

**A REGULATORY CONUNDRUM: BUILDING A REGIME FOR EC  
SOCIAL AND LABOUR MARKET POLICY**

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## INTRODUCTION

During the difficult negotiations which preceded the Maastricht summit of December 1991, Jacques Delors expressed his concern that an 'organised schizophrenia' was emerging in the Treaty on Political Union.<sup>1</sup> In the final draft of the Dutch Presidency, as modified by the summit and signed on 7 February 1992, his fears were realised. For despite the efforts made to ensure that progress in market integration was accompanied by parallel advances in the *non-market* spheres, Maastricht's main achievements relate to European Monetary Union (Emu), while innovations in other areas were more modest and clumsily hedged with conditions and qualifications. Leaving aside the complicated relationship between the existing three Communities and the distinct inter-governmental 'pillars' of foreign/security policy and home affairs/judicial, the alterations to the 'Communities' pillar reveals for one critic "more of a *bricoleur's* amateurism than a master brick-layer's strive for perfection and attention to detail".<sup>2</sup>

This is not to deny that, when and if it is ratified, the Maastricht Treaty will represent an important staging post on the road to a more integrated Europe. But it is an incomplete chapter in every respect: for while the terms on which Emu is to be achieved on schedule (in 1997 to 1999) may actually prove *too* specific and stringent for many Member States, many of its other provisions - on foreign and security policy, social cohesion, citizenship, immigration and social affairs - are partial and sometimes ambiguous: as a result, much of the Maastricht package will require refinement and modification.

The area of EC social and labour market policy is an area in which more questions are raised than answered by the Maastricht arrangements, and the creation of a regulatory regime made more complex rather than simplified. In one important respect it reflects a more general feature of the Maastricht treaty: its consecration of the concept of an internally differentiated regulatory structure through its 'special case protocols', including the 'Danish second home' protocol, the 'Irish abortion' protocol, the 'Barber protocol' (on the equalisation of pensions payments'), the EMU 'opt-out' for the United Kingdom as well as the special social and labour market provisions which are contained in the Social Policy Agreement which allows eleven Member States (the twelve excluding Britain) to continue along the path laid down in the 1989 Social Charter. Moreover, the acceptance of an opt-out clause for Britain on plans for a single currency and the decision by eleven Member States to 'opt up and out' into a separate Protocol on Social Policy excluding Britain, provides for a pragmatic and *à la carte* approach to integration in Europe and a multi-speed process of economic and political union.

This may be no bad thing given the complications created by the prospect of EC enlargement including the EFTA and central and eastern European states:

But a wider, more heterogeneous Europe will have profound consequences for integration, since 'widening' will clearly make 'deepening' more difficult - if not impossible. But one major casualty will be the 'European Social Community', already staggering from a major body blow at Maastricht with the special provisions for the British and the legal and political problems that ensue. For as Samuel Brittan has remarked: "Even those who are not particularly enamoured of free-market thinking can surely see that there is absolutely no prospect of anything like a Social Charter, with harmonised social security and similar

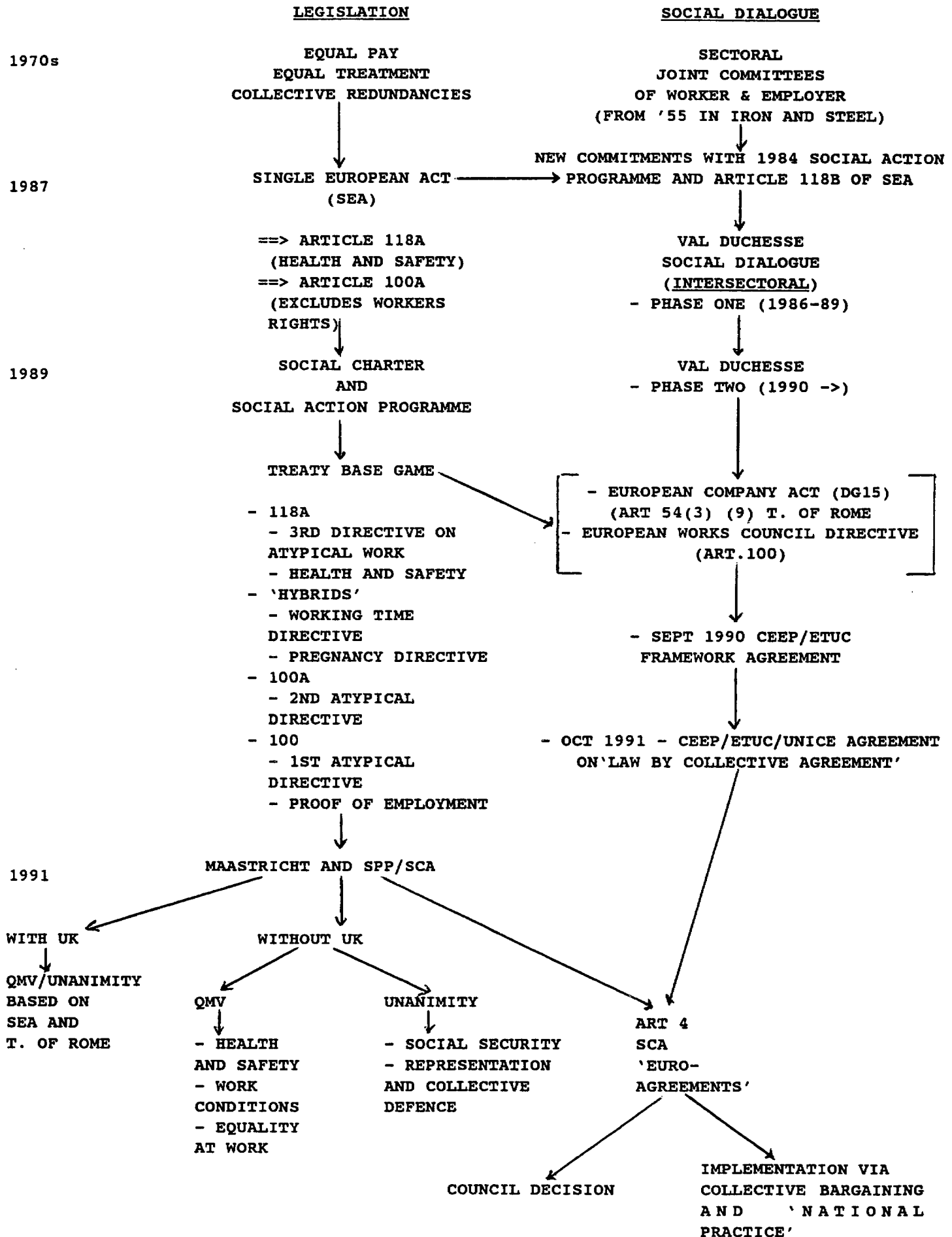
provisions, being applicable in an enlarged Community of more than twenty countries, taking in the former communist countries, with widely varying living standards and productivity levels."<sup>3</sup>

The aim of this paper is to discuss the attempted construction of a regulatory regime for European social and labour market policy. While it is clear that the concept of a European welfare state with harmonised social security structures to which Brittan alludes is infeasible - not least because the European Community lacks the resources required to engage in large-scale redistributive policies - as Giandomenico Majone has pointed out, this does not prevent it from undertaking ambitious programmes of social (and economic) regulation for the political and administrative costs of most regulatory programmes are borne by the regulated (firms and individuals) rather than the regulators.<sup>4</sup> But this begs the question of how that regulatory structure is to be built. What are the political and practical limits to the creation of a pan-European policy regime in this area? How effective can a structure of regulation or governance in this sector be given (a) the diversity of historical, legal and institutional traditions among the EC 12 and (b) the infinite scope for discord over two key regulatory issues: the desirability of new regulation in labour markets at either the national or supra-national level and the acceptability of the assumption of Community competence in this domain, with all that implies for the hallowed if notoriously imprecise notion of 'subsidiarity'?

The following discussion addresses these issues by considering the emergence of an embryonic system of governance in this area in terms of the three regime characteristics identified in the work of Oran Young: the substantive (the cluster of rights and rules associated with the regime), the procedural (forms of decision making) and the mode of implementation.<sup>5</sup> This will be carried out via an examination of the twin 'pillars' of the 'social dimension' - as set out in diagram one (page 3); the first (the legislative) comprising substantive and procedural developments (involving EC legislative acts and treaty arrangements); the second (the social dialogue) comprising an important second instrument of governance in this regime - agreements between the so-called social partners. Section one looks at the regulatory predicament prior to Maastricht, while section two considers whether the new arrangements introduced with Maastricht resolve or compound the regulatory problems in this area.

Does the Social Protocol, with its extension of majority voting for eleven Member States, provide a new, veto-free path towards a 'people's Europe' and an upward approximation of employment rights and protection? With British opposition sidelined, and the Protocol's new procedures for involving employers and unions in policy making, can the Commission, the Member States and Europe's social partners produce a 'New Deal' for the Community's citizens? Or will the Protocol's loopholes and contradictions lead the eleven into a regulatory cul-de-sac?

# THE TWIN PILLARS OF THE SOCIAL DIMENSION



## 1. BUILDING A REGULATORY REGIME: THE PRE-MAASTRICHT PREDICAMENT

### A. The Legislative Pillar

#### *The substantive and procedural foundations*

Following the framework for regime analysis outlined above, a regulatory regime comprises substantive, procedural and implementation components. In the pre-Maastricht period, the main developments concerned the first two. The *substantive* component begins to take form with the 1989 Social Charter.

The Community Charter of Basic Social Rights - adopted as a 'Solemn Declaration' by eleven of the twelve Member States in at the Strasbourg summit December 1989 - was the result of a compromise to accommodate the concerns of the British, Spanish and Portuguese governments. But the British Government still rejected it claims, "it did not satisfy criteria which were unanimously agreed by Heads of Government at the Madrid Summit in June 1989" - priority to job creation, adequate regard to subsidiarity and respect for the diversity of practice between Member States.<sup>6</sup> This was regardless of provision for the implementation of Social Charter measures through collective agreements and 'existing practices' as well as by law.<sup>7</sup> However, for most advocates of a strengthened social dimension, its eleven signatories had gone too far in placating the British and had saddled themselves with a compromised and emasculated text. For example, it excluded reference in an earlier draft to a 'decent minimum wage' (substituting the vaguer 'equitable wage' in its place) and had qualified the right to strike by acknowledging exceptions 'specified in existing legislation'. The decision of the British not to sign gave formal expression to an already well-established breach with their eleven EC partners who - regardless of their differences on detail - had reached a consensus on the need for progress. It also set a precedent for Maastricht: in effect, the British diluted the substance and modified the spirit of a document to which they themselves did not subscribe.

As far as substantive rights were concerned, the Social Charter was an immense disappointment for those seeking to enshrine citizenship rights at the centre of the project for closer political and economic union. Most seriously for those seeking a Community commitment to high common standards of social welfare, the final draft no longer referred to the fundamental rights of *citizens*: the use of that word in earlier drafts was replaced by *workers*. This was of more than symbolic importance. It meant that the prospect of a 'people's Europe' began to fade from the outset, to be replaced by much more limited - not to say 'minimalist' - set of provisions. Thus, the Charter focused overwhelmingly on policies required for the completion of the single market (primarily economic and industrial rights) with only limited reference to *social citizenship* rights.<sup>8</sup> Falling well short of the measures required to underpin a European welfare regime, the Charter betrays the more general tension in EC social policy between the provision of rights as an adjunct of economic policy (primarily to enhance the mobility of labour) and the more comprehensive conception of social rights - advanced by the European Court of Justice (ECJ) - which stems from a citizen's Community membership.<sup>9</sup> Moreover, support for subsidiarity and its conflation

(especially by the British) with *sovereignty*, serves only to undermine the principle of universal rights and entitlements.<sup>10</sup>

The social action programme - which contained proposals for implementing the Charter - also proceeded rather cautiously, broadly confirming this orientation (see APPENDIX II). It proposed forty-seven measures under thirteen headings, but binding Community instruments (Directives and Regulations) were restricted to employment relationships, living and working conditions, health and safety and the protection of adolescents and children. On pay, collective bargaining, vocational training, social protection and the consultation and participation of workers - only unspecified 'instruments', 'Opinions' and non-mandatory 'Recommendations' were mentioned (see APPENDIX I).

Even so, the British Government was concerned both at the scope and the legality, under Treaty provisions, of these measures; and Europe's employers' organisation, UNICE, complained that around a quarter fell outside the Community's legitimate sphere of influence.<sup>11</sup> Both the British and Europe's employers have been broadly supportive of social policy measures which secure the operation of the internal market (common health and safety standards, portable pensions, the mutual recognition of qualifications). But they have consistently opposed measures influencing the relationship between capital and labour (such as rights to consultation and information) and the 'equal protection of laws' in social security.<sup>12</sup>

They find support for this stance in the Treaty of Rome and the Single European Act (SEA) of 1987 which also set precise limits on the *procedural* component of any emerging regulatory regime. For while Article 118A of the SEA extended the scope of social policy making (giving the Commission the power of proposition after consultation with the Economic and Social Committee, providing the European Parliament with a 'second reading' of proposals through a new 'co-operation procedure' and allowing the Council to act on a qualified majority), Commission initiatives were constrained by a number of provisos. Critically, only health and safety measures fell unambiguously under the new majority voting system and Directives were to avoid imposing burdens, be they legal, financial or administrative, on small and medium-sized firms. And although Article 100A introduced majority voting for measures essential for the single market, those relating to the free movement of persons and the rights and interests of workers were specifically excluded.<sup>13</sup>

Of course, the resistance of Britain to legislative interference in the sphere of labour market policy revealed the distinction between the British legal tradition and that of its continental counterparts - a tradition of voluntarism in labour market regulation (which it has shared with Ireland and Denmark) and for contractual relationships between employees and employers rather than ones enshrined in legal statute. This distinction raises a third problem in building a regulatory regime in this area of policy - that of *implementation* - for both the Anglo-Saxon and Nordic legal families give pre-eminence to enforcement through collective agreement rather than social legislation, even if the UK has moved away from the voluntarist mode of regulation with the proliferation of restrictive labour legislation under the Conservative government since the early 1980s.<sup>14</sup> But even in the continental countries - which can broadly be described as belonging to a Romano-Germanic family, with a common tradition of individual, substantive rights in labour law, recent trends in industrial relations have seen a growing recourse to company or even plant level modifications to national labour

regulation through bargaining. Thus, the appropriate form of implementation of new labour regulations has also become an issue of debate, a debate has been complicated further by the clash over the principle of subsidiarity: should EC labour regulation be implemented via collective bargaining, both as a means of encompassing diverse legal traditions and of avoiding disputes over regulatory competence in this domain?<sup>15</sup>

Hence the regulatory impasse prior to Maastricht. For on the one side the British, backed by European employers, opposed any encroachment on national sovereignty and demanded the observance of Treaty law to the letter. And on the other, the Commission, backed by the European labour movement and by a majority of the other Member States, began seeking ways of evading the legal constraints: both the substantive and procedural foundations of the new regulatory regime were therefore weak, and based on shifting sand. In the background, the viability of the entire project was threatened by uncertainty over implementation and enforcement. In the first half of 1990, Jacques Delors, the European Parliament, and the Irish president of the Labour and Social Affairs Council, all expressed support for the adoption of as many action programme measures as possible by a qualified majority, in an attempt to force a solution to the procedural problems.<sup>16</sup> This would require a 'creative' formulation of action programme measures which, in turn, would attempt to link contractual rights with more limited entitlements in labour law. As a result, both the substantive and procedural issues of regulation became embroiled in controversy.

*'Creative' regulation: playing 'the treaty base game'*

Thus began some eighteen months of tactical manoeuvring as the Commission sought to outwit the British Government (and evade its powers of veto) by playing the 'treaty base game' - attempting, that is, to push its legal competence to the limit by a skilful (and at times rather devious) interpretation of treaty provisions. For the Commission, this was the only option pending a clarification of the Community's legal framework. Maastricht, it was hoped, would achieve this.

In the interim, legislation that fell unambiguously under Article 118A proved the least problematic. This was the case, for example, with the third draft Directive on atypical work which sought to improve the health and safety requirements for work at temporary or mobile work sites: a common position was formally adopted by the twelve in December 1991. Three other health and safety Directives were also adopted - on minimum requirements for improved medical treatment on board vessels, the protection of workers from the risks related to exposure to asbestos at work, and requirements for the provision of safety and/or health signs at work. These - and framework Directive 89/391 on Health and Safety at Work - represent significant advances on both the extent of entitlements already available in most European countries and substantially extend the regulatory scope of the European Community in this area. But as mentioned above, Europe's employers and the British government view these advances as important for securing the internal market: after all, comparable health and safety costs are essential in creating a level-playing field for competition among EC firms. But contractual rights are viewed differently. Thus, other Commission proposals had to be more 'creative', taking the form of 'hybrid Directives' which combined contractual rights with strictly health and safety entitlements. They were therefore also more open to challenge. Both the draft working time Directive - with its minimum requirements for daily

and weekly rest periods and on night and shift work -and the draft Directive on pregnant women in the work place fell into this more controversial category.

In the case of working time, the British challenged the Directive's legal basis, arguing that it placed financial and other burdens on employers which (paragraph 2 of Article 118A excludes) and that it stretched the meaning of 'health and safety' beyond recognition.<sup>17</sup> In the event, however, the British employment minister, Mrs Gillian Shephard, accepted the Directive at the Lisbon summit in June 1992, but only after she had won a number of concessions, including a seven-year period of grace for its implementation in Britain (beyond the three years permitted for the other Member States), an agreement that the 48-hour limit agreed for the working week could be exceeded *voluntarily* in Britain, and exemptions from this limit in a number of sectors, including continuous process work and the fishing, transport and security industries.

In the case of pregnant women in the work place, the British challenged the attempt to combine contractual employment and social security rights with more conventional health and safety measures: alongside protective provisions on exposure to toxins, for instance, the Directive also sought to regulate maternity leave and pay, presenting both together under Article 118A. However, a compromise was reached and a common position adopted in December 1991. Britain abstained in the vote to express its disapproval at the Commission's sleight of hand. But once again, it gained some key concessions: for while a 14 week entitlement to pregnancy leave was agreed to, an earlier draft's right to full-pay was replaced by a minimum allowance equivalent to sickness benefit; and eligibility was made conditional on national legislation, rather than the originally proposed condition of service since before the onset of pregnancy - provided that any length of service condition does not exceed twelve months (Britain's is currently two years).<sup>18</sup>

Table in Appendix III contrasts British work time and pregnancy leave entitlements with those in other EC Member States: the gap in provisions explains British hostility, since British firms will clearly bear the greatest costs in conforming with the new regulations.

The most controversial Directives have hit a solid wall of opposition, constructed, as one would expect, from mainly British bricks and mortar. Playing the 'treaty base game' in the case of the second draft Directive on atypical work was always going to be difficult. Covering entitlements for part-timers and temporary workers affecting employers' variable costs (including the same rights, on a pro-rata basis, as full-timers to social protection, holidays and dismissals procedures), the Commission is promoting this Directive under Article 100A, arguing that a lack of harmonisation will distort competition. However, this article specifically excludes workers' rights, leaving the Commission wide open to challenge. But quite apart from its procedural objections, the British Government has claimed that alongside the first atypical work Directive - which would extend pro-rata rights to occupational pensions, sick pay and training - the new substantive rights provided by this Directive "would cost employers in the UK around *£1 billion*" and "imperil tens of thousands of jobs".<sup>19</sup> Table

The Commission is attempting a similar ruse with the European Company Act (which falls, strictly speaking, outside the Social Charter programme). Promoted by DG 15, social clauses of this proposal would require transnational companies in Europe opting for a



Community rather than national legal statute (and thereby obtaining certain tax concessions) to implement one of three types of workers' consultation: West German-style co-determination, internal workers' committees (along Belgian, French or Italian lines) or a model established via bargaining between workers and management. In this case, the Commission has invoked Article 54 (3)(g) of the Treaty of Rome which allows for qualified voting on co-ordinating safeguards required by Member States of companies or firms. The Act's company law provisions have been linked to Article 100A and can only be passed by unanimity in the Council.

The Commissions' approach to other Directives has been more conventional - but, for the British at least, no less controversial. DG 5's proposals for a European Works Council (EWC) are linked, like the first atypical work Directive and the proof of employment Directive (discussed below) to Article 100 of the Treaty of Rome, demanding, once again, unanimous support. The EWC Directive would require companies with a minimum of 1,000 EC employees and operations with at least 100 workers in two or more Member States to arrange for consultation procedures on job reductions, new working practices and the introduction of new technology. It is opposed by Britain - and by Europe's employer's association, UNICE - since it "would impose a form of collective arrangement" and undermine the Government's efforts to limit employee involvement to share-ownership, team briefings and 'quality circles'. In its place, Britain, like UNICE, wants a non-binding Recommendation or resolution which "would emphasise the need for effective employee involvement practices based on flexibility".<sup>20</sup>

The Commission has had one important success in introducing binding legislation relating to wider employment rights - the Directive on proof of an employment relationship. Its passage was eased considerably by the fact that UK law already requires a written statement from an employer (unlike in a number of other Member States). But the British Government still abstained from the Council vote which adopted the Directive on 14 October 1991 (in protest against the use of Article 100 as its Treaty base) after successfully demanding a number of changes to the Commission's original draft. Nevertheless, modifications to UK labour law will have to be made, most notably in reducing the time in which an employment statement must be provided from 13 weeks to two months and providing employees working between 8 and 16 hours a week the same rights to a statement as those working more than 16 hours (until now there has been a five-year service condition!).<sup>21</sup>

Progress with these proposals has been agonisingly slow, and a number of the most important draft Directives are 'dead letters' - at least under the pre-Maastricht procedures.<sup>22</sup> But although in heavily modified form, and despite the legal constraints and the opposition of the British (often allowing those who share their misgivings to conceal them and seem more *communautaire*) the Commission and the Member States have been creating a patchwork of minimum social standards, moving beyond measures strictly required for the freedom of movement towards an approximation - if not harmonisation - of certain limited *industrial* citizenship rights. Absolute sovereignty in this domain is being slowly eroded, even if national preoccupations (and scope for variable geometry) have thus far prevailed over the supranational ardour of the Commission. In the process, the bare bones of a pan-European regulatory regime are being put in place.

## B. The 'Social Dialogue' Pillar

The procedural and implementation debates have been complicated further an ambitious effort to complement the EC legislative process of rule making with a pan-European equivalent collective bargaining. After all, all national industrial relations systems embrace both to one degree or another: and in the Anglo-Saxon and Nordic traditions, rule setting by collective bargaining has been primordial. But introducing collective bargaining at the EC level has provoked the hostility of capital - a major obstacle to any regime of social regulation dependent on economic agents for its realisation. However, by the time of the Maastricht negotiations, employers had accepted - at least in principle - the *procedural* importance of rule setting at the EC level via the 'social dialogue'. This represented a major advance - even if, as discussed in part 2 below, its inclusion as a form of policy making has introduced an untried and potentially counter-productive element into the procedural dimension of the regulatory regime.

If the British veto has been the major stumbling block to legislative progress, Europe's employers have successfully kept the 'social dialogue' in check. UNICE - the Union of Industrial and Employers Confederations of Europe - has consistently opposed both EC collective bargaining and any enhancement of workers' participation rights *by legislation* in transnational companies. Thus, while discussions between UNICE, the European Centre of Public Enterprises (CEEP) and the European Trade Union Confederation (ETUC)<sup>23</sup> have been promoted by the Commission in the framework of the 'social dialogue' (the *Val Duchesse* discussions launched in 1985), prior to Maastricht, the employers refused to be party to any statement which might be used for legislation. UNICE's member employer associations have refused and are still generally opposed to making UNICE an effective bargaining authority: by keeping UNICE weak institutionally, they can avoid its co-option into any form of neo-corporatist policy making.<sup>24</sup>

However, Article 118B of the Single European Act envisages just that in obliging the Commission to "endeavour to develop the dialogue between management and labour at the European level which could, if the two sides consider it desirable, lead to relations based on agreement". The vague and open-ended nature of this obligation has been criticised. Nevertheless, it has provided Treaty support for Europe's trade unions which want to make collective agreements integral to a European industrial relations system - and integrating them with the procedural and implementation components of the emerging social regulation regime. National union confederations are no longer opposed (as in the 1970s) to the ETUC advancing the collective rights of European workers at the EC level. However, like UNICE, the ETUC does not at present have a mandate for negotiating agreements and neither has the organisational strength - or legitimacy - to become major industrial relations actors.

It is easy to draw up a negative balance-sheet for the social dialogue. But it would be inaccurate to say that nothing has been achieved since the mid-1980s. Although its achievements have been limited, they may provide the basis for a more substantial process of negotiation between management and labour at the EC-level in the post-Maastricht period, and certainly created the conditions in which, by October 1991, UNICE and the ETUC could agree on a joint proposal for a new form of bargaining over the content of Action Programme Directives.

It is certainly true that the first steps were cautious. Phase one of the Val Duchesse dialogue (1986-1988) saw the creation of two working parties - one to monitor economic developments and employment (the macroeconomic working party), the other on social dialogue and new technologies - and agreement on three rather imprecise (if not ineffectual) joint opinions: two from the macroeconomic working party - the first on the need for a 'cooperative growth strategy' (November 1986), the second supporting the Commission's strategy for the European economy (November 1987); and one from the new technology working party (March 1987) on 'training and motivation and information and consultation', proposing the introduction of EC mutual recognition of qualifications, an enhanced dialogue with employees over the introduction of new technologies and a more sophisticated training system in Member States.

Phase two began in 1990 when Jacques Delors relaunched the dialogue after two years of inertia due to discord among the parties as to its purpose. This phase proved more productive, in part because of stimulation by a new steering committee (composed of representatives of the employer and union organisations) but also because of the Commission's agreement to consult the 'social partners' over its draft Action Programme directives. It was also more focused, placing priority on education and training.

Four joint opinions were issued during this period: on the creation of a European occupational and geographical mobility area, advocating measures to reduce the barriers to labour mobility in the Community (February 1990); on education and training (June 1990), emphasising the importance of initial and continuous training and the role of the collaboration between the social partners in this area; on the transition from school to adult and working life (November 1990), defining priorities in educational and vocational guidance and emphasising, once again, the importance of bipartite arrangements; and on access to training (September 1991), noting the need for partnerships between management and labour in promoting 'synergies' between company training programmes and for a Community role in affirming the right to vocational training.

A system of neo-corporatist policy making it is not: the social partners have no formal role in the policy process, the joint opinions do not amount to real and consequential agreements, and even if they did, neither UNICE nor the ETUC have the means of delivering the support of their members behind them. Nor do they have sufficient organisational strength to engage in a genuine process of neo-corporatist bargaining: for both the employers' and union representatives are subordinate to the authority of their member associations and federations. The importance of the dialogue lies rather in its potential as a spring-board to a more substantial form of consensus-based policy formation.

Arguably, it has achieved this in a number of ways. Firstly, it has allowed the social partners to appreciate the diversity of national positions - and seek areas of convergence - and become aware of their own organisational deficiencies, especially the need for a wider mandate. The need for a double compromise in negotiations - between the EC level employers and the ETUC, and between themselves and their national members - reveals both the problems and required reforms (a strengthened ETUC secretariat, for example) in moving beyond joint opinions to genuine contractual agreements.<sup>25</sup> And secondly, the limited success of the dialogue has proven its potential as a more formal forum for negotiation and debate, convincing many Member States that its role should be reinforced.

For as part of an emerging policy network involving the Commission, sectoral working groups, advisory groups and lobbyists, the dialogue has influenced opinion on key issues such as training and had a direct impact on certain Commission proposals.<sup>26</sup> There is also the prospect of joint opinions influencing sectoral and national bargaining.<sup>27</sup>

The dialogue's credibility has been enhanced by two agreements which transcend the standard joint opinion format. The 'European Framework Agreement' signed by CEEP and the ETUC in September 1990 does not have the status of a contractual bargain (it is not binding on its signatories or their members). But it does invite public sector enterprises and unions to proceed through dialogue and agreement in improving initial vocational training, establishing new technology training schemes and implementing new preventive policies and training in health and safety.<sup>28</sup> In adopting the language and spirit of bargaining, the CEEP-ETUC agreement moves one step closer to a genuine framework agreement and a neo-corporatist policy process at the European level.

A further step in the same direction was taken in October 1991 when an ad hoc group created by the social partners submitted a proposal to the Inter-governmental Conference advocating an enhancement of their role in the making and implementing of EC policy. It is from this point that the 'social dialogue' becomes of central importance for both the procedural and implementation components of the embryonic EC regime of social and labour market regulation. The submission echoed an earlier Belgian proposal advocating 'law by collective agreement'.<sup>29</sup> Under its terms, the European employer and employee representatives would be consulted on the content of draft EC social and employment legislation and would reach agreement on it before passing it back to the Commission. The proposal was inserted almost verbatim into the Maastricht social chapter, and transferred to the Social Protocol with the rest of the chapter in response to British opposition. Its greatest significance could lie in the UNICE's concession to negotiate, even if its principal motivation may have been to ensure that employers assumed the veto removed from the Member States by Maastricht.

## **2. MAASTRICHT AND THE SOCIAL PROTOCOL**

The Maastricht social chapter represented an ambitious attempt to resolve the three regulatory problems discussed above. In the first place, it sought to end the dispute over procedure by revising the treaty basis for decision making and bringing most areas of labour market policy under the qualified majority voting system. In the second, it thereby also sought to extend Community competence in the area of substantive rights, including influence over contractual rights in the area of workers representation and consultation. And thirdly, the inclusion of a new decision making procedure -the formulation of EC policy via 'collective bargaining' between the social partners - also sought to deal with two other related issues: the implementation of EC labour policy in EC Member States with diverse legal traditions and the need to respect the principle of subsidiarity which had been strengthened at the insistence of the British in the body of the Maastricht treaty.

### *The British Versus the Rest*

The British Conservative Government has been consistently anti-collective, both in domestic industrial relations and in its dealings with the Commission and other Member States. Under Margaret Thatcher, the assault on trade union powers was unforgiving, as was resistance to the Social Charter. Her successor's style is less strident, but his commitment to the project is unswerving: more union-constraining laws are in the pipeline (including limits on the use of dues check-off systems), the last vestige of 1970s British tripartism, the National Economic Development Office, is being wound up, and as for Europe, in forcing a separate Social Protocol on the rest of the Community at Maastricht, John Major has proven Mrs Thatcher's equal in keeping the bogey-man of Brussels at bay (see APPENDIX III for a brief discussion of social affairs and the 1992 British presidency of the Community).

It was never likely that Britain would go along with plans to remove its veto in social affairs, or with policies which might impose extra burdens on its businessmen. Moreover, the gulf separating the Conservative Government from the Commission had if anything widened since early 1991 when proposals to extend majority voting in social affairs first began to appear. In May of that year, at a time when the Luxembourg Presidency was proposing majority voting for contractual conditions of employment and management consultation of workers, the foreign secretary Douglas Hurd stated that: "It would be foolish to commit the Community to policies in the social and employment field which involve potentially enormous costs with regard to growth". To which Jacques Delors replied, "I feel like someone who at the start of this century heard people say that the abolition of child labour would cause the general collapse of the economy".<sup>30</sup>

Continuing the work of the Luxembourg Presidency, the Dutch set about drawing up a draft which would extend qualified majority voting (QMV) to a number of new areas - including 'working conditions' and 'the information and consultation of workers' - making the 'treaty base game' redundant. The Germans - keen to ensure that their own high labour market standards were not undermined - sought to bring under EC jurisdiction issues such as redundancy conditions and the representation and collective defence of workers and employers, including co-determination.<sup>31</sup> By November 1991, the social chapter for the forthcoming summit at Maastricht also included the new proposal from the social partners on European collective agreements.

Both the British Government and the European employers opposed the extension of majority voting, although UNICE said it would accept QMV on equality issues and the 'integration of people excluded from the labour market' in addition conventional health and safety measures. Much was made in Britain of the potential costs of 'social Europe'. In addition to Health and Safety Commission estimates that the first wave of EC health and safety Directives would cost UK industry some £300 mn in 1992, the employment minister, Michael Howard said Directives regulating working hours, the conditions of temporary and part-time workers, night working and benefits for pregnant women would add £2.5 bn to UK employers' costs, rising to £5 bn if restricting the working week to 48 hours was included.<sup>32</sup>

Based on a potent mix of neo-liberal ideology and expediency (anything which might undermine Britain's position as a low cost location for foreign investors must be avoided), the Conservative Government's intransigence was unlikely to be softened by the attempts of

the Dutch to accommodate Britain's concerns. And yet the final draft of the Maastricht Treaty did make genuine concessions to the British position.

In the Treaty itself, British hostility to 'federalism' (conceived as a synonym for centralisation by the Conservatives) was accommodated by altering Article A of the Treaty's Common Provisions. The original "This Treaty marks a new stage in the process leading gradually to a Union with a federal goal" was changed to "This Treaty marks a new stage in the process creating an ever closer Union among the peoples of Europe, where decisions are taken as closely as possible to the citizens". Echoing this emphasis on decentralisation - and ensuring that the Commission proceeds cautiously in the social policy arena - the strengthened subsidiarity clause (Article 3b) of the Treaty's provisions reads:

"In the areas which do not fall within its exclusive jurisdiction, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of proposed action, be better achieved by the Community."<sup>33</sup>

Advocates of a strengthened 'social dimension' fear that this clause in itself will place severe constraints on social policy, given the tendency, especially on the UK's part, to interpret 'subsidiarity' in terms of absolute sovereignty, rather in terms of diversity within a framework of Community solidarity.<sup>34</sup>

As for the social chapter itself, both subsidiarity and the need to take competitiveness into account were stressed in the revised Article 117 of the Treaty (which became Article 1 of the Agreement on Social Policy):

"...the Community and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy."<sup>35</sup>

The limits on Community intervention are reiterated in the revised Article 118, paragraph (2) (Article 2, paragraph 2 of the final Agreement), which follows the new list of measures which can be passed under QMV (including the improvement of workers' health and safety, working conditions, the information and consultation of workers, equality between men and women at work and the integration of persons excluded from the labour market):

"To this, end the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings."<sup>36</sup>

In terms of voting procedures, the social chapter excluded social security and the social protection of workers from the extended list of measures falling under QMV (alongside the protection of redundant workers, the representation and collective defence of workers, conditions of employment for third country nationals and financial contributions for the promotion of employment and job creation); while collective rights at work (pay, the right of association, the right to strike or impose lock-outs) were explicitly excluded from Community competence. The Commission also undertook a commitment to cost and detail the effects of legislation on employment.

But the British Government was not prepared to accept any changes to existing Treaty provisions which extended majority voting or Community competence. Nor was it prepared to accept the social partner's proposal on collective bargaining over the content of Community legislation - regardless of the fact that it strengthened still further the spirit of decentralisation and flexibility evident elsewhere in the social chapter.<sup>37</sup> Indeed, the new role for the social partners helps bridge the divide between the legalism of continental industrial relations and Britain's 'voluntarist' (or bargaining-based) approach, often cited as an obstacle to Britain's full participation in an emerging 'Social Community' based on the equivalence of laws.

Arguably, it does so in several ways. First, all directives, whether adopted by a qualified majority or unanimity may be entrusted 'at their joint request' to management and labour for implementation via collective agreement (Article 2, paragraph (4) of the Social Protocol). Second, under the new social dialogue procedures, the Commission is obliged to consult management and labour "on the possible direction of Community action" *prior* to submitting proposals, and consult on their content if it "considers Community action advisable". In response, management and labour "shall forward to the Commission an opinion, or, where appropriate, a recommendation". And third, the social partners may also opt for contractual relations - negotiating the content of the Commission's proposals - and proceed, should they wish, to agreements. These can be implemented via negotiation (providing further flexibility) "in accordance with the procedures and practices specific to management and labour and the Member States".

This is the 'voluntarist' path. But in those areas in which the EC has competence, the agreements can also be implemented "at the joint request of the signatory parties, by a Council decision on a proposal from the Commission". This course is much more problematic since decisions are binding on the specified parties, involving a rigid application of EC law.

Although the British Government had much else to object to, this new procedure made the social chapter quite unacceptable, given its combination of EC-level collectivism and the option - via Council decision - of an imposition of law. The new 'voluntarist' spirit of the social chapter was unlikely to seduce it. Deploying Britain's "distinctive tradition of industrial relations" as a defence against EC labour market legislation is in any case a chimera: after all successive Conservative employment laws have cocooned British labour relations in a complex and constraining web of rules. The real problem was that the social chapter, like the Commission's entire strategy since the early 1980s, went against the grain of Conservative policy. For not only would it have stimulated collective bargaining - ending the current, inglorious isolation of British unions - but it also implied the extension of agreements to non-unionised workers. In sum, as a Government publication points out, it "would have undermined the thrust of the UK Government's response since 1979, which has been to return the main responsibility for deciding terms and conditions to individual employees and employers."<sup>38</sup>

### *Twin-track or Cul-de-Sac? The Treaty, the Protocol and Policy*

The sheer quantity of political capital invested in the social chapter excluded either further dilution or abandonment. Two weeks before the the Maastricht summit, the ETUC threatened a campaign of industrial action if Community leaders watered down the Dutch draft to accomodate British opposition and said that the unions would be prepared to put pressure on national parliaments to throw out a diluted treaty.<sup>39</sup> An opt-out clause seemed the only solution, even if this meant the danger, evoked by Jacques Delors, of setting up "one country as a paradise for foreign investment, particularly Japanese investment".<sup>40</sup>

In the event, the solution to the 'British problem' left the UK within existing Treaty arrangements (which remained unrevised by Maastricht) while the rest opted 'up and out' into a separate Agreement on Social Policy (containing social chapter provisions) which is appended to the Treaty. The Protocol which precedes it - and which was signed by all twelve Member States - excludes the UK from involvement "in the deliberations and the adoption by the Council of Commission proposals" and from "any financial consequences other than administrative costs entailed for the institutions". The other eleven are authorised "to have recourse to the institutions, procedures and mechanisms of the Treat" to give effect to the Agreement. In a derogation from the Treaty, proposals adopted by a qualified majority must receive at least 44 out of a possible 66, as against 54 out of 76 under standard QMV procedures. This formula is fundamentally different from that adopted for the UK on monetary union, which allows *Britain* (and Denmark) to opt out, while the others can proceed under Treaty provisions (see APPENDIX II for the precise details of the Social Policy Protocol and the Social Chapter Agreement.)

Thus, once ratified, the Maastricht Treaty provides for twin-track policy making in social affairs. Since the Maastricht Treaty retains the original provisions of the Treaty of Rome and the Single European Act, the twelve can still make policy together - with majority voting on health and safety measures only (and yet more 'treaty base game' controversy) and the threat of a UK veto on any other proposals. However, the 'Protocol' eleven can avoid British obduracy by taking the second track, allowing qualified majority voting in a number of new areas (most importantly work conditions and the information and consultation of workers) and the involvement of management and labour in policy making through the procedures discussed above. At least in theory, the procedural, substantive and implementation components of the EC's regulatory regime in the policy domain have been clarified and strengthened. If procedurally the Council of Ministers has a much wider basis for decision-making via qualified majority voting, in terms of substantive rights the notion of 'social justice' appears to be the rationale for future progress (under Article 2 of the Social Chapter Agreement), replacing the controversial use of an 'integrated market' rationale for legislation. And as far as implementation is concerned, the exclusion of Britain makes the Romano-Germanic legal tradition prevalent within the 'social Community', creating greater potential for consensus on individual rights and simplifying the issue of enforcement.<sup>41</sup> Only the position of Denmark remains problematic in this regard, for its voluntarist tradition is anything more entrenched than that of Britain.

But where will the second track lead them? In principle, while the Protocol's provisions fall legally outside the new Treaty, the EC institutions are 'on loan' to the 'Protocol eleven' and legislation adopted by them can be enforced through the European Court of Justice. This



could allow certain blocked Commission proposals to be applied - including the two most controversial draft Directives: that providing part-time and temporary workers with the same employment protection and social security rights, pro rata, as full-time and permanent workers; and the other requiring European Works Councils in companies with a minimum of 1,000 EC employees and operations with at least 100 in at two or more Member States. Thus, with Britain marginalised, the prospect of a 'European Social Community' moves several steps closer.

That, at least, is the expectation. However, this path is also littered with obstacles. For as Mr Zygmunt Tyszkiewicz, the secretary-general of UNICE, has remarked, as a result of Maastricht, European social policy threatens to become a "two headed monster".<sup>42</sup> For while existing Treaty provisions have not been clarified the new arrangements are full of loopholes, contradictions and ambiguities, turning the second track into a social policy cul-de-sac.

For example, while the Agreement on Social Policy allows positive discrimination in favour of women (Article 6, paragraph 3), the Treaty does not. Which, then, should prevail? This opens a can of worms over the conflict of laws between the Treaty and the Agreement. And despite claims by France and Germany that measures passed by the eleven will become part of EC law (the *acquis communautaire*) there is infinite scope for legal controversy. Is the UK's signature of the Protocol sufficient to allow EC jurisdiction over the provisions of the Agreement which was signed by eleven Member States only? Some lawyers argue that is not. For them, the Protocol solution transfers the social chapter outside the EC's legal order altogether and into the sphere of international law, much like the Convention of application of the Schengen accords and the Dublin convention on rights of asylum.<sup>43</sup>

In this view, the Protocol is an *inter-governmental* agreement with no status under Community law; in consequence, neither the Commission nor the Court of Justice (which could have been awarded explicit competence by the contracting parties) have the right to intervene in the making or implementation of Protocol policy. Thus, measures would have none of the force of EC Directives and would have to be transferred into law through ratification by national parliaments, creating delays in implementation. The prospect of legal paralysis over this general issue has led the ETUC to demand that "The full and inalienable right of the European Parliament, the EcoSoc [Economic and Social Committee] and the European Court of Justice to apply the Agreement of the 11 must be guaranteed".<sup>44</sup> The issue hangs on whether Article 236/EEC which requires 'common accord' among the member states has been satisfied. According to the view above it has not. However, according to other legal commentators the fact that all 12 Member State including the UK have agreed to the Social Policy Protocol means that Article 236 has been satisfied and as is set out in Article 3 of the Protocol, the Protocol and the Social Chapter Agreement, are therefore part of the Treaty.<sup>45</sup>

But even if such hurdles can be side-stepped (either legally or by sheer political will) the convoluted nature of the Protocol solution will make life problematic - for all concerned - and contribute to a social policy impasse. For while the legal difficulties associated with the new arrangements are enormous - especially regarding the role of the European Court of Justice (which will sometimes be a court for the eleven, at others for the twelve) and the relationship in law between collective agreements and directives - the procedural practicalities

of the new decision-making process raise a host of new problems. What is the relationship between the Commission and the social partners: do the legislative process and the social dialogue proceed in tandem or does the social dialogue pre-empt the legislative process, as implicit in Article 3.4 (see APPENDIX II). Second, what is the contractual status of 'Euro-agreements'? Can the social partners sue each other for breach of agreement? And thirdly, as far as implementation is concerned, it is unclear whether Member States would have any obligation to implement the collective agreements at all.<sup>46</sup>

For *the Commission*, pursuit of social policy reform along the Protocol track would undermine its efforts to ensure a united, cohesive approach to integration and set precedents for 'variable geometry' which could defeat the entire object of the Treaty on European Union. For this reason, it may well prefer the slower but more consensual path involving all twelve Member States, while using 'treaty base game' methods to avoid the British veto. As shown by the progress achieved with the working time Directive (with Britain eventually accepting the principle of a 48-hour week), this strategy may occasionally pay dividends, even if the most controversial Commission proposals remain blocked.

For *the social partners*, the negotiation procedures set out in the Agreement on Social Policy open up new opportunities but also raise a number of complex issues and debates. The ETUC is in no doubt of the need to proceed quickly, declaring in March 1992 that the new mechanisms for joint consultation were put in place prior to the ratification of the Maastricht Treaty and that any resulting decisions be considered "Community provisions which also apply to the European Economic Area".<sup>47</sup> But while UNICE says that it is committed to creating new structures for the "broad consultation of business circles", its motives are rather different from those of the ETUC.

Concerned at the loss of its British ally should the eleven take the Protocol path, the employers now have a means of replacing the UK veto with their own. For not only is UNICE's membership internally divided on the desirability of bargaining (with the British and Dutch the least enthusiastic), but there is little sign of a moderation in its position on most of the Commission's proposals. And as Zygmunt Tyszkiewicz remarked before the Maastricht summit, his organisation still intends "to put strict limits on the scope of EC intervention in this area, whether by law *or by agreement*".<sup>48</sup> Thus, even if other intractable problems can be resolved - including the still uncertain status and structure of the social partners as negotiating authorities - there is a high risk of paralysis under Protocol procedures. In addition, there are further complications on the horizon, one of which promises to bolster the influence of the opponents of a more robust system of labour market regulation - a bid by the European Association of Craft, Small and Medium-Sized Enterprises to gain recognition as a European-level social partner with the same participation and voting rights in the social dialogue as UNICE, the ETUC and CEEP.<sup>49</sup> This organisation is even less sympathetic to the 'social dimension' than the mainly large-firm based UNICE.

This raises the additional issue of exactly how meaningful the new collective bargaining process is in any case. As Fitzpatrick points out, the problems of actually making the new arrangements work may mean that far from being resolved, this component of the regulatory regime has been rendered meaningless.<sup>50</sup>

For *the eleven*, the legal ambiguities may also make Member States reluctant to take the Protocol track, preferring the much more limited - but more certain - option of operating, alongside the British, under existing Treaty arrangements. For Directives or collective agreements produced via the Protocol could be challenged on two grounds: that their application in only eleven member states violates the principle of non-discrimination in EC law; and that they allow Britain to gain unfair competitive advantage through the non-implementation of Commission Directives.<sup>51</sup> There may also be a problem of ensuring that all workers are covered by EC collective agreements in those countries where there is no provision for the extension of agreements *erga omnes* to all workers, unionised or not (all except Belgium, Spain, France and Luxembourg). Moreover, ensuring the proper implementation of 'law by collective agreement' may well prove more difficult than in the case of standard Directives.<sup>52</sup>

Certain Member States who have relied on Britain in the past to voice their *own* concerns and opposition will also be reluctant to risk losing out under qualified majority voting. The extent to which they will accept the marginalisation of the Council from policy formulation under the procedures for collective agreements between management and labour is also unclear; and some Member States - already facing enormous problems in meeting EMU convergence criteria - fear the impact of collective agreements on their attempts to hold down labour costs. However, legislation deemed expensive for employers is likely to be heavily diluted if not wholly opposed by UNICE under social dialogue procedures.<sup>53</sup>

As for *Britain*, the victory at Maastricht could prove to be Pyrrhic, if the above-mentioned problems are resolved. For although British employers would be unaffected by certain new laws, others would be difficult to evade. For example, the UK has more than one-third of the 900 companies which pass the planned Works Council Directive's threshold of at least 1,000 employees and operations in two or more member states. They would fall under the same category as foreign multinationals in the Community and would need to conform to EC law, making it hard to exclude British representatives from their works councils.<sup>54</sup>

The Protocol could also influence Britain via a process of 'institutional osmosis'. For British management and union representatives are unlikely to abstain from the strengthened social dialogue, even if their role in negotiating policy options is constrained: as the UNICE secretary-general, Mr Tyszkiewicz has stated, his organisation and the ETUC are "almost certain" to negotiate agreements as twelve rather than eleven.<sup>55</sup> It also seems unlikely that Britain's 81 MEPs would be excluded from the 'co-operation procedure' under which the European Parliament can amend legislation in this sphere. On balance, however, this eventuality is less likely than an avoidance of the Protocol option altogether.

### 3. THE SOCIAL DIMENSION AFTER MAASTRICHT

#### *Future Scenarios: New Deal or Dead-End?*

In considering the future of the EC's social dimension after Maastricht it is crucial to appreciate the inter-dependence of policy areas. For as Young points out, an important criteria of regime success is *coherence*, and this can be compromised not just by inconsistencies within the regime itself - as discussed above, but also by conflicts with other regimes. In the case of the 'social dimension', the most evident conflict is with the present plans for EMU, based on convergence criteria which are imposing austerity policies on a number of EC Member States - hardly an environment conducive to innovation in social policy. The loss of exchange rate policy autonomy under EMU will have a further constraining effect on the upgrading of labour market entitlements: for under EMU, labour cost adjustment will become critical for maintaining competitiveness, and those countries finding competition especially demanding will be reluctant to incur further costs through more constraining laws on employee protection for example.

But more immediately, the success of a regulatory regime for social and labour market policy depends on the capacity of the Community to develop an enhanced capacity for redistribution - even if, as Majone argues, a European redistributive EC welfare state is not *a priori* essential for the development of a regulatory regime.<sup>56</sup> For without bolstered support for Community investment in the poorer regions of the poorer Member States (as envisaged by 'Delors II'), then an absence of cohesion, increased disparities and a marginalisation of a growing army of unemployed could well make the convergence among economies needed for monetary integration politically unsustainable. Even within a Community of twelve Member States -in which the much greater problems of rapid enlargement are avoided - a 'European Social Community' is unlikely to emerge in this worst-case scenario. Prima facie, given the new uncertainties engendered by the Maastricht 'Protocol solution', and subsequently by the Danish and French referenda, the the quest for 'New Deal' in social affairs by the European Commission seems to have led the Community into a dead-end. Depending on the Commission's success in escaping from the present impasse, one can therefore anticipate two future (ideal-type) scenarios, noting that the reality could combine elements of both. Both make allowance for the EC's prospective enlargement.

To a large extent the problems of the Protocol have been over-shadowed by the Treaty's ratification problems, which even the positive outcome of the recent ratification referendum fails fully to resolve. The enthusiasm for a strengthened social dimension has also been diminished, however, by the rejection by Community Finance Ministers of the 'Delors II package' on expanding the Community budget and by the gradual recognition that, for a number of Member States, the stringent conditions of Emu membership will sideline social issues (and rule out any costly upgrading of social protection) until more pressing issues - including inflation, interest rates and public sector deficits - are successfully tackled. It is also clear that, in the present climate of low growth if not recession across the Community, coinciding with rising unemployment, labour market priorities are shifting from employment protection to employment *creation* - fuelling once again the debate on employment flexibility and the desirability of an upward approximation of entitlements.

Thus, even without a British Presidency in the second half of 1992, the sense of urgency which characterised social affairs in the pre-Maastricht period was unlikely to be revived. The first six months of 1992 saw attempts by the Commission to maintain the momentum. The Commission's new budgetary proposals - the Delors II package - were presented in mid-February as an essential adjunct to the Maastricht Treaty, without which neither economic convergence or social cohesion in the Community could be achieved.<sup>57</sup> In April, Jacques Delors launched an attempt to push the issues of poverty, social exclusion and disadvantage higher up the EC agenda and to publicise the plight of the 50 million or so people in the EC who live on less than half of average income. The present budget of Ecu55mn (£36.8mn) equals one Ecu for each of them.<sup>58</sup>

Entitled 'From the Single Act to Maastricht and Beyond: the Means to Match our Ambitions', the Delors II package seeks to create a framework within which competitiveness and cohesion can be ensured, a multi-speed Europe rejected and economic expansion and monetary stability reconciled.<sup>59</sup> This would require an increase of 30 per cent in real terms in Community spending by 1997, based on an increase in the the EC budget from its present Ecu 66.5 bn to Ecu 87.5 bn (and from 1.2 to 1.37 per cent of Community GDP) and involving an increase in the budgetary share of the structural funds from 27 per cent to 33.5 per cent, with greater priority placed on Objective 1 regions.

The spending increase would complement the Cohesion Fund established by the Maastricht Treaty to which the Commission wants to allocate some Ecu 2.5 bn by 1997. Designed to provide assistance to those Member States with a per capita GDP of less than 90 per cent of the Community average, this was the price for gaining the assent of the poorer Member States to the Maastricht Treaty, even though it fell far short of the Spanish proposal for an EC form of fiscal redistribution based on the German *Finanzausgleich* system, to which the Germans themselves were opposed. Delors II seeks to provide the Community's poorer Member States with a compensatory package for the adverse effects of fiscal adjustment prior to EMU in a rather different way. But nonetheless, the British and the Germans led the Community's finance ministers in rejecting it. In a period of low growth throughout the Community - and of German preoccupation with its own post-unification problems - the concept of a European redistributive welfare regime was bound to find less favour.

### *Scenario 1: A Strengthened Social Dimension*

In this scenario, the 'Protocol eleven', the Commission and the social partners manage to clear the numerous legal, political and institutional hurdles in their path (including, of course, Maastricht ratification) and succeed, piece by piece, in building a European Social Community, extending to the EFTA countries which, under the terms of the European Economic Area (EEA) - operational from 1993 - will have to fall into line with EC law. This will be conditional, however, on a commitment by the Community to an expanded EC budget and a higher level of spending on assisting the poorer Member States with economic and social convergence. This will be neither cheap nor rapid, requiring a long term commitment to labour market harmonisation and a concomitant investment in training and skills provision. Common standards will gradually be put in place through both EC legislation and framework agreements arrived at between management and labour at the European level, allowing a degree of flexibility and subsidiarity. A quality, skills-based approach to modernisation in

the Mediterranean Member States will assist them in embarking on a path of 'qualifying' intrasectoral specialisation and a dynamic convergence of social and economic development paths within the Community.

Contrasts will remain, however, between several different modes of labour market regulation, based on entrenched societal distinctions and traditions. Genuine transnational initiatives - in providing, for example, for comparable forms of worker representation and consultation (initially in companies with cross-border operations) will be grafted on to these. Thus, even in this optimistic scenario, 'nordic', 'southern' and 'British' modes of labour market organisation will persist, exerting an important influence on the industrial division of labour in the Community.<sup>60</sup>

The 'nordic' zone, comprising Germany, Denmark, Belgium, the Netherlands among present Member States - and Austria, Switzerland, Sweden and Finland among prospective members - already has high standards of employment protection and conform broadly to a quality 'high skills equilibrium' approach to labour market management. Their main concern (especially that of their unions) will be to defend their established systems from erosion by social dumping and will be keen to promote a harmonisation of standards. The 'southern zone' of Spain, France, Greece, Italy and Portugal is more internally differentiated but distinguished from the first group by the degree of state intervention in the labour market and by the absence of formal systems of co-determination. This group will encounter problems of labour market dualism and problems of adjustment to a quality, high skills based, high employment protection mode of economic modernisation (although France may prove the exception, given its legislative drive against precarious contracts). The British tradition - from which Ireland has been steadily moving away due to its emphasis on tripartism in labour market management - will not be unaffected by developments on the continent, but will remain locked into a low-skilled, 'price-oriented' adjustment path.<sup>61</sup>

### *Scenario 2: A Minimalist Social Dimension*

In this, the most likely scenario, the 'Protocol eleven' and the Commission will refrain from using the second, social policy 'fast track' - due both to reluctance over breaking Community unity and the concern of the poorer Member States to avoid any costly upward approximation of employment rights - and the new procedure for reaching collective agreements between the social partners will lead to deadlock due to UNICE opposition to Commission proposals which might impose costs or constraints on employers. Given the problems of rising unemployment in many countries (especially Spain, Greece, Ireland, France and the United Kingdom), which will be exacerbated by increased competition in the single market, the debate on employment protection versus labour market flexibility will become more intense. That debate will be fuelled still further if the Maastricht Treaty is modified and if its convergence criteria and timetable remain unmodified, imposing politically unattainable targets on Member States outside the ERM core of Germany, Benelux and France (to which one can add the EFTA countries, which are now linked to the EC through the European Economic Area and are in better shape to join EMU than many current EC members.)

This may produce important changes in the systems of labour market regulation prevailing in, for example, Spain, Portugal and Greece - where the security and rights of the employed

(especially with regard to dismissals procedures and restrictions on part-time and temporary contracts) have tended to discriminate the unemployed - against a background of conflict between employers, calling for looser labour market regulation and minimal EC intervention and unions demanding the reverse.<sup>62</sup> Recent, radical reforms of the labour market in Spain - including greater scope for employer use of fixed-term contracts and tougher conditions on unemployment benefit eligibility - could presage similar developments in the other Mediterranean Member States.<sup>63</sup> At the same time, the absence of a commitment to higher spending on cohesion policies (following the rejection of Delors II) will make them reluctant to accept EC Social Action Programme policies or collective agreements which raise employment costs, provoke employer opposition and add to public expenditure at a time when convergence programmes are demanding its curtailment.

The more controversial Commission Directives in this scenario remain blocked by the British veto. This will be the case for the two atypical work Directives which seek to provide part-time and temporary workers with the same rights and entitlements, pro rata, as full-time workers as well as the participation provisions of the Company Act and the draft Directive on a European Works Council. The most recent Commission proposals - the draft Directive on young workers submitted to the Council in March 1991, and amendments to the 1975 Directive on collective redundancies (announced in September 1991) - will encounter similar problems to other EC employment legislation, either because of their legal basis (the Directive on young workers is another 'hybrid' Directive, linking health and safety entitlements to wider employment rights under Article 118A) or because they demand unanimity for measures which (as in the case of the collective redundancy amendments) the British, and perhaps certain other Member States, will find unacceptable.<sup>64</sup>

In this scenario, the 'European Social Community' will most solidly anchored in the 'nordic' zone discussed above, although its member countries will find that the single market will have more destabilising effects on traditional levels of workers' rights and entitlements, as well as on systems of corporatist or tripartite decision-making than in the first scenario.<sup>65</sup> In the rest of the Community, there will be strong pressures for the adoption of social policy measures *à la carte*, with Britain, once again, following an insular path, and providing an attractive location for inward investment, not just from Japan but from firms in other EC Member States, provoking conflict with other Member States (and especially with unions from the 'nordic' zone) over social dumping.

## APPENDIX I: The European Commission's Social Action Programme

The major new measures proposed by the Commission in its Action Programme are as follows (under Article 189 of the EEC Treaty, Regulations are directly applicable in all member states, Decisions are binding on the specified parties, Directives are also binding, but leave the precise form of implementation to the member states, while other instruments, such as Recommendations, are non-mandatory):

- (1) *the labour market* (action programmes on employment creation for specific target groups and an improvement in labour market information and documentation);
  - (2) *employment and remuneration* (an Opinion on an equitable wage and a Directive on contracts and employment relationships, other than full-time open-ended contracts);
  - (3) *Improvement of living and working conditions* (Directives on the adaptation of working time and on a form as proof of an employment contract; Memorandum on the social integration of migrants from non-member countries);
  - (4) *freedom of movement* (proposal for an instrument on conditions applicable to workers from another state in a host country in the framework of the freedom to provide services, proposal for an instrument on the introduction of a labour clause into public contracts, Communication on supplementary social security schemes);
  - (5) *social protection* (Recommendation on social protection, Recommendation on common criteria concerning sufficient resources and social assistance in the social protection systems);
  - (6) *association and collective bargaining* (Communication on the role of the social partners in collective bargaining);
  - (7) *Information, consultation and participation* (Instrument on the procedures for the information, consultation and participation of the workers of European-scale undertakings, Instrument on equity-sharing and financial participation by workers);
  - (8) *equal treatment for men and women* (Third Community programme on equal opportunities for women, Directive on the protection of pregnant women at work, Recommendation concerning child care and Recommendation concerning a code of good conduct on the protection of pregnancy);
  - (9) *vocational training* (proposal for an instrument on access to vocational training, updating of a 1963 proposal for a Council decision on a common vocational training policy, Communication on the rationalisation and coordination of Community action programmes in initial and continuous vocational training, comparability of qualifications);
  - (10) *health protection and safety at the workplace* (eleven proposals for Council Directives on minimum requirements in a range of sectors (including mining, drilling, fishing, transport and mobile work sites) and covering industrial diseases, the use of asbestos and other dangerous industrial agents);
  - (11) *protection of children and adolescents* (Directive on the approximation of the laws of the member states on the protection of young people);
  - (12) *the elderly* (initiative for the elderly - Communication and proposal for a Decision);
  - (13) *the disabled* (proposal for a Decision on a Third Community action programme for disabled people for 1992-1996, and proposal for a Directive on measures to improve the travel conditions of workers with motor disabilities).<sup>66</sup>
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**APPENDIX II: The Maastricht Protocol and Agreement on Social Policy****PROTOCOL ON SOCIAL POLICY****THE HIGH CONTRACTING PARTIES,**

NOTING that eleven Member States, that is to say the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Portuguese Republic wish to continue along the path laid down in the 1989 Social Charter; that they have now adopted among themselves an Agreement to this end; that this agreement is annexed to this Protocol; that this Protocol and the Said Agreement are without prejudice to the provisions of the Treaty, particularly those relating to social policy which constitute an integral part of the "acquis communautaire":

1. Agree to authorise those eleven Member States to have recourse to the institutions, procedures and mechanisms of the Treaty for the purposes of taking among themselves and applying as far as they are concerned the acts and decisions required for giving effect to the abovementioned Agreement.
2. The United Kingdom of Great Britain and Northern Ireland shall not take part in the deliberations and the adoption by the Council of Commission proposals made on the basis of this Protocol and the abovementioned Agreement.

By way of derogation from article 148(2) of the European Community, acts of the Council which are made pursuant to this Protocol and which must be adopted by a qualified majority shall be deemed to be so adopted if they have received at least forty-four votes in favour. The unanimity of the members of the Council, with the exception of the United Kingdom of Great Britain and Northern Ireland, shall be necessary for acts of the Council which must be adopted unanimously and for those amending the Commission proposal.

Acts adopted by the Council and any financial consequences other than administrative costs entailed for the institutions shall not be applicable to the United Kingdom of Great Britain and Northern Ireland.

3. This protocol shall be annexed to the Treaty establishing the European Community.
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**AGREEMENT  
ON SOCIAL POLICY  
CONCLUDED BETWEEN THE MEMBER STATES OF THE EUROPEAN COMMUNITY  
WITH THE EXCEPTION OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND**

The undersigned eleven HIGH CONTRACTING PARTIES, that is to say the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Portuguese Republic (hereinafter referred to as "the Member States"),

WISHING to implement the 1989 Social Charter on the basis of the "acquis communautaire",

CONSIDERING the PROTOCOL on social policy,

HAVE AGREED as follows:

**ARTICLE 1**

The Community and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Community and its Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy.

**ARTICLE 2**

1. With a view to achieving the objectives of Article 1, the Community shall support and complement the activities of the Member States in the following fields:
  - improvement in particular of the working environment to protect workers' health and safety;
  - working conditions;
  - the information and consultation of workers;
  - equality between men and women with regard to labour market opportunities and treatment at work;
  - the integration of persons excluded from the labour market, without prejudice to Article 127 of the Treaty establishing the European Community (hereinafter referred to as "the Treaty").
  
2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
 

The Council shall act in accordance with the procedure referred to in Article 189c of the Treaty after consulting the Economic and Social Committee.
  
3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, in the following areas:
  - social security and social protection of workers;
  - protection of workers where their employment contract is terminated;

- representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- conditions of employment for third country nationals legally residing in Community territory;
- financial contributions for promotion of employment and job creation without prejudice to provisions relating to the Social Fund

4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3.

In this case it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 189, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaty.
6. The provisions of this article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

#### ARTICLE 3

1. The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.
3. If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion, or where appropriate, a recommendation.
4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the procedure provided for in Article 4. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

#### ARTICLE 4

1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations including agreements.
2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters

covered by Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall Act by a qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 2(3), in which case it shall act unanimously.

#### ARTICLE 5

With a view to achieving the objectives of Article 1 and without prejudice to the other provisions of the Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Agreement.

#### ARTICLE 6

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
  - (b) that pay for work at time rates shall be the same for the same job.
3. This Article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their professional careers.

#### ARTICLE 7

The Commission shall draw up a report each year on progress in achieving the objectives of Article 1, including the demographic situation in the Community. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.

### APPENDIX III: The British Presidency

Given its general lack of sympathy with the European Commission's social affairs agenda, it was unlikely that it would be given a high priority under the British Presidency. Indeed, the Community's absorption with the Yugoslav crisis and with the impact of the Danish 'No' vote (and the forthcoming French Maastricht referendum) on the financial markets, provided an effective diversion. This was reflected by the fact that only one Labour and Social Affairs Council was arranged - for 1 December 1992. But as pointed out in the Employment Department's fact pack *People, Jobs and Progress* (February 1992), the UK Presidency did have a number of specific objectives in the social area: improving the implementation and enforcement of EC legislation, enhancing health and safety provisions (including a greater use of risk-assessment in EC health and safety legislation), making "sensible progress" in promoting labour mobility and competence-based training standards, playing a full part in the reform of the Structural funds, developing employer commitment to training and promoting a "quality-based approach to public employment services".<sup>67</sup>

Britain also claimed to have a more ambitious project - to "shape the post-1992 Community social affairs agenda" by impressing the benefits of deregulation and flexibility in the labour market on its European partners. And as the British employment minister, Mrs Gillian Shephard pointed out in a speech to the UK's peak employers' association, the Confederation of British Industry in May 1992, its aim was also "to promote discussion, regrettably long absent from the Council of Ministers, on employment growth, enterprise and help for unemployed people".<sup>68</sup>

In essence, there is little difference between these priorities and those advanced by Britain's 1986 Presidency. Then, an attempt to promote a non-interventionist Community policy - based largely on improving training and reducing the barriers to 'flexible' employment - misread the mood of the other member states. Critically, it also failed to build a consensus between the Commission and the Council of Ministers. At the end of the Presidency, employment minister Kenneth Clarke was severely rebuked by the spokeswoman for the Christian Democrats in the European Parliament: "We would prefer it if the United Kingdom co-operated closely in current Community programmes and stopped blocking social Directives. My feeling is that you do not have much to teach us in the social field. But you do have a great deal to learn from us".<sup>69</sup>

The collective response from Europe in 1992 was unlikely to be any different.

Moreover, the prospects for agenda shaping were even less opportune than in 1986. For not only had Britain alienated its Community partners in this domain by its rejection of the social chapter at Maastricht; it had also lost some credibility as an enforcer of EC policy. Prior to the Maastricht summit, the Government rejected an EC plan inviting member states to adopt national, regional and local sex equality plans and make assessment reports of equal opportunities and treatment. Such monitoring is needed to ensure the even application of EC laws - a clearly stated, priority objective of the British Presidency.<sup>70</sup>

Britain's reputation as social policy saboteur was not improved by the revelations contained in a document leaked as its Presidency was about to begin, suggesting that, regardless of its declared commitments, the British Government might have had a less progressive, secret agenda. Prepared by the Health and Safety Executive, it recommended delaying tactics to prevent the adoption of measures in a number of areas, including improving the health and safety of young people, workers' rights to information, the health threat from specific 'physical agencies', and health and safety conditions in the transport sector, the chemical industry and deep sea diving employment.<sup>71</sup> Deception and delay in this, an area in which Britain claims European leadership, could only antagonise its European partners further - especially in the European Year of Health and Safety and at a time when Britain was seeking the location in Edinburgh of a new EC institute of occupational safety and health.

More seriously, Britain's employment record gives it little credibility in the EC Social Affairs Council. Men in Britain work longer hours than anywhere else in Europe and its male *non*-employment rate (including 'discouraged workers' who have stopped searching for work) is currently around 15 per cent.<sup>72</sup> Britain also has the highest proportion of low-paid workers (earning less than two-thirds of median pay)<sup>73</sup>; and while its part-time (predominantly female) workforce is among the EC's largest, it is also, with that of Ireland, the least well protected either by law or collective agreement. Moreover, the Conservative Government's much vaunted employer-led, competence-based training system has left thousands of young people with neither jobs, training

nor benefits, and is currently in crisis due to the constraints of Treasury cash limits. As it is, only Luxembourg, Greece and Portugal spend less on active help for the unemployed.<sup>74</sup> In the current recession unemployment has risen faster than elsewhere in the Community, and economic recovery will be weakened by a shortage of skills. Its low-skill, low value-added industrial base puts Britain at a serious competitive disadvantage.<sup>75</sup>

Of course, it is Britain's rejection of the Maastricht social chapter which will prevent it from wielding influence where it matters. Yet Britain could make a valuable contribution to EC social affairs. In some areas its record is good. For instance, it is one of only three member states to have prioritised and implemented legislation on the mutual recognition of qualifications - in line with the first general system of mutual recognition for higher education diplomas obtained after three years' training which came into operation at the beginning of 1991.<sup>76</sup> Alongside transferable pensions -another British priority - this will help make labour more mobile across EC borders. And as the employment minister, Mrs Gillian Shepherd has stated, Europe does need the debate on unemployment and labour market flexibility which the British Presidency seeks to promote given both the high and rising rates of unemployment across the Community and the social impact of Emu convergence on the poorer Member States. But as the self-cast pariah of European social policy, Britain has only limited powers of persuasion.

## APPENDIX IV: Statistical Tables

Table 1: Statutory Working Time, Sickness and Maternity Leave Regulations

	Working week (hours)	Overtime	Night work hours	Sickness leave & pay	Maternity leave & pay
Belgium	40	65 hours per three months	8pm-6am	52 wks, 60% earnings	14 wks, 8 after birth, 80% insurable earnings (75% after 30 days)
Denmark	No legislation	By collective agreement	No legislation	91 wks in 3 yrs, 90% ave 4 preceeding wks' pay	4 wks before, 10 after and 10 addnal for either parent, 90% ave wkly pay
Germany <sup>a</sup>	48	2 hours per day for up to 30 days per year on the basis of a 48 hour week	8pm-6am	78 wks in 3 yrs; 80% ave 4 preceeding wks' pay	6 wks before, 8 after, 100% net pay for insured workers, or fixed sum
Greece	5 day week; 40 hours private sector	3 hours per day, 18 hours per week, 150 hours per annum	10pm-7am	26 wks, 50% pay, 10% incr for each dependent (max 4)	6 wks before, 6 after, 50% salary and medical costs
Spain	40	80 hours per annum	10pm-6am	2-6 months, 60% pay from 4th to 20th day, then 75%	16 weeks, 75% earnings
France	39	9 hours per week, 130 hours per year plus more if authorised	10pm-5am	52 wks in 3 yrs, 50% pay, or 66.66% with 3 children from 31st day	6 wks before, 10 after, 84% pay plus post-natal allowances
Ireland	48	2 hours per day, 12 hours per week, 240 hours per annum	No legislation	52 weeks (unlimited if claimant has payed 156 wks contrib-utions); 75% earnings	4 wks before, 4 after plus addnal 6; 70% pay plus maternity grant
Italy	48	No legislation	Midnight-6am	6 months; 50% pay, 66.66% from 21st day	8 wks before, 20 after, 80% earnings
Luxembourg	40	2 hours per day	No general legislation - pregnant women and nursing mothers 10pm-6am	52 wks, 100% earnings	8 wks before, 8 after, 100% earnings plus maternity grant
Netherlands	48	Between 20 mins. and 3 hours 30 mins. per day	8pm-7am	52 wks, 70% daily pay (often topped up by collective agreement)	6 wks before, 6 after, 100% pay plus maternity grant
Portugal	48	2 hours per day, 160 hours per annum	8pm-7am; at least 7 hours in this period	155 wks, 65% ave daily pay of preceding 2 months,	90 days total (at least 60 after), 100% daily wage

				100% if hospitalised and have dependents	plus maternity grant
United Kingdom	No legislation	No legislation	No legislation	28 wks, flat rate linked to salary, averages between 52% and 70% wkl pay	11 wks before, 7 after, fixed benefit, 6 wks' maternity pay at 90% earnings plus maternity grant

<sup>a</sup> The German Federal Republic

Source: Compiled from Commission of the European Communities, Summary Report on the Comparative Study of Rules Governing Working Conditions in the Member States, Brussels July 1989 Com (89) 360 Final.

Table 2: Size and composition of part-time employment, 1979-1990

	Part-time employment as a proportion of									Women's share in part-time employment (%)		
	Total employment			Male employment			Female employment			'79	'83	'90
	'79	'83	'90	'79	'83	'90	'79	'83	'90			
Belgium	6.0	17.5	21.3	1.0	2.0	1.7 <sup>a</sup>	16.5	19.7	25.0	88.9	84.0	89.6 <sup>d</sup>
Denmark	22.7	23.8	23.7 <sup>b</sup>	5.2	6.6	9.0 <sup>b</sup>	46.3	44.7	41.5 <sup>b</sup>	86.9	84.7	79.4 <sup>b</sup>
France <sup>c</sup>	8.2	9.7	12.0	2.4	2.6	3.5	16.9	20.0	23.8	82.2	84.4	83.1
Germany	11.4	12.6	13.2 <sup>b</sup>	1.5	1.7	2.1	27.6	30.0	30.6 <sup>b</sup>	91.6	91.9	90.5 <sup>b</sup>
Netherlands <sup>d</sup>	16.6	21.4	33.2	5.5	7.2	15.8	44.0	50.1	61.7	76.4	77.3	70.4
United Kingdom	16.4	19.4	21.8 <sup>a</sup>	1.9	3.3	5.0 <sup>a</sup>	39.0	42.4	43.8 <sup>a</sup>	92.8	89.8	87.0 <sup>a</sup>
Ireland	5.1	6.6	8.1 <sup>b</sup>	2.1	2.7	3.8 <sup>b</sup>	13.1	15.5	17.1 <sup>b</sup>	71.2	71.6	68.2 <sup>b</sup>
Greece	..	6.5	5.5 <sup>b</sup>	..	3.7	2.9 <sup>b</sup>	..	12.1	10.3 <sup>b</sup>	..	61.2	65.7 <sup>b</sup>
Italy	5.3	4.6	5.7 <sup>a</sup>	3.0	2.4	3.1 <sup>a</sup>	10.6	9.4	10.9 <sup>a</sup>	61.4	64.8	64.7 <sup>a</sup>
Portugal	7.8	..	5.9 <sup>a</sup>	2.5	..	3.1 <sup>a</sup>	16.5	..	10.0 <sup>a</sup>	80.4	..	69.8 <sup>a</sup>
Spain	..	..	4.8 <sup>a</sup>	..	..	1.6 <sup>a</sup>	..	..	11.9 <sup>a</sup>	..	..	77.2 <sup>a</sup>

<sup>a</sup> 1989. <sup>b</sup> 1988. <sup>c</sup> 1990 data for male employment include conscripts, contrary to the situation for earlier years. <sup>d</sup> Break in data in 1985.

Source: OECD, Employment Outlook, July 1991, table 2.9



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4. See G. Majone, 'The European Community between Social Policy and Social Regulation', *Journal of Common Market Studies*, 31, 2, June 1993, pp. 160-161.
5. See O. Young, *International Cooperation: Building Regimes for Natural Resources and the Environment*, Ithaca, N.Y., Cornell University Press 1989.
6. Employment Department, *People, Jobs and Progress*, London, February 1992, p. 4.
7. See M. Rhodes, 'The Social Dimension of the Single European Market: National versus Transnational Regulation', *European Journal of Political Research*, 19, 1991, p. 262.
8. In Marshall's sense these would entail for all Community citizens "the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in society". See T.H. Marshall, *Class, Citizenship and Social Development*, Westport, Greenwood Press 1964, p. 96. For a useful discussion of citizenship and the Social Charter, see P. Kenis, "Social Europe in the 1990s: Beyond an Adjunct to Achieving a Common Market", *Futures*, 23, 7, 1991, pp. 724-738. Kenis uses the work of Eduard Heimann to assess the Social Charter in terms of three types of social policy: measures that either (a) secure, or (b) change the course of the economy, or (c) promote social citizenship rights. In focusing on the removal of barriers to labour mobility, Kenis argues that the Charter supports especially the first category of measures.
9. See E. Meehan, 'European Citizenship and Social Policies', in U. Vogel and M. Moran (eds.), *The Frontiers of Citizenship*, London, Macmillan 1991.
10. See P. Spicker, 'The Principle of Subsidiarity and the Social Policy of the European Community', *Journal of European Social Policy*, 1, 1, 1991, pp. 3-14.
11. See Z. Tyszkiewicz, 'Employers Views of the Community Charter of Basic Social Rights for Workers', *Social Europe*, 1, 1990, pp.
12. In other words, 'type II' and 'type III' social policies in the schema presented by Kenis, *op.cit.*, pp. 725-726.
13. See E. Vogel Polsky, 'L'Acte unique ouvre-t-il l'espace social européen?', *Droit Social*, 2, 1989, pp. and B. Hepple, 'The Crisis in EC Labour Law', *Industrial Law Journal*, 12, 1987, pp.
14. See, for example, B. Fitzpatrick, 'Community Social Law after Maastricht', *Industrial Law Journal*, 21, 3, September 1992, pp. 210-211.
15. For a discussion of this debate and the potential problems of implementation of directives via collective bargaining, see A. Adinolfi, 'The Implementation of Social Policy Directives through Collective Agreements?', *Common Market Law Review*, 2, 1988.
16. See M. Rhodes, 'The Social Dimension of the Single European Market: National versus Transnational Regulation', *European Journal of Political Research*, 19, 1991, p. 264.

17. Britain was not the only Member State opposed to the passage of this Directive via qualified majority voting. As revealed by Luxembourg's labour minister, Mr Jean-Claude Juncker, the Spanish also demanded that such measures must have unanimous support, even if, somewhat perversely, they supported their substance. *Financial Times*, 16 May 1991.
18. In its second reading of the draft Directive, the European Parliament tried to claw some of these concessions back, calling for improved protection on night work and for maternity pay of at least 80 per cent of normal pay (rather than equivalent of sickness benefit. Only Italy supported the Parliament's proposed revision. See *European Industrial Relations Review*, 222, July 1992, p. 2.
19. Department of Employment, *People, Jobs and Progress*, London, February 1992.
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21. For a detailed analysis, see J. Clark and M. Hall, 'The Cinderella Directive? Employee Rights to Information about Conditions Applicable to their Contract or Employment Relationship', *Industrial Law Journal*, 21, 2, June 1992, pp. 106-118.
22. For a detailed survey of the progress made with Social Action Programme proposals to mid-1992, see 'Social Charter State of Play', *European Industrial Relations Review*, 221, June 1992, pp. 23-30.
23. UNICE was formed in 1958 and its membership is comprised of 32 national employers' and industrial federations from 22 countries. CEEP was formed in 1965 represents 260 of the European Community's public enterprises (from all Member States except Britain and Denmark) and provides them with information and research on EC activities. The ETUC was established in 1972 and has 40 affiliated confederations from 21 countries, including all of the most important EC national union confederations, apart from the Communist French CGT and the Portuguese CGTP-IN. For further details see 'The Social Dialogue - Euro-bargaining in the Making?', *European Industrial Relations Review* 220, May 1992, p. 28 and B. Barnouin, *The European Labour Movement and European Integration*, London, Frances Pinter 1986.
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26. See S. Milner, 'European Community Training Policy and Social Dialogue at European Level: A New Agenda?', Paper for BSA Conference 'A New Europe?' University of Kent, 6-8 April 1992.
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28. See 'The Social Dialogue - Euro-bargaining in the Making?' *op.cit.*, p. 24.
29. See Rhodes, 'The Future of the Social Dimension', p. 39
30. *Financial Times*, 14 May 1991.
31. On the background to the German position, see W. Streeck, 'More Uncertainties: German Unions Facing 1992', *Industrial Relations*, 30, 3, Fall 1991, pp. 317-349.

32. *Financial Times*, 29 October 1991.
33. *Treaty on Political Union, Final Draft by the Dutch Presidency as Modified by the Maastricht Summit*, reproduced as a supplement to *Europe*, No. 1750/1751, 13 December 1991.
34. See Spicker, *op.cit.*, pp. 9-13.
35. *Ibid.*
36. *Ibid.*
37. See M. Gold 'Social Policy: the UK and Maastricht', *National Institute Economic Review*, 1, February 1992, p. 99.
38. Employment Department, *op.cit.*, p. 23.
39. *Financial Times*, 27 November 1991.
40. *Financial Times*, 11 December 1991.
41. See Fitzpatrick, *op.cit.*, pp. 210-212 for a discussion of these issues.
42. *Financial Times*, 8 January 1992.
43. See the arguments in E. Vogel-Polsky, 'I maghi di Maastricht: ', *Politica ed Economia*, 1, 1992.
44. *IDS European Report* 365, May 1992, p. ix.
45. See Fitzpatrick, *op.cit.*, p. 202, and for a discussion of the constitutional aspects of the question, see Curtin, *op.cit.*, pp. 52-62.
46. *Ibid.*, p. 205.
47. *IDS European Report* 365, May 1992, p. ix.
48. *Financial Times*, 11 November 1991 (my emphasis).
49. *European Industrial Relations Review*, 222, July 1992, p. 4.
50. Fitzpatrick, *op.cit.*, pp. 204-206.
51. See Gold, *op.cit.*, p. 100. The German trade union confederation, the DGB, has warned that it would be prepared to challenge the exclusion of the UK from the Treaty's social provisions on the grounds of unfair competitive advantage (*IDS European Report* 361, January 1992, p. 2).
52. See A. Adinolfi, 'The Implementation of Social Policy Directives through Collective Agreements?', *Common Market Law Review*, 2, 1988.
53. This issue, among others - including the delaying effect of social dialogue negotiations on the Commission's right to initiate proposals and the representativeness of the ETUC and UNICE -were discussed (without producing any final answers) at an informal meeting of Labour and Social Affairs Ministers in mid-March 1992 under the Portuguese Presidency. See *European Industrial Relations Review*, 219, April 1992, p. 2.
54. article in *Human Resource Management*, end 1991

55. *Financial Times*, 8 January 1992. The TUC and the CBI were represented at a two-day summit meeting in Brussels in July 1992 held to discuss the new arrangements for joint consultation and European-level collective agreements.
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63. See F. Perez Amoros and E. Rojo, 'Implications of the Single European Market for Labour and Social Policy in Spain', *International Labour Review*, 130, 3, 1991, pp. 359-372 and 'Spain: Radical Labour Market Reform', *European Industrial Relations Review*, 220, May 1992, pp. 12-14.
64. The draft Directive on young workers fixes a minimum age for entry to employment, limiting the hours of work of young people, prohibiting night work and providing for regular medical check ups, excluding those working on a limited and occasional basis for their families and self-employed young people. Across the EC, the levels of employment for 13 to 17 year olds are typically very low (as low as 1 per cent in Belgium) but rise to 44 per cent in Denmark DK and 43 per cent in the UK. The effect on the UK would be the greatest since there is now little legislation since the 1989 Employment Act repealed a large number of provisions relating to 16 to 18 year olds - including holidays, night work and working time - deemed, by the Conservative Government to constitute unjustifiable interference in the labour market. See *European Industrial Relations Review*, 220, May 1992, pp. 14-18 for fuller details.
- As for the amendments to the 1975 Directive on collective redundancies, the UK and Ireland already fail to comply fully with requirements to provide for the notification and consultation of workers' representatives of proposed redundancies since UK employers can avoid the procedure where no union is recognised and their Irish counterparts can avoid consultation when there has been practice in the past of collective negotiation. Neither would comply with the obligation under the proposed amendments to consult with employee representatives in firms with more than 50 employees, since they alone in the EC have no requirement for such representatives in firms of this size. The amendments also require specific judicial procedures making any collective redundancies contravening the Directive null and void. This is already the case in eight Member States, but not in UK, Ireland, Denmark and Belgium. The UK government explicitly opposes this, arguing that remedies for breaches of the law should be a matter for individual Member States. See *European Industrial Relations Review*, 216, January 1992, pp. 12-15.

65. For a discussion of the possible threats to the German system, see W. Streeck, 'More Uncertainties: German Unions Facing 1992', *Industrial Relations*, 30, 3, Fall 1991, pp. 317-349.
66. This summary is derived from Commission of the European Communities, *Communication from the Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of the Basic Social Rights for Workers*. Com (89) 586 Final. Brussels: EC 1989. For a full analysis of these measures, see 'Social Charter: Action Programme Released', *European Industrial Relations Review*, 192, 1990.
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72. See E. Balls, 'No Jobs for the Boys', *New Statesman and Society*, 28 August 1992, pp. 14-15.
73. Research by the French Centre d'Etudes des Revenues et des Coûts (CERC) for the European Commission (and produced in the context of the Commission's draft Opinion on an equitable - or fair - wage) showed that 20 per cent of British workers earned less than 66 per cent of median pay, followed by Spain (19.0 per cent) and Ireland (18 per cent). It should be said, however, that the variable nature of the data makes comparisons difficult and rules out a rigid ranking of the Member States. See *IDS European Report*, 362, February 1992.
74. See OECD, *Labour Market Policies for the 1990s*, Paris, ORCD 1990, pp. 19-59 for a comparison of labour market policies and expenditure.
75. In an influential article on this issue, it has been argued that Britain is trapped in a 'low-skills equilibrium' in which the levels of training and education of both workers and management is poor and where the a growing number of companies are consigned to the low-quality end of the manufacturing/services continuum. See D. Finegold and D. Soskice, 'The Failure of British Training: Analysis and Prescription', *Oxford Review of Economic Policy*, 4, Autumn 1988, pp. 21-53.
76. In June 1992, a Directive was adopted by the Council of Ministers on a second system of mutual recognition of training qualifications. This will provide for the recognition of qualifications awarded for training of less than three years' duration - unconditionally if the training is of the same standard or lower than in the worker's country of origin, or conditional upon proof of experience or extra training if it is higher. See *European Industrial Relations Review*, 222, July 1992.