, transport etc. of dangerous substances. Other legislation which applies only to those sectors (e.g. the Safety in Industry Acts, 1955 and 1980, the Mines and Quarries Act, 1965 and the Dangerous Substances Act, 1972 and 1979) also embodies many of the features of the individual Directives which have been adopted under the umbrella of the Framework Directive 89/391/EEC. However, these Acts and Regulations are being reviewed in the context of those Directives to establish what changes will be necessary particularly as regards sectors and activities which came within the safety system for the first time under the 1989 Act.

Worker participation in decision-making

The employer under Section 13(1) of the act is required to consult his employees for the purpose of the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure their safety, health and welfare at work and in ascertaining the effectiveness of such measures. He must also, so far as is reasonably practicable, take account of any representations made by his employees.

Under Section 13(2) of the 1989 Act employees have the right to make representations to and consult their employer on matters of safety, health and welfare in their place of work. Employers also have the right to appoint safety representatives who, inter alia, may conduct investigations at the workplace.

The purpose of formal consultation between employer and workers is:

- to secure active worker participation in accident and disease prevention
- to bring management and workers together to review and take action on safety and health problems
- to establish a means of communication so that workers can bring to light safety hazards or make suggestions for appropriate safety measures.

PROTECTION OF CHILDREN AND ADOLESCENTS

Legislation governing the employment of young people

Under the terms of the Protection of Young Persons (Employment) Act, 1977 the employment of children under 15 is generally prohibited. However, a child over 14 may be permitted to do light non-industrial work during school holidays provided that it is not harmful to health or normal development and does not interfere with his or her schooling. The working hours of children during school holidays, must not exceed 7 hours in any day, and 35 hours in any week. During school summer holidays, a child must not do any work for one full period of 14 days.

The limitations on hours of work of young persons aged 15 are:

	Normal working hours	Maximum hours of work
In any day	8	8
In any week	37½	40

The limitations on hours of work of young persons aged 16 to 18 are as follows:

	Normal working hours	Maximum hours of work
In any day	8	9
In any week	40	45
In any 4 weeks		172
In any year		2000

The employment of children under school leaving age (at present 15 years) is prohibited for a period of 14 consecutive hours at night including the interval between 8 p.m. and 8 a.m.

Young persons aged 15 but under 18 years must not be employed for a period of 12 consecutive hours at night, including the interval between 10 p.m. and 6 a.m., except for industrial workers who must not be employed between 8 p.m. and 8 a.m.

Employees who work on more than 5 days a week and whose work on a Sunday exceeds 3 hours, must be given at least 24 consecutive hours rest in every 7 days.

A spell of work shall not continue for more than 5 hours in the case of a young person (a person under 18) and for more than 4 hours in the case of a child (a person under 15) without a rest interval of at least 30 minutes except that certain sections of the Conditions of Employment Act, 1936 shall continue to apply to industrial shift work.

All employees under 18 must be allowed 30 minutes break before beginning overtime which will last more than 1½ hours.

Under the Act, overtime must be paid at not less than the normal rate of pay increased by 25%. Overtime in this context means hours in excess of normal hours, as outlined above. Other than this provision, the remuneration of young people is generally a matter for negotiation.

Employment Regulation Orders (EROS) are made by Joint Labour Committees under the Industrial Relations Acts, 1946 and 1976. These EROS fix minimum rates of pay and regulate conditions of employment in specific industries. The EROS relevant to certain industries (agriculture, aerated waters, brush & broom, hotels and provender milling) set rates of pay applicable to workers on an age basis.

THE ELDERLY

Provisions for retired workers

Retired workers may qualify for a medical card if their income is insufficient to provide for their medical needs and those of their dependants. A medical card entitles the holder, and his or her dependants, to comprehensive health services without charge. 70% of those aged 65 and over have medical cards. The proportion rises to 80% for those aged 80 and over. At a minimum all citizens including retired workers are entitled to free hospital and specialist treatment and to a subsidy for drugs prescribed by general practitioners. Retired workers who are not entitled to an occupational or contributory pension are entitled to a non-contributory old age pension. Non-contributory old age pensioners qualify for medical cards, entitling them to a comprehensive health services without charge.

DISABLED PERSONS

Measures to encourage social and occupational integration of the disabled

There is a network of centres throughout the country which provides Vocational Training for persons with a physical or mental handicap.

There were approximately 3 400 full-time equivalent places in Vocational Training centres funded in 1990. It is anticipated that approximately 3 700 such places will be funded in 1991.

There is a range of Income Maintenance Allowances provided by the state to assist persons with disabilities. The main allowance paid is the Disabled Persons Maintenance Allowance. There were a total of 25 901 recipients of this allowance in 1989.

In addition to the foregoing day, residential and other support services, other services are being developed on a localized basis to ensure that people with disabilities enjoy life that is as normal as possible with their community for as long as possible.

ITALY

FREEDOM OF MOVEMENT

1. Freedom of movement is covered by Regulation 1612/1968 and Directive 360/1968 on the abolition of restrictions on movement and residence within the Community for workers and their families from Member States.

   The principle of freedom of movement entails *inter alia* there being no discrimination against the Community worker in relation to the national worker as regards access to jobs, remuneration and general living and working conditions.

   Italy applies this principle and, in particular, respects the so-called Community priority according to which vacancies may be laid open to non-Community citizens only if such vacancies cannot be filled by Italian or Community citizens.

2. Both the Regulation and the Directive referred to above are now over 20 years years old and need overhauling, particularly with the Single Market and the achievement of a "frontier-free European area" nearing completion.

3. This overhaul was commenced some time ago at Community level with meetings of the Advisory Committee on the Free Movement of Workers and the Technical Committee, but has been held up because certain Member States are reticent for various reasons. Italy's position was, including under the recent Italian presidency, and still is, to emphasise the need to pursue this overhaul which will also deal appropriately with problems related to family reunification (currently dealt with in restrictive terms in Article 10 of the Regulation), the recognition of qualifications and diplomas, and, more generally speaking, the improvement of living and working conditions for frontier workers. This latter point is the subject of a Commission paper now before the Directors-General for Employment and the Technical Committee.

   As regards measures to facilitate family reunification the conditions set out in Regulation 1612/1968 and the subsequent Law No 127 of 4 April 1977 are applied.

EMPLOYMENT AND REMUNERATION

4. There are no restrictions on the freedom of choice and the freedom to engage in an occupation; there are many prerequisites for the practise of certain specific professions (the holding of certificates or vocational qualifications, entry in an appropriate register or order, passing qualification exams before being able to practise a profession, etc.

5.1. Art. 2099 of the Civil Code stipulates that remuneration must be determined by collective bargaining, by agreement between the parties involved, or else by the competent court. In actual fact, Art. 36 of the Constitution states that a worker is entitled to remuneration commensurate with the **quantity** and

quality of his work and that in any event such remuneration must be sufficient to cover his personal and family needs; this provision is accepted as preceptive legislation and is directly applicable. Any worker considering that his or her remuneration is not in line with the parameters set out by this article has the right to refer the matter to the competent court for the calculation of the fair remuneration to which he/she is entitled on the basis of the joint provisions of Art. 36 of the Constitution and Art. 2099 (2) of the Civil Code.

5.2. The remuneration of workers recruited on the basis of a fixed-term contract and that of workers employed on a part-time basis, are calculated according to the same legal provisions mentioned above. For these two categories of worker remuneration is obviously in proportion to the quantity of work carried out.

5.3. There are legal limits to the amounts which can be withheld from sums due by private parties as wages, salaries or other payments connected with contracts of labour or employment, including sums relating to dismissal.

These limits are set out for the private sector in Art. 545 of the Code of Civil Procedure (in the text amended by the decree or the provisional head of state No 1548 of 10 December 1947).

Maintenance payments may be withheld to the extent determined by court decision; for payments owed to the state, provincial and municipal authorities and for all other payments this is in the amount of one fifth; the total amount which can be withheld for a combination of reasons may not exceed one half of the total payable for service.

On the subject of withholding and seizure of wages, salaries and pensions of general government and other employees, the Consolidated Text approved by Presidential Decree No 180 of 5 January 1950 applies.

6. Placement is considered a free public service and is implemented in accordance with the provisions set out in Law No 264 of 29 April 1989 and consequent amendments and additions.

In order to be entered in the registers of persons for placement job seekers must have the required legal age for employment and must be holders of an employment card or working papers, or a certificate in lieu of such documents, as established by Law No 112 of 10 January 1935.

Mediation is prohibited.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7.1. Royal Decree Law No 698 of 15.3.1923, introduced as Law No 473 of 17.4.1925, setting out the limits of the working hours for workers and employees in industry and business activities of any kind, and the relevant enabling regulation (Royal Decree No 1955 of 10.9.1923).

Royal Decree No 1956 of 10.9.1923 approving the regulation on the limits of working hours for workers in agriculture.

Royal Decree No 1957 of 10.9.1923 approving the schedules of industries and activities for which the stipulated 8-hour day and 48 hour week may be exceeded.

Royal Decree No 2657 of 6.12.1923 approving the schedule setting out the occupations requiring intermittent work or simply attendance.

7.2. Law No 230 of 18.4.1962 and subsequent amendments and additions setting out the limits to the use which can be made of fixed-term contracts by enterprises.

Art. 5 of Law No 863 of 19.12.1984 establishing and regulating employment training contracts.

Art. 3 of Law No 863 of 19.12.1984 governing part-time employment contracts.

Art. 2 of the same law establishing solidarity contracts.

7.3. Inter-union agreement of 20.12.1950 for the industrial sector, converted into law by Presidential Decree No 1019 of 14.7.1960 and setting out the inter-trade union procedures for collective redundancies by enterprises.

Royal Decree No 267 of 16.3.1942 governing bankruptcy proceedings.

Art. 2199 of the Civil Code, final paragraph, which stipulates that "bankruptcy of the entrepreneur does not constitute fair grounds for ending a contract".

Law No 223 of 23 July 1991 sets out inter alia new and precise provisions governing mobility and collective redundancies.

8. Art. 36(3) of the constitution stipulates that the worker is entitled to a weekly period of rest and paid annual leave and that this entitlement may not be renounced.

Art. 2109 of the Civil Code stipulates that an employee is entitled to one day of rest per week, usually Sunday. The same article (paragraph 2) stipulates that workers are entitled to a period of annual leave, if possible continuous, and the duration of this period must be set out by law, by the collective labour contract or, failing that, by custom or in accordance with the rules of fair practice. The duration of paid annual leave is generally set out in the specific clauses incorporated in the national collective labour agreements (by sector). Such agreements stipulate on average a period of paid annual leave varying from 4 weeks to 30 days in addition to the 6 days allowed for national holidays falling mid-week and no longer observed. In greater detail, Law No 370 of 22.2.1934 sets out public law provisions - non-compliance by enterprises being punishable - on Sunday and weekly resting (day and length of rest and specific rules concerning activities involving continuous production cycles or public utilities).

There are no restrictions of any kind on the enjoyment of this entitlement to rest which may not be renounced. The Constitutional Court, by decision No 66 of 7.5.1933 declared that part of Art. 2109 of the Civil Code which states that this right is recognised, "after one year of uninterrupted service" to be constitutionally illegal.

9. Art. 2222 et seq. of the Civil Code set out the conditions of employment, i.e. the obligation of a person "to perform, in return for payment, a task or a service consisting essentially of his own work and without constraints of subordination in relation to the employer". The performance of the work must be in accordance with the conditions set out in the relevant contracts.

No "written document" is explicitly required by the Civil Code.

Articles 2329 and 2330 set out the rules respectively for "the practise of intellectual professions" and the "provision of intellectual services".

The Law (in accordance with Art. 2062 of the Civil Code) lists the intellectual professions (pursued as an economic activity) for the practise of which the persons concerned must be entered in the appropriate "professional registers" or "professional orders" or "lists".

Ascertainment of fulfillment of the requirements in these lists or registers, and supervision of those entered therein, are devolved to the "professional associations" under the aegis of central government.

Appeal against rejection of application for entry into or being struck off from such registers and lists and against any disciplinary measures which entail the loss or suspension of the right of practise of a profession is legally governed as set out in the relevant laws.

Provision of intellectual services is governed by a contract which is itself regulated by the subsequent articles of the Civil Code, i.e. Articles 2223, 2232 and 2233, which provide for remuneration and performance of the service and all other related conditions; in particular, it stipulates that no remuneration shall be due if the person providing the intellectual services is not duly entered in one of the specific lists or registers.

In this case, too, no written document is explicitly required.

SOCIAL PROTECTION

10. All workers performing a remunerated task on his own account or for third parties must be insured irrespective of nationality, sex, sector of activity and category.

This obligation ensures that they can obtain a sufficient level of social security benefits.

The criteria for organising the social security system is predominantly contribution-based. The contributions are paid by the employer (19%) and the employee (7%) on the basis of pensionable remuneration, but where this system cannot guarantee a sufficient level of benefits the state intervenes to make up the shortfall to subsistence level.

Health benefits are available to all resident citizens (**Servizio Sanitario Nazionale** - Italian national health service).

For those excluded from the labour market Italian law provides in respect of employees unemployment benefit for a period of 6 months equivalent to 20% of the average remuneration provided that contributions were paid in the three months prior to commencement of the period of unemployment.

Payments in cash and in kind are also provided for persons who have no means of subsistence. These payments, being of a welfare nature, are the responsibility of the regional authorities.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. Employers and workers alike are at complete liberty to set up professional associations or trade unions, in accordance with Art. 39 of the Constitution.

In keeping with this precept, which implements so-called trade union pluralism, Art. 14 of Law no 300/1970 (Statute of Workers' Rights) gives workers the right to set up trade union organizations, to join such organizations and to pursue trade union activity within the enterprise.

The individual employer or employee, pursuant to Art. 39 of the Constitution, has the right to join or not to join professional organizations or trade unions. In such cases, Art. 15 of Law No 300/1970 nullifies any action taken to discriminate against a worker joining or refusing to join such organizations or opting out of such organizations.

12.1. There is no set procedure for negotiating and concluding collective agreements other than the principle of trade union freedom (Art. 39) and the right to strike (Art. 40).

There is a system of industrial relations based on negotiating practice which is now established as regards collective bargaining at inter-union level for each sector, locally or within the enterprise or group.

A legal basis for bargaining within the enterprise, but only as regards certain topics (audio-visual equipment, remote surveillance of workers, safety at work, etc.) is provided by Art. 3 and 4 <u>et seq.</u> of the "Statute of Workers' Rights".

In addition, all public employment sectors (Law No 93/1983) are covered by mandatory provisions governing this type of work relationship, setting out precisely the parties covered by contract, and the procedures and timescale for negotiations.

12.2. There are no obstacles to negotiations by employers' or employees' organizations, in accordance with the principle of trade union freedom provided for by Art. 39 of the Constitution, as mentioned above.

13.1. Art. 40 providing for the right of workers to strike is accepted in constitutional case law and by the Court of Appeal as preceptive legislation even if no enabling provisions exist as yet. Case law is predominantly aimed at excluding from the legal scope of Art. 40 of the Constitution any anomalous forms of agitation and dispute which lead to abnormal and unfair action resulting in wilful damage to enterprises (in particular, in the context of continuous cycle activities in which trade union practice provides for requisitioning).

Essential public services are covered by Law No 146/1990 setting out the procedures for announcing and implementing a strike, particular as regards the definition in trade union agreements of minimum service thresholds in order to make this right compatible with other rights which are guaranteed for the citizens by the Constitution (life, safety, etc.).

A Committee of Guarantee was therefore set up (Art. 12) to assess the appropriateness of steps taken to ensure that the exercise of the right to strike can be reconciled with the enjoyment by citizens of their Constitutionally-guaranteed rights.

13.2. Trade union and contractual practice provides for clauses of concilliation, mediation and arbitration for the settlement of industrial disputes and strikes. As well as being part of the general duties of central government authorities, mediation and conciliation is devolved by Law No 628/1961 to the Ministry of Labour for matters of "specific national relevance" and to the regional and provincial labour offices for disputes which fall within their respective areas of jurisdiction.

14. Following the entry into force of Law No 146/1990, the right to strike is currently the subject of conditions in public sectors defined as providing essential services (as set out in the Law itself, already described in 13.2 above).

As regards the police, demilitarized by Law no 121/1981, and the armed defence forces, the respective statutes applicable provide for the setting up of trade union representative organizations, the possibility of joining national trade union organizations being given only to the police. This category does not have the right to strike (Art. 84 of the above-mentioned law).

VOCATIONAL TRAINING

15.1. Framework Law No 845/1978 devolves responsibility for vocational training to the regional authorities, for which legislation is determined by specific local situations resulting from the different degree of development and the varying territorial pattern of requirements in terms of production and employment.

In terms of national legislation (Law No 863/1984, Law No 113/1986) new training arrangements extending access to vocational training have been introduced, mainly in order to enhance employment prospects.

The most significant of these provisions is the employment training contract (Law No 863/1984).

In order to cater for the perceived need to boost participation in innovatory processes resulting from new technology, Law No 492/1988 provides for the funding of innovation programmes within the training systems organized by the regional authorities.

15.2. As regards access to vocational training, Art. 2 of the 1978 framework Law excludes any form of discrimination based on nationality by making training open also to "... foreign citizens, resident in the country for reasons of employment or training".

These provisions were subsequently reiterated and reaffirmed by Law No 943. of 30 December 1986 and subsequent amendments and additions and in the more recent Law No 39 of 28 February 1990.

Various regional legal provisions provide for specific programming of action to facilitate the integration within the employment market of citizens from non-Community countries.

The new steps taken to boost access to vocational training includes notably one bill of law proposed by the government and currently before the Chamber of Deputies, concerning the provision for non-Community immigrants of development programmes and annual vocational training plans to support action taken to encourage non-Community citizens to learn the vocational skills needed to enter the labour market.

In addition, in the context of Community action to exploit human resources efficiently there are specific steps targetted at non-Community immigrants in regions where development is lagging behind. These are training programmes co-financed by the Ministry of Labour, the regional authorities and by the EEC (Horizon programme).

Lastly, in order to enhance the effectiveness of such action, the regional authorities foster and plan refresher training for local authority officials who deal with immigration problems.

15.3. Continuing or in-service training takes place mainly at enterprise level at the instigation of the two sides of industry who, usually in the context of collective agreements, provide for training action and ventures to enable workers employed in enterprises being restructured to cope with the threat of unemployment by acquiring vocational skills and thereby a greater degree of mobility.

The continuing or in-service training system is not therefore structured in any systematic way. Nevertheless, regional public authorities support and foster such action by focusing their attention on the most salient local requirements in production sectors undergoing reconversion and restructuring.

In particular, of the legal provisions which could determine the implementation of a continuing training system, the most significant is Law No 492/1988 designed to finance innovatory projects proposed by the regional authorities.

Public authorities can thus steer and encourage the setting up of a continuing training system, which is now theoretically recognized as being indispensible to constantly-changing production situations, but which has not yet been institutionalized and can rely only on the experiments carried out by the two sides of industry on the basis of collective agreements, sectoral agreements, etc.

EQUAL TREATMENT FOR MEN AND WOMEN

16.1. This is firmly rooted in the Italian Constitution (Articles 3, 4, 35, 36, 37 paragraph 1) and is implemented through Law No 903 of 9 December 1977, which lays down laws on equal treatment for women at work. As a result of these more recent legal provisions there has been a substantial drop in the number of measures to safeguard the employment situation of women and set out in previous legislation, for these rules were over-rigid and discouraged employment applications from women. The present provisions provide for a system of sanctions and Art. 15 stipulates an ad hoc court procedure for breaches of the rule of non-discrimination concerning access to jobs and of the prohibition of night working.

These substantial statutory guarantees have been further consolidated by the recent Law No 125 of 10 April 1991 part of which spells out in greater detail the definitional criteria for discrimination and introduces a new court procedure covering legal disputes arising from questions of sex-based discrimination.

16.2. a) There are also legal provisions which provide for priorities in the allocation of certain advantages, particularly the recent Law No 125, mentioned above.

b) Institutionally, monitoring and fostering of equality in practice is entrusted to specific equal opportunities bodies operating nationally, regionally and provincially.

Examples are the National Commission on Equality at the Presidency of the Council of Ministers, the National Committee on Equality at the Ministry of Labour, and the regional and provincial committees for equal opportunities set up in eleven regions.

c) At the regional level, collective bargaining has since 1986 broached the subject of equal opportunities for women at work, giving rise to increasingly specific commitments by the two sides of industry with a view to setting up joint committees to analyze female employment flows as the basis for plans to achieve equality and restore the balance in the male/female employment ratio, in line with the EEC recommendation on positive action and in anticipation of Italian legislation on such positive action.

16.3. Law No 903/1977 gives the working father some of the rights concerning leave of absence granted to the working mother as defined in Law No 1204 of 1971. The father can therefore, by way of alternative to the mother and subject to the latter's formal renouncement of her own entitlement, take leave of absence from work for a period of six months during the baby's first year and for cases of sickness while the baby is under three years of age.

Decision No 1/1987 of the Constitutional Court extended to the father the right to the compulsory post-natal absence (in accordance with Art. 4 of Law No 1204/1971) and the daily two-hour allowance (Art. 10 of the same law) when the baby cannot be cared for by his own mother on account of death or serious illness.

Working women who have adopted children or taken children into their care are also entitled to the post-natal compulsory period of absence, provided the child is under six when he enters the family and, by way of alternative to the father, to the optional six-month period of absence, as well as other periods of absence allowed for sickness of the child while the latter is still under three years of age.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. Information, consultation and participation of workers are covered, albeit not comprehensively, on the basis of production sector and category of workers affected, by certain provisions, particularly by collective bargaining and only in firms situated on the national territory.

The draft directives on the information, consultation and participation of workers and on the "Statute for a European company" are currently being discussed and/or referred to the Council's social affairs group, as the Commission already knows.

18.1. The legal bases for dealing with the subject of information and consultation are to be found in the context of collective bargaining.

The salient feature of this new facet of collective bargaining is the agreement protocol of 18 December 1984 between the IRI (as regards state-financed companies within this group) and the trade union confederations of CGIL, CISL and UIL, which after the preordained check after the first six-month trial period, was replaced by the agreement protocol between the same parties of 16 June 1986 drafting the new text on industrial relations for enterprises of that group.

Similar agreements followed, once again in the state-financed sector, fulfilling a pilot role in this field of industrial relations, such as the agreement protocols between the EFIM and CGIL-CISL-UIL of 29 September 1987 and between the GEPI and CGIL-CISL-UIL of January 1987.

Art. 47 of the Community provision of 12/01/91, with immediate effect, provides for information and consultation procedures covering workers in all productive sectors - but only in the event of transfer of enterprises.

As regards more specifically the "participation" of workers, Law No 300/1970 setting out the "Statute of Workers' Rights" and providing for trade union representation within the enterprise (Articles 19, 20 and 21) enabled workers to contribute to the definition of the conditions of work within the enterprise by making specific provision for negotiation on certain subjects, particularly the rules in Articles 3 and 4 (audiovisual equipment) and Art. 9 of Law No 300 enabling workers to monitor the implementation of the rules on health and safety at work.

Collective bargaining has also extended to other subjects (overtime, holiday working, etc.) the principle of negotiation to limit the enterprise's "power". Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work provides for the setting up at enterprise level of "joint technical committees" to improve the working environment. This directive must be implemented by the end of 1992.

18.2. Many collective agreements (in the familiar first part which sets out the conditions of employment) currently provide for joint bodies and consultation procedures (joint committees, etc.) and information. Information consultation with the enterprise cover: investment, sectoral crises, changes following the introduction of new technology, large-scale restructuring and any other aspects of industrial management which give rise to problems in maintaining the level of employment and the resulting concerns as regards the guarantee of the income of the workers affected.

These procedures (covered by Laws No 1115/68. 164/75 and 675/77) are the forms of compulsory consultation laid down exclusively to trigger recourse to the CIG (Cassa Integrazione Guadagni - temporary redundancy fund).

18.3. Law No 223 of 23 July 1991 makes tangible and detailed provision for a procedure of information and consultation of the two sides of industry on collective redundancies (see Article 24, and Articles 4 and 5), thus comprehensively fulfilling the obligations set by Council Directive 75/129/EEC (on collective redundancies).

HEALTH PROTECTION AND SAFETY AT THE WORK PLACE

19.1. It is felt that no reply can be given on the first question as the legal systems cannot be compared. However, as regards the individual directives in force, none of these offers a more favourable set of provisions than those currently provided for in Italian legislation.

19.2. The second question is covered by Law No 300/1970 which allows workers the possibility of a say in the implementation of the safety measures carried out at the place of work and in the context of collective bargaining.

PROTECTION OF CHILDREN AND ADOLESCENTS

20. The legal age for employment is 15 (in accordance with Art. 3 of Law No 977 of 17/10/1967).

In the non-industrial sector children aged 14 and over can be employed to perform light tasks as defined in Art. 4 of the Presidential Decree quoted above.

Under the terms of the Law of 19 April 1968 young people aged 14 and over may be taken on as apprentices "provided they have fulfilled their period of compulsory schooling in accordance with Art. 8 of Law No 1859 of 31 December 1962".

21. There are no specific provisions on the remuneration of young people. The legal rules are those already quoted on the subject of remuneration in general.

Apprenticeships and employment training contracts (Art. 3 of Law No 836/1984) are covered generally by the clauses written into collective agreements and concerning the so-called "starting salary".

22. The working hours for young people (i.e. those aged 15 and over) and adolescents (15 - 18 years) must not exceed 7 hours daily (and 35 weekly) and 8 hours daily (and 40 weekly) respectively.

Young people and adolescents are not allowed to undertake night work (Art. 15 of Law No 977/1967).

"Night" is defined in Art. 16 of the abovementioned Law.

Vocational training is covered by the framework Law No 845/1978.

The provisions governing the vocational training of young people are set out in Art. 25 of Law No 967/1967, in Law No 25/1955 (Art. 16/17 and 18) on apprenticeship, and Art. 3 of Law No 864/1964 on employment training contracts.

23. This topic is covered by the specific provisions mentioned above and also by the framework law on vocational training which devolves to the regional authorities responsibility for training, defines the training subject area, the fields of intervention, the training of training instructors, and also by Art. 10 (links with the school educational system) which entails that for the purposes of methodological and didactic innovation, research, and even more so for the purposes of the requirements of the future occupational life of young people, the regional authorities must introduce measures to facilitate cooperation between vocational training schemes and secondary and higher educational establishments (regionally-run vocational training courses and vocational technical schools).

THE ELDERLY

24. A worker leaving the employment market because he has reached retirement age can receive, provided the relevant contributions have always been paid in full, over 80% of his average salary during the last five years of work.

If the contributory pension scheme is insufficient to permit a decent standard of living the benefit is supplemented by a minimum payment which is adjusted to the actual cost of living every six months; this year this comes to Lit. 506 050 monthly over 13 months.

25. For persons who have reached pensionable age but are not entitled to such a pension, a subsistence benefit is provided for - the "social pension" - which is paid out, even if no contributions have been paid, to those who at 65 have an income of under Lit. 5 307 350 for the year 1990.

Last but not least, social assistance and various facilities are provided by the regional authorities (e.g. the schemes for the elderly within the regional social welfare programmes), including assistance to elderly persons who are not self-sufficient, by the municipal authorities and by the USL (area health authorities) as part of free health and welfare services to all who need them.

DISABLED PERSONS

26. For all categories of disabled persons framework Law No 845/1978 on vocational training provides for specific "integrated training" for these categories of citizens and workers.

The regional authorities responsible for implementing this training organize courses designed to achieve full rehabilitation of disabled persons so that they can be fully integrated on the employment market.

Law No 486/1968 provides for the "compulsory placement" of disabled persons, which means that all public and private enterprises and all general government agencies must take on a quota of disabled persons. This law is currently being improved in order to bring it in line with the present situation of this category of citizens, i.e. in order to fully integrate them in the world of work and society in general like all other citizens and workers.

IMPLEMENTATION OF THE CHARTER

27. The Community Charter of Fundamental Social Rights for Workers is still awaiting a more tangible and comprehensive implementation, particularly through the plan for implementation submitted by the Commission of the European Communities.

Nearly all the 49 draft directives which go to make up the implementation package for the Community charter are still being discussed and/or drafted by the Commission itself. These drafts concern employment and social infrastructures which are relevant to the subject areas mentioned above and which are not yet fully harmonized in the twelve Member States.

Furthermore, the Member States, Italy among them, still have to transpose by the end of 1992 directives already adopted, and also to deploy resources and resolve to achieve a realistic consensus on the draft directives currently being discussed, as the objective of the Single Market cannot be attained unless it is accompanied by a solid and credible "social dimension".

LUXEMBOURG

FREEDOM OF MOVEMENT

Question 1

The right of nationals of a Member State to move to a different Member State to seek work is subject to no condition other than that applying to entry into Luxembourg itself.

Question 2

a) There are at present no plans for new initiatives to regulate the right of residence of workers exercising their right to freedom of movement within the Community.

b) - Private sector: Workers who have exercised their right to freedom of movement are treated in the same way as nationals in respect of the exercise of an occupation of profession.

- Public sector: See reply to question 4.

c) Negative answer.

Question 3

a) - There are no measures preventing the reunification of families of workers from the Community working in Luxembourg.

- The State Immigration Service (reporting to the Ministry for Family Affairs) assists in family reunification in respect of legal, administrative and material problems.

The Ministry plans to modify the Immigration Service's terms of reference by widening its scope and providing it with more resources to deal with the implications for families of the completion of the Single Market.

b) In all cases where the recognition of diplomas or occupational qualifications acquired in another Member State is based on international treaties, bilateral agreements between Member States or laws or regulations resulting from the transposition of a Community instrument into national law, decisions are taken on an ad hoc basis, in application of the relevant rules or regulations, by the competent authorities.

Recognition of foreign diplomas awarded at university or higher education levels is a practical necessity in Luxembourg owing to the fact that Luxembourg has no full-scale university education system. The legal bases are the Law of 17 June 1963 on higher education qualifications and the amended Law of 18 June 1969 on higher education and the recognition of foreign qualifications and degrees.

In all other cases, the Ministry of Education examines individual applications and issues certificates of equivalence where appropriate.

This process is quick and unbureaucratic. Where appropriate, foreign embassies and/or professional bodies are asked for their opinion.

c) In terms of living and working conditions, frontier workers enjoy exactly the same rights as workers resident in Luxembourg.

EMPLOYMENT AND REMUNERATION

Question 4

Freedom of choice of, and freedom to engage in, an occupation do not extend to a certain number of posts requiring direct or indirect involvement in the exercise of public power and participation in functions aimed at safeguarding the general interests of central and local government, more particularly:

- the armed forces, the police and other law and order enforcement bodies;

- the judiciary, the tax service and the diplomatic service;

- posts in ministerial departments, local authorities and other similar bodies, the central bank (for staff exercising activities prescribed in respect of a central government legal power or a legal person under public law, such as the drawing up of legal acts, the implementation of such acts, monitoring of such application and the supervision of dependent organizations).

The Commission has informed the Luxembourg Government that proceedings are being brought under Article 169 of the EEC Treaty (failure to fulfil an obligation) in respect of the free movement of workers in the following six fields:

- rail transport, urban and extra-urban transport;
- water, gas and electricity distribution services;
- post and telecommunications services;
- operational services in the public health sector;
- teaching in nursery, primary and secondary schools and in higher education;
- public civilian research establishments.

Question 5

a) Generally speaking, the level of remuneration, the essential element in a contract of employment, is freely determined by the parties to the contract.

However, there are certain binding rules on pay which apply to employers and workers alike.

1. *Definition of "remuneration"*

The statutes governing the status of (non-government) employees contain a general definition of the various terms covering pay, wages, salaries and remuneration as used in law.

The general concept covers all income elements including:

- cash remuneration
- other ancillary benefits and the like such as bonuses, royalties, discounts, premiums, free housing, etc.

2. *Minimum wage*

The statutory minimum ("social") wage scheme is based on the Law of 12 March 1973, as amended by the laws of 27 March 1981, 28 March 1986 and 28 December 1988.

The law provides for payment of a minimum wage to all persons of normal physical and intellectual aptitude, without distinction by sex, employed by an employer under a provision of services contract.

The minimum wage finds general application, no derogation being provided for in law by reason of the employer's sector or branch of economic activity.

The law provides for the legislature to adapt the minimum wage to economic developments. In practice, in order to ensure that workers and employees benefit from economic development in the country, the minimum wage is increased every two years at least, whenever general economic conditions and income trends so justify.

To this end, the Government is required to submit a report every two years to Parliament accompanied, where appropriate, by a draft instrument for increasing the minimum wage.

3. *"Escalator" scheme for wages and salaries*

The Law of 27 May 1975 gave general effect to the "escalator" scheme for wages and salaries which already applied to the minimum wage and to remuneration covered by a collective agreement.

The system for the automatic adaptation of wages and salaries operates according to mechanisms introduced by the Law of 28 April 1972, and is triggered by attainment of a threshold based on the weighted consumer price index, based in turn on a basket of 269 items (Grand-Ducal Regulation of 24 December 1984). This happens whenever the mean of the index calculated over the past six months exceeds 2.5%.

The Law of 1975 makes it an offence for an employer to pay workers at a rate below that determined by the above scheme.

b) The legal provisions mentioned under a) above apply likewise to terms of employment other than open-ended full-time contracts.

c) Cases in which wages are witheld, seized or transferred are covered by a special regulation governed by the concept of providing protection for workers for whom the wage or salary is very often their only means of subsistence. Thus, the Law of 11 November 1970 makes wages and salaries immune in part to seizure or transfer. This basic legal text was amended and supplemented on a number of points by the Law of 23 December 1978. Finally, a Grand-Ducal Regulation of 9 January 1979 redefined the procedure for the withholding or seizure of wages or salaries, laying down the forms and dispute arrangements in respect of assignment or transfer of remuneration or pensions.

1. *Protected elements*

The special regulation on attachment and assignment of remuneration applies to all types of remuneration without distinction, provided they arise from a paid activity. The employment status (government, non-government, manual worker) is irrelevant, nor is any distinction made according to the quantum and nature of remuneration, or to the form and nature of relations between the worker and his employer.

The regulation also applies to pensions and unemployment benefit.

2. *Quantum of the attachable and assignable proportion*

A Grand-Ducal Regulation of 18 January 1988 lays down what proportion of each wage or salary may be only partially attached or assigned.

The Law of 11 November 1970 lays down the available percentage from each of these wage or salary instalments. It operates the principle of the separation of the attachable and assignable portions, apart from the fifth instalment, which is declared to be attachable and assignable in total.

3. *Basis of assessment for disposable portions*

For the purposes of determining what amounts are disposable, the law provides for tax and social security payments to be deducted.

4. *Special rules in respect of maintenance payments*

In the event of an assignment or attachment arrangement to service maintenance payments, the monthly amount due for such maintenance payments is taken in whole from unattachable and unassignable portions of the remuneration.

Any outstanding maintenance payments from previous months and the attendant costs have to compete with other creditors for the attachable and assignable portion.

Question 6

Nationals of a Member State seeking a job in Luxembourg receive the same assistance as that accorded by placement offices to job seekers of Luxembourg nationality.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Question 7

a) *Working time*

1. Normal working time

Normal hours of work for employed persons are 8 hours a day and 40 hours a week.

Compensating derogations:

In certain cases, the normal working time may be exceeded provided it is compensated for at another time by a rest period corresponding to the excess hours worked. Hours so worked are not subject to extra pay arrangements.

Without authorization from the Minister of Labour:
For both staff and manual workers, employers have the right to increase the maximum working day to 9 hours on condition that the weekly time worked does not exceed the normal 40 hours.

With authorization from the Minister of Labour:
- for sectoral or technical reasons, exceptions may be granted for a reference period (to be determined by the Minister for manual workers, 2 weeks for non-manual workers), provided that the average working week does not exceed 40 hours or 10 hours per day;
- for continuous and shift work: maximum reference period of 4 weeks;
- for seasonal and hotel establishments.

For non-manual workers, maximum reference period of a year; the 40-hour limit may be exceeded for a number of weeks provided there is a compensatory reduction during certain other weeks.

Overtime arrangements

- The law allows overtime to be worked, subject to prior ministerial authorization, in the following cases:

  . to prevent the loss of perishable items or to avoid compromising the technical results of work;
  . to allow special work to be done (e.g. stocktaking);
  . to enable firms to cope with temporary pileups of work;
  . in exceptional cases in the public interest and in connection with events constituting a national risk.

- The law also allows for recourse to be had automatically to overtime (i.e. without prior authorization) for all types of work designed to cope with an accident or imminent risk of accident and for urgent work to be carried out on machines and work equipment and for work caused by force majeure insofar as this is needed to avoid causing a serious hindrance to the firm's normal operations.

Firms are required only to inform the Labour Inspectorate. Overtime is limited to 2 hours per day unless special arrangements are made to the contrary.

2. *Night work*

There are no general rules and regulations. Special rules apply to:

- The bakery trade:

  . bread and pastries may not be made between 10 pm and 5 am;
  . the working day in bakeries may be from 4 am to 9 pm provided the operator has made a written declaration to the Labour Inspectorate.

- Pregnant women and nursing mothers:
  May not work between 10 pm and 6 am.

- Adolescents:
  Must have a break from work of at least 12 consecutive hours, this period to include the time between 8 pm and 6 am.

b) *Employment contracts other than full-time open-ended contracts*

1. *Fixed-term contracts*

1.1. The law stresses the exceptional nature of fixed-term contracts, stipulating that employment contracts must be open-ended.

Only in cases and under conditions provided for in the law may contracts of employment be for a fixed period, such period to be laid down on signature of the contract or to be terminated on completion of the work to which the contract relates.

Thus, the Law of 24 May 1989 on employment contracts lays down the legal scope of fixed-term contracts, enabling parties to conclude such contracts "for the execution of a precise and non-permanent task". The law adds that a fixed-term contract may not be for a job linked to the firm's normal and permanent activity.

It gives examples of jobs which are to be regarded as precise and non-permanent tasks within the meaning of the law:

- replacements
- work of a seasonal nature
- work for which it is normal to have recourse to fixed-term contracts (e.g. in the audiovisual and building industries)
- for the execution of a clearly-defined occasional and specific task
- for urgent work
- contracts linked to employment policy schemes

1.2. The law requires employment contracts concluded for a fixed duration to define the object of the contract and to indicate a number of elements related to the time-limitation aspect.

- Where a contract is concluded for a precise period, the date of expiry must be stated.

- Where the contract does not include a date of expiry, it must indicate the minimum period for which it has been concluded.

- Where a contract has been concluded to provide a replacement for an absent worker, it must name the person whose absence has given rise to the contract.

The contract must, where appropriate, name the precise trial period.

It may, where appropriate, include a renewal clause.

In the absence of a clause to the effect that the contract has been concluded for a fixed duration, a contract of employment is assumed to be open-ended.

No provision is made in the law for proof to the contrary.

1.3. Duration of fixed-term contracts

1.3.1 Contract period

The law provides for two types of fixed-term contract, viz. where the contract period is clearly stated, and where the contract is concluded for a precise project or task where the date of completion is not known in advance.

In principle, the law requires contracts to be concluded from a fixed date to a fixed date. However, the parties to the contract may opt for different arrangements in three cases:

- for the replacement of an absent employee or for an employee whose contract has been suspended,

- for work of a seasonal nature,

- for jobs for which in certain sectors of activity it is normal not to use open-ended contracts because of the nature of the activity and the temporary nature of the job.

1.3.2 Maximum contract duration

The maximum duration of a fixed-term contract may not, for one and the same employee, exceed 24 months, including any renewals.

In view of the possibility open to the contract parties to provide for a seasonal contract to be renewed from season to season, the law states that the 24-month limit does not apply to successive contracts of a seasonal nature.

The law also makes an exception to the 24-month upper ceiling for employees exercising activities requiring highly specialist knowledge and properly substantiated specialist professional experience.

Exceptions to the ceiling rule are also allowed for jobs assigned to a job seeker under an occupational integration or reintegration measure under the law, along with jobs designed to encourage the recruitment of certain categories of job seeker and jobs occupied with a view to enabling the job holder to benefit from vocational training. These types of job must be authorised in advance by the Minister of Labour.

1.4. Renewal of fixed-term contracts

The law provides for fixed-term contracts to be renewed twice for a fixed period.

The principle, and where appropriate, the conditions of renewal must be set out in the initial contract or in a rider to the contract. In the absence of any such written provision, the renewed contract is assumed to be open-ended. The law makes no provision for proof to the contrary.

Employment contracts of a seasonal nature may be renewed for the following season, in which case a contract concluded for a fixed period of one season is held to constitute a fixed-term contract even if it is renewed for subsequent seasons.

If there is a renewal clause, the repetition of contractual relations for more than two seasons between an employer and one and the same employee has the effect of transforming the sum total of the seasonal contracts into an overall open-ended relationship. The consequence is that, when the firm no longer has need of the worker for the next season, the cessation of seasonal relations is deemed to be equivalent to a redundancy.

1.5. Succession of contracts

- In the event of the tacit renewal of a fixed-term employment contract which has expired, the law provides for the employment relationship to be continued in the form of an open-ended contract.

- In respect of the continuation of contractual relations by open-ended contract, the law says that one and the same post cannot in principle be filled by a succession of fixed-term contracts.

- Where a post has been occupied by a person employed under a fixed-term contract, the employer may not, once the contract has expired, employ the same person or another person at the post in question under a fixed-term contract or an interim contract before expiry of a period equivalent to a third of the duration of the previous contract, including renewals (known as the one-third rule).

  By way of exception to this general principle, the law provides for the possibility of concluding successive fixed-term contracts with one and the same employee or with another employee without application of the continuity solution.

  Exceptions to the principle of the waiting period concern first and foremost - and regardless of the motive behind recourse to a fixed-term contract - cases where cessation of contract is the employee's fault. The same goes for the anticipated termination of contract by the employee or linked to a serious misdemeanour on his or her part or refusal by the employee to renew a contract comprising a renewal clause.

  An uninterrupted succession of fixed-term contracts with different employees or with one and the same employee is allowed for jobs of a seasonal nature, for jobs where it is not normal to have recourse to open-ended contracts and for contracts linked to employment policy measures.

  The same possibility is available for the execution of urgent work.

  Finally, the law allows for the case of a fresh absence on the part of a replaced employee, particularly for a health relapse. Whatever the time which has elapsed since the end of the first contract, the employer may instate a new employee under a fixed-term contract if the employee who was originally replaced has once again gone absent.

- The law provides for restricted contracts to be reclassified as open-ended contracts for violations of certain legal provisions governing the fixed-term type of contract.
  The types mainly concerned here are contracts which are renewed under conditions which are not authorised by law and successive contracts concluded for one and the same post without complying with the waiting period.

- Where a contract is reclassified into an open-ended type, the employee retains the seniority he had acquired at the end or the fixed-term contract.

- In all cases, the law makes it illegal for a trial clause to be inserted into the new contract.

1.6. Trial period.

A contract concluded for a fixed period may make provision for a trial period in conformity with the provisions applying to open-ended contracts (see under 16. Trial period). The trial period is taken into account in calculating the maximum duration of a fixed-term contract.

The two parties to the contract may terminate a contract which includes a trial period according to the same rules which apply to open-ended contracts.

Where a trial contract is not terminated in accordance with the law before expiry of the trial period agreed by the parties, the contract is deemed to be concluded for the period agreed in the contract from the date of entry into service of the employee.

1.7. Termination of fixed-term contracts

Fixed-term contracts are terminated automatically on expiry. Suspension of such contracts has no effect on the expiry arrangements, although the law allows for the anticipated termination of such contracts for a serious reason attributable to other party.

Anticipated termination of a fixed-term contract by the employer gives the employee a right to compensation in a sum equivalent to the wages and salaries which would have been paid over up to the expiry of the contract, up to a maximum amount equivalent to the remuneration for the period of notice which the employer should have observed had the contract been of the open-ended type.

Where a contract is terminated prematurely by the employee, the employer has a right to compensation corresponding to the damage or disadvantage actually incurred, on condition though that the level of such compensation may not exceed the sum of wages and salaries payable for the period of notice which the employee should have observed if the contract had been of the open-ended type.

2. *Trial contract*

A trial clause may be incorporated into both open-ended and fixed-term contracts.

Any contract which does not incorporate a trial clause is deemed to be concluded for an indefinite period. Evidence to the contrary is not admissible.

2.1. The trial period

- may not be less than two weeks;

- must be
  . two weeks to a maximum of three months for employees whose qualifications are below CATP level;
  . two weeks to a maximum of six months for employees with the CATP or with equivalent or higher qualifications;
  . two weeks to a maximum of 12 months for employees earning a monthly salary of F 21 622 or more (base 100 index-linked);

- if of one month or less must be expressed in full weeks, with trial periods in excess of one month being expressed in full months.

2.2. Termination of trial contract

2.2.1 Termination

- May not be terminated unilaterally during the first two weeks except for a serious reason.

- Once two weeks have elapsed, any termination of the contract by one or other of the parties must be by registered letter or by way of signature on the duplicate on the letter of termination.

- The reason for termination does not have to be indicated.

2.2.2 Notice

The period of notice is expressed in days and calculated by reference to the trial period. It must comprise the same number of days as the trial period comprises weeks. If the trial period is expressed in months, the period of notice will be four days per trial month without, however, exceeding a period of one month.

If the trial contract is not terminated before expiry of the agreed trial period, the contract will be deemed to have been concluded for an indefinite period from the date of entry into service.

c) *Collective redundancy and bankruptcy procedures*

The law regards collective redundancy as comprising redundancy for at least 10 persons for a period of 30 days or of at least 20 persons for a period of 60 days.

The employer must conduct prior consulations with the staff representatives and inform them in writing of the reasons for the redundancy arrangements, the number of workers affected, the number of workers normally employed and the period over which he intends to effect the redundancies.

A copy of this letter must be sent to the Employment Administration, which in turn forwards to the Labour Inspectorate.

Collective redundancy arrangements notified in advance to the Employment Administration do not take effect for individual workers until a period of 60 days has elapsed.

Question 8

1. *Ordinary leave*

Employees have a right to leave after 3 months' uninterrupted work with the same employer.

- Duration: 25 working days per year regardless of age.

- Supplementary leave:

  . disabled workers: 6 days;

  . where the weekly rest period is less than 44 hours: 1 working day for each full period of 8 weeks, whether successive or not, for which the weekly rest period is not granted.

Employees may be refused leave where unjustified absences, calculated as a proportion of the year which has passed to date, exceed 10% of the time which should normally have been worked.

Leave must be taken in a single instalment unless the needs of the service or justified reasons on the part of the employee apply. In such cases, one leave instalment must comprise at least 12 continuous days.

For the first year at work, the period of leave is 1/12th per full month worked, with fractions of a month in excess of 15 days being counted as a full month. Fractions of leave-days in excess of 50% are regarded as full days.

Where the firm closes for its annual holiday, the collective leave period must be fixed by common accord between the employer and his employees (or their delegated representatives).

Where a contract is terminated in the course of the year, the employee has a right to 1/12th of his annual leave for each full month worked.

For each day's leave, employees have a right to an allowance equivalent to the average daily rate of pay over the three months immediately preceding the period of leave. The holiday allowance must correspond to the pay the employee would have received had he been working normal hours, and must be paid over together with the normal wage or salary.

Employers must keep records of the statutory leave periods of employees in their service.

2. *Weekly rest period*

Employers may not employ any workers, whether manual or non-manual, whether contracted or under an apprenticeship contract, on work between midnight on Saturday night and midnight on Sunday night.

2.1. Exceptions in respect of certain categories of persons

- Relatives in the ascending or descending line, brothers and sisters or in-laws of the employer, where their sole occupation is with the firm.

  This derogation concerns one-man firms, but also companies where the proprietor is affiliated to the liberal professions and self-employed workers sickness insurance fund.

- Travellers and sales representatives, in so far as they exercise their activity away from fixed establishments.

- Employees occupying an executive post and executives whose presence in the firm is essential for the smooth running and supervision of the firm.

2.2. Exceptions in respect of certain types of work

- Supervisory work in premises attached to the firm.

- Cleaning, repair and maintenance work ensuring the smooth running of the firm; work other than production which is essential so that work can resume on subsequent days.

- Work needed to prevent any deterioration of raw materials or products.

- Urgent work which has to be done in respect of salvaging, preventing imminent accidents or carrying out repairs following accidents affecting materials, installations or buildings.

2.3. Exceptions in respect of firms

- Retail sales establishments where Sunday closing would be such as to compromise the normal functioning of the establishment because of the scale of the Sunday turnover and the impossibility of making up for the custom over the other weekdays. The Minister of Labour may grant temporary or permanent derogations to the ban on Sunday working in cases which are duly justified, on condition that the legal provisions governing normal working time are upheld.

  Such working time may not exceed four hours, although there is a Grand-Ducal Regulation enabling this period to be extended up to 8 hours at most for at most six Sundays per year.

- Firms where the only or main driving force is water; the exercise of activities to satisfy public needs which arise 7 days a week or mainly on Sundays; activities which are carried on for only part of the year or are carried on more intensively in certain seasons; activities exercised for reasons of public utility. A Grand-Ducal Regulation lays down the conditions and arrangements in respect of such derogations.

- Undertakings which are automatically excluded from the general ban on Sunday working:

  . hotels, restaurants, canteens, establishments serving drinks or other consumable items;
  . pharmacies, drug stores and shops selling medical and surgical appliances;
  . fairs and sideshows;
  . farming and wine-growing undertakings;
  . public entertainment undertakings;
  . suppliers of lighting, water and motive power;
  . transport undertakings;
  . hospitals, clinics, dispensaries, sanatoria, rest homes, old people's homes, children's homes, holiday camps, orphans' homes and boarding schools;
  . undertakings in which work, by its nature, must be continuous and punctual. A Grand-Ducal Regulation will be issued to lay down which undertakings are involved and specify the nature of work which is authorized on Sundays;
  . domestic staff.

- Firms operating continuously on a shift system and which do not fall within the category of firms in which work, by its nature, must be continuous and punctual, i.e. in most cases firms wishing to introduce Sunday working, not so much for considerations inherent in the production method, but more for economic reasons (e.g. improved production capacity utilization, job growth or consolidation). Any such exceptions are subject to an agreement which must be distinct from the collective agreement and must be concluded for a specified firm with all the representative trade union organizations at national level.

Compensatory rest arrangements

Employers must grant compensatory rest time to employees who work on Sundays. Such rest may not necessarily be on a Sunday, nor on the same day of the week for all the employees in one and the same firm. It must amount to a full day if the Sunday work accounted for more than 4 hours, and a half-day at least if the Sunday working time was 4 hours or less. In the latter case, the compensatory rest time must be granted before or after 1.00 p.m., and on such days working time may not exceed 5 hours.

Question 9

The law provides for a compulsory contract of employment in writing and in duplicate, one copy to be held by the employer and the other to be handed to the employee at the time of entry into service at the latest.

The employment contract must contain the following details:

- the nature of the job
- the normal working time

- the basic salary or wage and, where appropriate, any supplements, bonuses, profit-sharing arrangements and the like
- the duration of the trial period
- any other terms agreed between the parties.

SOCIAL PROTECTION

Question 10

The social security system in Luxembourg is designed to guarantee workers an alternative source of income where they are prevented from pursuing their normal occupational activity by reason of illness, child birth, old age, invalidity, death or unemployment. The basis on which social security benefits are calculated is the wage or salary previously received. The entire working population (employed or self-employed) is covered by the system; there are also optional insurance arrangements covering cessation of work.

In addition to these traditional social security mechanisms, there is also a guaranteed resources mechanism which ensures that people receive a guaranteed minimum level of income to guard against poverty.

The guaranteed minimum income is a State social benefit by which the monthly income of all inhabitants who are not in a position to live off their own resources is raised by a supplementary payment to a given level laid down in law.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Question 11

Apart from a worker's constitutional rights, the right to form professional organizations derives from ILO Convention 87 on the freedom of association and protection of the right to organize, ratified in 1958.

This convention states that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization".

As regards the rules, "workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes".

The convention goes on to state that "organizations shall not be liable to be dissolved or suspended by administrative authority" and insists that "workers and employers and their respective organizations shall respect the law of the land".

Question 12

1. *Definition*

The law defines a collective agreement as a contract relating to employment relations and general conditions of employment concluded between, on the one hand, one or more trade union organizations and, on the other, one or more employers' organizations, or a particular firm, or a group of companies with a similar production pattern or activity, or a group of companies exercising the same activity.

2. *Drafting arrangements*

The law requires an employer who has been asked to enter into negotiations with a view to the conclusion of a collective agreement to comply with the request.

However, it releases the employer from the obligation to negotiate where he shows a willingness to negotiate within a group of employers or in concert with other employers exercising the same activity. Where, in such cases, negotiations have not commenced within 60 days of the initial request, the employer may be obliged to negotiate separately.

Where an employer refuses to enter into negotiations, the fact of disagreement is notified to the national conciliation board. The same happens where, in the course of negotiations, the parties fail to agree on all or part of the agreement.

Finally, the law allows the parties to have their case adjudged by one or more arbitrators, either before or after failure has been ascertained at the conciliaton stage.

3. *Form and notification*

The agreement must be in writing and duly signed, otherwise it is deemed to be null and void.

It must be lodged with the Labour Inspectorate and be posted at the main entrances to the places of work.

4. *Date of entry into effect and duration*

The agreement is applicable from the day after it is lodged with the Labour Inspectorate.
Minimum duration: 6 months
Maximum duration: 3 years

The agreement may be terminated by notice agreed between the parties. The period of notice is three months at most and 15 days at least.

5. *Sanctions*

Failure on the part of the employer or worker to comply with his obligations under the agreement is subject to a fine ranging from F 2 501 to F 250 000.

Question 13

1. *The right to strike*

Workers' right to strike is not stated explicitly either in the constitution or in law. It derives from a broad interpretation of judicial origin of the concept of freedom of association incorporated in Article 11(5) of the constitution which, in its amended 1948 version, states that "the law ... guarantees freedom of trade union activity".

Any strike which is launched before exhausting all means of conciliation as evidenced by a protocol of non-conciliation is deemed to be illegal.

2. *Conciliation*

All collective disputes must be the subject of a session of the national conciliation board, which is called by the Chairman either:

- as a matter of course
- at the request of the parties to the dispute
- at the request of two members of the Joint Committee.

* Conciliation agreement

Settlement of a dispute results from agreement on the part of the groups. The secretary draws up a report, which is signed by the Chairman and the parties.

The resulting rules govern the employment relations and conditions of work in signatory companies.

They may also be declared to have general application for all employers and employees in the branch of activity concerned.

* Failure of conciliation

When the Chairman rules that all means of conciliation have been exhausted, the Commission draws up a report of non-conciliation bringing out the contentious issues. The law states that the conciliation procedure at the national conciliation board is mandatory.

a) It is an offence to :

. bring about a stoppage or general cessation of work without taking the matter first of all to the national conciliation board;

. refuse, without legitimate grounds, to enter into the conciliation efforts undertaken by the national conciliation board;

. hinder the parties' representatives in the accomplishment of their mission as part of the conciliation procedure.

b) It is a criminal offence for employers and employees to fail to carry out their duties devolving from agreements reached with the board.

Question 14

Certain categories of civil servants may make use of the strike weapon within the limits and subject to the conditions of the Law of 16 April 1979 concerning strike action in the civil service and public establishments under the direct control of central government.

a) Beneficiaries

Strike action may be taken by all established officials, trainee officials, employees and auxiliary staff with the exception of:

1. Officials whose functions are based on Article 76 of the Constitution (Conseillers de Gouvernement).

2. Envoys extraordinary and ministers plenipotentiary, diplomatic service delegation advisors and other agents in the diplomatic service exercising the functions abroad of a permanent or temporary chef de mission.

3. Judges.

4. Administrative heads and their assistants.

5. Directors of teaching establishments and their assistants.

6. Staff of the judicial and prison services.

7. Members of the armed forces.

8. Medical and paramedical staff on duty.

9. Security agents and staff responsible for security in the public services.

b) Conciliation

* Collective disputes between the staff and the employing authorities referred to in Article 1 are subject to a compulsory conciliation procedure under the auspices of a conciliation commission.

* Apart from the chairman, who must be a member of the judiciary, the conciliation commission is made up of five representatives of the public authority and five representatives of the trade union organization or organizations representing the staff involved in the dispute.

* The chairman is appointed by the Grand Duke for a period of three years; the representatives of the public authority are appointed by the Prime Minister; the representatives of the trade union organizations are appointed by the organizations themselves, bearing in mind the following criteria:

- where the dispute is a general one, the trade union organization or organizations which are most representative in national terms of the sectors covered by this law have the right to name the five representatives from among their members;
- where the dispute is not of a general nature, but is limited to one department or another, or one category of staff or another, the trade union organization or organizations which are most representative in national terms name three representatives, with the other two being appointed by the trade union organization or organizations representing the staff involved in the dispute.

* A trade union organization within the meaning of this law is taken to mean any professional grouping with an internal organization whose aim is to defend the professional interests and which represent exclusively the staff of central government and of public establishments under the direct control of the State.

* The most representative trade union organization in national terms or for the sector concerned is the one which can show evidence of being the most representative in terms of having the highest number of members, and in terms of its activities and independence.

c) Mediation

* In the event of non-conciliation, the dispute is put, at the request of one of the parties and within a period of forty-eight hours, to the Chairman of the Council of State or to the member of the Council of State delegated by the Chairman as mediator.

  The mediator then endeavours to mediate between the two parties. If he fails in his task, he puts to them, within a period of eight days and in the form of a recommendation, proposals for regulating the dispute.

d) Notice of strike action

Where, as a result of failure of the conciliation procedure and, where appropriate, of the mediation process, the staff decide to take strike action, the concerted cessation of work must be preceded by notice in writing. Such notice must be issued by the trade union organization or organizations designated in Article 2, and must be transmitted to the Prime Minister ten days before the planned start of the strike. It must indicate the reasons, place, date and time of start and the planned duration of the strike. It may not have cumulative effect with any other notice of strike action.

e) Limitations

* In the event of the concerted cessation of work on the part of staff covered by Article 1, the time of cessation and the time of return to work may not be different for different categories of staff or for the various members of staff.

* Stoppages may not, by staggered strike action or by rotation, affect the various sectors or staff categories in one and the same service or establishment or the various services or establishments in one and the same organization.

* Concerted stoppages whose aim is not exclusively the defence of professional, economic or social interests are prohibited.

* Stoppages accompanied by acts of violence against persons or property or by constraints on the freedom to work are deemed to be illegal in respect of the persons committing such acts.

f) Requisition arrangements

* By reason of a government decision, the ministers may be authorized to requisition or have requisitioned all or some of the persons designated in Article 1 as being indispensable to the provision of essential services to meet national needs.

* Such requisition orders may be individual or collective and must be brought to the attention of those concerned by appropriate means such as individual notification, posting, publication in the national Gazette or in the press or radio.

g) Sanctions

1. **Custodial**

* Any member of staff as designated in Article 1 and any union representative who does not conform to the rules set out in Articles 2, 3, 4 and 5 may be subject to a fine of between 2 500 and 150 000 francs.

* The provisions set out in Volume 1 of the Penal Code and in the law of 18 June 1879 making the courts responsible for assessing attenuating circumstances, as amended by the law of 16 May 1904, apply.

* If a second offence is committed within a period of two years, the fine set out above may be doubled.

* The above provisions apply without prejudice to the application of any other provisions of the Penal Code.

2. **Financial**

* Absence from work as a consequence of the concerted stoppage of work brings with it, for the persons designated in Article 1, a loss of remuneration, other than family allowances, of a thirtieth of the monthly remuneration per day.

  For the purposes of this provision, parts of a day are deemed to count as a full day.

* Despatch to the person concerned of the supporting evidence of withheld remuneration counts as notification of the decision, the date indicated on the bank statement acting as the first day of the period within which appeal may be made to the Council of State's disputes committee.

3. **Disciplinary**

* Without prejudice to the application of penal sanctions and the sanctions provided for in Article 8 below, the non-observance of the above provisions attracts, in conformity with the normal disciplinary procedure, sanctions as provided for in the statutes or rules governing the categories of staff concerned.

VOCATIONAL TRAINING

Question 15

a) The conditions of access to vocational training are laid down in the Grand-Ducal Regulation of 8 February 1991, determining the criteria for advancement in the lower, middle and technical education sectors and in the upper cycle of secondary technical education.

They are as follows:

1. Pupils who have successfully completed a class in the 9th level of technical education (9/I) under advancement system A are eligible to attend all classes in the 10th grade of the middle school.

2. Pupils who have successfully completed

   - a class in the 9th technical grade (9/I) under advancement system B,
   - a class in the 9th general grade (9/II) under advancement systems A and B,
   - a class in the 9th vocational grade (9/III) under advancement system A

   are eligible to enrol in a 10th grade class in the middle school in conformity with the class advisor's opinion.

   In forming his opinion on children who fall into the above category, the advisor takes into account:

   - the pupil's results,
   - the knowledge and aptitude required to follow training courses in the various divisions and sections of the middle school,
   - the advice of the school pyschological and guidance service.

3. The provisions set out in Article 25 of the Law of 4 September 1990 introducing reforms to the secondary technical education system and to the continuing vocational training system find their application in the publication of the Grand-Ducal Regulation determining the way in which the guidance profile is drawn up and applied.

The following points should be noted:

- advancement system A governs the school career of pupils continuing the same training scheme,
- advancement system B governs the school career of pupils changing training stream,
- the guidance profile is based essentially on grades obtained, weighted in accordance with a system which takes into account the pupil's intended school and vocational career and indicates, where appropriate, what means of support might be available to enable the pupil to pursue his or her training scheme.

b) The question does not apply, given that the education system in Luxembourg features no element of discrimination on grounds of nationality with regard to access to vocational training.

c) The Law of 4 September 1990 introducing reforms to the continuing vocational training system offers, with no restriction whatever, opportunities for refresher courses, retraining and further training. Admission to such courses is free of charge or costs a token sum.

The same goes for adult training courses offering opportunities for a "second chance" to obtain certificates and diplomas. This type of training is governed by a law passed by Parliament on 4 June 1991 and offers a wide range of courses in languages and general subjects.

Other intiatives on continuing training have been taken by professional organizations and firms themselves and are, generally speaking, designed for particular groups.

EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

a) Equal treatment is a principle which has been written into the various laws which have been passed over recent years (e.g. equal pay, equal access to jobs, equal treatment in respect of training and promotion, equal working conditions and equal treatment in respect of social security). There is no direct discrimination in terms of access to education, training or jobs.

b) A variety of measures have been taken in respect of education and vocational training with a view to encouraging girls to take an interest in the new technologies and non-traditional trades, and to provide training and support for women returning to work after a career break.

c) The Law of 1 August 1988 creating an education allowance provides for the following persons to be eligible for such payment:

- a parent whose main concern is bringing up children at home and who does not exercise a professional activity;

- a parent who, while exercising a professional activity, has - together with his or her spouse - a level of income which does not exceed a certain threshold which varies with the size of the family.

Discussions are currently in progress with a view to extending the education allowance to persons exercising a part-time professional activity.

The Law of 24 April 1991 concerning contributory pension schemes provides for two rather than one baby year to count as an effective insurance period for calculating contributory scheme pensions.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

The Laws of 6 May 1974 and 18 May 1979 providing for the information, consultation and participation of workers or, via joint works councils, for the representation of workers at company level and staff delegations apply exclusively to firms situated on the territory of the Grand Duchy of Luxembourg.

Question 18

1. *Staff delegates*

The Law of 18 May 1979 makes the staff delegations generally responsible for safeguarding and defending the interests of employees in the firm in respect of the following:

- working conditions
- job security
- social status

The law allows for an exception to be made to this principle where this mission is assumed by the joint works committee, where such a committee exists.

1.1. Functions of a social and professional nature

The staff delegation is required to give its opinion and formulate proposals on any matter to do with the improvement of working conditions and employment conditions and to the social situtation of employees.

In this context, the law requires the staff delegation to give its opinion on any new or revised internal rules and regulations for the company or a particular operating unit and to ensure that the rules are strictly applied.

The staff delegation is also empowered to propose changes to the internal rules of procedure; the management or, where appropriate, the joint works committee must take a decision on any such proposal within a period of two months, such decision being communicated to the staff delegation.

1.2. Functions of an economic nature

1.2.1 Annual information

In a joint stock company, the law requires the management to inform the staff delegates once a year at least of the economic and financial situation of the company.

To this end, the management presents workers' delegates with a general report on the firm's activities, turnover, overall production and operating results, orders, staff remuneration changes and investment activity.

Where there is a joint works committee, presentation of the report must be first of all to the committee and then to the staff delegates.

1.2.2 Periodic information

The law requires heads of companies to give staff delegates information in respect of company status and prospects.

Such details must be made available:

- in companies with a joint committee: every month;
- in companies without a mixed committee: to coincide with meetings of the staff delegation and management.

2. *Joint committees*

The Law of 6 May 1974 introduced joint works committees made up jointly of management and staff representatives.

The law lays down the functions of the joint committee, making a distinction between consultation, decision-making and supervisory functions.

2.1. Information and advisory functions

2.1.1 Six-monthly information

The law requires the head of the company to inform and consult the joint committee in writing at least twice a year on economic and financial developments in the company.

To this end, it calls on the person in charge to present a general report on the company's activities, turnover, overall production and operating results, orders, staff remuneration changes and investment activity.

It also requires the management of joint stock companies to pass on to the joint committee the company's profit and loss account, annual balance sheet, auditors' report, board of administration's report and any other document destined for the shareholders' general assembley.

All these documents must be communicated before being presented to the general assembley to enable the joint committee to base its opinion on the information contained in them.

2.1.2 Annual information

The company head must inform and consult the joint committee once a year at least on the company's current and future needs in terms of manpower and on the ensuing measures, particularly training and retraining, which might affect the company staff.

2.1.3 Specific information and consultation

Generally speaking, the law gives the joint committee powers to state its views on decisions of an economic and financial nature which could have major implications for the structure of the firm or its manning level.

The examples given concern decisions on the volume of production and sales, production programming and planning, investment policy, plans for restricting or extending the firm's activities, merger plans, and plans for altering the firm's organizational structure.

The law also states that the joint committee has advisory powers in respect of measures relating to production or administrative installations, equipment and manufacturing processes and methods.

It states that the information and consultation function is not restricted to a straight description of what decisions are pending, but must extend to the implications of such measures for the staffing level and structure and for employment and working conditions. Where appropriate, it will also relate to measures of a social nature either taken or planned by the head of the firm to lessen the impact of these measures on employment conditions, particularly as regards vocational training and retraining.

Information and consultation must, in principle, precede the decision itself.

However, the law allows for derogations from this rule where prior consultation might have a detrimental effect on the management of the firm or compromise a projected operation. In such cases, the company head must give the joint committee all necessary information and explanations within 3 days.

2.2. Joint decision-making function

The law gives the joint committee a power of joint decision-making in respect of the introduction or application of technical installations designed to keep a check on the behaviour and performance of workers at work.

The same applies to the introduction or modification of measures in respect of the health and safety of workers and the prevention of occupational diseases.

The law also bestows joint decision-making powers on the joint committee in respect of the establishment or modification of general criteria regarding recruitment, promotion, transfer and redundancy and for the establishment or modification of general criteria for assessing workers' performance. The actual decisions on recruitment, promotion, transfer and redundancy, however, remain the exclusive preserve of the employer.

Finally, the law gives the joint committee joint decision-making powers in respect of the granting of bonuses to workers for suggestions or proposals which prove particularly useful to the firm, although the firm reserves all patent and invention rights.

2.3. Monitoring function

The joint committee is responsible for overseeing the firm's social services; to this end, it receives a management report from the head of the firm at least once a year.

Deliberations of the joint committee:

Each decision and each opinion expressed by the joint committee is deemed to be adopted if it receives an absolute majority of votes from the employer's representatives' group and the staff representatives' group.

- Where there is disagreement between the two groups on the adoption of a measure falling within the scope of joint decision-making powers, the law gives the first petitioner the right to initiate the conciliation procedure and, where appropriate, the arbitration procedure under the auspices of the national conciliation board.

- In the event of disagreement between the two groups on the adoption of an opinion voiced by the joint committee, the law makes it mandatory to communicate each of the two opinions to the company's administration board.

The head of the company or the administration board must give full details of what becomes of the opinions expressed by the joint committee.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

a) In the areas or sectors covered by Community Directives, there are, generally speaking, no provisions which are more favourable in national terms, with the result that Luxembourg endeavours to transpose such directives into national law before the projected implementation dates.

b) The Law of 18 May 1979 on the reform of staff delegation arrangements says in Article 10, in the chapter entitled "Staff delegates' functions", that the staff delegation is required in particular to participate in labour protection and its environment and in the prevention of occupational accidents and occupational diseases.

   Article 11 says that each divisional delegation must nominate from its members or from the other workers in the establishment a staff safety delegate.

   The Law of 6 May 1974 instituting joint committees in private-sector companies says in Article 7 that the joint works committee has the power of decision-making in respect of the introduction or modification of measures concerning the health and safety of workers and the prevention of occupational diseases.

PROTECTION OF CHILDREN AND ADOLESCENTS

Question 20

The law prohibits the employment of:

- children under 15 years of age on any kind of work;

- adolescents up to the age of 18 on work which is not appropriate to an adolescent's stage of development, which requires a disproportionate effort from.him or her or which may be a risk to his or her physical or mental health.

Question 21

For work of equal value, the law gives adolescents aged 18 years or more the same remuneration as adult workers aged 20 years occupying a similar post. It does not, however, allow bonuses based on length of service to which adults may be entitled.

The following abatements apply:

- adolescents aged between 17 and 18 years of age: 80%
- adolescents aged between 16 and 17 years of age: 70%
- adolescents aged between 15 and 16 years of age: 60%

Question 22

1. *Duration of work*

The normal working week for adolescents is 40 hours with effect from 1 November 1969.

2. *Night work*

2.1. Principle

The Law of 28 October 1969 prohibits in principle the employment of adolescents during night time, i.e. for a period of 12 consecutive hours at least, whereby this period must include the period between 8 pm and 5 am.

2.2. Derogations

1. The employment of adolescents is authorized automatically up to 10 pm in continuous-operation production processes.

2. The employment of adolescents may be authorized by the labour inspectorate director up to 10 pm where such adolescents are covered by an apprenticeship contract and are employed in hotels, restaurants, cafés and the like.

3. Similarly, the employment of an adolescent during night time may be authorized by the labour inspectorate director for certain paramedical professions.

3. *Vocational training*

The Grand-Ducal Decree of 8 October 1945 defines the terms of apprenticeship contracts.

It determines the functions and forms of action open to the employers' professional representation and of the professional representation responsible for the apprenticeship arrangements. It also determines the conditions under which the right to engage or train an apprentice may be refused.

3.1. Contract validity

The apprenticeship contract or declaration is compulsory and must take the form of a private deed, otherwise it is deemed to be null and void.

3.2. Employer's duties

The employer's duties with regard to his apprentice are:

- to pay over apprenticeship allowances as laid down in the ministerial decree;
- to provide the apprentice's vocational education and training;
- to act with all reasonable and usual care, skill and forethought, to supervise the apprentice's behaviour and habits, to inform the apprentice's legal guardian where a serious misdemeanour is committed;

- to give the apprentice whatever time is needed to pursue formal or post-school vocational training courses prescribed by the employer's professional representation;
- not to employ the apprentice on work or services which do not fall within the scope of the occupation covered by the contract;
- not to give the apprentice productive work to do at home.

3.3. Apprentice's duties

The apprentice owes his employer loyalty, obedience and respect. He must help him in his work and give him proof of the fact that he is enrolled for and attending courses at the vocational training establishment.

3.4. Cessation and termination of contract

The apprenticeship contract is terminated:

a) by the apprentice passing the final examination,
b) if the employer dies or gives up his occupation,
c) if the employer or the apprentice are given certain types of custodial sentences,
d) by force majeure.

The apprenticeship contract may be terminated prematurely:

1. By the employer's professional representation where one or the other party is manifestly not complying with the apprenticeship conditions or with the provisions of the relevant decree;

2. By one or other of the parties:

   - where there has been a serious violation of the contract conditions,
   - in the event of a penalty involving the loss of civil rights,
   - where one of the parties changes residence in conditions such that continuation of the apprenticeship arrangements becomes impracticable. However, in such an event the contract may not be terminated until the month following the change of address.

3. By the employer:

   a) where the apprentice is guilty of a breach of good conduct;
   b) where, even after a trial period, it becomes obvious that the apprentice will never learn the trade properly;
   c) on the advice of the doctor where, as a result of an accident or illness lasting more than three months, the apprentice is no longer capable of exercising his chosen occupation;
   d) on the advice of the doctor, where the apprentice is suffering from a contagious or repellent disease;
   e) on the death of the employer's spouse, where the apprentice received board and lodging from the late spouse.

4. By the apprentice or his legal guardian:

   a) on the advice of the doctor, where the apprenticeship cannot be continued without damaging the apprentice's health;
   b) on the event of a female apprentice's marriage;
   c) where a female apprentice receives board and lodging from the employer: in the event of the death of the spouse or of the person running the household.

   An employer who takes on an apprentice whom he knows to have been a party to an apprenticeship contract and where the contract has not been properly terminated may be liable to pay compensation to the former employer.

3.5. Disputes and legal redress

Disputes between employers and apprentices under this Decree are dealt with by a joint committee comprising:

a) the Director of the Labour Inspectorate, chairing the committee;
b) two representatives of the employer's professional representation
c) two representatives of the professional representation for the apprentice;
d) a similar number of deputy members.

Legal redress

Appeals brought against decisions taken by the joint committee may be made to the national conciliation board within 10 days of notification of the decision.

Supervision and examination

Supervision of the apprenticeship arrangement is a matter for the relevant professional institutes.
Apprentices must take an apprenticeship examination based on the rules and programmes drawn up by the relevant professional institutes and approved by the government.

Question 23

See reply to question 15.

THE ELDERLY

Questions 24 & 25

The retirement system has been improved over recent years to afford retired persons a decent standard of living. Thus, the Law of 24 April 1991 brought about a substantial increase in old-age pensions under the contributory scheme.

Elderly persons who are not entitled to a pension may obtain sufficient resources under the guaranteed minimum income scheme or under legislation on emergency accommodation.

The local authorities' social welfare offices and the central social services are responsible for dealing with the problems of impoverished old people.

The Ministry for Family Affairs has put forward a national programme for the elderly, which was adopted by the government on 11 March 1988.

This programme provides for the fair and equitable distribution of services to the elderly. More than 80% of the country is covered by the meals-on-wheels scheme, and the Ministries of Family Affairs and Health are currently organising a scheme for providing home help and health care throughout the country.

Finally, there are central and local government arrangements in the form of day centres, old people's homes, sanatoria and special geriatric units to provide help for all elderly people regardless of financial resources.

The central or local government social services pay the difference between expenditure and the person's resources. Persons placed in an institution are guaranteed a minimum level of resources.

The Advisory Committee for the Elderly has been asked to analyse and put forward concrete proposals for the implementation of Articles 24 and 25 of the Charter.

DISABLED PERSONS

Question 26

The Law of 28 April 1959 created the Office for the placement and vocational retraining of disabled workers.

1. *Definition of disabled worker*

   For the purposes of the legislation on the placement and vocational retraining of disabled workers, the law defines "disabled worker" as follows:

   - persons who have suffered an accident at work
   - war cripples
   - persons with a physical impairment.

2. *Recognition of status as disabled worker*

   A person's status as a "disabled worker" is assessed and recognised by the Office for the placement and vocational retraining of disabled workers.

When the Employment Administration Service or one of its agencies receives an application for recognition as a disabled worker, it passes it on to the Office for the placement and vocational retraining of disabled workers, which then takes a decision after hearing the advice of a committee.

3. *Compulsory employment of disabled workers*

3.1 Establishments concerned

The following establishments or organizations are required to give priority to disabled job seekers:

3.1.1 Public sector

- Central government
- Local government
- The national railways company
- Public establishments

3.1.2 Private sector

- Firms normally employing 25 or more workers.

3.2 Percentage of disabled workers

The law lays down the criteria for reserving jobs for disabled workers as follows:

Public-sector undertakings must reserve at least 2% of their total jobs for disabled workers.

Private-sector firms normally employing at least 50 workers must reserve at least 2% of their total jobs for disabled workers.

Firms employing at least 25 workers must reserve one priority job for a disabled worker.

3.3 Conditions of employment

Disabled workers are paid in principle according to their aptitude and capacity.

Where a disabled worker is fully able to do the work required at the post he occupies, he has a right to the full pay for the job in question.

However, the law makes provision for disabled workers who cannot perform to the level of an able-bodied worker to receive proportionately less pay.

In the event of disagreement on the subject of reduced pay, it is up to the Office to decide.

Where such reductions would force a disabled worker's level of pay down to below the minimum wage, special rules apply.

Allowances for which disabled workers might be eligible may not be reduced by such remuneration. Similarly, the remuneration received by a disabled worker may not be reduced by the amount of any allowance for which he or she is eligible.

4. *Measures for the vocational retraining of the disabled*

Once a person's status as a disabled worker has been recognised, the Office gives its advice on career prospects and on what measures should be taken to facilitate his or her occupational reintegration.

The State bears the expense of vocational retraining for persons with a physical impairment and for war cripples.

The law makes the accident assurance association responsible for the cost of vocational retraining for persons who have suffered an accident at work.

IMPLEMENTATION OF THE CHARTER

Question 27

Virtually all the laws implementing the fundamental social rights of workers at national level are accompanied by administrative and/or penal sanctions.

THE NETHERLANDS

FREEDOM OF MOVEMENT

Question 1

- No.

- As far as job placement is concerned, the employment authorities place no restrictions in the way of such workers. The provisions of Article 1 of Order 1612/68 do not yet apply to Spaniards and Portuguese.

  Under the law, employment in the judiciary, the police or the armed forces, or in sensitive posts or posts representing the Netherlands abroad, is confined to persons of Netherlands nationality. This is because such posts either involve essential state duties, frequently involving the direct exercise of authority over citizens, or are connected with national interests, in particular the internal and external security of the state. It is admissible to reserve such jobs for state nationals under Article 48(4) of the EEC Treaty.

Question 2

- No, not as far as we are aware.

- There are no restrictions other than those deriving from Article 48(4) of the EEC Treaty, many of which have now been dropped.

- No.

Question 3

- The Netherlands already has a flexible family reunification policy in conformity with Community law. No special measures exist to encourage family reunification. There are no restrictions on family members as regards employment, but until 1.1.1992 family members of Portuguese and Spanish workers remain subject to the legal residence qualifications.

- Facilities exist for the employment offices to check what practical (labour-market) relevance attaches to diplomas, etc. issued in other countries (including EC Member States).

  Pursuant to the EC Directive 89/48 (general system for recognition of higher-education diplomas), comprehensive legislation on the recognition of EC higher-education diplomas is currently in preparation.

- Under the Employment Act ("Arbeidsvoorzieningswet"), frontier workers who are nationals of a Member State have the same rights as Dutch workers.

Under Article 24 of the revised Royal Decree regulating Admittance to National Insurance Schemes (Royal Decree 164), a resident who is in receipt of a benefit under a foreign social security system may, on request and subject to certain conditions, be exempted from the obligation to join the Netherlands national insurance scheme.

This measure was taken in order to avoid persons entitled to benefits having to pay double, and therefore disproportionate, contributions. The measure applies in particular to former frontier workers.

EMPLOYMENT AND REMUNERATION

Question 4

- No.

Question 5

- Employees in the private sector who are aged between 23 and 65 and who work for at least one third of the normal weekly or monthly working hours are entitled to at least the statutory minimum wage (adjusted pro rata). The statutory minimum wage is regarded as fair remuneration for the work performed and as adequate to support a family. The normal number of working hours constituting full-time employment is not defined by law but is usually laid down in the collective labour agreement under which the worker is employed. In cases where no collective labour agreement exists, the number of working hours must be laid down in the individual work contract. The duration of the labour agreement has no effect on this statutory minimum wage guarantee.

  Collective labour agreements normally set out the remuneration conditions in detail, including those for part-time workers and workers on limited-duration contracts. The provisions of a collective labour agreement are without prejudice to the provisions of the above-mentioned law.

- Under Article 1638g or the Civil Code, total seizure of wages is prohibited: the worker must at all times be left with a sufficient part of his wage (the "seizure-exempt allowance") to enable him to afford the basic necessities of life. The employer must continue to pay this portion to the worker, irrespective of the seizure. The same applies to transfers, pledges or any other procedure whereby the worker grants a third party some right to his wage. The employer first withholds and deducts the income tax and the social security, pension and health insurance contributions. Of the sum remaining, the "seizure-exempt allowance" corresponds to 90% of the benefit to which the worker would be entitled in his specific situation under the National Assistance (Standardisation) Decree.

In the case of civil servants, Article 115 et seq. of the Central and Local Government Personnel Act stipulates up to what percentages specified parts of the remunerations and pensions of civil servants may be withheld, seized, cut, transferred, pledged or similarly treated. These restrictions do not apply to certain special withholding, seizure or reduction procedures, such as those to recover maintenance or fines imposed by the courts (Article 120 of the Central and Local Government Personnel Act).

Question 6

- Employees and employers have access to public placement services free of charge (Article 79 of the Employment Act).

  Reimbursement may be claimed only for "additional" costs incurred at the express request of the employer or job-seeker.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Question 7

- The maximum working time is 8.5 hours per day. Employers have various options for extending this but a permit must be obtained from the Labour Inspectorate.

  A one-year permit is automatically granted for schemes negotiated in collective labour agreements or between employers and works councils, provided that the following standards are not exceeded:

  . maximum hours of work per day: 9.5
  . maximum hours of work per four weeks: 190
  . maximum hours of work per quarter: 552.2
  . minimum daily rest: 11 hours
  . minimum rest between two working weeks: 38 hours
  . working days, for the purposes of this permit, are Mondays to Saturdays
  . the limits of daily working hours are between 06.00 and 19.00, or between 08.00 and 21.00.

  In addition to this permit, there also exists a contingency permit for overtime in unexpected, short-term emergencies. The maximum day is 11 hours, the maximum week 48 hours and the maximum four-week period 180 hours.

  Finally, there is also an ad-hoc permit for situations in which the above-mentioned permits are not sufficient. The ad-hoc permit is issued for a maximum of one quarter. The maximum working day is 11 hours, the maximum week 62 weeks, the maximum four-week period 200 hours and the maximum quarter 585 hours.

- It has been government policy for some considerable time to improve the legal position of part-time workers where necessary.

One current issue, for example, is the existence of thresholds for part-time workers in relation to supplementary pensions. The pension funds themselves are now deeply involved in reviewing these thresholds.

On a more general level, it can also be confirmed that in collective labour agreements and in working practice the legal position of part-time workers is being brought closer into line with that of full-time workers. The government has asked the Socio-Economic Council for an opinion on the so-called "flexible work relationships", certain forms of which must be regarded as undesirable from the social point of view, particularly the mutually-binding contracts which offer virtually no job security or income security: contracts with no specified number of working hours and "min-max contracts" where the minimum is extremely low. The government has particularly asked the Socio-Economic Council to give an opinion on a statutory provision providing a basic level of job-income security.

Parliament currently has before it a bill amending the law governing dismissal. For workers on fixed-term contracts this will mean that an employment contract which is not terminated or not terminated on time can no longer - as currently established in the Civil Code - be repeatedly extended for fixed terms but must henceforth be regarded as an open-ended contract which is thus subject to the conditions concerning notice. However, it will still be possible to extend a contract for a fixed period provided the parties agree this in writing.

- In 1976, in implementation of EC Directive 75/129/EEC, the Netherlands promulgated the Collective Redundancies (Notification) Act. Under this Act, an employer intending to terminate the employment of 20 or more employees in a particular employment region within a period of three months must first notify and consult the competent workers' associations. The Act specifies the information which the employer must supply. The Regional Director for Employment then deals with the employer's redundancy proposal one month after notification, provided the unions have been consulted. The one-month waiting period does not apply in bankruptcy cases. The Act is supplemented by the 1971 Works Councils Act, under which the employer is obliged to inform and consult the works council about, for example, the termination of the activities of the undertaking or of a part of the undertaking.

  The traditional rules governing dismissal, as laid down in the Civil Code and the 1945 Labour Relations (Special Powers) Decree, are somewhat modified if the employer is declared bankrupt. The receiver or an employee wishing to terminate the employment contract does not then require the approval of the Regional Director. Nor does the special interdiction on dismissal under Article 1639h of the Civil Code apply. Declaration of the employer's bankruptcy also affects the period of notice required (Article 40 of the Bankruptcy Act).

Question 8

- The minimum paid-leave entitlements of every worker in the Netherlands are set out in Articles 1638bb to 1638mm of the Civil Code. The main rule is that workers on a five-day working week are entitled to a minimum of 20 days' paid leave per year (Art. 1638bb). Those working only part of a year are entitled to at least this minimum, adjusted pro rata.

  The minimum is established in the law of 9 June 1988 (published in the Staatsblad 1988, 281), which entered into force on 1 August 1988. It is based on developments in practice and on the EC Council Recommendation of mid-1975 providing for four weeks' basic paid leave. Under collective labour agreements, regulations or individual work contracts the minimum entitlement can be adjusted upwards. In 1990, the average paid-leave entitlement in collective labour agreements was 24 eight-hour days.

  Civil servants' entitlements to annual leave and weekly rest periods are laid down by law. The minimum annual-leave entitlement is 23 days, and the weekly rest entitlement over each 7-day period is at least two days - these two days should, in principle, be consecutive.

Question 9

- Articles 1637 to 1639 of the Civil Code lay down requirements concerning, among other things, remuneration, paid leave and dismissal. These are generally minimum requirements, which can be adjusted upwards in collective labour agreements or individual work contracts. A collective labour agreement must always be in writing, whereas in an individual contract of employment even a verbal agreement is binding.

  Working conditions of civil servants are governed by regulations based on the 1929 Central and Local Government Personnel Act (CLGP Act). The drafting of such regulations is preceded by consultations with the organizations and government personnel. Civil servants are appointed in writing, in accordance with the law.

SOCIAL PROTECTION

Question 10

- Salaried employees in the Netherlands are insured both under the social insurance laws for employees (Sickness Benefits Act; Occupational Disability Insurance Act; Unemployment Act and the Health Insurance Act up to a specific wage ceiling), and under the national insurance laws (General Old-Age Pensions Act; General Widows' and Orphans' Benefits Act; General Child Benefit Act; the General Exceptional Medical Expenses Act and the General Occupational Disability Act). The amount of benefit

payable under the social insurance laws for employees is generally related to the most recent wage earned, while the benefit payable under the national insurance laws is a statutory fixed amount, a "flat-rate" benefit related to the statutory minimum wage.

If for any reason the benefit payable under the Sickness Benefits Act, the Unemployment Act, the General Occupational Disability Act and the Occupational Disability Insurance Act is not at least equivalent to the minimum income, the beneficiary may, subject to certain conditions, be eligible for a supplementary allowance under the Supplementary Allowances Act.

The amount of the supplementary allowance varies depending on the beneficiary's family situation, ranging from the difference between 70% of the minimum wage and the income to the difference between the full minimum wage and the income.

Civil servants are covered by the Public Servants' Superannuation Fund Act, which provides protection against the financial consequences of old age, invalidity and death (survivor's pension). These benefits are over and above the statutory minimum levels under the general national insurance schemes. As regards unemployment insurance, civil servants have a separate statutory scheme which compares favourably with the scheme for the private sector.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Question 11

- There are no obstacles to prevent employers and workers in the Netherlands from forming professional organizations or trade unions. Freedom of (professional) association is guaranteed under Article 8 of the Constitution. In addition, the Netherlands has ratified ILO Conventions 87 concerning Freedom of Association and 151 concerning Protection of the Right to Organize and Procedures for Examining Conditions of Employment in the Public Service. The guarantees under ILO Convention 151 are enshrined in the 1929 CLGP Act and the 1937 Military Personnel Act and the decrees based on these two laws.

  Every employer or worker has the right to join or not to join a professional organization or trade union without suffering any disadvantage.

  Freedom of association for civil servants is enshrined in Article 125a of the 1929 CLGP Act.

Question 12

- There is no statutory obligation for collective bargaining or any similar procedure in the Netherlands. Collective bargaining is governed by the principle of freedom of contract. In principle, any union organization or employer/employers'

organization with full legal rights and an explicit right to conclude collective labour agreements is free to decide whether and with whom it wishes to conclude such an agreement. The contracting parties are also free to determine the content of the collective agreement at their own discretion. The parties must formally sign the collective agreement.

The 1927 Collective Agreements Act and the 1937 Collective Agreements (Binding or Non-binding Provisions) Act define what is meant by a collective labour agreement and the legal consequences of such an agreement. Making provisions in collective agreements universally binding has the effect of aligning the terms of employment within a particular sector, thus offering protection against undercutting by outsiders. Universally binding provisions are an important cornerstone of and stimulant to collective bargaining.

In 1985 the National Insurance Funded and Subsidised Sector (Terms of Employment) Act came into force. This Act empowers the government to set minimum and maximum remuneration figures each year for this sector, and the contracting parties to collective agreements can then use these as the basis for concrete negotiations.

In the civil service, terms of employment are negotiated with the Civil Service Unions. Technically, the government implements such terms unilaterally, taking account of decisions by Parliament and the Council of Ministers.

Question 13

- The Netherlands has no statutory provisions in this field.

  From the jurisprudence (on the basis of Article 1401 of the Civil Code, concerning unlawful acts) it is clear that, among other things:

  * Article 6(4) of the European Social Charter has direct effect;
  * strikes organized by trade unions in protest against working conditions are illegal only if:

    - important procedural rules are ignored, or
    - (having regard to the restrictions imposed by Article 31 of the European Social Charter) it is concluded, when all the circumstances of the case have been weighed up, that the unions had no reasonable justification for calling the strike.

- The Netherlands has no legislation in this field, at least as far as the private sector is concerned, although collective labour agreements contain provisions on the subject.

  At the end of 1986 the Joint Industrial Labour Council introduced a system whereby the parties to a conflict may jointly request mediation or arbitration by one or more persons to be chosen by them from a list of mediators (the list currently contains 12 names).

For labour disputes in the civil service there is an Advisory and Arbitration Committee, whose task it is to advise or produce a binding judgement in disputes brought before it (Chapter XI of the General Civil Service Regulations).

Question 14

- There is currently no Dutch legislation concerning the right of civil servants to strike. As regards international legislation, the Netherlands excludes civil servants from the scope of Article 6(4) of the European Social Charter, thus theoretically denying civil servants the right to collective action - including strike action. In national practice, however, the right is recognised, both in case law and de facto. In case law, the prerequisites established for strike action are the same as those applying to the private sector.

  Advisory and arbitration committees have been set up to deal with questions concerning working conditions in the various sectors of national and local government.

VOCATIONAL TRAINING

Question 15

- Distinctions need to made here between:

  a) Standard, initial training.

     This is paid for entirely by the Ministry of Education and Science. In principle, vocational training at lower and intermediate levels is eligible for open-ended financing. Such training is open to any applicant who fulfils the admission criteria. These criteria are based primarily on the applicant's prior education.

     Nationality is not a criterion.

     Institutes for higher vocational education and university education have their own education budgets. Within these budgets, the institutes have a degree of autonomy in their admission procedures, although here too the main criterion is prior education. In principle, students are entitled to receive six years' higher or university education at the government's expense. After that they must contribute some of the costs themselves. Grant entitlement is age-related.

  b) Adult education.

     The Ministry of Education and Science operates an adult-education system, giving people a second chance to obtain qualifications. Increasingly, authority for planning of and admission to adult education courses is being delegated to

the municipalities concerned, on the grounds that they know best what the adult-education priorities are for their region, in terms both of target groups and programme content.

Ethnic groups have priority for certain forms of adult education.

c) Training for job-seekers.

The employment offices are run regionally by a tripartite committee comprising employers, employees and government representatives. Training is seen not as an end in itself but as a means of ensuring rapid and permanent job placement. The employment office determines whether registered job-seekers are suitable candidates for such training.

d) Training for workers.

In principle, training for workers is the employer's responsibility. However, workers too have a say in the matter, since many sectors have training funds which are administered on a bipartite basis. Training arrangements are also dealt with in collective labour agreements.

The employers decide, either independently or in collaboration with the workers' organizations, which workers should receive free training. The government has recently released an extra budget to give the most poorly educated workers sufficient further education to obtain an initial vocational qualification.

EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

- Article 1637ij of the Civil Code and the Equal Opportunities Act prohibit differential treatment for men and women at work. A Bill on equal pension treatment is currently before the Upper House of Parliament.

An Equal Opportunities Commission has been set up to ensure compliance with the regulations. There is also scope for joint legal action by a number of workers. In addition, surveys to check compliance with the legislation are conducted at regular intervals.

In addition to the abovementioned measures to ensure compliance with the legislation, the government has an active policy of improving the position of women in work organizations. A scheme exists to encourage the creation of positive action programmes for women, through the provision of subsidies for the development and/or implementation of such programmes.

Other instruments in the government's policy include information and identification of suitable models to be imitated.

The Parental Leave Act came into force on 1 January 1991. It contains statutory minimum requirements entitling workers with at least one year's service to take unpaid part-time leave - to be taken over an unbroken 6-month period - for children aged under 4. Collective labour agreements can incorporate different arrangements from the statutory scheme, provided the leave entitlement negotiated is at least that laid down in the statutory scheme.

Child-care plays an important part in enabling parents to reconcile occupational and family commitments. Over a four-year period, the Child-Care Subsidy Scheme will provide funds for more child-care places for children aged between 0 and 12.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

- The answer to the following question (Question 18) applies in principle to all Dutch undertakings, including those belonging to a concern or group with subsidiaries outside the Netherlands (Arts 31 and 31a of the Works Councils Act).

  As regards the right to consultation, however, attention is drawn to the final sentence of Article 25(1) of this Act, imposing restrictions for cross-frontier situations (the foreign country clause).

Question 18

- This question is covered by the Works Councils Act, and quite a number of collective labour agreements also contain provisions in this field.

  The Works Councils Act contains the following provisions.

  Every undertaking in the Netherlands employing 35 or more workers must have a works council. The works council consists of workers' representatives, who consult with management on company policy in general and matters of relevance to the personnel in particular.

  The works council has a number of rights which enable it to influence the employer's policies: the right to information, the right to consultation and the right to grant or withhold approval.

  The employer must, without being asked, give the works council certain information specified in the Act, such as the annual accounts, the annual social report, plans for future policy, etc. He must also provide any other information requested by the works council which the latter can reasonably be said to need in order to perform its functions. Articles 31, 31a and 31b of the Act are particularly relevant.

The employer must **consult** the works council in good time whenever he wishes to take important financial or organizational decisions, for example on the question of merging with another undertaking, on shutting down (part of) his own undertaking or on major investment proposals (Article 25 of the Act).

If the works council is not happy with the employer's plans, the employer must defer the decision for one month, during which time the works council can submit the case to the Commercial Chamber of the Court of Appeal in Amsterdam. The Commercial Chamber judges whether the employer's proposal is reasonable, and can oblige the employer to withdraw it or reverse the consequences.

When an employer wishes to establish or amend certain rules concerning the company's social policy and is not bound by a collective labour agreement or, in the context of the Working Conditions Act, by an order or requirement of the Labour Inspectorate, he must first seek the **approval** of the works council. The rules in question include those concerning working hours, leave, conditions of work, staff training, and the appointment, promotion or dismissal of workers (Article 27 of the Works Councils Act). If the works council withholds approval, the employer can ask the industrial tribunal to arbitrate. If arbitration fails to produce the desired result the employer can ask the cantonal judge for permission to proceed with his proposal. The latter will only give permission if the works council's decision to withhold approval is unreasonable or if the employer's proposal is dictated by compelling organizational, economic or social reasons. The employer may not introduce the new rules without the approval of the works council or the permission of the cantonal judge.

There are no specific provisions concerning frontier workers in the Works Councils Act, although the Act offers points of departure for discussion of such a specific policy (e.g. Article 25(1) f and g).

Chapter XI A of the General Civil Service Regulations provides for employee participation via consultative committees. These committees, chosen by civil servants, can advise on the way in which working conditions and service conditions are applied within the particular branch of service, on personnel policy, on the organization of the branch of service, and on other such matters.

Consultation must take place between the committees and management prior to the issuing of opinions (Article 127d of the General Civil Service Regulations).

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

- The Working Conditions Act is the most important instrument of legislation which the Netherlands has in this field. The differences with the Community directives are merely differences of emphasis.

  The directives based on the framework directive concerning safety and health at work (Article 118A) go further than the Working Conditions Act in certain respects. The framework directive itself brings an obligation to adapt the legislation concerning the organization of safety and health protection for all workers.

  The imposition of uniform requirements for the design and manufacture of machinery and personal protective equipment (Article 100A directives) could see the Netherlands faced with requirements which it has never in the past been required to meet. However, the consequences should be offset to a large extent by the EC's policy on normalization and certification. The burden of implementation will thus fall primarily on industry. The necessary legal basis will be provided by the amended Dangerous Machinery Amendment Bill, which is currently before Parliament.

  1. Under the Working Conditions Act, responsibility for safety, health and welfare at work lies jointly with the employers and the workers. This requires collaboration and consultation. Consultation takes place at various levels.

     At shop-floor level there is job consultation with workers (Article 16 of the Act). This gives the individual worker the chance to play an active role in improving working conditions.

     At the level of the undertaking there is a general obligation on workers and employers to collaborate (Article 13). Consultation is therefore essential and takes place primarily via the works council, a body accorded a central role in the Act (Article 14). Complementing the Works Councils Act (of which more at point 2), the Working Conditions Act extends and gives further details of the rights of the works council. These include the right to information and the right to accompany labour inspectors during their visits. The Act also accords rights to the works council (or, in the absence of a works council, to the workers concerned) in connection with the preparation, drafting and notification of Labour Inspectorate decisions.

     One important area in which provision for worker participation exists is in the preparation of decisions. The works council has the right to be heard before the district head of the Labour Inspectorate or the Director-General of Labour issues a decision concerning, for example:

a. the work safety report, Article 5(2);
b. an instruction to an undertaking or establishment to set up a works committee, Article 15(3);
c. an instruction to an undertaking or establishment concerning the obligation to provide an occupational medical service, Article 8(2);
d. an instruction to an undertaking or establishment concerning the obligation to provide an occupational safety service, Art. 19(2);
e. an instruction from the Labour Inspectorate to comply with the Working Conditions Act, Art. 35(1);
f. a dispensation, Art. 41(8).

The works council also has the right to request the Labour Inspectorate to apply the Act (Article 40), and in particular Articles 35 (imposition of a requirement), 36 (issuing of an instruction), 37 (ordering work to be stopped), 5, second paragraph (obligation on an undertaking or establishment to produce a work safety report), 18, second paragraph (obligation on an undertaking or establishment to provide an occupational medical service), and 19, second paragraph (obligation on an undertaking or establishment to provide an occupational safety service).

Finally, at national level consultations between the government and employers' and workers' organizations take place within the government's advisory body on working conditions, the Council for Monitoring Compliance with the Working Conditions Act.

2. Works council (and thus worker) participation in decisions concerning working conditions is also guaranteed under Article 27(1)(e) of the Works Councils Act, which gives the works council the right to withhold approval for any scheme proposed by the employer concerning safety, health and welfare at work.

Although not strictly "participation", the works council is also entitled, under Article 31(1) of the Works Councils Act, to receive information from the employer insofar as it can reasonably be said to need the information in order to perform its functions. This must be taken to include information referred to in Article 14(1)(a)(1) of the Working Conditions Act. On the basis of this provision, the works council has the right to information from the specialist and welfare services. This provides the formal basis for specialist support for the works council from the specialist services.

As regards civil servants, within the framework of the Working Conditions Act the consultative committees are regarded as the negotiators with management on questions of safety, health and welfare (Articles 2-5 of the Decision on Working Conditions for the Civil Service).

PROTECTION OF CHILDREN AND ADOLESCENTS

Question 20

- The minimum employment age for young people, and the exceptions thereto, is covered in the 1919 Factories Act (Staatsblad 624), the Stevedores Act (Staatsblad 1914, 486) and the 1933 Outwork Act (Staatsblad 597).

  The first paragraph of Article 9 of the 1919 Factories Act states that no child may work, Article 8 defining a child as:

  1. a person whose compulsory education pursuant to paragraph 2 of the 1969 Compulsory Education Act (Staatsblad 1968, 303) has not yet started or not yet ended;
     the Compulsory Education Act states that compulsory education begins on the first school day of the month following the child's fifth birthday and ends at the end of the school year in which the child completes at least 12 school years or at the end of the school year in which the child reaches the age of 16;
  2. a person exempted from the requirement of paragraph 2 of the 1969 Act on the basis of Article 5 or 15 of the same Act;
  3. a person aged under 16 years residing outside the Netherlands.

  The second paragraph of Article 9 lists certain exceptions relating to the performance of specific types of light work for a very limited number of hours per day. In addition, a written dispensation may be granted in a very small number of cases by the district head of the Labour Inspectorate.

  The first paragraph of Article 4 of the Stevedores Act states, among other things, that no stevedoring work may be performed by persons aged under 18, except as otherwise specified by decree. No such decree has ever been issued.

  The provisions of the 1919 Factories Act concerning the employment of children apply mutatis mutandis to outwork.

  For the civil service, there are no special provisions governing the minimum employment age.

  As soon as a child enters the labour market in order to perform authorised work as described above, he/she is termed a "young person", and the relevant provisions covering this situation apply until age 18.

Question 21

- Under the Minimum Wage and Minimum Holiday Allowance Act, workers aged under 23 are entitled to the minimum young persons' wage, this being a specific percentage of the minimum adult wage. The percentage is fixed by decree and is graduated by age.

Salary scales in the civil service are based on the nature and level of the post (job rating), but in general young persons on scales 1-5 are paid the lowest "adult" wage (i.e. wage at age 22), with a reduction of 10% for each year younger than this age up to a maximum of 50%.

Question 22

- The 1919 Factories Act sets the maximum working hours of young people at 8 hours per day for 5 days per week, with an unbroken daily rest period of at least 12 hours. It also states that a young person may not work between the hours of 19.00 and 07.00.

  The second paragraph of Article 9h of the Act lays down an exception to the ban on work between 19.00 and 07.00, allowing young persons to be employed between 06.00 and 07.00 in the delivery of newspapers to subscribers.

  Exemptions from the ban on work between 19.00 and 07.00 may be established by decree for work in nursing establishments and similar institutions. However, under the terms of such decrees no work may be performed after 23.00.

  The Decree on hours of work and rest periods for young people allows the district head of the Labour Inspectorate to grant dispensations from the ban on night work by young people. It has been agreed, in consultation between employers', workers' and young people's organizations, that such dispensations shall be granted only for training-related night work in the hotel and catering sector (provided that the employer can show that this is necessary) and for young artistes. In both cases, of course, the obligations entered into with the ILO apply.

THE ELDERLY

Question 24

- In principle, every person who has been insured under the General Old-Age Pensions Act is entitled to a pension on reaching the age of 65. The amount of pension depends on the number of years' coverage amassed, i.e. the number of years that the person concerned has lived or worked in the Netherlands.

  A person having been in paid employment in the Netherlands and having been affiliated to a company pension scheme may be entitled, in addition to the statutory state pension, to a supplementary pension, the amount of which is generally based on the most recent earnings and the duration of employment.

Question 25

- Every resident with insufficient resources to afford the basic necessities of life is entitled to a cash allowance under the National Assistance Act. The amount is based on the claimant's individual circumstances and family size and is related to the statutory minimum wage.

DISABLED PERSONS

Question 26

- In the Netherlands, all disabled persons, regardless of the origin and nature of their disability, are entitled to concrete supplementary measures to facilitate their social and occupational integration, insofar as these can be considered beyond their means.

  Under the Disabled Workers Employment Act, responsibility for facilitating the reintegration of disabled persons into the world of work lies with the Joint Medical Service (for the private sector) and the Public Servants Superannuation Fund (for the public sector). The means at their disposal include:

  - authority to set up job placement activities on the basis of the Disabled Workers Employment Act.
  - subsidies for training and wage costs. Unlike in the past, it is no longer necessary for another body to be involved.
  - the possibility of providing facilities on the basis of the General Occupational Disabilities Act (for the private sector) and the Public Servants Superannuation Act (for the public sector).
    This includes the costs of specially adapted transport to and from work, of workplace modifications, and of special aids necessary for the performance of the work. Within the framework of the Disabled Workers Employment Act, facilities for use by more than one disabled person can be (part) financed on the basis of the General Occupational Disabilities Act or the Public Servants Superannuation Act.

    Decision-making with regard to such funding lies with the industrial insurance boards in the private sector (under the General Occupational Disabilities Act) and with the Public Servants Superannuation Fund in the public sector (under the Public Servants Superannuation Act).

- Integration into social life is facilitated by the following concrete measures:

  - The provision of facilities to individual disabled persons in order to improve their living conditions. These facilities are provided via the same procedure as the facilities outlined above in connection with work, but can be provided independently of the above. The most important one is the allowance for adaptation of a vehicle. Apart from this, wheelchairs and communication aids can be provided, as well as special home help over and above the standard home help. Applicants must be aged under 65.

- Persons aged over 65 can claim under the National Assistance Act for essential facilities. A means test is applied. The government is planning to introduce new rules for the provision of facilities to the disabled, scrapping the current distinction between under-65s and over-65s and obliging every recipient to pay a proportion of the costs.
- As regards suitably adapted accommodation, claims for assistance under the Financial Aid Scheme for Accommodation for the Disabled can be made via the municipality. The scheme covers, for example, the costs of removing and replacing ergonomically unsuitable design features or of relocating a disabled person to suitable accommodation.
- The building legislation stipulates that public buildings, such as town halls, should be accessible to the disabled.

IMPLEMENTATION OF THE CHARTER

Question 27

- Through the legislation, policies and court judgments referred to in these replies.

PORTUGAL

INTRODUCTION

In Portugal, 1990 saw an intensified social dialogue, culminating in October in the conclusion of an Economic and Social Agreement between the Government and the social partners on the Permanent Council for Social Concertation, in which they undertook to make a decisive contribution to modernising the national economy, reducing its vulnerability to the short-term and medium-term challenges that may confront it, ensuring the competitiveness of industry and bringing about a progressive and sustained improvement in the living conditions of the Portuguese people.

This agreement covers various areas of social policy and lays down objectives to be met and measures to be taken from January 1991 which, while taking the reality of the Portuguese economy into account, should help to achieve convergence with the other Member States of the European Community by progressive application of the Charter of Fundamental Social Rights for Workers.

With a view to the implementation of the Economic and Social Agreement, the Government and all other organisations representing workers and employers signed an agreement on vocational training policy and an agreement on safety, hygiene and health at work on 30 July 1991.

The following details on each of the separate chapters of the Charter reflect the legislative measures adopted following the above agreements.

FREEDOM OF MOVEMENT

Where employees are concerned, the Treaty of Accession of Portugal to the European Communities provides for a transitional period, yet to expire, for implementation of free access to employment. National legislation thus governs the access to employment of nationals of other Member States wishing to take up employment for the first time in Portugal, except for members of a worker's family making use of the right to reunification.

EMPLOYMENT AND REMUNERATION

Under the Portuguese constitution, everyone has the right to choose freely his or her profession or type of work subject to the restrictions imposed by law in the public interest or by their ability, and all workers, without distinction as to age, sex, race, citizenship, religion or political or ideological conviction, are entitled to remuneration for work corresponding to its quantity, nature and quality, in accordance with the principle of equal pay for equal work, so as to ensure a decent standard of living.

Under national legislation, all employees, whatever the terms of employment, are guaranteed a monthly minimum wage. This minimum wage does not preclude the payment of higher wages under collective agreements or agreements between the individual parties.

For part-time working, remuneration may not be less than the fraction of the full-time remuneration corresponding to the period of work in question.

One objective of the Economic and Social Agreement is for the guaranteed minimum wage to rise faster than the average wage, a goal already achieved in 1991.

Where wages are withheld, seized or transferred, there is no provision for national benefits in the social security system. In cases of transfer, however, unemployment benefits or social assistance benefits may be paid in the event of economic need; wages may be withheld only in the event of debts contracted by the worker and then only up to a maximum of 1/6 of pay; as for seizure, only 1/3 of pay may be legally seized, although the judge may fix a lower fraction.

The services provided by the public employment centres are unconditionally free of charge.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

The working conditions of employees are governed by legislation, collective agreements, internal rules and an individual contract of employment if in writing (required only if the contract is temporary, for a specific or unspecified term, for foreigners not entitled to free access to employment, for public performances and for employment on board ship).

Until January 1991, normal working time was not permitted by law to exceed 48 hours a week and 8 hours a day. Under the Economic and Social Agreement, however, a reduction to 44 hours was agreed for January 1991 (legislation already having been exacted to this end), falling to 40 hours in 1995. For office workers and civil servants, the normal working week is 42 and 35 hours, respectively. Working time may be less than that defined by law, as is the case in the services sector, where the working week is around 35 hours. In collective agreements, normal working time may be defined as an average whereby the normal working day may be increased by up to 2 hours, provided that the working week does not exceed 50 hours except in the case of overtime worked as a result of force majeure. The reference period for calculating such an average is fixed by collective agreement or, in the absence of any explicit provision in such an agreement, is 3 months.

Without prejudice to the exemptions authorised in collective agreements, the working day must be interrupted by at least one and at most two hours in such a way that not more than five hours are worked consecutively.
By law, the weekly rest period is one day, normally Sunday. A further day or half-day may be granted under a collective agreement.

Shift working is regulated by legislation and collective agreement. The duration of each shift may not exceed the maximum limits for normal working and the shift workforce may not be replaced until after the weekly rest period.

Night work is work performed between 20.00 hours on one day and 7.00 hours the next. Consecutive periods of 11 hours are permitted by collective agreement, provided that 7 of them are worked between 22.00 hours and 7.00 hours.

Overtime working may not as a rule exceed 2 hours a day and 200 hours a year. Workers on overtime are entitled to a higher hourly pay and, in certain situations, to paid compensatory leave. In 1991, the additional social security contributions payable on overtime were eliminated.

Term contracts are permitted only in situations specified by the law and must be in writing. The employer is obliged to notify the workers' commission of the employment of workers under such contracts. Fixed-term contracts, which have a minimum legal duration of 6 months, may not be renewed more than twice and are limited to 3 consecutive years. Within specified deadlines, the employer must inform the worker of the non-renewal of a fixed-term contract or the term of a contract with an unspecified term, otherwise these types of contract are converted into open-ended contracts. On expiry of the contract, the worker is entitled to compensation corresponding to 2 days pay for every completed month of the duration of the contract. The same conditions are laid down by law for cases where the contract is terminated by the worker.

Part-time working is essentially regulated by collective agreement, except for the principle of proportional remuneration, which is laid down by law.
Temporary working is subject to the rules for term contracts. A temporary worker is subject to the conditions of employment of the employer to whom he is assigned.

There are 12 obligatory and 2 optional paid holidays.

Annual leave is 22 working days. Entitlement to leave is acquired upon signing of the contract of employment and falls due on the first of January, unless employment commences in the second week of the calendar year, in which case leave may be taken after 6 months of effective employment; if employment commences in the first week, the employee is entitled to leave of 8 working days after a period of 60 days of effective employment.

Where an enterprise or establishment closes for holidays, workers entitled to a period of leave longer than the period of closure may opt to receive the remuneration and allowances corresponding to the difference, without prejudice to their effective entitlement to 15 working days, or take the extra period as leave.

The remuneration for the period of leave may not be less than that which the workers would receive if at work and must be paid at the start of the period of leave. Workers are also entitled to a holiday allowance equal to the amount of this remuneration.

Workers employed under a term contract with an initial or renewed duration of less than one year are entitled to a period of leave corresponding to 2 working days for each completed month of employment.

Justified or unjustified absences have no effect on the entitlement to leave. However, where absences entail loss of pay, the worker may instead, if he so wishes, substitute days of leave for these absences, provided that the leave entitlement to 15 working days, or 5 working days in the case of leave in the first year of employment, is maintained.

If the worker falls sick during leave, leave is suspended, provided the employer is informed, and continued after the period of sickness.

Under national legislation, collective redundancy is defined as the termination of individual contracts of employment by the employer, simultaneously or successively over a period of 3 months, affecting at least 2 workers (in enterprises with 2 to 50 workers) or 5 workers (in enterprises with more than 50 workers) in connection with the definitive closure of the enterprise or one or more of its sections or a cutback in the workforce for structural, technological or economic reasons. Notice of such redundancies must be communicated in writing to the body representing the workers, with a copy to the Ministry of Employment and Social Security. This is followed by negotiations, with the participation of the above Ministry, with the aim of obtaining agreement on the scale and impact of the measures to be taken. Whether or not an agreement is reached, 30 days after the communication referred to above, the employer must give each worker to be made redundant notice of redundancy not later than 60 days before the planned date of redundancy.

Workers who are made redundant are entitled to compensation corresponding to one month's basic pay for each year of seniority or fraction thereof, the minimum being three months. During the period of notice, the employee may terminate his contract without loss of entitlement to such compensation.
If the employer is legally declared bankrupt or insolvent, this does not terminate the contract of employment as long as the establishment is not definitively closed. The administrator of the bankrupt employer's assets must meet in full the obligations arising from the contracts of employment. If the bankrupt employer's assets are insufficient to pay all the creditors, creditor preference applies. Claims arising from contracts of employment are met immediately after those of the State. At all events, if the contract of employment is terminated, a wage guarantee fund (fully financed by the government) ensures that workers are paid for the last four months immediately prior to the legal declaration of bankruptcy or insolvency. However, the maximum monthly amount may not exceed three times the minimum wage guaranteed by law for the sector of activity concerned.

SOCIAL PROTECTION

Social protection for workers is essentially provided by the general social security system, which covers all employed workers and the self-employed, and the civil service system. Persons not compulsorily covered by these systems may join a voluntary social insurance scheme.

For employed workers, the following contingencies are covered: sickness, maternity, unemployment, occupational illnesses, invalidity, old-age, death and family responsibilities.

The self-employed and civil servants enjoy the same coverage except for unemployment. Protection against occupational illness is also optional for the self-employed.

Voluntary social insurance is intended to protect insurees in the event of invalidity, old-age and death as well as, for certain specific groups, occupational illness and family responsibilities.

As a rule, benefits are calculated as a function of the pay on which contributions are based and range between 65 and 100% of pay.
Protection in the event of occupational accidents is the responsibility of employers. However, they may transfer their responsibility to insurance companies.

Social protection for workers is also provided by supplementary schemes run by insurance companies, pension funds and other bodies.

Social protection for persons excluded from the labour market and having no means of subsistence is provided by the non-contributory system in the form of cash benefits to compensate for invalidity, old age, death and also to cover family responsibilities, subject to a means test. Also subject to a means test is a benefit for entry into working life granted to young people age between 18 and 25 seeking their first job.

In addition social assistance benefits are granted on a case-by-case basis.

Currently under preparation is a national programme to combat poverty, comprising a set of locally based activities - projects - aimed at ensuring the social, economic and cultural integration of disadvantaged persons, groups and communities by mobilising local and national resources, exploiting and enhancing the capacities of the population, and activating local solidarity.

The programme is coordinated and managed by two commissioners, one for the north of the country and the other for the south. Both answer directly to the office of the Minister of Employment and Social Security.

Health protection is assured by a system comprising the national health service and all the public bodies undertaking promotion, prevention and treatment activities in the field of health, together with all private bodies and professionals who sign agreements with the national health service to perform all or some of these activities. The national health service, which comes under the Ministry of Health, embraces all the official health-care services and institutions under the Ministry of Health and has a statute of its own. Beneficiaries of the national health service are citizens of Portugal and the other Member States of the European Community as well as stateless persons and residents of Portugal who are citizens of third countries with reciprocal arrangements with Portugal.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Under national legislation, employers have the right to constitute associations to defend and promote their entrepreneurial interests and to join the association representing the category to which they belong in their area of activity, provided that the statutory requirements are met. The right to leave such associations is free and unconditional. Where workers are concerned, the Constitution lays down that freedom of association in trade unions is guaranteed without discrimination, in particular the freedom to form trade unions at all levels and the freedom to join trade unions. However, no worker is obliged to pay dues for a trade union to which he does not belong.

Ordinary law also guarantees workers the right of association in trade unions to defend and promote their social and professional interests and the right to join the trade union that represents the categories to which they belong in the field of their activity as well as the right to leave at any time the trade union to which they belong.

Any agreement or act making a worker's employment conditional upon joining or not joining a trade union or upon leaving the trade union to which he belongs or any agreement or act intended to dismiss, transfer or in any way prejudice a worker on account of his belonging or not belonging to a trade union or on account of his trade union activities is prohibited and deemed null and void.

Labour relations are collectively regulated by collective agreement, arbitration or affiliation agreements.

Only the trade unions and employers' associations registered in accordance with the appropriate statutory regulations as well as individual employers may sign collective agreements.

Collective agreements concluded by trade unions and employers' associations are known as collective contracts, while collective agreements proper are entered into by trade unions and a group of employers on behalf of a group of enterprises. Company agreements are those signed by trade unions with just one employer for one enterprise.

The process of securing or revising an agreement starts with the presentation of a proposal and a counter-proposal within certain statutorily defined deadlines, followed by a phase known as "direct negotiation" between the parties involved with a view to reaching an agreement. If no agreement is reached, the resulting dispute may be resolved by conciliation, mediation or arbitration.

The regulations established by any one of the above methods may not be overturned by individual contracts of employment except to establish more favourable conditions for workers.

The only obstacle preventing parties to agreements from revising or replacing them is the minimum duration of agreements (1 year). Notice of termination of these agreements may be given only after 10 months following their deposition with the Ministry of Employment and Social Security.

Workers are guaranteed the right to strike under the Constitution. It is left to them to decide the scope of the interests to defend. This scope cannot be restricted by law.

National legislation lays down some rules in this area, specifying who may call a strike, the compulsory nature of the notice to strike, the effects of a strike, obligations during a strike and the consequences for workers of not complying with the law.

Civil servants, but not the military and paramilitary forces, are guaranteed the right to strike under the conditions outlined above.

VOCATIONAL TRAINING

Pursuant to the Economic and Social Agreement referred to in the introduction, the Government and the trade union and employers' federations represented on the Permanent Council for Social Consultation signed, on 30 July 1991, an agreement on vocational training policy. It concerns the "improvement of coordination between training and working life", the "integration within the labour market of disadvantaged groups", the "intensification of further training", "social consultation in the definition, development and implementation of employment and training policies", the "encouragement of the investigation and systematisation of training and employment statistics" and "cooperation within the European Communities".

The agreement provides for a range of measures requiring intensive cooperation between public bodies and the social partners. These measures focus on the creation of conditions to ensure the future generalisation of initial and further training, on the linkage between training and work and on the economic and social integration of those social groups with the most problems entering the labour market.

Social dialogue and the participation of the social partners feature throughout this agreement, particularly as regards the definition, development and implementation of vocational training policy, the tripartite organisation of the bodies concerned and the coordination of activities at European Community level.

Of the measures provided for in this agreement, five pieces of draft legislation are worth singling out: the first setting out a framework for vocational training; the second concerning training on the labour market; the third concerning preliminary vocational training; the fourth concerning vocational qualifications and the fifth concerning vocational information. The first three have now been approved by the Council of Ministers.

The legislation setting out the framework for vocational training in the education system and on the labour market integrates all such training, regardless of the system - education or employment - in which it is provided, in a legal system ensuring the desired unity and effectiveness, particularly in terms of principles, methods, certification, evaluation and coordination.

Where vocational training in the education system is concerned, the main provisions have already been set out in the Education System (Bases) Act (1986), which, for initial training, distinguishes between two models, technical vocational education and vocational schools. Lasting three years and open to students who have completed the 9th year of schooling, technical vocational education leads to a secondary school-leaving diploma and a technical vocational training certificate.

In the vocational schools, which are open to young people with 9 or 6 years of schooling, courses are organised into modules of varying duration corresponding to progressively higher levels of education and vocational qualification and lead to a certificate of qualification at level 1, 2 or 3 and a diploma equivalent to the 10th, 11th or 12th years of the regular education system.

Where vocational training on the labour market is concerned, the legal system adopted clarifies the role of the state, enterprises, other employing and training bodies and the social partners and lays down criteria for defining the priorities for training aid and financial resources.

One particular form of this type of training is apprenticeship, which provides training combined with work for a duration of not more than 4 years and covers young people from the age of 14 to 24 who have completed compulsory schooling.

As regards continuing training, legislation adopted in 1985 established the legal system for technical and financial aid by the Institute of Employment and Vocational Training for vocational training in cooperation with other public, private or cooperative bodies through the conclusion of agreements to implement specific activities or to meet the ongoing needs of one or more sectors of the economy.

Portugal is currently seeing a significant expansion in vocational training, particularly for those at work. In fact, all applications for financial aid have been approved, provided that they meet various conditions for eligibility. In addition, there has been an extension in the nation-wide coverage of training facilities and agents, including distance learning and the training of professionals who undertake training activities in enterprises alongside their usual duties.

With the aim of encouraging the improvement of worker skills, while taking into account economic reality in enterprises, the right to unpaid, long-term leave (not less than 60 days) to attend vocational training courses has recently been established. The employer may refuse to grant such leave only in cases specified by law.

A fact worth noting is that any foreign citizen resident in Portugal aspiring to enter the national labour market has access to vocational training.

EQUAL TREATMENT FOR MEN AND WOMEN

The principle of equality between men and women is enshrined in the Constitution. It is implemented by ordinary legislation guaranteeing, in particular, equality of opportunity and treatment at work in both the private and public sectors. There is a tripartite Commission for Equality at Work and in Employment with the aim of promoting the application of this legislation. This Commission performs various activities, including the analysis and processing of complaints submitted by trade unions and workers and providing information on, and raising awareness of, the issue in question.

The Labour Inspectorate is responsible for monitoring compliance with the law.

Workers or trade unions may bring proceedings before the competent courts in cases of discrimination.

Also worth noting is the existence of a Commission for the Equality and Rights of Women, under the Prime Minister, which has its aim the defence of the equal rights and dignity of women and men at all levels of family, occupational, social, cultural, economic and political life. Among other things, this Commission has launched information and awareness-raising activities.

Various positive measures in favour of women have been adopted to counter and offset discrimination through preferential treatment. In particular, they include increases in public assistance to enterprises employing or training women in traditionally male professions and to women starting up businesses or becoming self-employed.

In this connection, the agreement on vocational training policy also aims to step up measures concerned with the employment and the training of women with a view to facilitating their integration within the labour market.

Also with a view to ensuring equal opportunities, national legislation provides for the sharing of family responsibilities by specifying that leave for looking after children may be taken by the father or the mother, or, in the event of adoption, either adoptive parent.

With this same objective, efforts have been made in recent years to create facilities and provide services for childcare and care of the aged.

In spite of the constitutional principle mentioned above, the general social security system still contains an element of inequality where the minimum age of entitlement to old-age pension is concerned. Currently under study, however, are measures to make the age of entitlement to old-age pension more flexible in order to ensure equality between men and women.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

The representative bodies exercising the rights of workers to information, consultation and participation are the workers' commissions.
Workers are constitutionally guaranteed the right to establish workers' commissions to defend their interests and intervene democratically in the life of the enterprise.

The workers' commissions have the right to: receive all the information necessary for the exercise of their activity; monitor the management of enterprises; intervene in the reorganisation of productive units; participate in the preparation of labour legislation and economic and social plans relating to the sector concerned; administer or participate in the administration of the social works of the enterprise; promote the election of worker representatives to the social bodies of enterprises belonging to the State or other public authorities in accordance with the law.

The right of the workers' commissions to information covers: general operating and budgetary plans; internal regulations; organisation of production and its implications for the degree of utilisation of labour and equipment; the situation regarding supplies; forecasts of the volume and management of sales; personnel management; enterprise accounts; financing methods; burden of taxes and similar charges; projected alterations to the registered capital and object of the enterprise and plans for changing the productive activity of the enterprise.

The right to consultation takes the form of the obligation to be asked for an opinion before decisions are taken on the following: conclusion of restructuring contracts; liquidation of the enterprise or application for bankruptcy; closing of the establishment or production lines; any measures resulting in a significant cutback in the workforce or a substantial worsening of working conditions; establishment of the annual holiday programme; alteration of hours of work; modification of the criteria on which occupational classifications and promotions are based; change in the location of the enterprise or business.

The workers' commissions must also be consulted on individual and collective dismissals, suspension of the contract of employment or reduction in the normal working time and also on social accounts.

Apart from some exceptions relating to activities in the public interest, the right of the workers' commissions to monitor management covers: the issuing of opinions on the enterprise's economic plans and budgets; the submission of recommendations or critical reports on the apprenticeship, retraining and advanced training of workers and on the improvement of living and working conditions and of health and safety; defending the interests of the workers before the management and supervisory bodies of the enterprise and the competent authorities.

PROTECTION OF HEALTH AND SAFETY AT THE WORKPLACE

Under the constitution, all workers are entitled to work in healthy and safe conditions. In accordance with this principle, the employer must provide the worker with good working conditions and ensure health, safety and the prevention of the risks of occupational illness and accidents.

Current legislation in this area includes, in particular, the basic legislation specifying the conditions for the installation and operation of industrial establishments, commercial establishments, offices and services, including the civil service, and the general regulations governing health and safety in industrial establishments.

Taken as a whole, the Community Directives contain more favourable provisions for the training and information of workers.

The improvement of health and safety conditions at the workplace is an issue that has preoccupied the government and the social partners and is one of the aspects covered by the 1990 Economic and Social Agreement. As provided for in the latter, an agreement on hygiene, health and safety at work was signed on 30 July 1991 with the following main guiding principles: i) integration in the vocational preparation of minors of training on occupational risks and their prevention; ii) provision of workers throughout their working lives with information and training on occupational risks and their prevention; iii) promotion of qualified training for specialists in the field of hygiene, health and safety at work; iv) development of a knowledge of occupational risks and prevention techniques; v) creation of a body for the prevention of occupational risks with participation of the social partners; vi) encouragement of negotiation at sectoral and enterprise level on the creation of joint hygiene, health and safety committees in enterprises, establishments and agencies.

As an integral part of this agreement, the Council of Ministers has approved a Decree-Law setting out a framework for safety, hygiene and health at work, which implements in national legislation the requirements set out in various Community directives, in particular Directive 89/391/EEC, and ILO Convention 155.

This legislation guarantees workers the right to work in safe, hygienic and healthy conditions. This calls for a policy for the prevention of occupational hazards based on: a definition of the technical conditions to be met by the physical components of work, the identification of the substances, agents or processes to be prohibited, restricted or subject to authorisation or control by the authorities, the promotion and monitoring of the health of workers and the stepping up of research in the field of safety, hygiene, and health at work.

This legislation also entitles workers to up-to-date information on the risks to health and safety and on the measures and instructions to be followed in the event of grave danger. It lists the situations where workers have the right to such information. In addition, workers are also entitled to adequate and sufficient training in safety, hygiene and health.

To ensure the implementation of all the obligations it sets, the legislation requires the employer to ensure the organisation, with the participation of the workforce, of activities in the field of safety, hygiene and health at work.

Consultation of the workers or their representatives is compulsory on: i) hygiene and safety measures before they are put into effect; ii) measures that will have an impact on safety and health at work due to their effects or the technology employed; iii) the programme and organisation of training in the field of safety, hygiene and health at work.
The workers or their representatives may submit proposals to minimise any occupational hazard.

Also worth noting in the agreement on safety, hygiene and health at work is the decision to create, by the end of this year, an "Institute of Safety, Hygiene and Health, with the particular task of undertaking activities in the fields of applied research, the prevention of occupational hazards, training and information, either directly or by promoting projects to be carried out by public, private or cooperative bodies.

PROTECTION OF CHILDREN AND ADOLESCENTS

The minimum legal working age is fixed at: i) 16 years from the 1st of January of the year following that when the first pupils have completed the nine-year period of compulsory schooling; ii) 15 years until this date.

However, minors between the ages of 14 and 16 may, upon completion of compulsory schooling, perform light work not prejudicial to their health or physical and mental development.

Minors of minimum working age who have not completed compulsory schooling may be employed only if they attend an educational establishment or take an apprenticeship or vocational training course that provides them with an equivalent educational qualification. In such cases, working hours may not be prejudicial to educational activities and permission for the young person to work must have been given by his or her legal guardians.

Minor workers have additional guarantees to protect their health and education: a medical examination upon recruitment and subsequently every year; the prohibition of work impairing their physical, mental or moral development; the granting of unpaid leave to attend vocational training; and the right to part-time working when attending an educational establishment or apprenticeship or vocational training course providing them with qualifications equivalent to that of compulsory schooling, with entitlement to compensation for loss of pay.

For workers less than 18 years of age, national legislation fixes a minimum guaranteed monthly wage 25% less than that for persons over 18 years of age. The minimum monthly wage for trainees, apprentices or similar who are receiving practical training for a skilled or

highly skilled occupation and are aged between 18 and 25 is 20% lower for the first two years or for the first year if they have completed a vocational technical course or appropriate vocational training.

It must be stressed, however, that such reductions are without prejudice to the principle of equal pay for equal work.

The law expressly calls for collective agreements to reduce, where possible, the maximum normal working time for workers under 18 years of age. In addition, student workers (regardless of age) are entitled to up to 6 hours off a week without loss of pay or any other benefit, if their school timetable so requires.

As regards night work, workers of under 18 years of age are not permitted to work at night in industrial establishments and may only do so in activities of a non-industrial nature where this is considered essential for their vocational training.

Young people aged between 16 and 18 may work nights in industrial establishments only in cases of force majeure that prevent the normal operation of the enterprise.

Minors are not permitted to do overtime.

ELDERLY PERSONS

Persons who have reached retirement age but are not entitled to a pension under the general social security system may receive an old-age pension under the non-contributory system, subject to a means test.

The elderly are entitled to a range of benefits including: reduced fares and telephone subscription charges; free entry to museums; and exemption from tax on savings up to Esc 1 500 000. It is also not possible for a landlord to terminate the lease of anyone over the age of 65 who has been living in the dwelling concerned for at least 20 years.

Recent years have seen an increase in the provision of home care for the elderly, i.e. carrying out tasks they are no longer able to perform themselves.

Medical assistance is provided, as mentioned above, by the national health system.

In 1988, a National Commission for Old Age Policy was set up with the aim of developing an integrated policy for elderly persons.

DISABLED PERSONS

Under a policy for promoting their occupational and social integration, disabled persons benefit from the following measures: vocational preparation and training of young disabled people; technical and financial support for training and occupational rehabilitation programmes for disabled persons; support for self-employed activities; support for protected employment; social and occupational integration in the normal labour market (compensation subsidies for adapting workplaces, eliminating architectural obstacles and providing individual attention in enterprises, merit and integration awards for employers, incentives for employers through tax concessions and a reduction of 50% in their social security contributions, and measures concerning working time in the civil service); tax concessions for the importation of cars, tricycles and wheelchairs; reservation of seats in public transport; reservation of parking spaces on public highways; reductions in personal income tax; special credit conditions for home purchase or construction; permission for the blind to be accompanied when voting in elections; technical recommendations for improving accessibility to establishments open to the public; personal assistance in public services for users with reduced mobility; establishment of specific conditions for access, assistance and information/guidance in some museums and palaces.

SPAIN

FREEDOM OF MOVEMENT

1. There are no restrictions other than those arising from the transitional period.

2. Royal Decree 1099/1986 of 26 May on the right of nationals of the Community Member States to enter, stay and work in Spain, which incorporates the pertinent Community rules into Spanish national law for the transitional period, lays down the administrative formalities to be completed by nationals of the Community Member States in order to exercise the rights of entry and stay in Spain, to engage in paid employment or self-employment or to provide or receive services for remuneration in accordance with Articles 48, 52 and 59 of the EEC Treaty.

   It stipulates that the special arrangements for work and residence permits for employed persons set out in Chapter III shall apply preferentially as long as the transitional provisions set out in Articles 56, 57 and 58 of the Act of Accession of Spain to the Communities remain in force(1).

   Article 14.1 thus provides that any worker from a Community Member State who applies in due form shall be granted a work permit valid for five years, which shall be automatically renewable and not subject to restrictions on geographical extent, occupational sector or activity and a residence permit for the same period, which shall also be automatically renewable.

   Reference should also be made in this connection to the provisions of Organic Law 7/1985 of 1 July on the rights and freedoms of foreign nationals in Spain and of Royal Decree 1119/1986 of 26 May approving the Regulation implementing the above Law, which are interpreted and implemented, as stipulated by the sole Article of the Regulation, "without prejudice to the Treaties establishing the European Communities and amendments thereof, the legislation deriving therefrom and Royal Decree 1099/1986 of 26 May", being of a supplementary nature and applying solely insofar as they do not conflict with these instruments.

   In Spain, there is thus no difference whatsoever between the treatment of Spanish workers and workers from Community Member States with due authorization to work in Spain, whose pay and other working conditions may not on any account be inferior to those laid down by the rules applying in Spanish territory or fixed by collective agreement for Spanish workers in the activity, category and locality in question.

   As a member of the Community, Spain applies to its system of social security and hence to the schemes constituting this system, the social protection rules which are mandatory for the Member States, in particular Council Directive 79/7/EEC on

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(1) However, account should be taken of Council Regulation (EEC) n° 2194/91 of 25 June 1991 on the transitional period for freedom of movement of workers between Spain and Portugal, on the one hand, and the other Member States, on the other (OJ L 206 of 29 July 1991, p. 1).

progressive implementation of the principle of equal treatment for men and women in matters of social security and Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

3. The Community rules on family reunification apply subject to the restrictions arising from the transitional period. Article 15 of Royal Decree 1099/1986 provides for the granting of a five-year work permit with no geographical or occupational restrictions to the worker's dependent spouse and children less than 21 years of age.

The Order of 9 January 1991 of the Ministry of Labour and Social Security institutes various action programmes for social integration and vocational development of immigrants and their families, comprising assistance for familiarization with the language and culture, vocational guidance and employment training, social integration activities and social integration of foreign workers in Spain by means of programme contracts.

The Spanish authorities have transposed Council Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration by approving a Royal Decree(2). This Royal Decree lays down the general system for recognition of higher-education diplomas awarded in the Community Member States and requiring at least three years' training.

Under the terms of this Royal Decree, any national of a Member State who possesses occupational qualifications obtained in a Member State other than Spain and similar to those required in Spain in order to practise a profession, will have the right to be admitted to that profession on the same basis as persons who have obtained a Spanish qualification. Only if the training obtained in another Member State is not equivalent to the Spanish requirements for admission to the profession or when the profession in Spain includes activities which are not covered by the equivalent profession in the country of origin is it permissible to assess the ability of a practitioner trained in another country to adapt to his new environment by suitable adjustment measures.

The same Royal Decree will lay down rules governing certification by the Spanish authorities that the nationals of a Member State have acquired a training of at least three years' duration in Spain which qualifies them to practise a regulated profession in another Member State.

The scope of the Royal Decree does not include those professions which have been covered by a Directive providing for mutual recognition of qualifications among the Member States.

(2) which will shortly be published in the Official State Gazette, at which time it will be forwarded to the Commission.

Documents issued by the competent authority in a Member State will be treated in the Royal Decree as equivalent to qualifications, certificates or diplomas issued by the Member State authority to attest that the holder has completed a course of post-secondary studies of at least three years' duration if they are recognized as being of equal status in that State and attest to training obtained in the Community.

Royal Decree 1099/1986 of 26 May, to which reference has already been made, provides that the transitional arrangements laid down in Articles 56 to 59 of the Act of Accession of Spain to the Communities also apply to frontier workers who are nationals of a Community Member State. Such workers will be granted a special frontier worker's permit valid for five years, restricted to the frontier zone and not subject to restrictions with regard to the occupational sector or activity.

EMPLOYMENT AND REMUNERATION

4. Article 35 of the Spanish Constitution recognizes not only the duty of all Spaniards to work and the right to work but also the right to the free choice of profession or trade.

   The Workers' Statute also recognizes as a workers' basic right the right to work and to the free choice of profession or trade (Article 4.1.a).

5. There are minimum standards for pay, which specify the general minimum wage applying each year to all activities in agriculture, industry and the service sector, referred to the legal working day in each activity and determined as a function of the consumer price index, mean national productivity, the increase in the part played by labour in the national income and the general economic situation.

   Certain additions laid down in collective agreements are made to these minimum wages. These are the length-of-service allowance, payments made at intervals greater than one month such as extraordinary payments or participation in profits, travelling distance and public transport allowances, job-related allowances such as those for night work, arduous, unhealthy, dangerous or dirty work, boarding and sailing allowances, guaranteed bonus and incentive payments over and above the time-related wage and, finally, allowances for residents in the island provinces and in the towns of Ceuta and Melilla.

   When part-time working is practised, the principle of wage proportionality applies on the basis of the hours or days actually worked. Length of service is then determined from the date of recruitment as if the person concerned were a full-time worker.

   Temporary contracts are governed by the principle that the persons concerned should enjoy the same rights and the same pay as permanent workers.

Article 27.2 of the Workers' Statute states that an amount corresponding to the minimum wage cannot be distrained.

Similarly, Article 8.1 of the Law on Social Offences and Penalties in social matters states that it is a very serious offence for the employer: "to fail to pay the due remuneration or to delay payment repeatedly". Penalties are imposed at the initiative of the Labour and Social Security Inspectorate, the severity depending on whether the offender acted out of negligence or deliberately. In very serious cases, the fine may range from 300 001 pesetas to 15 000 000 pesetas.

Article 32 of the Workers' Statute establishes a number of safeguards for payment of the due remuneration, which is regarded as a debt having particularly high priority, e.g. in cases in which the employer has initiated bankruptcy proceedings and in all other cases in which wage debts are in competition with other claims on the employer's property.

Finally, Article 33 of the Workers' Statute provides for the Guaranteed Wage Fund. This is an autonomous administrative body operating under the auspices of the Ministry of Labour and Social Security, with legal personality and the capacity to act in pursuit of its aims. It pays workers the value of outstanding wages which are unpaid because of insolvency, suspension of payments, bankruptcy or composition proceedings involving the employer. The sum paid cannot exceed the product of twice the daily rate of the general minimum wage and the number of days for which payment is outstanding, up to a maximum of 120.

6. The national free public placement service may be used both by the unemployed and by workers in employment who wish information, guidance, vocational training or placement if they are out of work or wish to change to other work on different terms or of a different nature.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. Article 34 of the Workers' Statute provides that the normal working week shall not exceed 40 hours of actual work, to be calculated on a weekly or annual basis subject to the following constraints: (1) not more than nine normal hours may be worked per day; (2) between the end of one working day and the beginning of the next, the worker shall have a break of at least 12 hours in his work for the undertaking in question.

Working time may be arranged in the form of a "split day", in which case there must be an uninterrupted break lasting at least one hour, which is not regarded as working time, or in the form of a "continuous day" in which case there must be a break of not less than 15 minutes, which may be regarded as actual working time.

The forms of employment contract other than open-ended full-time contracts are as follows:

- practical training contract: performance of paid work allowing the worker to apply and improve his knowledge;
- training contract: the worker undertakes to perform work and receive instruction simultaneously;
- temporary job creation contract, with the aim of placing jobseekers;
- contract for specific works or services;
- standby contract depending on operational circumstances;
- interim contract enabling workers of the undertaking to be replaced while retaining the right to be reinstated in their jobs;
- contract for the start-up of a new activity;
- fixed employment contract for discontinuous work, i.e. work carried out on an intermittent or cyclic basis;
- part-time contract, services being provided for less than two thirds of the normal working day in the activity in question;
- job-sharing contract: a worker takes over part of the working day of a person entering upon part-retirement.

Spanish law prescribes equal treatment with regard to working conditions and trade union rights for part-time and full-time workers, including those with fixed-term contracts, the only difference being the logical adjustment of the wages due.

Royal Decree 1991/1984 of 31 October regulating part-time contracts, job-sharing contracts and part-retirement thus states in Article 2:

1. "Workers with part-time contracts shall enjoy the same rights as are granted to full-time workers by the law or by collective agreements.

2. "Remuneration of a part-time worker shall be proportional to that laid down by law or collective agreement for a full-time worker in the same occupational category, taking account of working hours and length of service in the undertaking.

3. "Part-time workers shall be represented jointly with full-time workers."

With regard to the procedure for collective redundancies, manpower rationalisation may take place in Spain when justified for economic or technical reasons and is monitored by the Labour Authority. In addition, the employer must in any case engage in a period of consultation with the workers' representatives.

With regard to bankruptcies, Article 51.11 of the Workers' Statute provides that a declaration of bankruptcy may be followed by the continuation of employment contracts if this agreed by the receivers in order to continue the firm's business. Otherwise, the matter must be forwarded to the competent Labour Authority as if it were a procedure for manpower rationalisation on economic or technical grounds.

8. Article 38 of the Workers' Statute states that workers are entitled to at least 30 calendar days' paid holiday, which may be negotiated by agreement. The period will be determined by common consent of the employer and worker, or, if this is not possible, the provisions of the collective agreements will apply. The criteria to be satisfied are as follows.

   - By agreement with the workers' representatives, the employer may exclude the time of year when the undertaking is most busy from the holiday period and the holidays of all the workforce may be determined. They may be staggered, or the unit may be closed down completely.

   - When holidays are staggered, workers with family responsibilities will have priority so that their holidays coincide with the school holidays.

   - If there is disagreement between the parties, the competent judicial body shall determine the dates and its decision shall be final.

9. Working conditions (rights and obligations of the parties in the employment relationship) are largely laid down by legislation, regulations or agreements.

   All contracts for a period in excess of four weeks, other than open-ended contracts, must be in writing, as must some open-ended contracts (part-time, fixed contracts for discontinuous work, etc.).

   Many employment regulations and collective agreements require all types of contract to be in writing.

SOCIAL PROTECTION

10.1 The public authorities in Spain are required to maintain a public social security system for all citizens to ensure adequate assistance and social benefits in cases of need, and especially in the event of unemployment. Cover for additional assistance and benefits is voluntary.

   On this basis, the Spanish social security system rests on a basic distinction between

   - a public system, which is compulsory and
   - voluntary supplementary protection.

   The public system in turn comprises two levels of protection covering different types of need:

   - a general level for cases of need which as a rule do not depend on whether the person concerned is in or out of work and which affect those who have not had an earned income, have lost such an income without becoming entitled to a compensatory benefit or have lost their right to such benefit;

- an occupational level for cases arising from the pursuit of an occupation and consisting in the temporary or permanent loss of all or part of earned income.

At this second level, there are two systems:

- a general scheme for employed persons and persons of equivalent status in the various branches of economic activity, covering 8 675 900 members;

- special schemes for workers in occupations which, because of their nature, particular characteristics or the nature of the productive processes, require special arrangements for social security benefits, covering 3 892 577 members.

The occupational schemes are essentially contributory, their funds being obtained from remuneration by means of employers' and workers' contributions. The maximum and minimum contribution limits for 1991 were set as follows: the maximum contribution basis for all social security schemes is 306 120 pesetas per month, while the minimum limit for industrial injuries and occupational diseases cover is 62 130 pesetas per month for workers aged 18 or over and 41 010 pesetas per month for workers under 18 years old. Direct transfers are also made from the General State Budget to the Social Security Budget. These logically correspond to the degree to which the social protection system provides non-contributory benefits which are unrelated to occupational activity and hence to earlier contributions.

The system of protection against unemployment is hybrid, including a contributory benefit, mainly for employed persons and other specific groups which are deemed to be employed persons for purposes of protection, and non-contributory assistance for unemployed persons who have exhausted their entitlement to unemployment benefit. This latter category includes two groups of unemployed persons who are not required to have had previous employment: returning emigrants and released prisoners, subject to the conditions laid down by law.

10.2 The regulating instrument is Law 26/1990 of 20 December on Non-contributory Benefits and Royal Decree 357/1991 of 15 March implementing this Law. The main purpose of Law 26/1990 is to establish and regulate a non-contributory level of cash benefits within the social security system in accordance with the principle enshrined in Article 41 of the Spanish constitution, which requires the public authorities to maintain a "public social security system for all citizens".

The Law extends the right to retirement and invalidity pensions and to cash benefits for dependent children under the social security system to all citizens, even if they have never paid contributions or have not done so for a sufficient time to become entitled to contributory benefits as a result of occupational activity.

The only requirements for entitlement to non-contributory benefits are, as general conditions, residence in Spanish territory and lack of adequate means of subsistence, and, as specific conditions, the age of 65 for the retirement pension and the age of 18 and the specified degree of disability for the invalidity pension.

These pensions are paid at a flat rate laid down in the General State Budget laws.

With regard to benefit for dependent children, Law 26/1990 substantially changes the child benefits under the social security system by establishing a non-contributory system, extending entitlement to all citizens who were hitherto excluded since they were not covered by the social security system.

Similarly, within the contributory system, entitlement to these benefits has been extended to the special scheme for self-employed persons, who hitherto did not receive periodic benefit for each child. The overall effect is to make entitlement to cash benefits for dependent children universal.

The creation of a general entitlement to child benefits for all citizens is combined with a redistributive mechanism which consists in setting maximum income levels for entitlement to these benefits while at the same time increasing their value to 12 times their present level.

The Law also institutes new benefits for dependent children over 18 years old and suffering not less than 65 or 75% disability. These benefits are higher than those mentioned above and are unaffected by the beneficiaries' income.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. In Spain, there is no impediment to the formation of professional or trade union organizations by employers and workers. Article 7 of the Spanish Constitution thus provides that trade unions and employers' associations may defend and promote the economic and social interests of their members and that they may be formed and may operate freely in conformity with the Constitution and law. Article 28.1 of the Constitution also affirms a general right to form and join trade unions, subject to the restrictions or exceptions applying to the armed forces or institutions or to bodies subject to military discipline, while also stating that no one may be obliged to join a trade union.

Similarly, Article 1 of Organic Law 11/1985 of 2 August on Trade Union Freedom states that: "All workers have the right to form or join trade unions freely in order to promote and defend their economic and social interests, with the exception of members of the armed forces and armed institutions of a military nature".

Article 2b states: "Trade union freedom entails the worker's right to join a trade union, while no person may be obliged to join a trade union".

Article 12 states: "Regulations, provisions of collective agreements, individual agreements and unilateral decisions by the employer which involve or imply any type of discrimination in employment or working conditions, whether positive or negative, on the basis of membership or non-membership of a trade union, acceptance of trade union agreements or in general the pursuit of trade union activities shall be null and void".

Any worker who considers the rights of free association to have been infringed by the employer may seek legal redress from the competent court by the process of judicial protection of fundamental human rights and from the social courts by a procedure which is treated as urgent (Article 174 of the Codified Text of the Law on Labour Procedures).

12. Freedom of collective bargaining is recognized by the Spanish Constitution, Article 37.1 of which provides that the law shall safeguard the right to engage in collective bargaining and the binding nature of the agreements, the latter deriving from the intention expressed by the contracting parties and appropriate registration according to the functional and territorial scope of the agreement. This scope determines whether the agreement in question applies to a sector or an undertaking, or at state, regional, interprovincial, district or local level.

Article 3 of the Worker's Statute, relating to the basis of the employment relationship, states that: "The rights and obligations relating to the employment relationship are governed.... by collective agreements", while Article 82.2 and 3 states that: "By means and within the scope of collective agreements, workers and employers shall determine working and productivity conditions and terms for settlement of any disputes, such agreements being binding on all employers and workers falling within their scope throughout the entire period for which they are valid".

13. The right to strike is recognized in Article 28.2 of the Spanish Constitution and governed by the Royal Decree-Law on Labour Relations of 4 March 1977, insofar as it was not expressly declared unconstitutional by the Judgment of the Constitutional Court of 8 April 1981.

The contract of employment is suspended as a result of strike action only in the case of legal strikes (i.e. strikes carried out for reasons admissible under Article 11 of the Royal Decree-Law and in accordance with the procedure laid down therein).

The following are illegal:
- strikes called or prolonged for political reasons;
- sympathy or secondary strikes;
- strikes intended to change an existing collective agreement.

In Spanish law, the following procedures exist for the settlement of collective labour disputes.

a) Settlement between the parties: the parties to the dispute themselves resolve it directly by collective bargaining.

b) Settlement involving outside parties: the dispute is resolved through or with the assistance of a third party. This procedure may consist in:
   - mediation and conciliation: in neither case has the third party any power of decision, the difference between the two being that a mediator proposes a solution while a conciliator does not;
   - arbitration: the arbitrator proposes a solution which, if accepted by the two parties, has the same status as an agreement between them.

   If the parties cannot reach agreement, the Labour Authority refers the dispute to the Social Courts, which must deal with it as a matter of urgency and give a ruling within three days, indicating the appeal procedure.

In Spanish law, conciliation, mediation and arbitration presuppose that the "disputes procedure", is set in motion as an alternative to strike action. This procedure is intended to be used both in conflicts of interest or substantive conflicts concerned with the changing of provisions of agreements or their replacement by others and in secondary conflicts over the application or interpretation of existing agreements.

14. With regard to the civil service, the Law on Civil Service Reform of 2 August 1984 recognized civil servants' right to strike and described as very serious misconduct "any action intended to restrict the free exercise of the right to strike". Such action will result in one of the following disciplinary measures:
   - dismissal from the service: this may be decided only by the Council of Ministers on a proposal from the Minister of Public Administration;
   - suspension, for not more than six years nor less than three years;
   - transfer and change of residence, no return to the original posting being permitted until three years have elapsed.

In all three cases, a disciplinary procedure must first be followed and the civil servant responsible for the misconduct must be heard.

Organic Law 2/1986 of 13 March on the Armed and Security Forces forbids strike action by members of these forces.

VOCATIONAL TRAINING

15.1 Basic Law 51/1980 of 8 October on Employment.

Royal Decree 1618/1990 of 14 December regulating the National Plan for Training and Integration into Employment.

Organic Law 1/1990 of 3 October on the General Organization of the Educational System institutes a far-reaching reform of formal vocational training, which is the responsibility of the Ministry of Education and Science. Under the new arrangements,

formal vocational training will comprise basic vocational training, to be received by all secondary pupils, and specialised vocational training, to be organised in intermediate and higher-level cycles. Access to the intermediate level will be conditional on completion of elementary education and hence on possession of the certificate of secondary education.

15.2 The National Plan for Training and Integration into Employment (the FIP Plan) includes a special programme for guidance and employment training for foreigners who are legally resident in Spain and are entitled to take up employment.

15.3 The programme for employment training of the workforce, within the FIP Plan, provides for the National Employment Institute, its Approved Centres and employers, on the basis of cooperation agreements concluded with individual employers or with employer or trade union organizations, to develop courses providing continuing training for the workforce at all levels to help it adjust to occupational changes resulting from the introduction of new production technologies or new management methods.

15.4 The public authorities and the employers' and trade union organizations are all involved in managing employment policy, which includes vocational training, under the responsibility of the National Employment Institute. They are equally represented on the General Council and Executive Committee, which are the bodies responsible for overseeing the central departments, and on the executive committees of the provinces and islands.

The General Vocational Training Council, the advisory body to the government in matters of formal vocational training and employment training, also has a tripartite composition with equal representation as described above. Its responsibilities include preparing the FIP Plan and submitting it to the government for approval, monitoring its implementation and proposing any changes needed to bring it up to date.

Royal Decree 1618/1990 introduces certain innovations in the involvement of the two sides of industry in vocational training, instituting three-year programme contracts as a vehicle for collaboration of employers and unions in the implementation of the FIP Plan.

This Royal Decree also provides for the establishment of Provincial Monitoring Committees for Employment Training, which are intended to provide the National Employment Institute with machinery at provincial level for participation in vocational training. Their functions include that of gathering information on the progress of the FIP Plan, analysing and assessing the data collected and issuing proposals and recommendations.

EQUAL TREATMENT FOR MEN AND WOMEN

16.1 Article 14 of the Spanish Constitution of 1978 recognizes the equality of men and women before the law, while Article 35.1 forbids discrimination in employment. Since the promulgation of

the Constitution, legislative and institutional action has been taken to give effect to the principle of equal treatment. Article 17 of the Workers' Statute thus declares null and void regulations, provisions of collective agreements, individual agreements and unilateral decisions by the employer which involve negative discrimination on grounds of sex or negative or positive discrimination with regard to employment. In order to safeguard the principle of equal treatment in access to employment, Law 8/1988 on Social Offences and Penalties provides that it shall be a very serious offence to stipulate conditions, by advertising, job offers or any other means, which constitute negative discrimination on grounds of sex as regards access to employment.

With regard to the burden of proof in cases involving alleged discrimination on sex grounds, Article 96 of the Codified Text of the Law on Labour Procedures, approved by Legislative Royal Decree 521/1990 of 27 April, requires the defendant to provide objective, reasonable and adequately proven justification for the measures taken and their fairness.

Much of the institutional action has been taken as part of the Action Plan for Equality of Opportunity for Women approved by the Spanish government in September 1987.

16.2 Approval of this Plan was a major step towards equal treatment. It comprised 120 measures involving 13 ministerial departments, and had the following objectives.

- To improve the regulatory arrangements giving effect to the constitutional principle of sexual equality.
- To make it possible to choose parenthood freely and responsibly.
- To improve health protection for the entire female population and especially the groups of women most at risk.
- To reduce the rate of female unemployment and sexual segregation in employment and improve working conditions for women in employment by means of public programmes of job-related training, recruitment and self-employment. There is a specific programme of wage subsidies for the conclusion of open-ended employment contracts for women in professions or jobs in which they are under-represented.
- To improve and extend the social protection of groups of women particularly in need of assistance.
- To launch international cooperation programmes aimed at benefiting specific groups of women.
- To improve and complete the information available on the social position of Spanish women and how it is affected by social and economic policy measures.

This Action Plan has led to the adoption of plans with similar objectives in eight regions under the auspices of the regional governments. Work is currently in progress on preparing the second state action plan.

The Action Plan for Equality of Opportunity for Women recognized the need to prevent pressures and sexual harassment, to which women are particularly exposed. To this end, Article 4(2)(e) of

Law 8/1980 of 10 March on the Workers' Statute was amended by Article 1 of Law 3/1989 of 3 March, which extended maternity leave to 16 weeks and prescribed measures to promote equal treatment for men and women at work. The new Article reads as follows: "In relation to their employment, workers have a right .... to respect for their privacy and due consideration for their dignity, including protection from verbal or physical aggression of a sexual nature".

Mention should finally be made of the major importance in the social and occupational advancement of Spanish women of the creation of the Institute for Women's Issues in 1983 and, more recently, of equal opportunities commissions in many of the regional governments.

16.3 In addition to part-time contracts, a contribution is made by the whole system of leave arrangements and the latest and most important measure intended to enable men and women to reconcile their occupational and family commitments, which was contained in Law 3/1989. This extended maternity/paternity leave from 14 to 16 weeks and to 18 weeks in the case of a multiple birth and guaranteed reinstatement in employment in the public or private sector after one year's child-rearing leave, such leave also counting towards length of service.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. For companies established in Spain, the right of workers or their representatives to information and consultation is enshrined in Spanish labour legislation and in particular in Article 64 of the Workers' Statute, together with Article 62.2 of the same instrument and Organic Law 11/1985 of 2 August on Trade Union Freedom.

18. Under the terms of the Workers' Statute, the Works Council has the following prerogatives: (1) to receive information at least every three months on the general trends in the economic sector to which the undertaking belongs and on the unit's production and sales, production programme and employment prospects; (2) to be acquainted with the balance sheet, the profit and loss account, the annual report and with the same documentation, under the same conditions, as the shareholders or partners if the firm is in the legal form of a joint stock company or a partnership; (3) to issue reports prior to action by the employer on the latter's decisions with regard to restructuring of the workforce and total or partial layoffs or redundancies, short-time working and total or partial transfer of plant, the undertaking's vocational training plans, the introduction or alteration of work organization and control sytems, time studies, systems establishment and job evaluation; (4) to issue reports when mergers, takeovers or changes in the legal status of the undertaking are liable to affect employment.

In addition, the Works Council is responsible for:

- monitoring compliance with the labour, social security and employment regulations;
- monitoring safety and industrial hygiene in the undertaking;
- assisting in the management of the undertaking as provided for in collective agreements;
- participating in the management of welfare facilities provided by the undertaking for its workers or their families.

Article 10.3 of the Organic Law on Trade Union Freedom provides that trade union representatives who are not members of the Works Council shall enjoy the same guarantees as are established by law for the members of the Works Council, together with the following rights:

- to have access to the same information and documentation as the employer makes available to the Works Council;
- to be present at the meetings of the Works Council and the internal health and safety bodies established by the employer;
- to be consulted by the employer in advance on any collective measures affecting the workers in general and in particular on dismissals and disciplinary measures.

The branches of the major trade unions and the unions represented on the Works Council are entitled to engage in collective bargaining in accordance with the pertinent legislation.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19.1 With regard to the Directives in course of transposal, it should first of all be mentioned that the areas to which they relate are already regulated in Spain. Nonetheless, their incorporation into Spanish law will involve the following changes.

- Council Directive 89/391/EEC (Framework Directive) will require the institution of preventive services and the strengthening of protective measures against the fire hazard and serious and imminent danger and of the right of workers and their representatives to information. The Framework Directive will also make a considerable contribution to Spanish law by confirming a progressive approach to workers' health and safety, i.e. an overall, integrated and dynamic health and safety policy affecting every aspect of an undertaking's operations.

- Council Directive 89/654/EEC on the workplace will have a major impact in Spain, especially with regard to new workplaces established after 31 December 1992, and more specifically with regard to electrical installations.

- Existing Spanish legislation already goes as far as Council Directive 89/655/EEC on work equipment and actually goes farther than Council Directive 89/656/EEC on personal protective equipment.

- Council Directive 90/270/EEC on display screen equipment will, in its overall impact, involve far-reaching innovations for Spanish workers.

- Finally, Council Directives 90/394/EEC and 90/679/EEC on exposure to carcinogens and to biological agents, and in particular the latter, will result in improved prevention and protection in that these Directives will make it necessary to introduce a system of rules, action levels and limit values, together with a set of graded measures to be taken, which will clarify the Spanish legislation in these areas.

19.2 The legislation now in force gives the workers' representatives (Works Councils and delegates) responsibility for monitoring preventive measures and safety and health conditions in their undertaking's operations. The Workers' Statute thus entrusts the Works Councils with the task of monitoring compliance with the rules for health at work and the safety and hygiene conditions in their undertakings, and taking any necessary legal action in relation to the employer and the competent authorities or courts.

The right of the representatives of the workforce in an undertaking to receive information was recognized in the Workers' Statute and has been strengthened by Law 2/1991 of 7 January with regard to employment contracts, the employer being required, inter alia, to provide the workers' representatives within the undertaking with an outline copy of all contracts which must be concluded in writing.

Finally, Law 21/1991 of 17 June set up an Economic and Social Council to strengthen participation by those concerned in economic and social affairs. The Council will include representative trade unions and employer organizations and other organizations or social forces representing various interests (agriculture, shipping and fisheries, consumers and users). It will serve as a forum for consultation on the government's prescriptive action in the socio-economic and employment fields - in which case its role will consist basically in issuing reports and opinions of a mandatory or optional nature as appropriate - or will express views on its own initiative, since it has wide powers of autonomous action and organization which ensure its independence.

Workers' representatives have the same rights to information and participation with regard to frontier workers as for other workers with respect to employment measures or policies which may affect working conditions.

Article 10.6 of the Law on Social Offences and Penalties states that it shall be a very serious offence "to fail to set up the safety and health machinery within the undertaking or to infringe the rights of the bodies concerned and in general of the workers' representatives in safety and health matters". This offence will incur a fine proposed by the Labour and Social Security Inspectorate, without prejudice to any penalties which may be imposed by the health authorities.

Moreover, the General Ordinance on Safety and Health at Work of 1971 states that the duties of the workers' representatives who are members of the Safety and Health Committees include cooperation with the employer and submission to the latter of proposals for preventive measures.

At the individual level, the worker has a subjective right to protection by the employer. But the law also provides for a parallel contractual obligation on the part of the worker to comply in his work with the statutory health and safety requirements (Article 19.2 of the Law on the Workers' Statute) and to follow the practical instructions provided by the employer (Article 19.4 of the Law on the Workers' Statute).

Finally, mention should be made of the Draft Law on Health at Work, which regulates the action to be taken by the parties to the employment relationship in order to prevent risks and safeguard the health and physical well-being of workers by improving working conditions.

Title V "Participation and representation" of this bill provides that: "Workers shall have the right to participate in matters relevant to the protection of their health and physical well-being at work through their representatives and the specialist internal bodies provided for in this Title".

It further states that: "The bodies representing the workforce and trade union representatives shall, in accordance with the Workers' Statute and the Organic Law on Trade Union Freedom, monitor compliance with the rules on safety, hygiene and working conditions, and take any necessary legal action in relation to the employer and the competent authorities and courts on behalf of the workforce. To this end, they shall be assisted by the safety representatives, who shall make available to them all information to which they obtain access in the performance of their duties."

PROTECTION OF CHILDREN AND ADOLESCENTS

20. Articles 6 and 7 of the Workers' Statute provide that the minimum employment age shall be 16 years, except that persons less than 16 years old may work in the entertainment industry. Such work must be specified and authorised in writing by the labour authority and must not put at risk the minor's physical health, vocational training or personal development.

21. Article 27.1 of the Worker's Statute states that the government shall set the general minimum wage at yearly intervals.
Under the terms of Royal Decree 8/1991 of 11 January, the general minimum wage is 1 172 pesetas per day or 35 160 pesetas per month for persons less than 18 years old and 1 775 pesetas per day or 53 250 pesetas per month for persons over 18 years old.
The minimum wage may, however, be above this general level for certain occupations, depending on category, as specified by collective agreements.

22. Article 6.2 of the Worker's Statute states that workers less than 18 years old may not engage in night work or activity nor hold jobs which the government declares to be unhygienic, arduous, noxious or prejudicial to health, vocational training or personal development.
Article 6.3 of this instrument prohibits overtime working by persons less than 18 years old.
Failure to comply with these prohibitions incurs administrative sanctions in that Article 8.4 of the Law on Social Offences and Penalties declares infringement of the rules on work by minors to be a very serious offence.
Spanish legislation makes no distinction between adults and minors for purposes of the length of the employment contract, both categories being able to conclude open-ended and temporary contracts. There is, however, a type of temporary contract specifically designed for young persons: the "practical training" or "training" contract, approved by Royal Decree 1992/1984 of 31 October, which permits simultaneous work and vocational training.
A practical training contract may be concluded by young persons within the four years following completion of the studies necessary for the qualification in question.
A training contract may be concluded by unemployed persons between the ages of 16 and 20 years, with no upper age limit for the handicapped.

23. The FIP Plan includes the following programmes for young persons;

1. training support guarantee programme for young persons with training contracts;
2. employment training programme for unemployed persons under 25 years old;
3. work experience programme for persons under 25 years old following employment training courses;
4. compensatory training programme for persons under 16 years old;
5. work experience programme for persons in second-level vocational training, experimental modules and higher education;
6. employment training programmes during military service.

THE ELDERLY

24. In Spain, workers are entitled, on reaching retirement age, to a life-long, imprescriptible retirement pension under the public social security system.

To qualify, workers must satisfy the age, minimum contribution and contingency requirements, be covered by one of the schemes in the Spanish social security system or a scheme linked with it and have active contributor or equivalent status, although under the terms of Law 26/1985 of 31 July persons may receive a retirement pension without having active contributor status.

As a general rule, the pensionable age is 65 years. Workers must have or be deemed to have active contributor status, subject to certain conditions.

The minimum contribution period required is 15 years, two of which must be among the last eight years immediately preceding retirement.

Workers may also be entitled to a pension additional to the social security pension under supplementary voluntary arrangements. These are largely regulated by collective agreements and may be run by voluntary provident schemes and mutual insurance societies.

Such supplementary pensions are widespread in some sectors of the Spanish economy.

Since 1987, there have also been pension plans and funds, which are of three types depending on the promoters and participants:
- occupational system;
- associate system;
- personal system.

25. As already mentioned in section 10, the Spanish social protection system provides for non-contributory retirement pensions so that all elderly citizens who are in need are entitled to minimum benefits even if they have never paid contributions or have not done so for a sufficient period to obtain benefits at the contributory level. Such citizens are also entitled to medical/pharmaceutical benefits and social services, with the result that their needs are fully covered.

Law 26/1990 of 20 December instituting non-contributory benefits under the social security system builds on the guiding principle set out in Article 41 of the Spanish Constitution, which requires the public authorities to "maintain a public social security system for all citizens". The only requirements for entitlement to the non-contributory retirement pension are, as a general condition, residence in Spanish territory and lack of adequate means of subsistence and, as a specific condition, the age of 65 years. The pension is paid at a flat rate fixed by the General Budget laws.

The social security system provides the following social assistance and social services for retired persons or pensioners:
- old people's homes;
- day centres and clubs;
- assistance in the home;
- holidays;
- subsidized thermal cures.

DISABLED PERSONS

26.1 The main approach to integration of disabled persons into working life is to induce employers to give open-ended work contracts to disabled persons who are unemployed by granting a 500 000 peseta subsidy and reducing the employer's social security contribution for all risks by 70% for workers under 45 years old and 90% for older workers.

These incentives are compatible with the granting of aid for adaptation of workstations.

The "training contract", which combines work with the necessary training for the job and which can normally be concluded with persons between the ages of 16 and 20, is not subject to any age limit when the unemployed person concerned is disabled.

The programme of occupational integration of the disabled in Special Employment Centres covers two types of activity. The first supports the launching of innovatory job-creating projects by means of subsidies for technical support, interest rebates and the capital investment required. The second is intended to maintain jobs by subsidizing part of the wage cost and the employer's social security contributions.

Self-employment of the disabled is encouraged by means of interest rebates and subsidies of up to 400 000 pesetas for fixed capital investment.

In the field of vocational training, the FIP Plan includes an employement training programme for disabled workers with the aim of easier integration into the open labour market.

A further series of measures carried out under the aegis of the National Institute for Social Services (INSERSO) may be briefly described as follows.

- Vocational guidance in basic centres, whose functions include providing advice on the most suitable work for the type of disability concerned.

- Employment training organized and financed by INSERSO, which is carried out in Rehabilitation Centres for the Physically Disabled, one of which belongs to the Community network of vocational training or rehabilitation centres and experiments set up under the Community HELIOS programme.

- Work in Occupational Centres, whose aim is the vocational and social rehabilitation of persons suffering total incapacity which temporarily or permanently prevents their integration in a Special Employment Centre or in open employment. One of these centres too, forms part of the HELIOS programme.

- In the field of employment for the disabled, INSERSO also manages the Register of Occupational Centres run by non-profit private bodies. This register lists establishments

which aim to provide occupational therapy and personal and social adjustment for the disabled when the degree of invalidity is such that they are not employable in an undertaking or Special Employment Centre.

26.2 Various measures are being taken in the following areas to promote the social integration of the disabled:

- ergonomics: by subsidizing employers for adapting workstations to the requirements of the disabled;

- accessibility and mobility: by eliminating architectural obstacles, subsidising the acquisition and adaption of aids to mobility and adaptation of means of transport to allow their use by disabled persons.

With regard to housing, the regulations on subsidized housing provide for a quota of 3% to be reserved for the disabled.

IMPLEMENTATION OF THE CHARTER

27. The rights contained in the Charter are guaranteed by various mechanisms.

Under the terms of Article 13 of the Organic Law on Trade Union Freedom, if workers or trade unions consider trade union rights to have been infringed by an employer, an employers' association or any other person, entity or public or private corporation, they may seek legal redress from the competent court by the process of judicial protection of fundamental human rights.

The Codified Text of the Law on Labour Procedures assigns competence to deal with claims arising in social law, in both individual and collective disputes, to the social courts and accords legal capacity and the right to plead in defence of their rights and legitimate interests to all persons having the full enjoyment of their civil rights and to trade unions and employers' associations for the defence of their economic and social interests.

At the administrative level, Law 8/1988 classifies social offences and penalties, assigning responsibility in this area to the Labour and Social Security Inspectorate, which may take action, either ex officio or on complaint by the party affected, on the entire range of regulations on labour and employment matters, social security, migration, safety and health at work, etc. When it is established that offences have been committed, penalties are imposed by the competent administrative authority following a proposal from the Labour and Social Security Inspectorate.

In addition to these normal channels for judicial and administrative redress, parties suffering violation of rights recognized by the Constitution have access to the constitutional machinery for guaranteeing such rights: challenges to the constitutionality of legislative decrees before the Cons

titutional Court; appeals to the Constitutional Court for protection against de facto infringements; judicial proceedings by summary and priority procedure before the normal courts for the protection of fundamental human rights, complaints to the Ombudsman against administrative acts which infringe citizens' rights, etc.

In Spain, the rights contained in the Charter are also exercised by means of collective agreements, the binding force of which is recognized by Article 37 of the Spanish Constitution: "The law shall guarantee the right to collective labour negotiations and the binding force of the agreements concluded".

Article 82.3 of the Workers' Statute states that: "The collective agreements regulated by this Law are binding on all employers and workers covered by their scope and for as long as they are in force", while Article 3 of the same Statute describes collective agreements as the basis of the employment relationship.

Article 96 of the Spanish Constitution states that: "Duly concluded international treaties, once they have been published in Spain, shall form part of Spanish law".

The rights set out in the Charter are thus also guaranteed by means of the international conventions ratified and published in Spain. The following ILO Conventions, which have been ratified by Spain and are thus part of Spanish law, are pertinent.

1. Social policy

   - Convention No 117 concerning Basic Aims and Standards of Social Policy, 1962

2. Freedom of movement

   - Convention No 97 concerning Migration for Employment (revised), 1949
   - Convention No 157 concerning the Establishment of an International System for the Maintenance of Rights in Social Security, 1982

3. Employment and remuneration

   - Convention No 122 concerning Employment Policy, 1964
   - Convention No 88 concerning Organisation of the Employment Service, 1948
   - Convention No 131 concerning Minimum Wage Fixing, 1970
   - Convention No 95 concerning the Protection of Wages, 1949

4. Improvement of living and working conditions

   - Convention No 1 limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-Eight in the Week, 1919
   - Convention No 30 concerning the Regulation of Hours of Work in Commerce and Offices, 1930
   - Convention No 132 concerning Annual Holidays with Pay (revised), 1970

5. Social protection

   - Convention No 102 concerning Minimum Standards of Social Security, 1952

6. Freedom of association and collective bargaining

   - Convention No 18 concerning Freedom of Association and Protection of the Right to Organize, 1948
   - Convention No 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949
   - Convention No 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971
   - Convention No 154 concerning the Promotion of Collective Bargaining, 1981

7. Vocational training

   - Convention No 142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975

8. Equal treatment for men and women

   - Convention No 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981
   - Convention No 111 concerning Discrimination in Respect of Employment and Occupation, 1958
   - Convention No 103 concerning Maternity Protection (revised), 1952

9. Information, consultation and participation of workers

   - Convention No 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976

10. Health protection and safety at the workplace

    - Convention No 155 concerning Occupational Safety and Health and the Working Environment, 1981

11. Protection of children and adolescents

    - Convention No 138 concerning Minimum Age for Admission to Employment, 1973

12. Disabled persons

    - Convention No 159 concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983

13. Implementation of the Charter

- Convention No 81 concerning Labour Inspection in Industry and Commerce, 1947

Finally, reference should be made to the European Social Charter of the Council of Europe, which was ratified by Spain on 29 April 1980. This guarantees the enjoyment, without discrimination, of the following basic rights:

- the right to work;
- the right to just conditions of work;
- the right to safe and healthy working conditions;
- the right to a fair remuneration;
- the right to organize;
- the right to bargain collectively;
- the right to vocational guidance and training;
- the right of children and young persons to protection;
- the right of employed women to protection;
- the right to social security;
- the right to social and medical assistance;
- the right to benefit from social welfare services;
- the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement;
- the right to engage in a gainful occupation in the territory of other Contracting Parties;
- the right of migrant workers and their families to protection and assistance.

UNITED KINGDOM

THE LABOUR MARKET

Introduction

The 1980s was a decade of great change in the structure of employment, much greater than that seen in the 1960s or the 1970s. This can clearly be seen by looking at employment in 1989 and comparing it with the situation in 1979. Five key points emerge:

1) Substantial employment growth

At June 1990 the UK workforce in employment stood at 26.8 million, an all-time high and 1.5 million higher than in June 1979.

2) Changing forms of employment

Traditional patterns of employment are changing. There has been substantial growth in part-time work. Nearly a quarter of all jobs are part-time. One in eight of the workforce in employment is now self-employed, compared with one in twelve in 1979.

These and other moves away from old-style work patterns suit both employer and employee. Evidence suggests that people entering these jobs do so from choice rather than lack of opportunity.

3) Changing industrial structure

In common with most industrialized countries, the last decade has seen a decline in jobs in manufacturing. In contrast, the service sector has expanded rapidly, with total job growth of over 2 million since 1979. This sector now accounts for two thirds of all employment, compared with three fifths in 1979. There has also been strong growth in the creation of new businesses.

4) Changing occupational structure

Equally significant have been changes in the occupational structure of employment. Between 1979 and 1989, the number of people employed in managerial and professional occupations has increased by nearly 2.2 million - they now account for a third of all workers compared with a quarter in 1979. Only 45% of workers are in manual occupations now, compared with 52% in 1979.

5) More women in employment

There has been a large increase in the number of women at work. In 1979 the UK female workforce in employment stood at just over 10 million - now it is almost 12 million. Women now account for 44% of the workforce. Nearly 60% of women employees work full-time, a figure which is little changed from the position in 1979. The UK alone in the EC has an unemployment rate for women lower than that for men. These changes reflect increased demand from women for jobs and the growth in the types of job opportunities that women have been looking for, such as part-time employment.

Government policy towards the labour market

Government policies towards the labour market have to reflect these changes. It is the UK Government's view that labour markets work most efficiently with the minimum of government intervention. Policies have been directed at removing hindrances to the free operation of markets and to balancing the needs of employer and employee. This led to an all time high in the level of employment. Unnecessary regulations have been removed, thereby lessening the burden of government on business, and it has been made easier to start up a new business.

The UK believes that terms and conditions of employment are best determined by employers and employees; they are in the best position to judge what is appropriate, taking account of the circumstances of their particular firm in the labour market.

The UK is not, however, opposed in principle to all regulation of the labour market; legislation is sometimes necessary to ensure effective operation of the market, to protect particularly vulnerable groups or to achieve a fundamental principle of public policy, for example to combat discrimination. In the UK there is comprehensive legislation on such matters as health and safety, equal opportunities, maternity rights, unfair dismissal and redundancy payments. However, legislation should be confined to the minimum necessary consistent with establishing a balance between the needs of employers and employees.

UK policies in the 1990s will reflect the key challenges of greater international competition and technological and demographic changes. Flexibility in the types of employment patterns, in training and in wages will be important objectives in meeting these challenges.

The following sections outline UK employment and social policies. Many of the legislative provisions described satisfy or implement existing Community directives. The UK has an excellent record on implementation; a European Commission report in November 1990 showed that the UK was the only Member State to have implemented all 18 directives so far agreed in the social area.

THE FRAMEWORK OF EMPLOYMENT PROTECTION

There is a comprehensive package of employment protection legislation for workers in the UK.

All employees are covered by legislation dealing with a number of important employment rights. These include equal pay, protection against discrimination on grounds of sex, race or trade union membership or non-membership, protection against the employer's insolvency and the right not to suffer unlawful deductions from pay.

In addition, most employees qualify for other legal rights, such as a redundancy payment, redress against unfair dismissal and the right to return to work after having a baby.

In brief, the main individual rights are as follows:

- written statement of main terms and conditions
- right to receive an itemized pay statement
- right to minimum period of notice
- right not to be unfairly dismissed
- right to written statement of reasons for dismissal
- right not to be discriminated against on grounds of race, sex, marital status, or grounds of membership or non-membership of a trade union
- time off for public duties
- right to compensation if made redundant
- time off (for employees who are being made redundant) to look for work or make arrangements for training
- maternity rights is right not to be unreasonably refused paid time off for ante-natal care; right not to be dismissed because of pregnancy or for a reason connected with pregnancy; right to return to work after having a baby
- protection against unlawful deductions from wages
- right to remuneration on suspension on medical grounds.

Means of redress

Workers who believe their rights have been infringed can get free advice from the independent Advisory, Conciliation and Arbitration Service, from Citizens Advice Bureaux, and from law centres. Complaints may generally be pursued through the industrial tribunal system.

Industrial tribunals are independent judicial bodies which were set up to provide a speedy, informal and inexpensive method of resolving disputes between employers and employees. Their procedures have been framed with the objective of making it unnecessary for the parties to be legally represented.

In most cases an industrial tribunal will make an award of financial compensation to a successful complainant; depending on the jurisdiction under the which the complaint has been made, the tribunal may alternatively make an order for re-employment or a declaration of the rights of the parties.

There is a right of appeal against tribunal decisions on a point of law, first to the Employment Appeal Tribunal and then to the Court of Appeal and the House of Lords.

Protection in cases of redundancy and insolvency

The UK believes that all employees are entitled to effective social protection in the event of redundancy or the employer's insolvency. The UK arrangements go well beyond the scope of the EC directives on insolvency and collective redundancies:

* Most employees have a statutory right to compensation, based on earnings and length of service, if they become redundant.

* Recognised trade union representatives must be consulted about prospective redundancies and business transfers; and employers must inform the Government in advance about large redundancies.

* A comprehensive package of measures is available to redundant workers to help them back into employment.

* UK law gives preference to debts owed to employees in the event of their employer's insolvency. Furthermore, the UK Government guarantees payment of certain wages debts owed by insolvent employers.

* In 1990/91 the Government made payments, totalling some UKL145m, under the redundancy and insolvency provisions to nearly 400 000 employees.

WORKING CONDITIONS

There is no general legislative framework setting out terms and conditions of employment. In general employers and employees, or their representative organizations are free to agree what suits them best.

Working time

Working time in the UK is in most cases determined by agreement between employers and employees. Average weekly hours worked in the UK, at 37.7 hours, are the same as in France and Germany and only marginally higher than the EC average of 37.6, though greater flexibility results in a wider spread of working patterns and hours worked. The UK's non-statutory approach allows employers and employees greater freedom to explore new types of working patterns and to respond quickly to economic circumstances and customers' requirements. The average annual paid holiday entitlement set by collective agreement is approximately 23 days. These levels are comparable to those in other EC member states.

In surveys UK employees have reported high levels of satisfaction with their working time arrangements: over 80% are satisfied or very satisfied and only 9% dissatisfied. Levels of satisfaction are high among all main categories of workers, including part-timers and those working longer than average hours.

Wages

Real incomes have increased for all income groups since 1979 (on average by 29% for males and 38% for females) and there are more people in the workforce than ever before. For the lower paid there are "in work" social security benefits specially designed for those with heavy family commitments.

The Government believes the imposition of minimum wages hinders the free operation of the labour market and destroys jobs.

The best way of helping the lower paid is to create the conditions for a prosperous and growing economy and to remove barriers to

employment. The main cause of poverty is unemployment and the best answer is realistic wages which create the right conditions for job growth.

INDUSTRIAL RELATIONS AND TRADE UNIONS

Freedom of association

In general, employers and employees are free to establish and run such organizations as they see fit.

Steps taken by the Government over the past decade to reform the relevant legislation have provided a legal framework which ensures that individuals are free to join, or not to join, trade unions. With certain exceptions, all employees now have the following rights:

(i) not to be dismissed for being a member of a trade union or for not belonging to one, or for proposing to become a member of a trade union or refusing to join one;

(ii) not to have action short of dismissal taken by their employer to prevent or deter them from seeking to become a member, or to penalize them for doing so, or to compel them to be or become a member;

(iii) not to be chosen for redundancy because they belong or do not belong to a trade union, or are proposing to join one.

In addition, individuals seeking employment are protected against an employer's refusal to employ them if that refusal was because the individual concerned was, or was not, a trade union member or because he refused to become, or cease to be, a member.

Where an employee, or jobseeker, believes that any of the rights afforded to him under the law have been infringed, he may complain to an industrial tribunal.

Collective agreements

There has been an increasing trend in the UK towards individual agreements between employer and employee. The notion of people at work as an undifferentiated mass with identical interests and aims is diminishing. Individual employees want to have much more control over the whole direction of their careers. They have their own views about the training and skills they need. They look for and they will stay with the employer who will train them and help them to develop their careers.

The Government believe that making collective agreements should be a voluntary matter between the parties concerned. There is nothing in UK legislation which prevents employers, employer organizations, or worker organizations from negotiating and concluding such agreements.

However, there is nothing in UK legislation that prevents an employer from recognizing a trade union, or from concluding a collective agreement. These are matters which employers are free to decide, having regard to their particular business needs and circumstances.

It is for the parties to collective agreements to decide themselves whether their agreements should be legally enforceable.

Disputes

The industrial relations reforms pursued by the Government have led to the lowest number of stoppages for over 55 years, and the fewest days lost for ten years.

Should a collective or individual dispute arise, the UK already has in place well-established provision for conciliation and arbitration for the settlement of disputes in the form of the Advisory, Conciliation and Arbitration Service (ACAS).

ACAS was established as an independent statutory body under the Employment Protection Act 1975 with the general duty of improving industrial relations. Its specific functions include conciliating in industrial disputes (at the request, or with the agreement, of the parties concerned), and arranging arbitrations. The Service enjoys a high reputation on both sides of industry.

In 1990, ACAS dealt with 1 260 requests for collective conciliation, 52 071 for individual conciliation, and arranged 200 arbitration and mediation hearings.

If disputes cannot be resolved, nothing in UK law prevents any employee from choosing to take collective strike action.

UK law specifically prevents any court - in any circumstances - from making an order which would compel an employee to do any work or attend any place to do any work, even if such work or attendance is required by the employee's contract of employment.

Provisions in employment law also prevent an employer selecting for dismissal only some of those employees taking "official" (i.e. union organized) industrial action, in so far as any employee so dismissed may be able to claim unfair dismissal.

Other provisions in employment law provide special protection for any employee who takes strike action by preserving any "qualifying period of employment" which the employee may have accumulated prior to taking such action - thereby protecting certain statutory employment protection rights (e.g. to redundancy pay), even though the employee has chosen to go on strike in breach of the terms of his employment contract.

In addition, anyone (including a trade union) who calls for, or otherwise organises, industrial action which interferes with contracts, may be protected from civil liability (and proceedings which could otherwise be brought for an injunction and/or for damages) by special statutory "immunities".

A 1989 independent survey of foreign-owned firms showed that 96% believed that UK industrial relations have significantly improved.

EMPLOYEE INVOLVEMENT

The UK Government is firmly committed to the principle of employers informing and consulting their employees, and involving them in the businesses in which they work.

There is no blueprint for successful employee involvement - arrangements must be suited to each organization's particular circumstances. The UK is opposed to the introduction of prescriptive legislation on consultation and participation. This would be at odds with the UK's voluntarist industrial relations tradition.

The Government does however recognize that it has a role to play in promoting the voluntary development of employee involvement. It achieves this in four main ways:

(i) Good company practice: the Government draws attention to and encourages the adoption of good company practice.

(ii) Specialist, business and professional organisations: the Government supports the initiatives of business, specialist and professional organizations.

(iii) Research: the Government sponsors and supports a variety of research work on employee involvement.

(iv) Financial participation: the Government is convinced of the value - to employees and employers alike - of employees having a financial stake in the company in which they work. As shareholders, employees acquire a new type of interest in the company's success and receive information about its wider objectives and performance. Share schemes tend to make employees identify more with their company and its performance - and are usually associated with other employee involvement practices.

The Government has introduced a range of tax incentives for the establishment of financial participation schemes. The UK is in the forefront in Europe in encouraging financial involvement, and more schemes are being established all the time. Eleven of the last twelve Budgets presented by the Chacellor of the Exchequer have included tax incentives in this area.

Nearly 2 000 all-employee share schemes have been registered to date. By the end of February 1991 there were 4 700 discretionary share option schemes in operation. Also at end February 1991, 1 245 profit related pay schemes had been registered, covering 285 000 employees.

FREEDOM OF MOVEMENT

The UK Government recognizes that freedom to take work and provide services anywhere in the Community is vital, both for individual EC nationals, and for business in the free market.

All EC nationals, except those from Spain and Portugal, are entitled to enter and reside in the United Kingdom in order to seek or take paid employment, to engage in self-employment or to provide or receive services for remuneration. The UK supported the regulation agreed at the Social Affairs Council on 25 June which will shorten the transitional period for Spain and Portugal.

Individuals are not subject to any restrictions on the nature and type of activity of these kinds that they may engage in (except insofar as British citizens may be subject to restrictions), and they thus have full and equal opportunity in employment or business and the professions. They are also covered by the same employment protection rights as UK workers, therefore ensuring equal and fair treatment.

The UK also fully supports Community action to eliminate obstacles arising from the non-recognition of diplomas or equivalent occupational qualifications. The UK regulations transposing in full Directive 89/48/EEC (on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration) came into force on 17 April 1991. The UK is the second Member State to iemplement the Directive in full.

The Directive was implemented for teachers in autumn 1989 and since then 1 698 teachers from the Community have been granted qualified teacher status allowing them to teach in the UK.

The UK is a leading participant in ERASMUS: the European Action Scheme for the Mobility of University Students which aims to promote increased freedom of movement for students already in higher education within the EC and increased co-operation within higher education. Within ERASMUS the European Credit Transfer Scheme (ECTS) promotes credit transfer between Member States. It requires higher education institutions across the EC to accord full credit for academic work undertaken by participating students.

VOCATIONAL TRAINING

The overall UK aim is to develop systems which enable individuals to build on their skills and experience throughout working life; meet the needs of employers and individuals; are capable of delivery by a wide variety of cost-effective means; and can respond flexibly to changing demand.

To achieve this aim, six major priorities for training and enterprise in the 1990s have recently been set. These are:

- employers must invest more effectively in the skills their businesses need;

- young people must have the motivation to achieve their full potential and to develop their skills;

- individuals must be persuaded that training pays and that they should take more responsibility for their own development;

- people who are unemployed and those at a disadvantage in the job market must be helped to get back to work and develop their abilities to the full;

- the providers of education and training must offer high quality and flexible provision which meets the needs of individuals and employers;

- enterprise must be encouraged throughout the economy, particularly through the continued growth of small business and self-employment.

Systems enabling these priorities to be met which are already in place or shortly to be completed include:

- a national network of operational TECs (Training and Enterprise Councils) and LECs (Local Enterprise Companies), locally based employer-led organizations which will tailor training and enterprise activities to meet ever changing consumer demand;

- a comprehensive network of voluntary, employer-led, independent Industry Training Organizations, which is well on the way to being established. One of their key tasks will be to establish a mechanism for keeping TECs informed of sectoral labour market needs;

- a national framework of National Vocational Qualifications, based on standards of competence defined by lead bodies representing sectors of industry and commerce, will ensure training is relevant to the needs of the job and help progression by individuals.

The UK Government is planning to spend over UKL2.7 billion on training, enterprise and vocational education in 1991/92 - two and a half times more in real terms than in 1978/79. Employers, who have the prime responsibility for training, are estimated to spend around UKL20 billion a year on training and development. Over 85% more employees received training in the spring of 1990 than in a similar period six years ago.

EQUAL OPPORTUNITIES FOR WOMEN AND MEN

The UK Government recognizes the essential contribution that women make to the economic and social life of the country and wholeheartedly supports equality of opportunity between the sexes in all aspects of life. Significant advances have been made in the field of equal opportunities between women and men in recent years, and are clear evidence that our equal opportunities policies are working.

Nearly half the civilian workforce in employment is women, the second highest participation rate for women in western Europe; at 12 million, there are more women in employment than in any western European country. The UK is the only EC country where the unemployment rate for women is lower than for men, and there are far more women than ever before in managerial and professional occupations and training for the professions, e.g. a quarter of all doctors, dentists, opticians, solicitors, barristers and veterinary surgeons in the UK are now women.

The Legal Framework

The UK has an extensive legal framework to combat sex discrimination generally; in the employment field in particular the Equal Pay Act 1970 provided for equal pay when a man and a woman working for the same or an associated employer were doing like work or broadly similar work or work judged to be equal by a job evaluation study. It was significantly extended by the Equal Pay (Amendment) Regulations 1986 to provide also for work of equal value. Women's average hourly earnings relative to men's, currently at an all time high, have increased from less than two thirds in 1970 when the UK's Equal Pay Act was introduced to over three quarters in 1990.

The Sex Discrimination Act 1975 covers a wide range of areas of life which directly and indirectly affect equality of opportunity for women in employment. It makes sex discrimination in the fields of employment, education and the provision of goods, facilities, services and premises generally unlawful. It also makes victimization and a wide range of other acts unlawful including advertisements and aiding unlawful acts. The Act also allows for positive action in certain circumstances, for example in relation to aspects of training, and as regards elected executive positions in trade unions, but not positive discrimination. Our law also deals with those who suffer from sexual harassment and provides protection against any victimization.

Complaints are heard by industrial tribunals. The UK has implemented three Community directives dealing with equal treatment in employment.

Other initiatives

Legislation by itself cannot deliver an equal opportunities society. Indeed, regulation which increases disproportionately the costs to employers of employing women workers will become a brake on jobs without acting as a spur to greater equality of opportunity. Non-legislative approaches are equally important; much can be done to change attitudes by raising awareness.

The Equal Opportunities Commission (EOC) is charged with the duty of working toward the elimination of discrimination and the promotion of equality of opportunity between men and women generally. The EOC can offer free help and advice to anyone who feels they have suffered discrimination. It can also investigate complaints and has the power to serve "non discrimination" notices on employers.

The Government is playing its part too by encouraging women to think about the full range of job and training opportunities and by putting a good deal of effort into job-related training. For example, the Employment Training and Youth Training Schemes can help women back into work or to enter non-traditional jobs.

New patterns of work, such as job-sharing, part-time work, career breaks and voluntary parental leave, are helping women to mix successfully work and family life and are encouraged by the Government. Of course the work of women who want to stay at home to bring up their children must not be undervalued - what is important is the freedom to choose.

Recent initiatives

The Ministerial Group on Women's Issues was established in 1986 to coordinate government policy on issues of concern to women. Thirteen Government departments are represented.

The equal opportunities provisions in the Broadcasting Act, 1990 seek to build on existing equal opportunities policies, to create a climate in which more top editorial jobs are held by women and to ensure that women are represented fairly and sympathetically. The equal opportunities condition will be enforceable in the same way as any other licence condition.

Childcare and reconciling work/family responsibilities

It is for families to decide whether mothers should take paid work outside the home and if so on what basis. However, the Government recognizes the importance of flexible working hours, flexible working practices and good quality childcare for working parents.

It is expected that in the UK, 95% of the growth in the labour force in the next decade will be amongst women. Employers are increasingly offering hours and patterns of work to facilitate this development.

There has also been marked progress in childcare provision. Tax reforms in 1990 now allow employees tax relief on benefits paid by the employer with regard to childcare. A diversity and variety of childcare provision has developed over the years with vital contributions from the voluntary sector and the private sector. This pattern provides a sound basis for future development.

HEALTH AND SAFETY

The UK has been in the forefront of protecting workers' health and safety through legislation for over 150 years. The present legislation provides a comprehensive and effective framework for maintaining, improving and enforcing standards of workplace health and safety. Everyone involved with work has legal duties aimed at protecting not only employees, but also the self-employed and members of the public, from risks to their health and safety arising from work activities.

UK health and safety legislation is based on the premise that everyone concerned with work (employers, employees, the self-employed, etc.) must co-operate to comply with their duties to ensure health and safety. The legislation therefore contains general requirements on information, training and consultation, plus more specific requirements where needed. A recent report by the European Commission suggests that the UK system of workers' participation in health and safety is one of the most effective in the Community.

The UK legislative approach is based on proper assessment in relation to risk and sound medical and technical criteria which results in relevant and effective controls being introduced. There is considerable emphasis on wide consultation on proposals for new legislation.

UK health and safety standards are among the highest in the Community. This was borne out by a recent HSE study which showed that British accident statistics compare favourably in most respects with those of the largest EC partners.

SPECIAL GROUPS

1. Young people

Young people in employment

All workers in the UK, including young people and children who work, are covered by the same comprehensive health and safety legislation that applies to all workers.

There is, in addition, further protection for young workers from regulations which govern the extent to which they can work in particularly hazardous industries or with particularly hazardous substances.

Accident statistics show that young employees (16-19 year olds) have fewer accidents than employees generally.

The minimum age for full-time employment is 16, the same as the statutory school-leaving age. Children aged 13 and over can engage in light non-industrial work where this does not put them at risk and does not interfere with their education.

Young people and school-age children are also covered by the comprehensive package of employment protection legislation and equal opportunities legislation, the only exception being provisions for redundancy.

Training young people

The Government attaches the highest priority to the training of young people. Over the last decade there has been a revolution in Britain's education and training. Far-reaching reforms have been introduced, backed up with increased resources. Parents, their

children and young people now have choices that did not exist a generation ago.

The Government's policies are aimed at knocking down barriers to opportunity and creating higher standards. The objective is to give all young people the chance to make the most of their talents and to have the best possible start in life.

On 20 May 1991 the Government introduced a White Paper, "Education and Training for the Twenty-First Century". The key policies set out in this are:

- speeding up the introduction of National Vocational Qualifications (NVQs) in further education and developing a range of general NVQs;

- providing equal esteem for academic and vocational qualifications and clearer and more accessible paths between them;

- extending the range of services offered by school sixth forms and colleges so that young people face fewer restrictions about what education or training they choose and where they take it up;

- giving TECs more scope to promote employer influence in education, and mutual support between employers and education;

- stimulating more young people to training through the offer of a training credit;

- promoting links between schools and employers, to ensure that pupils gain a good understanding of the world of work before they leave school;

- ensuring that all young people get better information and guidance about the choices available to them at 16 and as they progress through further education and training;

- providing opportunities and incentives for young people to reach higher levels of attainment;

- giving colleges more freedom to expand their provision and respond more flexibly to the demands of their customers.

Another Government initiative is Youth Training (YT), a training programme which aims to provide broad-based education and vocational training mainly for 16 and 17 year olds and to produce better qualified young entrants to the labour market.

Under the Youth Training Guarantee all unemployed young people aged 16-17 are entitled to be offered entry to a suitable YT programme and to receive such training.

Some 350 000 young people are currently in training, compared with the 6 000 young people who were benefiting from Government training programmes in 1978. The proportion of 16 year olds in

part-time or full-time education or training in 1988 was over 90%. For 16-18 year olds the percentage was 69%, compared to 64% in 1984.

II. People with disabilities

A wide range of services is provided for people with disabilities in the UK by health authorities, local authorities, voluntary organizations, Training and Enterprise Coucils and Local Enterprise Companies and the Employment Service. They cover a very broad spectrum - medical and nursing care, rehabilitation, training therapy, supply of equipment, support services in the home, holidays, relief for carers, access to information about local services and special employment services for employed and unemployed people with disabilities. There is in addition a comprehensive system of benefits for sick and disabled people.

Employment and Training

UK training and employment services and programmes are designed to encourage equality of access and opportunity, to help progression into open employment and to promote the retention and development of people with disabilities in work. Many people with disabilities use the mainstream services, but there is also a wide range of specialist provision to help with job placing, promoting good practices in employment, advice, assessment, rehabilitation and training. There are special schemes designed to help overcome particular barriers to employment and training and help is provided for severely disabled people in the sheltered employment programme.

The programmes and services are developed to meet both local and individual needs. From April 1991, the Government has had the aim of ensuring that unemployed people with disabilities are offered a place on one of its four main employment and training programmes. Decisions affecting the effectiveness of employment and training provision for people with disabilities will shortly be taken following consideration of the outcomes on two wide-ranging consultation exercises undertaken in 1990.

Benefits

The UK provides a wide range of state benefits for the sick and disabled at a cost of UKL11.95 billion per year (1991/92 estimate). This is complemented by a well-developed system of occupational benefits. Help with income maintenance is provided through both contributory and non-contributory benefits. Increases in non-contributory benefits introduced in December 1990 concentrate additional money on those disabled from birth or who became incapable of work early in life. Help is also provided with the extra cost of disability through contributory benefits, Attendance Allowance and Mobility Allowance. Recent surveys have shown these to be a very effective means of helping over 1 million severely disabled people.

In recent years the UK has improved the framework of benefits for disabled people so that it is more in tune with their needs and circumstances. A new extra cost benefit, Disability Living Allowance is to be introduced from April 1992 to extend the help currently available. At the same time a second new benefit, Disability Working Allowance, is to be introduced to promote the independence of disabled people by helping those who wish to work do so.

III. Elderly people

The UK Government provides a retirement pension to all women over 60 and men over 65 who have satisfied a minimum contributory requirement over their working life. Uniquely, it may also provide women with a pension based wholly or partly on their present, former or late husband's contributions if this gives them a more valuable pension than one based on their own contributions. Furthermore, an additional pension may be paid, conditional on the level of certain earnings received since 1978; extra payments are made to those pensioners who are over 80, and an increase in pension may also be granted to those who support another adult or who have dependent children. The Government is pledged, and is statutorily required to increase retirement pension every year in line with prices so that it maintains its value. The Government has been committed in principle to the equalization of pension ages for some time, but this is a complex issue and proposals can be brought forward only when the economic assumptions, demographic factors and people's expectations for retirement have been fully considered.

In addition to the state pension, the Government encourages schemes that make additional provisions so that retirement does not bring about a sharp fall in income. For example, personal pensions, occupational pensions and income from savings. Anyone over pensionable age who still has inadequate resources may claim Income Support, Housing Benefit and Community Charge Benefit. Higher levels of Income Support are available for elderly people in nursing homes.

The average net income of those over pension age rose by 31% between 1979 and 1987, with half of all pensioner couples and single pensioners in receipt of an occupational pension from a previous employer. Occupational pensions accounted in 1987 for one fifth of pensioners' average incomes. Pensioners' real income increased faster than the rest of the population from 1979 to 1987.

SOCIAL PROTECTION

The general aim of the UK social protection system is to provide an efficient and responsive system of financial help with due regard to the wider economic and social policies. The structure has enabled resources to be directed effectively towards those most in need, encouraging independence and providing incentives to return to the labour market. A national scheme of social assistance provides a guaranteed adequate income, without time restriction, to

all groups including the elderly, sick lone parents and the unemployed. Annual social security expenditure has increased by UKL17 billion over the last ten years to UKL55.9 billion in 1990/91.

Contributory benefits to cover periods of maternity, sickness and unemployment are provided for workers or those with recent employment records; non-contributory benefits provide financial help for the severely ill or disabled (including those disabled as a result of an accident at work) and carers of the sick and disabled. Income Support provides an adequate income for those not in full time work. It directs help to those identified as having extra need with higher amounts for families, lone parents, the elderly, the sick and disabled. Over 4 million people receive Income Support.

Within the last two years there have been a number of initiatives. They include a substantial increase in income support for pensioners over and above normal annual upratings, at a cost of UKL300 million and a new addition for carers introduced in October 1990.

Family Credit supplements low earnings where there are children in the family (including lone-parent families) and provide an incentive to return to the labour market. The Government has announced proposals to reduce the qualifying hours, extending eligibility to a whole new range of people. It represents a major advance, unmatched in Europe, providing a vital link between relying on benefits and returning to (and remaining in) work. The transition to work has been made easier by assessing eligibility for benefits on net rather than gross income, so people are no longer worse off owing to withdrawal of benefit when earnings increase.

Housing Benefit helps with housing costs and local taxes for those on income support or an equivalent income level from other sources.

ANNEX

QUESTIONNAIRE ADDRESSED TO THE MEMBER STATES RELATING TO THE REPORT ON THE APPLICATION OF THE COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS FOR WORKERS

Under the terms of paragraph 29 of the Charter, "the Commission shall establish each year, during the last three months a report on the application of the Charter by the Member States and by the European Community.

FREEDOM OF MOVEMENT

1. Are there any restrictions other than those justified on grounds of public order, public safety or public health which would prevent any worker of the European Community from moving freely ?

2. Are there any new initiatives to guarantee the right of residence to workers who, in exercising their right to freedom of movement, engage in any occupation or profession ?

   Are there any obstacles preventing a worker who has exerciced his right to freedom of movement from engaging in any occupation or profession under the same rules applying to nationals ?

   Are there any new initiatives to reinforce the rights to freedom of movement and equal treatment in all types of occupation or profession and for social protection purposes ?

3. What measures exist to :

   - encourage family reunification;

   - encourage the recognition of diplomas or equivalent occupational qualifications acquired in another Member State;

   - improve the living and working conditions of frontier workers ?

EMPLOYMENT AND REMUNERATION

4. Are there any particular provisions, apart from the regulations governing each occupation, restricting the freedom of choice and the freedom to engage in an occupation for certain categories of people ?

5. - Are there any legislative or agreement-based provisions, practices or judgements to guarantee fair remuneration for workers ?

- Is there an equitable reference wage for workers subject to terms of employment other than an open-ended full-time contract ?

- Where wages are withheld, seized or transferred, does national law make provisions for measures to enable the worker to continue to enjoy the necessary means of subsistence for him or herself and his or her family ?

6. Under what conditions does an individual have access to public placement services free of charge ?

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. Give a brief description of measures taken in the following areas :

   - duration and organization of working time;
   - forms of employment other than open-ended full-time contracts;
   - procedures for collective redundancies and for bankruptcies

8. Does every worker of the European Community have the right to annual paid leave and a weekly rest period ?
   Are they organized on a legal basis or by collective agreement ?
   What is their duration ?
   Under what conditions are they granted ?

9. How are the conditions of employment of every worker defined ?
   Is a written document required ?
   Are they stipulated in laws ?
   In a collective agreement ?
   In a contract of employment ?
   Are there any exceptions ?

SOCIAL PROTECTION

10. - How is social protection for workers organized in order to guarantee an adequate level of social security benefits ?
      On what basis and according to which criteria ?
    - Is there a generalized social protection system ?
      For what categories of persons ? ?

- What provisions are there to allow persons excluded from the labour market and having no means of subsistence to receive sufficient benefits and resources ?

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. - Are there any obstacles to prevent employers and workers of the European Community forming professional organizations or trade unions ?

- Does an employer or worker have the right to join or not to join such organizations without suffering any personnal or occupational damage ?

12. What are the procedures for negotiating and concluding collective agreements ?
Are there any obstacles preventing employers or employers' organizations and workers' organizations from negociating and concluding collective agreements ?

13. - What are the regulations governing the exercising of the right to strike ?

- What measures are there to encourage conciliation, mediation and arbitration procedures for the settlement of industrial disputes ?

14. - With regard to the right to strike, what internal legal order applies to the civil service in general and to the police and armed forces in particular ?

VOCATIONAL TRAINING

15. - What are the conditions governing access to vocational training ?

- Are there any new initiatives to offset or to ban discrimination on grounds of nationality with regard to access to vocational training ?

- Are there continuing and permanent training systems enabling every person to undergo retraining ?

Are these systems the responsibility of the public authorities, of undertakings or of the two sides of industry ?

EQUAL TREATMENT FOR MEN AND WOMEN

16. - How is equal treatment for men and women implemented and assured ?

- What initiatives have been taken to intensify action to ensure equal treatment for men and women ?

- Are there any measures to enable men and women to reconcile their occupational and family commitments ?

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. Is there a system for information, consultation and participation of workers, particularly within companies established in two or more Member States ?

18. - What measures or practices are there relating to the information, consultation and participation of workers ?

- To which particular cases do such provisions refer ?

- Is such information, consultation and participation implemented at least in the following cases :

  - the introduction of technological changes into undertakings;
  - restructuring operations in undertakings;
  - collective redundancy procedures;
  - where <u>transfrontier workers in particular</u> are affected by employment policies pursued by the undertaking where they are employed ?

HEALTH PROTECTION AND SAFETY AT THE WORK PLACE

19.- In which areas or sectors do Community Directives lay down more favourable provisions than those currently in force in your country ?

- With regard to health and safety, is there any provision for worker participation in decision-making, and what are the procedures ?

PROTECTION OF CHILDREN AND ADOLESCENT

20. What is the minimum employment age for young people ?

21. Are there specific provisions to regulate the remuneration of young people ?
What are the basic procedures ?

22. Are there specific provisions to regulate the duration of work, night work and vocational training for young people ?

23. Following the end of compulsory education, are young people entitled to initial vocational training aimed at enabling them to adapt to the requirements of their future working life ?

THE ELDERLY

24. What provisions are there to ensure that every worker of the European Community is able, at the time of retirement, to enjoy resources affording him or her a decent standard of living ?

25. Is there a protection system enabling every person who has reached retirement age but who is <u>not entitled to a pension</u> to have sufficient resources and/or medical and social assistance suited to his or her needs ?
What are the basic procedures ?

DISABLED PERSONS

26. What concrete measures are there to facilitate the social and occupational integration of the disabled ?

IMPLEMENTATION OF THE CHARTER

27. How are the fundamental social rights contained in the Charter guaranteed ?

ANNEXE I I

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
THE LABOUR MARKET				
Employment in Europe' report	Every year a Report: June 1990, July 1991,			
'Observatory' and documentation system on employment				
- NEC Network of Employ. Co-ordinators	1st meeting 6 April 1990			
- MISEP - Mutual Inform. System on Employ. Policies	launched in 1982			
- SYSDEM European System of Docum. on Employment	launched in October 1989			
Action programmes on employment creation for specific target groups				
- ERGO Action Programme for the long-term unemployment	three year programme 1989-1991			
- LEDA Local Employ. Develop. Act. Progr.	launched in 1986; at present third phase (1990-1993)			
- SPEC Support Progr. for Employ. Creation	scheduled for 3 yrs (at the request of the EP) from 1990-1992			
- ELISE European Info. Network on local Employ. Initiative	set up in January 1985			
Monitoring and evaluation of the activities of the European Social Fund				
- Annual Report	scheduled for Dec.			
Revision of Part II of Regulation 1612/68 on the clearance of vacancies and applications for employment and the related procedural decisions (SEDOC) (legal basis: Art. 49)	Adopted by the COM 5.9.1991 - COM (91) 316 final			**under discussion**

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
EMPLOYMENT AND REMUNERATION				
Opinion on the introduction of an equitable wage by the Member States	Adoption by Commission is scheduled for December			
Directive on contracts and employment relationships other than full-time open-ended contracts (atypical work; 3 proposals)				
- Working condit. (legal basis: Art. 100)	COM(90)228/I final of 29.6.90 OJ C 224, 8.9.1190	Opinion OJ C 332, 31.12.1990	Opinion OJ C 324, 24.12.1990 (rejects the legal basis chosen by the COM.)	under discussion
- distortions of competition (legal basis: Art. 100A)	Proposal COM(90)228/II final of 29.6.90 OJ C 224, 8.9.1990. Amended proposal : COm(90)533/I final OJ C 305, 5.12.1990	Opinion OJ C 332, 31.12.1990	Opinion: first reading OJ C 295, 26.11.1990	under discussion
- health and safety (legal basis: Art. 118A)	Proposal COM(90)228/II final of 29.6.90 OJ C 224, 8.9.1990	Opinion OJ C 332, 31.12.1990	Opinion: first reading : OJ C 295, 26.11.1990 second reading : given in May 1991	Final adoption on 25 June 1991

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
IMPROVEMENT OF LIVING AND WORKING CONDITIONS				
Directive for the adaptation, of working time (118A)	Proposal: COM(90)317 final of 5.12.90, OJ C 254 9.10.1990 Amended proposal : COM(91) 130 final of 23.4.1991	Opinion OJ C 60, 8.3.1991	Opinion : first reading OJ C 72, 18.03.1991	under discussion
Council Directive on the introduction of a form to serve as proof of an employment contract or relationship (100)	Proposal: COM (90) 563 final of 8.1.91, OJ C 24, 31.1.1991	Opinion: given in April 1991	Opinion given in July 1991	Final adoption by Council on 14.10.1991, OJ L 288 of 18.10.1991
Revision of the Council Directive of 17 February 1975 (75/129/EEC) on the approximation of the Member States pertaining collective redundancies	Adopted by the COM on 18.9.1991			
Memorandum on the social integration of migrants from non-member countries	Adopted by the COM in Sept. 1990 (SEC (90) 1813 final)			

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
FREEDOM OF MOVEMENT				
Revision of Commission Regulation (EEC) No 1251/70 of 29.6.1970 on the right of workers to remain on the territory of a Member State after having been employed in that State	Depends on the adoption of the revision of part I of Regulation 1612/68			
Proposal for a regulation extending Council Regulation (EEC) N° 1408/71 on the application of social security schemes to employed persons, to selfemployed persons and to members of their families moving within the Community and Council Regulation (EEC) N° 574/72 (laying down the procedure for implementing Regulation N° 1408/71) to all insured persons (51 & 235)	To be adopted by the COM in Dec.1991			
Proposal for a Community instrument on working conditions applicable to workers from another State performing work in the host country in the framework of the freedom to provide services, especially on behalf of a subcontracting undertaking (Art. 57 & 66)	COM (91) final of 1 August 1991;	18.9.1991 1st meeting study group		under discussion
Proposal for a Community instrument on the introduction of a labour clause into public contracts	The subject of this instrument is dealted within the above proposal			
Communication on supplementary social security schemes	Communication SEC (91) 1332 final of 22.7.91	under discussion	Discussion started	

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
SOCIAL PROTECTION				
Recommendation on social protection: convergence of objectives	Proposal:COM (91) 228 final of 26.6.1991	under discussion		under discussion
Recommandation on common criteria concerning sufficient resources and social assistance in the social protection systems	Proposal : COM (91) 161 final of 13.5.91, OJ C 163, 22.6.1991			Discussion started
FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING				
Communication on the role of the social partners in collective bargaining	Communication is scheduled for Dec. 1991			
INFORMATION, CONSULTATION AND PARTICIPATION				
European Works Council	Proposal: COM (90) 581 final of 25.1.91, OJ C 39, amended proposal to be transmitted to the Council.	Opinion : OJ C 120, 6.5.1991	Opinion: given in July 1991	under discussion
Recommandation of the Council equitysharing and financial participation by workers	Adopted on 10.7.91 by the Commission; COM (91) 259 final of 3.9.91		under discussion	

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
EQUAL TREATMENT FOR MEN AND WOMEN				
Directive on the protection of pregnant women at work	Proposal: COM(90) 406 final of 17.10.90, decision: 11.09.90, OJ C 281, 9.11.1990. Amended proposal: COM(90) 692 final OJ C 25, 1.2.91	Opinion: OJ C 41, 18.2.1991	Opinion: 1st reading in Dec. 1990, OJ C 19, 28.01.1991	Adoption of common position scheduled for Council on Dec 3, 1991
3rd Cty programme on equal opportunities for women	COM (90) 449 final, 6.11.1990			Council Resolution of 21.5.1991 OJ C 142, 31.5.1991
Recommendation concerning child care	Proposal: COM (91) 233 final of 28.8.1991	1st study group meeting on 20.9.1991	Opinion given in November plenary session 1991	On the agenda of 3rd December Council.
Recommendation concerning a code of good conduct on the protection of pregnancy and maternity	Proposal will be presented after the adoption of the common position concerning the protection of pregnant women at work			

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
VOCATIONAL TRAINING				
Proposal for a Community instrument on access to vocational training	early 1992			
Updating of the 1963 proposal for a Council decision on the general principles for implementing a common vocational policy	spring 1992			
Communication on the rationalization and coordination of vocational training programmes at Community level	Adopted by COM the 21.8.1990 COM (90) 334 final			
Proposal concerning the joint programm for the exchange of young workers and youth exchanges	COM (90) 467 of 15.10.90, OJ C 322 of 21.12.90			Council decision adopted the 25.06.91

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
HEALTH PROTECTION AND SAFETY AT THE WORKPLACE				
Proposal for a Council Directive on the minimum health and safety requirements to encourage improved medical assistance on board vessels	Proposal: COM(91) 272 final OJ C 183, 27.04.90. Amended proposal: COM(91) 65 final OJ C 74, 20.03.91	Opinion: OJ C 3323, 21.12.90	Opinion: first reading OJ C 48, 25.2.91, second reading: opinion delivered in November plenary 1991	Common position adopted on October 1st, 1991
Proposal for a Council directive on the min. health and safety requirements for work at temporary or mobile work sites (Art. 118A)	Proposal: COM(90) 275 final SYN 279; OJ C 213, 28.8.90; amended proposal: COM(91) 117 final, decision: 9.4.91 OJ C 112, 27.4.91	Opinion: given on 20.03.91	Opinion, 1st reading OJ C 72, 18.3.91	Adoption scheduled for the Social Affairs Council meeting on 3.12.91
Proposal for a Council directive on the minimum requirements to be applied in improving the safety and health of workers in the drilling industries (118A)	Proposal: COM(90) 663 final, decision: 19.12.90 OJ C 32, 7.2.91	Opinion: OJ C 191, 22.7.91	Opinion: 1st reading given in the plenary session October 1st, 91	under discussion
Proposal for a Council Directive on the minimum requirements to be applied in improving the safety and health of workers in the quarrying and open-cast mining industries (118A)	To be adopted by the COM in December 1991			
Proposal for a Council Directive on the min. safety and health requirements for fishing vessels (118A)	To be adopted by the COM in December 1991			

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
Recommendation to the Member States on the adoption of a European schedule of industrial diseases	Commission recommendation 90/326/EEC, 22.5.90, OJ L 160, 26.6.90			
Proposal for a Council Directive on the minimum requirements for safety and health signs at the workplace (118A)	Proposal: COM(90) 664 final, decision: 19.12.90, OJ C 53, 28.2.91	Opinion: given on 24 April 1991	Opinion: 1st reading given in July 1991	On the agenda of 3rd December Council
Proposal for a Council Directive on the min. safety and health requirements regarding the exposure of workers to the risks caused by physical agents (118A)	To be adopted by the COM in December 1991			
Proposal for a Council Directive amending Directive 83/447/EEC on the protection of workers from the risks related to exposure to asbestos at work (118A)	Proposal: COM(90) 184 final 12.6.90 Amended proposal: COM(90) 539 final, 6.11.90	Opinion: OJ C 332, 31.12.90	Opinion: 1st reading OJ C 284, 12.11.90; 2nd reading: OJ C 129, 20.5.91	Final adoption on 25.6.91, OJ L 206, 29.7.91 (91/382/EEC)
Proposal for a Council Directive on the minimum safety and health requirements for activities in the transport sector (118A)	To be adopted by the COM in december 1991			
Council Regulation for the establishment of a safety, hygiene and health agency (235)	COM(90) 564 final OJ C 271, 16.10.91			

Initiative	Adoption and progress in the Commission	Progress in the ESC	Progress in the EP	Progress in the Council
PROTECTION OF CHILDREN AND ADOLESCENTS				
Council Directive on the approximation of the laws of the Member States on the protection of young people (118A)	To be adopted by the COM in December 1991			
THE ELDERLY				
Communication and proposal for a Decision concerning the elderly	Communication of the Commission and proposal for a decision proposal: COM(90) 80/I final of 24.4.90	Opinion on the decision: OJ C 225, 10.9.1990	Opinion on the decision: OJ C 285, 12.11.90	Adopted by the Council on 26.11.90 OJ L 28, 2.2.91
THE DISABLED				
Proposal for a Council Decision establishing a 3rd Community action programme for disabled people (HELIOS) for the period 1992-1996	Adopted by the COM on September 2, 1991, COM(91) 350 fin. of 23.10.91		Raporteur named on 18.9.1991	
Proposal for a Council Directive on the introduction of measures aimed at promoting an improvement in the travel conditions of workers with motor disabilities (118A)	Proposal OJ C 68, 16.3.91	Opinion: OJ C 191, of 22.7.91	1st reading in November plenary 1991	under discussion