

Industrial relations & industrial change

# Industrial Relations in Europe

2004

Employment & social affairs



European Commission



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European Commission  
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# Foreword by the Commissioner



Industrial relations are at the core of Member States' economic and social organisation. At the European level, the European social dialogue acts as a complement to national industrial relations systems and has developed in tandem with European integration and the efforts to build the European internal market in order to ensure that it develops in a consensual manner. Social dialogue is recognised at the European level as a force for innovation, the consensual anticipation and management of change and as making a key contribution to better governance.

This, the third report on *Industrial Relations in Europe*, comes at an interesting time, just as the European Union (EU) has embarked on its largest enlargement which will increase the diversity of industrial relations traditions and the need for social cohesion. Against this background, understanding better the different industrial relations systems in Europe — including how they are evolving and how they contribute to economic and social prosperity — is more important than ever.

The 2004 report also comes in the run-up to the mid-term review of the Lisbon strategy, the EU's response to the challenges presented by globalisation. The spring 2004 European Council stressed the need to step up efforts to achieve the Lisbon objectives, including the need for the social partners to make a concrete contribution. This report shows that activities at the European level have been strongly influenced by the need to achieve the Lisbon objectives, and the link between European industrial relations and the Lisbon strategy is therefore a recurring theme throughout this publication.

In a context of Europeanisation, occurring as a result of globalisation and economic and monetary integration, the interaction between the European, national, sectoral and company levels of industrial relations is becoming of central importance. This increases the need for coordination and the European level provides a good interface for benchmarking, sharing best practice and mutual learning. This report seeks to make an active contribution to this process and illustrates the growing coordination practices among a wide range of actors at the European level. I trust it will provide meaningful information and stimulating food for thought to all its readers.

Vladimír Špidla  
*Commissioner for Employment, Social Affairs and Equal Opportunities*



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# Editorial

The evolution of the idea and practice of social partnership is a key element in the construction of the European Union (EU). Also described as 'social dialogue', its central message is that employers and workers, and their organised representatives, have an important role to play in the governance of the EU's economy and labour market, and in the development of appropriate policies of social and economic reform. The potential role of the social partners in times of much needed reform — in order to respond to the challenges set out at the European Council of Lisbon in 2000 — was highlighted in the report of the High Level Group on Industrial Relations and Change and the Commission's communication on the European social dialogue, both published in 2002 <sup>(1)</sup>.

The European social dialogue is recognised at the highest level by the European Council as being at the heart of Europe's economic and social model, enabling parallel progress to be made on the economic and social fronts. In order to underpin the implementation of the Lisbon agenda, the spring 2004 European Council called on Member States to build partnerships for change involving the social partners, civil society and public authorities in accordance with national traditions. The importance of strong commitment from the European social partners to delivering reforms was also stressed by the Employment Taskforce in its November 2003 report <sup>(2)</sup>.

In adopting the partnership approach, the EU and its Member States recognise that they have a joint responsibility in providing support for a coordinated approach to industrial relations and labour markets at a time when that is being increasingly challenged — by processes of internationalisation, decentralisation and individualisation that tend to make collective solutions less attractive and harder to enforce.

Like its two predecessors <sup>(3)</sup>, this third report, *Industrial Relations in Europe 2004*, intends to provide an overview of the current state and recent development of industrial relations and social partnership — the organisation of its key actors, the relationships between them, the agreements they negotiate and the policies they conduct. Social partnership structures apply at various levels — within companies, in local and regional labour markets and in branches or sectors of economic activity, within single Member States and beyond them to embrace the EU as a whole. How these structures and the resulting processes and policies are connected across levels — mutually reinforcing or obstructing each other, or being merely irrelevant — is a critical issue for coordination. In the first report, *Industrial relations in Europe 2000*, the focus was on the role and value of European-level structures and policies. The 2002 report devoted a chapter to industrial relations in the candidate countries. This 2004 report makes an attempt to compare all 25 current Member States of the EU,

although data is still lacking in some areas.

The starting point for any overview of European industrial relations and labour market institutions must be the recognition that although considerable change is occurring and there are some convergent trends in European industrial relations, diversity is also a persistent feature, both between and within Member States. This diversity, already a feature of the EU before May 2004, will further increase with the EU's enlargement. The fact that diversity persists in spite of common pressures and challenges and the fact that countries respond in different ways to these, demonstrates the important role played by rules and institutions and the way in which they are designed.

In a context of economic integration such as that occurring in the EU, while diversity may often increase the need for harmonisation, convergence or coordination, it also makes it more difficult. It therefore presents a challenge to policy-makers in designing policies to address common problems. The EU is responding to this challenge in innovative ways, both through legislation, horizontal coordination and the European social dialogue.

With regard to EU legislation, its role is evolving. Although the traditional objective of classical EU labour law instruments, namely creating a level-playing field through setting minimum standards, remains

(1) Report of the High Level Group on Industrial Relations and Change in the European Union, Employment and Social Affairs DG, Brussels, January 2002; Communication from the Commission, 'The European social dialogue, a force for innovation and change', COM(2002) 341 final, 26 June 2002.

(2) Report of the Employment Taskforce chaired by Wim Kok, Jobs, jobs, jobs — Creating more employment in Europe, November 2003.

(3) European Commission, Industrial relations in Europe 2000, Employment and Social Affairs DG, Brussels, March 2000; and European Commission, Industrial relations in Europe 2002, Employment and Social Affairs DG, Brussels, May 2002.

important, European legally-binding provisions increasingly pursue other European policy goals, such as modernising the regulatory framework, developing social dialogue at all levels, finding new balances between flexibility and security, and increasing the adaptability of workers. Examples of horizontal coordination are the open method of coordination (OMC), the exchange of views and practices within and between multinational corporations, among others with European works councils, and the coordination of bargaining agendas and activities by trade unions from different Member States.

With regard to the European social dialogue, it makes an important contribution to policy coordination in the industrial relations field. In recent years this role has been stepped up by the evolution of the social dialogue in the direction of greater autonomy, with the increasing adoption by the European social partners of 'new generation' texts which make recommendations to their members and which they undertake to follow up themselves at the national level. This contrasts with their earlier joint opinions which tended to be directed solely at the European institutions and national public authorities.

The developments described in the report indicate that it is becoming increasingly clear that Europeanisation in the field of industrial relations does not refer to 'harmonisation', or a vertical or upward transfer of authority to the European level, as was often assumed in the past. It refers instead to a process of bringing the European level closer to national and local discussions and practices, and European, national and local actors closer to each other, while respecting national and cultural differ-

ences. It refers to the convergent evolution of institutions, practices, values and outcomes such as democracy, growth, employment and social cohesion, as well as a growing awareness among industrial relations actors at all levels of what happens outside one's own national borders and cultures. This understanding of a more 'horizontal' Europeanisation, with its implications of more meaningful exchange and coordination across national borders, can be more easily reconciled with the overall decentralisation trend in industrial relations. It acknowledges the emergence of a European pattern of orientations and social relations among all participants (e.g. unions, workers, managers, employers' organisations and governments) amidst a persistent diversity of nationally defined interests, identities and practices.

Against this background, although diversity presents a challenge, it is also an asset which Europe should learn from and make to work to its advantage. Indeed the European level offers a rich context for benchmarking, sharing best practice and mutual learning. For example, one of the main contributions of the European social dialogue is that by bringing together social partners from different countries, it helps to promote mutual learning among the actors, both with regard to understanding better the perspectives of their counterparts on the other side of industry, but also by increasing their understanding of different national traditions and cultures and what happens beyond their borders.

Chapter 1 begins by examining patterns and variations in European industrial relations. The focus is mainly on the national level, although the interaction with the European level is

also explored. The chapter describes European industrial relations as a 'mosaic of diversity', but with interesting efforts at coordination occurring, both at national and European level. Chapter 2 complements the first chapter by exploring the notion of 'quality in industrial relations'. At a time when national industrial relations systems are having to adapt to the pressures of globalisation and the EU has enlarged to new Member States with rather new industrial relations systems, there is an important need to better understand what constitutes good quality industrial relations, in other words, what works in terms of delivering good economic and social outcomes. This was an element emphasised in the European Commission's 'Social policy agenda' for the years 2000–05<sup>(4)</sup>. The chapter provides examples of good industrial relations at both the national and European levels. Although the subject is in need of further research, what is clear at this stage is that a wide variety of approaches are being pursued and that diverse solutions can deliver beneficial outcomes.

Chapters 3 and 4 concentrate on European level responses. Chapter 3 examines developments in the European social dialogue over the last couple of years, which can be summarised as a response to the Lisbon objectives and preparation for enlargement. In view of the contribution of the European social dialogue to better governance, the chapter also examines the qualitative evolution of the European social dialogue towards greater autonomy, including the increasing adoption by the social partners of new generation texts. Chapter 4 outlines the main legislative developments over the past two years and the important role of legislation — in spite of diverse national situations —

(4) COM(2000) 379 final, 28 June 2000.

for establishing a minimum degree of convergence in certain areas in order to create a level playing field for economic actors.

In view of the growing importance of the company level of industrial relations, Chapter 5 examines national trends with regard to the interaction between corporate ownership patterns and industrial relations in the EU, as well as initiatives taken at the European level in the field of company level industrial relations. Finally, Chapter 6 examines employment and working conditions in the new Member States in relation to the Lisbon objectives. It examines some of the main trends occurring, including the similarities and differences within EU-15 or groups of Member States within EU-15. Indeed, the trends within EU-15 are not themselves uniform, with considerable differences, most notably between the northern and southern Member States. EU membership and the need to implement the EU's social *acquis*, should over time contribute to raising standards in these countries, and there are indications that this is already occurring, for example, with regard to working time. EU health and safety and employee information and consultation rules should also help to bring about considerable improvements.



# Patterns and variations in European industrial relations <sup>(5)</sup>

## ■ 1. Introduction

The evolution of the idea and practice of **social partnership** is a key element in the construction of the EU. Also described as ‘social dialogue’, its central message is that employers and workers, and their organised representatives, have an important role to play in the governance of the EU’s economy and labour market, and in the development of appropriate policies of social and economic reform. The potential role of the social partners as ‘change masters’ in times of much needed reform — in order to respond to the challenges set out at the European Council of Lisbon in 2000 — was highlighted in the report of the High Level Group on Industrial Relations and Change <sup>(6)</sup>. In adopting the partnership approach, the EU and its Member States recognise that they have a joint responsibility in providing support for a coordinated approach to industrial relations and labour markets at a time when that is being increasingly challenged — by processes of internationalisation, decentralisation and individualisation that tend to make collective solutions less attractive and harder to enforce.

Like its two predecessors <sup>(7)</sup>, this third report, *Industrial Relations in Europe 2004*, intends to provide an overview of the current state and recent development of industrial relations and social partnership — the organisation of its key actors, the relationships

between them, the agreements they negotiate and the policies they conduct. Social partnership structures apply at various levels — within companies, in local and regional labour markets and in branches or sectors of economic activity, within single Member States and beyond them to embrace the EU as a whole. How these structures and the resulting processes and policies are connected across levels — mutually reinforcing or obstructing each other, or being merely irrelevant — is a critical issue for coordination. In the first report, *Industrial Relations in Europe 2000*, the focus was on the role and value of European-level structures and policies. The 2002 report devoted a chapter to industrial relations in the so-called ‘candidate countries’. This 2004 report makes an attempt to compare all 25 current Member States of the EU.

The starting point for any overview of European industrial relations and labour market institutions must be the massive diversity across European countries, and possibly increasing diversity within them, both between sectors and firms. This diversity, already a feature of the EU before May 2004, will further increase with the EU’s enlargement. Besides differences in social and economic position and interests, this cross-national diversity in industrial relations institutions and practices is a challenge to those who want to adapt institutions and design policies

in order to address common problems. Increased heterogeneity within countries, not only between companies and across sectors, but also in social, regional and ethnic terms, complicates the task of national lawmakers and makes centralised solutions within national borders more difficult. Across Europe, institutional diversity and different national interests in a politically sensitive area have made harmonisation in the field of labour law and social policy in the EU more difficult, even if national diversity might in fact increase its importance. Steps towards greater unity and coordination have better chances of realisation and contributing to the solution of common problems, when diversity is recognised and understood.

To identify and understand the main patterns and master trends in this **changing mosaic of diversity** is the key descriptive and analytical task of this chapter. How different are Europe’s trade unions in structure and policy? What do Europe’s employers, as represented by their associations, have in common? How much deep variation in partnership relations and in policies can be observed? Which way do trends go? What alternatives are there to centralisation? What patterns of government assistance and intervention can be witnessed? How much convergence is there, and where, and why? Does it include the industrial relations institutions and practices in

(5) This chapter was drafted by Professor Jelle Visser of the Amsterdam Institute for Advanced Labour Studies, University of Amsterdam.

(6) Report of the High Level Group on Industrial Relations and Change in the European Union, Employment and Social Affairs DG, Brussels, January 2002.

(7) European Commission, *Industrial relations in Europe 2000*, Employment and Social Affairs DG, Brussels, March 2000; and European Commission, *Industrial relations in Europe 2002*, Employment and Social Affairs DG, Brussels, May 2002.

the 10 new Member States that have recently joined the EU? Are there particular shortcomings in the institutions and practices of European industrial relations seen from the social partnership perspective? These questions guide the survey of actors and institutions in this chapter, as their answers are the backdrop for the discussion of European-level structures, initiatives and policies. In order to see order in diversity, facilitate comparison and improve the analytical value of the chapter, considerable importance has been placed on the development of comparative indicators on industrial relations institutions: unions, employers' organisations, organisation rates, bargaining coverage, centralisation, coordination, and government intervention.

One of the master trends in industrial relations in the past two decades has been the gradual **decentralisation** of multi-employer and firm bargaining structures. In Europe, this process first became noticeable in bargaining over reduced working hours in the 1980s, but has since been extended to matters of pay. Internationalisation, technological and organisational change, multi-tasking, teamwork and client-related work processes have made standardised solutions, negotiated for entire sectors, less feasible and less efficient. Reflecting growing diversity among their affiliates and within the membership, this decentralisation trend has also affected trade union movements, in particular in relation to working hours and work-family issues.

It needs to be repeated that Member States, and sectors of economic activity within them, often set out from different starting points before being subject to common pressures towards decentralisation. In EU-15<sup>(8)</sup>, multi-employer bargaining, in some countries nationwide though more

often at the level of sectors, has been common during the first three or four decades since 1945. Decentralisation in these countries often means offering more space for company or enterprise bargaining. Such a development towards multi-level bargaining requires institutional learning and experimenting, and adaptations both within unions and employers' associations. The key issue, now, is to seek **new ways and methods of coordination**, within and across policy fields, adapted to an environment characterised by more international pressure and internal diversity. In EU-10, multi-employer bargaining and collective bargaining of any kind is much less common. Here the institutions of social partnership are obviously much younger, less settled, fragile and in need of political support most of the time. The search for new forms of partnership and coordination, within and across countries, but without the obvious drawbacks of overly centralised decision-making and uniform solutions that insufficiently recognise the diversity in problems, preferences and capabilities, is a common theme in Europe, in industrial relations and in this report.

Moving away from the old economy, based on standardisation, mass production, assimilation of existing technologies and long-term employment, a new phase is being entered, where the institutions of industrial relations must facilitate, reward and address a different set of conditions: choice, commitment, inventiveness, mobility and retraining. Classic industrial relations institutions — social partnership and collective bargaining — can play a facilitating role, creating the conditions of fairness and shared rules that allow investment and risk-taking among both firms and workers. For this to happen, existing collective agreements are under constant revision, opening up to new reward sys-

tems, allowing new trade-offs between security and flexibility, and seeking better coverage of part-time work and temporary employment. The degree of **openness to procedural and substantive reform** is one of the strong points of collective bargaining and part of its adaptive flexibility.

European industrial relations offer a rich context for benchmarking and **best practice learning**. Such learning occurs in the various European organisations and forums, in the boardrooms and works councils of international firms, in the context of the European social dialogue and through the involvement of social partners in the open method of coordination (OMC), for instance in the field of employment and labour market reform. The involvement and participation of the social partners, at various levels and alongside other societal actors, is a critical resource in such learning experiences. Learning is part of a process of **Europeanisation** — bringing the European level closer to national and local discussions and practices, and European, national and local actors closer to each other, while respecting national and cultural differences. Various examples of Europeanisation will be highlighted, not just in the limited sense of a vertical or upward transfer of authority, but also in the sense of a convergent evolution of institutions, practices, values and outcomes such as democracy, growth, employment and social cohesion, as well as a growing awareness among industrial relations actors at all levels of what happens outside one's own national borders and cultures ('less parochialism'). This understanding of (horizontal) Europeanisation, with its implications of more meaningful exchange and coordination across national borders, can be reconciled with the overall decentralisation

(8) The chapter will sometimes refer to EU-15 (the Member States until 30 April 2004) and EU-10 (those that joined on 1 May 2004).



trend in industrial relations. It acknowledges the emergence of a European pattern of orientation and social relations among all participants (e.g. unions, workers, managers, employers associations, and governments) amidst a persistent diversity of nationally defined interests, identities and practices.

## ■ 2. The actors

In this first part, the two main agents in industrial relations are discussed: firstly, the employees, trade unions and employee representation in the enterprise, and secondly, the employers, firms and employers' associations. In the second part, institutional variations and developments are examined, especially with regard to collective bargaining and wage-setting<sup>(9)</sup>. Although the State as the 'third actor' in industrial relations is always there — as a legislator laying down the conditions under which unions and employers can organise and are granted particular rights and freedoms — its role will be discussed in the second part. With the exception of the United Kingdom (UK) where union and bargaining recognition procedures were reintroduced under the 1999 Employment Relations Act, most of the EU-15 countries have been characterised by relative legislative stability on regulatory issues concerning union recognition, procedures of industrial conflict and the administrative extension of collective agreements. In contrast, during the past decade there have been fundamental overhauls of relevant labour legislation in the new EU Member States, especially in central and eastern Europe. In the transition to a market economy and to democratic conditions, and in preparing for meeting the *acquis* of the EU, many laws were revised or introduced for the first time in order to create the

conditions for free union and employer organisation, the right to strike and dispute settlement, effective collective bargaining, employee representation and consultation, social dialogue and concertation.

### 2.1. Employees, trade unions and representation

#### 2.1.1. Affiliation, organisation and reform patterns in the Member States

In response to external social and economic changes as well as internal financial and membership problems, trade unions across Europe have over the past few years restructured through numerous mergers<sup>(10)</sup>. The current wave of mergers reflects a long-term decline in the number of affiliates within the major union confederations, especially in western and northern Europe. So-called 'super-unions', creating large-scale organisations spreading across major parts of the economy, have emerged in the Netherlands (1998), Finland (2000), Germany (2001) and the UK (2002). Similar 'conglomerate unions' had already developed in Ireland (general workers), Denmark (unskilled workers), Austria and Belgium (white-collar employees). 2002–03 saw major union mergers initiated or completed in countries such as Austria, Denmark, Sweden and the UK, while the two main Greek trade union confederations are planning a merger in the near future. In Austria, the separate organisation of blue- and white-collar workers will end with the planned merger of five unions in 2005. In Germany, the separate general union of white-collar employees joined the four member-unions of the German Confederation of Trade Unions (DGB) in 2001. Mergers between three (Ireland) and six

(Finland) public sector unions have been announced for 2006.

The trend towards union concentration is less pronounced in southern Europe and in the central and eastern Europe (CEE) Member States, where the process of economic and political transition was in many cases marked by the emergence of numerous competing union centres and breakaways from existing centres. There have recently been some moves towards a greater rationalisation of union structures in a number of countries, such as Hungary, though conversely a new national union confederation was set up in Poland in 2002, alongside the two existing ones.

Amalgamations and mergers are not new phenomenon in union history. What is new, however, is the scale and spread of the resulting conglomerate unions, which straddle the boundaries of sectors and occupational groups. This often entails a shift in the balance of power within confederations and may necessitate a rethinking of the role of the confederation itself, especially with regard to service provision and representation in national and European politics and social dialogue<sup>(11)</sup>. In some countries the new super-unions have now conquered a place in national concertation bodies alongside the peak federations, a development that may be interpreted as a move from centralisation (as one form of vertical coordination) to horizontal coordination.

There are several driving forces behind the current concentration trend: structural changes (shrinking domains in industry, decline of manual occupations); membership decline; corporate restructuring and privatisation of public services; decentralisation of collective bargaining; pooling resources and economies of scale in

(9) Extensive use will be made throughout of the data and reports of the European Foundation for the Improvement of Living and Working Conditions and its European Industrial Relations Observatory Online (Euronline), <http://www.eiro.eurofound>.

(10) For an overview, see B. Ebbinghaus (2003), 'Ever larger unions: organisational restructuring and its impact on union confederations', *Industrial Relations Journal*, Vol. 34.

(11) W. Streeck and J. Visser (1997), 'The rise of the conglomerate union', *European Journal of Industrial Relations*, Vol. 3.

service provision and representation, both in the national and European arena. Another benefit would lie in the reduction of inter-union competition. In theory, union mergers should free resources for recruitment and make for more effective representation and servicing of members. However, mergers are also costly — as the organisation has to be restructured and officials and staff may have to be retired.

Thus far, union mergers have respected political and religious demarcations. Nearly all merger activities take place within confederations and not between them. There is also no example of a cross-national merger between unions — evidence that trade unions are deeply embedded in the history of the national welfare state, democracy and industrial relations systems. Between unions and confederations defined by occupational status (white collar staff, public servants, managerial staff) there are some examples of closer cooperation (Austria, Belgium, Denmark, Finland, Sweden), though in general the structure of trade unions in EU-15, as defined fifty to hundred years ago, resembles a frozen landscape. In contrast, the fragmented trade union structure in central and eastern Europe is still young and further changes are quite likely.

In view of the varied pattern of trade union organisation in the EU it is hard to discern any typical EU model of trade unionism. Table 1.1 shows that the number of confederations or central organisations of trade unions varies from one to six, the membership share of the largest confederation from 100 % in Austria to 28 % in France, and the number of affiliated unions in the main union confederation from 8 in Germany to over 100 in Portugal or Poland. In most Member States there are independent

unions outside the confederal mainstream of 'representative' and recognised unions, though the size of independent unionism varies a great deal. In most cases, independent or 'autonomous' unionism is mostly found among professionals, managers and high ranking civil servants, some of whom may be without bargaining and striking rights. In some Member States (Denmark, Germany, Spain), religious organisation outside the mainstream is another source of independent unionism. In others, especially in Italy and France, independent unionism has strong political elements and is concentrated above all in public (or subsidised) services. In Spain, the Czech Republic and of course in Cyprus independent unionism has also a regional (and sometime linguistic) signature. In the new Member States from central and eastern Europe, for instance in Hungary and Poland, additional divisions emerged between the new unions, sometimes with strong ties to the democratic opposition against the old regime and the State-dominated unions, and those of the old unions and union centres that succeeded in reforming themselves.

Table 1.1 presents the structural characteristics of EU trade unions: the number of divisions between the main union confederations or centres; the membership share of the largest centre; the number of affiliates or member unions of those confederations; the main divisions between these affiliates; the (membership) size; and the nature of independent unionism outside the mainstream. With regard to the main divisions, three main groups of Member States can be detected:

- Member States with one dominant union confederation. This group includes Ireland, the UK, Austria, Germany and Greece among EU-15, and Latvia, Slovakia,

the Czech Republic and Slovenia among EU-10. The average membership share represented by the largest union centre in this group is 84 %. Outside the ICTU and TUC, the main confederations in Ireland and the UK, there are various occupational and professional unions, usually small, though numerous in the case of the UK. The Austrian Confederation of Trade Unions (ÖGB) is unique in so far as it represents all unionised labour in the country and bridges different political affiliations of union members and officials. (The Freedom Party's recent attempts to establish its own unions have stalled.) The German confederation (DGB) has since 1949 followed a similar approach, but in its case a large organisation of civil servants (without bargaining rights), some occupational groups, and a small confederation of Christian trade unions (CGB) have remained independent. In Greece, alongside the dominant union confederation (GSEE) for the private sector, there is a separate organisation (ADEDY) for public sector unions. The two are planning a merger in the near future. In Latvia, the Slovak and Czech Republics and Slovenia, the reformed union confederations, often with historical roots that stretch back to the beginnings of the 20th century, have remained in a position of dominance during and since the transition process. In the case of Slovenia, one or more rival centres have emerged.

- Member States with union centres demarcated by occupation. Denmark, Sweden and Finland (and outside the EU, Norway) belong to this group, together with Malta and perhaps also Estonia. The average membership share of the largest union centre is much lower than in the



first group: around 55 %. In these countries there are sometimes two (Estonia, Malta, Norway) and usually three union confederations: one for skilled and unskilled manual workers, though often stretching to clerical employees and lower-grade public servants; one for white-collar employees; and one for academic professionals. In Malta, the dividing line coincides with employment in the public or private sector; otherwise Maltese trade unions follow the British tradition of occupational unions (as is the case in Ireland and Cyprus) and — rare on the European continent — in Denmark.

In Scandinavia, cooperation between the three union centres has been the common pattern, though the historical dominance of the main confederation representing blue-collar workers has waned. There is hardly a basis for independent unionism outside this mainstream — a small syndicalist centre in Sweden, a Christian federation and some occupational unions in Denmark, managerial and professional unions in Finland and Estonia (and in Norway).

- Member States with union centres divided on mainly political grounds.

In Portugal, Spain, France, Italy, and Cyprus, and in some of the new Member States, these divisions are within the broad left; in the Netherlands, Belgium, Luxembourg, Malta, and to some extent also in Italy, France, and Lithuania (as well as in Switzerland) they relate to the split between Christian and Social Democratic orientations and politics; in Belgium and in some of the new Member States (Poland, Hungary) there are also links with Liberal or Democratic parties further to the right of the political spectrum. Finally, additional fragmentation can occur as a conse-

**TABLE 1.1: UNION STRUCTURE AND AFFILIATION PATTERNS IN THE EU**

	Main union confederations <sup>(1)</sup>			Affiliates <sup>(2)</sup>			Independent unions
	No	Main divisions between confederations	Share of largest (%)	No	Main divisions between affiliates	Share of all members (%)	Source
I	2	3	4	5	6	7	8
Ireland	1		97	48 <sup>(3)</sup>	occup.&sector	3	occup&mngt.
UK	1		84	71	occup.&sector	16	occup&mngt.
Austria	1		100	13	sector&status	-	-
Germany	1 (2)	private&public	83	8	sector	17	public&mngt&relig.
Slovenia	1 (2)	private&public	68	20	sector	32	polit&occup.
Greece	1 (2)	private&public	70	65	occup.&sector		?
Latvia	1		90	25	sector	10	?
Slovakia	1		95	37	sector	5	occup&religion
Czech Rep.	1		73	34	sector	27	occup&region
Denmark	3	occupation	66	19	occup.&sector	6	occup&mngt&relig.
Sweden	3	occupation	52	16	sector	1	syndic&mngt.
Finland	3	occupation	49	24	sector	1	occup&mngt.
Estonia	2	occupation	58	18	sector	9	occup.
Malta	2	private/public	55	11	occup.&sector	15	occup.&public
Portugal	2	political	65	100+	occup.&sector	10	occup.
Spain	2 (3)	political	41	12	sector	19	regional&polit.
Italy	3	political-religious	41	15	sector	15	polit&mngt.
Belgium	3	political-religious	50	17	sector&status	2	mngt.
Luxembourg	2 (3)	polit-relig&occup.	50	15	sector&status	7	occup&mngt.
Netherlands	3	polit-relig&occup.	66	11	sector	6	occup.
Lithuania	3	political-religious	61	24	sector	?	?
Poland	3	political	43	110	sector&company	?	?
Cyprus <sup>(4)</sup>	4	polit-relig&occup.	43	8	sector	24	occup&public
France	6 (7)	polit-relig&occup.	28	20	sector	12	polit&occup.
Hungary	6	political	31	42	sector	1	mngt.

(1) Only confederations that organise in several sectors and organise 5 % or more of total membership. (2) Affiliates or member unions belonging to the largest confederation, only national unions (without local organisations). (3) Without 36 affiliated unions in Northern Ireland; (4) including Turkish Cypriot organisations in northern Cyprus.

Sources: B. Ebbinghaus and J. Visser (2000), *The societies of Europe. Trade unions in western Europe since 1945*, Palgrave for the main divisions and demarcations in EU-15, updated with information from union websites (number of unions) and AIAS union file. For EU-10 Member States, information is obtained from Commission research (UCL).

quence of separate organisation of occupational unionism (Cyprus); managerial and white collar staff unions (Netherlands, France, emerging also in Luxembourg, and in Slovenia); regional divisions (Spain, Cyprus, and outside the EU in Switzerland); and divisions related to the opposition of new and old unions in the transition economies of the former communist State economies in central and eastern Europe and the former Soviet Union. Where divisions are motivated by politics, the potential for inter-union conflict and non-cooperation is large. Yet, in some countries, for example in the Netherlands, Belgium, and Luxembourg, but at particular times also in Spain and Italy, unions have been able to overcome their differences and present common policies of recruitment, bargaining and representation.

The median number of affiliated unions per union confederation is just above 20 (17 in EU-15 and 26 in EU-10). Table 1.1 shows that the most fragmented trade union confederations, with large numbers of affiliates, many very small, are found in Greece (65), Portugal (110), Poland (104), the UK (71), Ireland (48) and Hungary (42). Typically, in these countries trade unions tend to organise on the basis of companies, occupations and status, rather than on the basis of sectors. The most concentrated union confederations with a small number of large unions are found in Germany, the Netherlands, Spain, Malta and Cyprus. Typically, these unions have organised on a sectoral basis ('one employer = one union'), while many declining (manufacturing) sectors have now merged. In the two island States of Malta and Cyprus, union concentration is surely related to the small and selective economy, with a strong presence of tourism and services, but with many manufacturing sectors missing or too small to sustain separate organisation. The issue of union division and concentration will

be returned to in the second part of this chapter in the discussion on bargaining centralisation and coordination.

### *2.1.2. Affiliation, organisation and reform patterns at the European level*

Despite the massive diversity and divisions at the national level, trade unionism at the European level is characterised by a high degree of unity. The European Trade Union Confederation (ETUC) brings together all major confederations. Of the 65 confederations identified in Table 1.1, 59 are members of the ETUC. In addition to these confederations, the ETUC also serves as the European umbrella organisation for union confederations from Iceland (2), Norway (2), San Marino (2), Switzerland (2), Turkey (4), Bulgaria (2), and Romania (4), and it welcomes confederations with observer status from Croatia, Lithuania, Macedonia, Serbia and Switzerland. While coverage in the new Member States is not yet complete, the ETUC does have affiliates in all of them, usually including the largest and most representative confederation.

At its foundation, in 1973, the ETUC replaced previous European organisations which had been divided on the basis of politics, religion and ideology. During the next 30 years, the organisation steadily expanded, overcoming remaining divisions between Socialist, Christian and Communist union movements, in the end also embracing the special white-collar staff confederations. Starting with its support for the Solidarity union in Poland, back in 1980, the ETUC supported the new union movements from CEE countries early on. It established a European Trade Union Forum in 1990 to help 'cooperation and integration' and, at its 1991 Congress, the ETUC introduced an 'observer status' in order to integrate new or reformed union centres. In 1995, the

ETUC granted full membership to nine confederations from six CEE countries having signed application agreements with the EU. In the following years, ratified by the ETUC Congress in Helsinki (1999) and Prague (2003), this process of enlargement was further expanded. Table 1.2 shows this expansion and can be taken as one indicator of the Europeanisation of trade unions in Europe.

Starting with 36 million members in 1973 from 14 countries, all in western Europe, the ETUC's combined membership has increased to nearly 60 million in 35 countries, spanning the whole European (sub)continent. Currently, the ETUC represents around 90 % of all union members in Europe. The most notable exceptions to ETUC membership among union organisations in the current EU are: a number of specific organisations for managerial and professional staff, which belong to the European Confederation of Executives and Managerial Staff (Confédération Européenne des Cadres or CEC) which organises some of the independent professional and managerial unions referred to in Table 1.1; and a number of organisations affiliated to the European Confederation of Independent Trade Unions (Confédération Européenne des Syndicats Indépendants or CESI). CEC was re-established in 1989 from an older organisation founded in 1951 and represents around 1 million union members from 15 countries. Although not exactly in the same categories, ETUC's 'Eurocadres' claims a larger membership of around 5 or 6 million. Both organisations are recognised, as representative for their category by the Commission. This is not the case for CESI. This umbrella organisation was founded in 1990 by seven national organisations which for various reasons had remained outside the main-

**TABLE 1.2: EUROPEANISATION OF TRADE UNIONS:  
AFFILIATION AND MEMBERSHIP OF THE ETUC, 1973-2003**

	1973	1975	1983	1990	1992	1995	1998	2003
Total membership (Mio.)	36.1	44.0	41.0	40.5	45.3	46.3	50.3	59.0
No of affiliates	17	29	34	38	46	49	68	77
No of countries	14	16	20	22	22	22	29	35
No of European industry federations	6	6	10	14	15	15	15	11

Sources: B. Ebbinghaus and J. Visser, *The societies of Europe*, op.cit., Chapter 19, updated with ETUC reports and website. The total membership includes pensioners, students, self-employed and unemployed workers, and cannot simply be translated in 'union density', i.e. membership as a fraction of the dependent workforce (wage and salaried employees) in employment (see below).

stream, such as the German civil service federation, DBB, which is barred from collective bargaining, or the federation of autonomous unions in Italy CISAL, which is politically distinct. Although attempts to coordinate the non-ETUC affiliated unions existed before the relaunching of the social dialogue in the late 1980s, it was the increased success of the ETUC as a European social partner that instigated the remaining unions to seek coordination and representation at the European level. However, since most minority organisations are now in the ETUC, staying outside the ETUC has become less attractive.

Also affiliated to the ETUC are 11 European industry federations, grouping almost all major EU trade unions in their respective sectors, along with many from the 10 new Member States and from countries not (yet) members of the EU. A process of regrouping and concentration, similar to the merger process among national unions, has reduced their number from 15 to the current 11. This process of regrouping was more or less completed in 2000. The activities of these federations will be discussed below, in the context of collective bargaining and coordination.

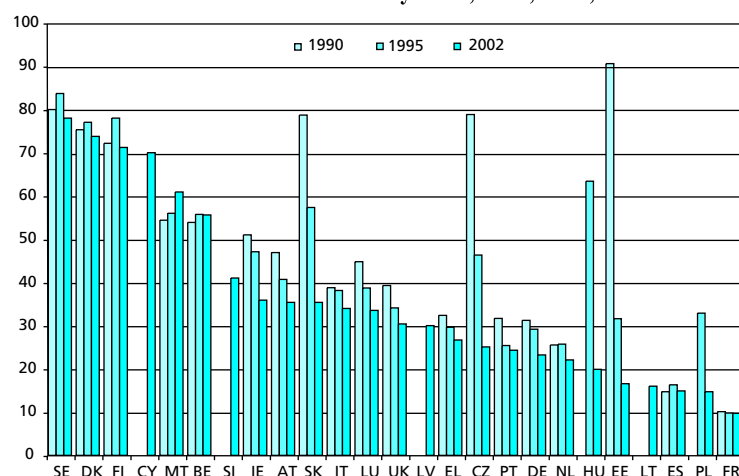
The important achievement of unity and the ability to speak with a common voice in Europe is somewhat hampered by the national and sec-

toral diversity in union structure, which together with cultural and language differences complicates the process of cooperation among Europe's trade unionists, both at the strategic level and in their day-to-day operations. There are now several forums that promote contacts across national borders: European works councils (EWC) in transnational firms; the sectoral and cross-industry social dialogue in Brussels; transnational coordination of bargaining activities in some industries; and the interregional trade union councils (ITC) in several European regions. These forums have expanded during the 1990s, also into the new Member States, with the support of the European Commission (social dialogue, regional policies). Interregional Trade Union Councils are part of the ETUC's structure and

deal with practical problems of border workers as well as some strategic initiatives in regional development.

### 2.1.3. Membership developments

Well-organised and representative trade unions are an important part of the European social or partnership model. Indeed, union density, measured as the share of dependent employed who are members of a trade union, is higher in Europe than in the United States, in Japan, or in most parts of the world <sup>(12)</sup>. As can be seen from Table 1.3, there are massive differences across Europe and, in the late 1990s, the partial trend towards decline has become rather general, implicating also countries such as Sweden, Finland and Denmark. On average, union density in the EU has

**Chart 1.1: Trade union density rates, 1990, 1995, 2001–02**

(12) J. Visser (2003), 'Unions and unionism around the world', in J. T. Addison and C. Schnabel (eds.), *International handbook of trade unions*, Cheltenham, Edgar Elgar, 366–414. See also World labour report 1997–98, Geneva, International Labour Organisation (ILO), 1998.

declined from 32.6 in 1995 to 26.4 % in 2001, a decline of 1 percentage point per year. (Unfortunately, data for 2002 are incomplete and for 2003 not yet available.) In EU-15, union density decreased from 31.0 to 27.3 %; in EU-10 from 42.7 to 20.4 %.

Union membership is of course not the only, but it is the most commonly used indicator of union presence and influence in labour markets, society and politics. Membership relative to the size of the dependent workforce is one of the key indicators of union representation and of the support that unions have among employees and the public. Other indicators of the state of unions include recognition and presence in social dialogue and concertation at various levels including the company (works councils); coverage of employees by union-negotiated collective agreements; union services (sometimes extended to non-members) and union presence in administrative social security councils; and the standing of unions and union leaders in public opinion. Data on coverage rates will be returned to in the second part of the chapter, union presence in works councils will be covered in the following paragraph, and union presence in social security arrangements in relationship to membership developments will also be addressed.

One of the most striking things demonstrated by Table 1.3 is the enormous difference in unionisation levels across Europe — the highest levels are found in the Nordic countries, the lowest in France and Spain and in some of the new Member States, Poland, the three Baltic States and Hungary in particular. There is hardly any other variable showing so

much variation — with unionisation rates in Sweden around 80 % and only 10 % in France and 15 % or lower in Poland. Treated separately, both EU-15 and EU-10 offer a varied picture. Of the new Member States, the two small Mediterranean island States but also Slovenia and Slovakia appear to have above-average unionisation levels. Persistent cross-national differences in unionisation are *prima facie* evidence that union organisation must be seen in the context of institutions specific to national labour markets and that the meaning and importance of union membership varies across countries.

In econometric analysis of unionisation trends in the advanced industrial countries of western Europe, and in the United States, Canada, Australia, New Zealand and Japan, it has been demonstrated that the downward trend in unionisation is related to a power shift in present-day labour markets related to globalisation, to the rise in unemployment and to structural changes in labour market participation and employment, bringing in groups with a lower propensity to unionise (service workers, workers employed in small firms) and groups that go into non-standard employment<sup>(13)</sup>. However, it has also been shown that institutions matter greatly in terms of how unions are affected and have been able to respond to change. Prominent among such institutional factors are the unions' involvement in unemployment insurance, the spread and recognition of union workplace representation, and legally or nationally established procedures of union recognition and involvement. However, it should be stressed that these factors work best in

favour of unionisation where they are combined<sup>(14)</sup>. Unemployment insurance without the presence of local unionism does not attract new members, as new data from Sweden and Finland appears to show. And a high-profile social dialogue and union recognition, without strong membership representation in firms or competitive member-only services, does not solve obvious free rider problems in union organisation, as the examples from Ireland, Austria or the Netherlands clearly demonstrate.

The impact of comparatively low unionisation in many former CEE countries, but also in France, is augmented by a weak and fragmented structure of collective bargaining and inter-union rivalry<sup>(15)</sup>. Initially, following the downturn of the communist State economies in central and eastern Europe, the new opposition unions tended to advance, while the old, party-led unions were able to start reforming and keep many of their members. However, as might have been expected, the high levels of unionisation, to a large extent based on compulsory services and subscription, could not be maintained. The transition to the market economy and a more voluntary-based membership went together with sharply rising unemployment rates, falling wages, huge losses of membership and intense inter-union competition. It has been particularly difficult to found trade unions and organise recruitment and services in the new multinational firms and in the large small firms sector. These difficulties are not dissimilar from the problems faced by unions in EU-15, for instance in Ireland and the UK in the case of international firms, or almost universally (perhaps with

(13) B. Western (1997), *Between capital and class: Post-war unionisation in the capitalist democracies*, Princeton NJ, Princeton University Press; and J. Visser (2002), 'Why fewer European workers join unions. A social customs explanation of membership trends', *British Journal of Industrial Relations*, Vol. 40.

(14) B. Ebbinghaus and J. Visser (1999), 'When institutions matter: Union growth and decline in western Europe, 1950–95', *European Sociological Review*, Vol. 15.

(15) H. Kohl and H.-W. Platzer (2003), *Arbeitsbeziehungen in Mitteleuropa. Transformationen und Integration: die acht EU-Beitrittsländer in Vergleich*, Baden-Baden, Nomos.

TABLE 1.3: TRADE UNION DENSITY RATES AND MEMBERSHIP COMPOSITION, 1995–2002

	Union density rates						Change	Share of all members (%)	
	1990	1995	1997	1999	2001	2002	1995–2002	Female	Public
Sweden	80.0	83.1	82.2	80.6	78.0	78.0	-0.7	52.7	47.9
Denmark	75.3	77.0	75.6	76.3	73.8	..	-0.5	48.5	..
Finland	72.2	78.0	76.1	..	71.2	..	-1.1	50.5	..
Cyprus <sup>(1)</sup>	..	..	..	..	..	70.0	..	..	..
Malta <sup>(2)</sup>	54.4	56.0	59.2	60.9	63.0	62.8	1.3	27.0	..
Belgium	53.9	55.7	56.0	55.1	55.8	..	0.0	..	..
Slovenia	..	..	..	..	..	41.0	..	49.4*	76.2*
Ireland	51.0	47.1	44.4	40.5	35.9	..	-1.9	37.9	..
Austria	46.9	40.7	38.9	37.4	35.7	35.4	-0.8	31.8	39.7
Slovakia	78.7	57.3	..	..	..	35.4	-3.1	49.6*	70.9*
Italy	38.8	38.1	36.2	36.1	34.8	34.0	-0.6	38.3*	53.1*
Luxembourg	44.8	38.7	38.1	35.7	33.5	..	-0.9	..	..
UK	39.3	34.1	32.1	31.4	30.7	30.4	-0.5	43.7	47.4
Latvia	..	..	..	..	..	20.0	..	57.0	82.1*
Greece	32.4	29.6	28.6	26.7	..	..	-0.7	..	..
Czech Republic	78.7	46.3	..	..	27.0	25.1	-3.0	57.9*	44.5*
Portugal	31.7	25.4	24.3	..	..	..	-0.5	..	..
Germany	31.2	29.2	27.0	25.6	23.5	23.2	-0.9	31.2	39.3
Netherlands	25.5	25.7	25.1	24.6	22.5	22.1	-0.5	34.2*	28.8*
Hungary	..	63.4	..	32.8	..	19.9	-6.2	48.7*	70.3*
Estonia	90.6	31.6	19.3	20.0	16.6	..	-2.5	..	..
Lithuania	..	..	..	..	..	16.0	..	..	..
Spain	14.7	16.3	15.7	14.9	..	..	-0.4	..	31.2
Poland	..	32.9	..	24.2	14.7	..	-3.0	55.1*	76.6*
France	10.1	9.8	9.8	..	9.7	..	0.0	48.3*	66.3*
Average EU-25 **	..	32.6	..	27.9	26.4	..	-1.0	..	..
Average EU-15 **	32.8	31.0	29.5	28.5	27.3	..	-0.6	..	..
Average EU-10 **	..	42.7	..	22.5	20.4	..	-3.7	..	..
United States	16.1	14.3	13.6	13.4	12.9	12.8	-0.2	39.2	..
Japan	25.4	24.0	22.8	22.2	20.9	20.3	-0.5	27.4	..

NB: Density rates for EU-15 countries are standardised, i.e. without unemployed and self-employed, retired employees and student members, along the model in B. Ebbinghaus and J. Visser (2000), *The societies of Europe*, op.cit. In the case of the Netherlands, Sweden, the UK and the United States, figures are calculated from the labour force survey. Elsewhere they are recalculated from administrative sources. See also OECD, *Employment outlook 2004*, Chapter 3 ('Wage-setting outcomes and institutions'), Paris, July 2004. The EU-10 figures are non-standardised and follow nationally based statistics collected by the Institut des Sciences du Travail of the Université Catholique de Louvain, *Monographs on the Situation of social partners in the candidate countries*, Brussels, December 2003, a research project conducted on behalf of the Employment and Social Affairs DG of the European Commission.

If marked with an asterisk (\*), the data on membership composition (share of female members; share of members in the public sector) are calculated from sample surveys of the International Social Science Programme (ISSP) and relate to 1998. (\*\*) weighted averages. In the case of missing data, the nearest year is taken into account.

(1) Without the northern (Turkish Cypriot) part.

(2) Non-standardised rates, without pensioners (10 % of the total membership in 2003) the union density rate in 2002 decreases to 57 %.

.. No data available.

the exception of Denmark and northern Italy) in the case of small and medium-sized enterprises (SMEs). The difference is that in the transition economies the international and SME sectors tend to have a greater weight and that the shock from old style enterprise and union relations is larger.

Another main finding is that unionisation trends in the private and public sectors have further diverged. As the incomplete data of Table 1.3 show, in France, Italy, Hungary, Poland, Latvia and Slovakia, more than half, and, in Sweden, the UK and the Czech Republic, nearly half of all union members are employed in the public sec-

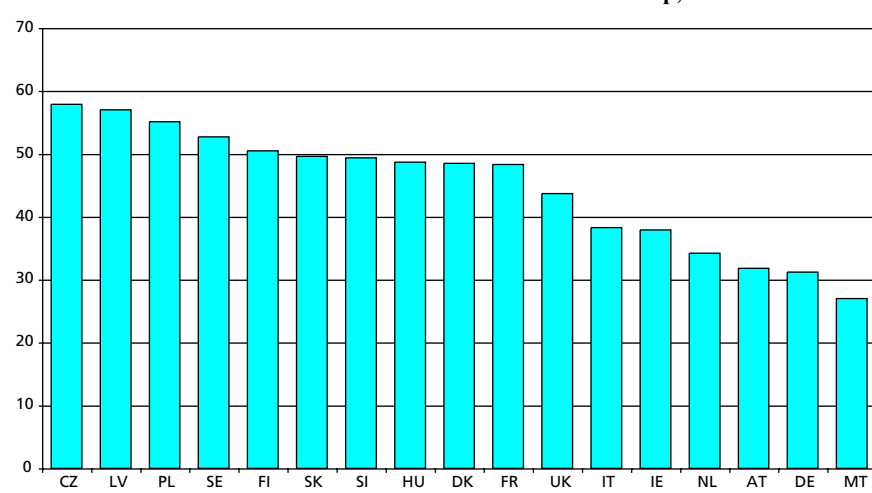
tor. When comparing such compositional figures, we should however be aware that the public sector is defined in different ways in different countries. In the CEE countries, the large share of public sector unionism, besides being a heritage of the past, reflects the difficulties of unions in recruiting members in the private sector. In



Chart 1.2: Share of union membership in the public sector, 1998



Chart 1.3: Share of female union membership, 1998



many EU-15 countries, union decline in recent times has been most severe in the private sector and, on average, union density in the public sector is now two to three times higher than in the private sector <sup>(16)</sup>.

The higher unionisation rate in public and subsidised services has contributed to the advance of women in unions, since women make up a disproportionate share of employment in public administration, local government, social services, health and education. It appears that in Sweden, Finland, Latvia, the Czech Republic and Poland women represent more than half of all union members, while in Denmark and, according to survey

data, also in Slovakia, Slovenia, Hungary and France, women make up almost half of union membership. Women in the UK, Ireland, Italy and the Netherlands, though still under-represented, have made considerable progress in unions. In a number of countries the female density rate has now equalled or risen above the male density rate (this is the case in the Nordic countries but probably also in Poland, Latvia, the Czech Republic and Slovakia), but this is clearly related to the size and the higher unionisation rate of the public sector. The lowest density rate in all countries of both men and women are found in commercial services, in particular in commerce and retailing, hotels and restaura-

rants, cleaning, personal and business services, among workers in non-standard, temporary and part-time jobs, and in small firms. Generally, these are the sectors where less protection of standards and rights is provided by the law or by collective agreements, and where unions have less access. Small firms, for instance, or temporary workers, are in many countries exempted from statutory norms regarding working time and consultation of employees (works councils).

#### 2.1.4. Trade union and employee representation in enterprises

A key feature of European industrial relations is the existence of forms of employee representation in enterprises for the purpose of information and consultation. Provisions for works councils or similar bodies for information and consultation in enterprises of staff representatives, elected by and from the firm's employees, and based on law or central agreement, exist in nearly all EU Member States. In Belgium, Luxembourg and France, management is also represented and an executive company director chairs the council. In Denmark, joint bodies for representation and consultation in enterprises are established on the basis of a central agreement, whereas in Finland, the law provides for exchange of information and cooperation negotiations between management and employees or their representatives. In Sweden, legislation confers information, consultation and codetermination rights on the (local) unions. Such statutory rights have been absent in the UK and Ireland, with the exception of specific rights of information and consultation in the case of collective dismissals and the transfer of undertakings, as provided under EU law. In the UK there has been, and still are, joint consultative councils, or similar structures in some companies, though these are entirely

(16) J. Visser (2003), 'Unions and unionism around the world', *op. cit.*

framed by voluntary agreement between management and unions. Recent central agreements in Ireland have urged management to extend partnership to the local and company level, but this has not been followed up to a large extent. This situation is set to change owing to the implementation of EU directive 2002/14/EC which establishes a general framework for informing and consulting employees in enterprises (see also Chapter 4). This directive establishes a general framework for informing and consulting employees in the EU, providing for minimum requirements regarding information and consultation of employees in decisions that affect their interests, targeting enterprises with over 50 employees or establishments with at least 20 employees. According to the directive, Member States must make appropriate provisions to deal with non-compliance on the part of either employers or employees' representatives.

Table 1.4 offers an overview of the characteristics of employee representation in firms in the EU.

The main division that matters is between **single** and **dual channel** systems.

- In **single channel systems**, currently in Finland, Sweden, Denmark, Poland, Lithuania, Cyprus and Malta, the rights or workplace representation for the purpose of information, consultation and in some cases co-determination are expressed through workplace unions. These rights can be established by law or by (central) agreement with employers, or both. The advantage of single channel systems is their simplicity, as union and council functions are merged. The disadvantages are that non-union members, and employees in firms in which unions are not recognised, may be excluded from representation. This problem is relatively small in countries such as Sweden, Finland and Denmark, and also in Malta and Cyprus, where unionisation rates are high, but it is a problem where the basis of union membership is small, as in Poland and Lithuania. Ireland and the UK present 'single channel' cases, but on a voluntary and fairly limited basis.
- In **mixed or extended channel systems**, employee rights are in principle expressed through the union, but non-union members are included, directly (Italy) or through a supplementary channel in non-union enterprises (Czech Republic, Latvia, Estonia). Thus, Italian works councils, based on agreements with employers and the statutory rights bestowed on all employees (in firms above a certain size) are a mixed case in so far as no distinction is made between union and non-union members, and the unions voluntarily extend union rights and benefits to non-union members<sup>(17)</sup>. In the Czech Republic, Latvia and Estonia, the law provides for mechanisms of employee representation in non-union firms, additional to the rights bestowed on unions in enterprises where they are present. Under the 2001 law, Czech employees have the right to establish a works council in non-union firms. The council must however be dissolved if a workplace union is established. In anticipation of EU legislation, Lithuania will move towards a mixed or even dual model. In Poland and Estonia, government attempts to establish works councils, independent of the unions, have stalled because of the opposition of (some of) the unions, partly in alliance with employers.
- In **dual channel systems** the law provides for a separate channel of employee representation in firms, which is additional to the trade union(s). This system is found in Germany, Austria, France, Belgium, Luxembourg, the Netherlands, and has also been adopted, following the return to democracy, by Spain, and with less success, in Portugal and Greece, and during the transition in Hungary, Poland (public enterprises only), Slovakia and Slovenia (where the works council system was embedded in the 'Yugoslav' model of worker self-determination). In this model the rights to representation, information and consultation are conferred on individual workers (in firms above a certain threshold), irrespective of the trade unions. Consequently, there may be competition between the works council and the unions, though in reality lay union officials and representatives tend to play a leading role in the councils and councils may be a recruitment ground for trade unions. Works councils tend to be highly unionised and in council elections the trade union candidates tend to attract votes from members and non-members alike. Another encouraging sign is that voter turnout in workplace election tends to be high, between 65 and 85%<sup>(18)</sup>.

(17) I. Regalia (1995), 'Italy: the costs and benefits of informality', in Joel Rogers and Wolfgang Streeck (eds.), *Works councils. Consultation, representation and cooperation in industrial relations*, Chicago, University of Chicago Press, pp. 217–42.

(18) Data presented in L. Calmfors, A. Booth, M. Burda, D. Checchi, R. Naylor and J. Visser (2001), 'The future of collective bargaining in Europe', in T. Boeri, A. Brugiavini and L. Calmfors (eds.), *The role of the unions in the 21st century*, Oxford, Oxford University Press, 1–155, Table 4.1.

TABLE 1.4: WORKS COUNCILS, EMPLOYEE REPRESENTATION AND EMPLOYEE RIGHTS IN (LARGE) FIRMS

	Basis	Single	Mixed	Dual	Union competition	Separate union workplace representation	Council bargains wages?	Information	Consultation	Codetermination
Sweden	C&L	Y			Some	N.A.	N	Y	Y	Y
Denmark	C&L		Y		Some	N.A.	N	Y	Y	Y
Finland	L&C		Y		Some	N.A.	N	Y	Y	Y
Poland	L	Y			Very strong	N.A.	N	Y	Y	N
Lithuania	L	Y			Considerable	N.A.	N	Y	Y	N
Cyprus	A	Y			Very strong	N.A.	Possible	Y	Y	N
Malta	A	Y			Very strong	N.A.	N	Y	Y	N
Ireland	A	Some			-	N.A.	N	-	-	-
UK	A	Some	-	-	-	N.A.	N	-	-	-
Italy	L&C		Y		Very strong	N.A.	Frequently	Y	Y	N
Czech Rep.	L		Y		Marginal	N.A.	N	Y	Y	N
Estonia	L		Y		Some	N.A.	N	Y	Y	N
Latvia	L		Y		No	N.A.	N	Y	Y	N
Germany	L			Y	Marginal	Sometimes	N	Y	Y	Y
Netherlands	L			Y	Considerable	Rarely	Possible	Y	Y	Y
Austria	L			Y	No	Sometimes	N	Y	Y	Y
Slovenia	L			Y	Considerable	Sometimes	N	Y	Y	Y
Hungary	L			Y	Very strong	Frequently	N	Y	Y	Y
Slovakia	L			Y	Marginal	Sometimes	Possible	Y	Y	Y
Spain	L			Y	Very strong	Normally	Y	Y	Y	N
France	L			Y	Very strong	Frequently	N	Y	Y	N
Belgium	L&C			Y	Considerable	Normally	N	Y	Y	N
Luxembourg	L			Y	Considerable	Normally	N	Y	Y	N
Greece	L			Y	?	?	?	Y	Y	N
Portugal	L			Y	Very strong	Frequently	N	Y	Y	N

NB: Basis for employee representation rights: central agreement = C; agreement (sector/company) = A; law = L.

Sources: J. Rogers and W. Streeck (eds.), *Works councils*, op. cit.; J. Visser (1992), 'La representación de los trabajadores en los centros de trabajo en Europa occidental: Estructura, escala, alcance y estrategia', in *Sociología del Trabajo*, Vol. 14; A. Toth and Y. Ghellab, 'The challenge of representation at the workplace in EU accession countries: Does the creation of works councils offer a solution alongside trade unions?', Geneva, ILO, report prepared for the *Tripartite Conference: The right to information and consultation in practice in an enlarged European Union*, Warsaw, 12–13 December 2003; G. Gradev and M. Stajonevic (2003), 'Workers' representation at company level in CEE countries', in *Transfer*, Vol. 9, and national overviews in *EIRO*, Thematic feature – works councils and other workplace employee representation and participation structures.

A general problem is implementation of agreements and legislation on the ground. In general, works councils are a phenomenon of large firms. Even where the law provides for works council structures and employee representation in SMEs and firms with less than 100 employees, usually only a minority of these firms establish councils, or they make do with informal consultation mechanisms. In Germany, for example, the law provides statutory rights in firms with five or more employees. The establishment of a works council is not mandatory and according to survey figures from 2002, works councils cover just 11 % of all firms and 50 % of all employees within the law's

scope. Coverage is related to the size and the age of the firm, with smaller and newer firms much less likely to have established a works council. (They are also less likely to join an employers' organisation or have a collective agreement. Around one third of German employees is neither covered by an agreement nor by a council.) In the Netherlands, councils are mandatory in all firms of 50 or more employees. There are councils in about half of all firms between 50 and 99 employees, whereas implementation approaches 100 % in larger firms. In France, the Ministry of Labour estimates that of small firms (10–19 employees) less than 20 % have a form of workplace representa-

tion for employees. This percentage increases to 56 % for firms with 20–49 employees and to 90 % in firms with more than 50 employees. In Greece, it appears that less than 5 % of the firms covered by the law have actually established a works council. These figures strongly suggest that where union members are absent (in small firms) there will also be less activity and pressure to set up a works council and implement whatever firms are required to do by law or by agreement.

Besides the lack of adequate information and monitoring, non-implementation is still a problem in EU-10. According to a study of the European



Foundation for the Improvement of Living and Working Conditions, there is a general lack of institutionalisation and councils are virtually non-existent in any of the new Member States (including Cyprus and Malta), with the partial exception of Slovenia, Poland (public sector), and perhaps Slovakia, and only in Hungary and Slovenia are councils comparable with the fully-fledged types in EU-15 <sup>(19)</sup>. There seem to be virtually no works councils in the Czech Republic. The law establishes a right, not an obligation, that works councils be established in enterprises where no unions are present; however, the council must be disbanded if a trade union is established. In Slovakia the law was changed in 2003 making works councils a secondary channel for information and consultation even in enterprises where unions are present. Previous legislation had provided for employee representation only in non-unionised workplaces, but few works councils had been established. As noted by the report, *Industrial relations in Europe 2002*, on the state of industrial relations in the accession and candidate countries, there is a clear lack of workers' representation especially in companies without trade unions, the number of which is growing rapidly. This is leading to a situation in which many of the new Member States, and some of the old, face the impossibility of ensuring workers' information and consultation, despite the fact that it is enshrined in their national legislation and represents an important element of the Community *acquis* <sup>(20)</sup>.

Where they exist, works councils or similar (union-based) structures of employee representation exercise consultation and information rights, especially with regard to social and personnel policies. Sometimes, employees or their representatives

are represented on the company board. This relationship between employee representation and corporate governance is further explored in Chapter 5 of the report. In addition to consultation with management, many works councils have a monitoring task with regard to collective agreements or statutory rights and legal pre-scripts, for instance concerning equal opportunity, or health and safety. In most EU-15 and in three of the EU-10 Member States, works councils or union-based representation bodies in enterprises have co-determination rights, mostly with regard to social and human resource management policies, sometimes extending to matters of economic policy, mergers, takeovers, work organisation and investment.

Usually, when councils have co-determination rights, they must be consulted over the implementation of pay systems and working-time schedules. In addition, in some Member States, the law permits elected employees' representative bodies to negotiate so-called plant agreements regulating issues not covered by collective agreement with management. This is a rather sensitive issue from the trade unions' point of view. Unions tend to consider such legislative entitlements as infringements of their bargaining rights. Trade unions have nearly always, by law or by agreement, primacy in negotiating and signing collective agreements. Yet works councils, even when established as a second channel, often play a supplementary role. This role has become more important in recent times, especially with increased attention to negotiating change and variation in working time, performance-related pay systems, secondary benefits, and the application of 'opening' or 'hardship clauses' which allow firms to suspend parts of (sectoral) collective agreements in case they

face financial and business difficulties. These clauses have become more important in recent years, as will be seen below, but the application of such clauses requires the exchange of credible information and representative structures for consultation at the level of firms. Where such practices and structures are missing, or not trusted by employees, decentralisation of bargaining, with a view to creating more flexibility in response to the challenges facing firms, is often stalled.

In single channel systems, the division of bargaining tasks and responsibilities between the 'external' and 'internal' union is a matter of internal union decision and discipline. In dual channel systems, it involves the law. Usually, councils are legally barred from collective bargaining and calling a strike. Only in Spain, for historical reasons connected with the transition to democracy in the 1970s, do works councils have a recognised role in collective bargaining. But also in Germany, in spite of legal provisions, many works councils engage in collective bargaining over working hours and even pay, with or without the prior consent and knowledge of the union. In Hungary, the law that had given councils the right to negotiate an agreement if no union is present, was repealed in 2002. In the Netherlands and in Austria, councils may negotiate wages and working hours, in firms where no union is present or when the industry agreement permits such negotiations. Company bargaining in the Netherlands usually takes place with trade unions, since management prefers the professionalism and legal responsibility of 'external' and 'independent' unions. But in some non-union sectors, for instance in information technology and in business services, works councils step in. However,

(19) European Foundation (2004), *Social dialogue and conflict resolution in the acceding countries*, Luxembourg, Office for Official Publications of the European Communities, p. 11.

(20) European Commission, *Industrial relations in Europe 2002*, op. cit.

under Dutch law, while collective agreements are legally binding, it is not the case when the agreement is signed by the works council. The presumption is that councils are not independent and that employees have no choice. They can voluntarily join and leave the union, and union negotiators are not on the firm's payroll. These conditions do not apply to works councils.

Table 1.4 also presents information regarding the presence of union workplace organisations in enterprises. In single channel systems, union workplace organisation is given for unionised firms. In dual channel systems, union workplace organisation may be absent, for instance in the Netherlands. In France, legislation introduced in 1969 provides for separate union representation in enterprises. In Belgium and Luxembourg this is guaranteed by central agreement. In Germany and elsewhere this may be subject to sectoral agreements and hence it may vary considerably across the economy (usually stronger in manufacturing and public services, and absent in commercial services). The effectiveness of workplace representation and also of works councils will be influenced by inter-union competition. Where competition is strong, the works council has a stronger *raison d'être*, since it provides for unitary representation. Council elections have the important secondary function of providing some measure of the popularity and representation claims of rival unions in, for instance, Belgium, Luxembourg, France, Spain and Italy, in the latter case also against the excessive representation claims of the independent unions.

### 2.1.5. Europeanisation of employee representation

The role of the EU's legislative *acquis* and its body of rules concerning employee and union rights, and the directives concerning consultation and information in multinational and national companies and establishments have already been mentioned. These are examples not only of vertical intervention and legal harmonisation, but also occasions for increased cross-border contacts and mutual learning in trade unions and companies. In addition, the particular form of legal intervention, with room for locally negotiated solutions that satisfy certain conditions, also foster a climate and experience of social dialogue and autonomous contractual arrangements (see also Chapters 4 and 5).

The European Works Councils (EWCs) Directive 94/45/EC applies to undertakings or groups with at least 1 000 employees and at least 150 employees in each of two Member States. It allows for the establishment of a EWC, representative of employees in the Member States where the group has operations, to be informed and consulted on the progress of the business and any significant changes envisaged. While not really comparable with national works councils, and generally much weaker, the importance of EWCs lies in the fact that they involve over 10 000 employee representatives directly in intercultural exchanges and practices. In a recent opinion <sup>(21)</sup>, the European Economic and Social Committee (EESC) observes that various studies point to internal growth of EWCs and

recognition of their positive role played in promoting social dialogue within companies. As many of the original pre-1996 EWC agreements have been renegotiated, their content has become richer and provides more and better facilities for transnational exchange. The developing scope of these agreements would also seem evident from the extension of the range of issues being dealt with by EWCs. Issues with a strong European dimension such as health and safety, equal opportunities policy, training and mobility and environmental policy are often included. This process of dynamic development within EWCs has probably reached its fullest expression in consultation over company restructuring in the case of relocations, mergers and closures. This issue is returned to in Chapter 5.

## 2.2. Employers and their organisations

### 2.2.1. Affiliation, organisation and reform patterns in the Member States

Cross-national differences in the organisation and roles of employers' organisations significantly affect national industrial relations practices <sup>(22)</sup>. Usually, multi-employer bargaining can be institutionalised only when employers' organisations exist and engage in bargaining. For similar reasons, statutory provisions for the extension of collective agreements to non-organised firms can be used only when the signatory party on behalf of the employer side is an employers' organisation. In other words, the prevalence of multi- or single-employer bargaining as well as the coverage

(21) *Opinion of the European Economic and Social Committee on the practical application of the European Works Councils Directive 94/45/EC*, 24 September 2003, EESC 1164/2003.

(22) *This section has benefited greatly from the research by F. Traxler and his associates, as presented in the report on Employers associations in Europe, covering EU-15, Hungary, Slovenia and Norway, published by the European Foundation, and from the study by F. Traxler, S. Blaschke and B. Kittel (2001), National labour relations in internationalised markets. A comparative study of institutions, change and performance, Oxford University Press. For this section we have also used the database established by the Institut des Sciences du Travail of the Université Catholique de Louvain, Monographs on the situation of social partners in the candidate countries, Brussels, December 2003, a research project conducted on behalf of the Employment and Social Affairs DG of the European Commission.*

**TABLE 1.5: EUROPE'S BUSINESS AND EMPLOYERS' ASSOCIATIONS  
AFFILIATION, ORGANISATION RATES AND PARTICIPATION IN SOCIAL DIALOGUE**

	(1) No	Member UNICE	Affiliates (2) No	Organisation rate (3) %	Participation in social dialogue		UEAPME	CEEP member?
					Bipartite	Tripartite		
Austria	2	IV	9	100 (=WKÖ) *	Y	Y	WKÖ*	Y
Slovenia	2	(ZDS)	26	100 (=GZS) *	Y	Y	(OZS)	N
Netherlands	1	VNO-NCW	149	85	Y	Y	MKB	Y <sup>(4)</sup>
Luxembourg	1	FEDIL	24	80	N	Y	CDM, FDA	Y <sup>(4)</sup>
France	1	MEDEF	87	74	N	Y	APCM, UPA, CGPME	Y
Belgium	1	VBO-FEB	33	72	Y	Y	UNIZO, UCM, CC, PME-SDI, KAN	Y <sup>(4)</sup>
Spain	1	CEOE	148	72	Y	Y	CEPYME, PIME, PIMEC SEFES	Y
Greece	1	—	44	70	Y	Y	GSEVEE	Y
Slovakia	1	AZZR SR	37	65	N	Y	(SZZ)	N
Germany	2	BDA, BDI	54	63	N	Y	ZDH-BFD, BDS-DgeV	Y
Cyprus	4	OEB	52	60	Y	Y	(CCCI)	N
Finland	2	TT, PT	29	60	Y	Y	SY-FEE	Y
Ireland	1	IBEC	53	60	Y	Y	ISME, SFA	Y
Portugal	2	AIP, CIP	79,42	58	N	Y	AIP	Y
Sweden	1	SN	25	55	N	Y	FR, FPB	Y
Denmark	1	DA	13	52	Y	Y	Håndværksrådet	Y
Italy	1	Confindustria	110	51	N	Y	Confartigianato, CONFAPI, CAN, Confesercenti, CASA	Y
UK	1	CBI	150	40	N	(Y)	UIC	Y
Czech Rep.	2	SP CR	7	35	N	Y	(AMSP-CR), (SPCR), (EXXR)	Y
Estonia	1	ETTK	..	35	Y	Y	(EVEA)	N
Latvia	1	(LDDK)	19	30	Y	Y	(LAK)	N
Hungary	4	(CEHIC)	43	..	N	Y	(IPOSZ)	Y
Poland	2	KPP, (PKPP)	..	..	Y	Y	(ZRP)	N
Lithuania	4	(LPK)	..	..	Y	Y	(LVDK)	N
Malta	2	FOI	..	..	Y	Y	(IPSE)	N

NB: (1) General associations, without organisations specialising in representing agriculture, horticulture and fishery; cooperatives; SMEs, financial enterprises, and nationalised firms or local government; public sector; organisations representing public firms or special sectors, such as finance and banking. (2) Only sectoral affiliates or companies, without regional affiliates. (3) Expressed as a percentage of wage and salaried employees working in organised firms. Members with observer status between brackets. (4) Benelux. \* Compulsory membership (in Austria in WKÖ, not in IV; in Slovenia in GSD, not in ZDS. Between brackets: members with observer status.

Sources: Reports and websites of UNICE, CEEP and UEAPME; supplemented with information from F. Traxler, S. Blaschke and B. Kittel (2001), *National labour relations in internationalised markets*, op.cit., and the Institut des Sciences du Travail of the Université Catholique de Louvain, *Monographs on the situation of social partners in the candidate countries*, Brussels, December 2003, a research project conducted on behalf of the Employment and Social Affairs DG of the European Commission.

of agreements is strongly influenced by the existence and activities of employers' organisations.

The organisation of employers varies considerably across Member States. At the cross-industry level, in countries like Denmark, Sweden, Ireland, the UK, the Netherlands, Belgium, Luxembourg, France, Switzerland, Italy and Spain, as well as in Cyprus, the three Baltic States and Slovakia, there is essentially a single umbrella organisation, representing employers' and

trade interests in the private sector. Alongside these organisations we often find specialist organisations representing the small and medium-sized firm sector, in agriculture, among cooperatives and sometimes in the banking sector. Often, the State sector and public interest enterprises are excluded from mainstream business and employers' associations. They may organise separately.

In Finland, Portugal, Greece and Malta the main federation organises indus-

trial businesses and employers only and separate organisations exist in (commercial) services. In Finland, there are now moves towards a merger, to be completed in 2005. Slovenia, like Austria, is unusual in that it has a chamber of commerce and industry, of which membership is obligatory. Alongside these, separate chambers of crafts and small enterprises, also with obligatory membership, exist. It now seems that the compulsory-membership chambers in Slovenia will cease representing

employers' interests in collective bargaining, a role which has been much criticised but had ensured full bargaining coverage in the past. Germany is the only remaining case with a division — at the national level — between the representation of employers and trade interests (in some regions, for instance Bavaria, the two structures have been integrated), although a somewhat similar situation exists in Denmark and the Czech Republic at the industry level. As part of a larger trend of reintegrating industrial relations, human resource management and social policy in general business practice, this once common division — especially in northern Europe — has now disappeared in Sweden (2000) and Switzerland (2002), following the early examples of the British CBI in 1965 and the Dutch in 1968, later followed by the Irish, the Finnish, the Norwegian and the Danish employers. With a less institutionalised and autonomous sphere of industrial relations, the Belgian, French, Italian, Greek, Spanish and Portuguese organisations of *le Patronat* had never separated these functions. Finally, in a number of countries there are two or more major federations, on the basis of a division between industry and services, or — more rarely — reflecting political and regional divisions.

Rationalisation processes have taken place also at the levels below the peak associations. This includes mergers of trade and employers' organisations in the same sector, as well as mergers of employers' associations representing neighbouring sectors. Aside from the Nordic countries, a notable number of mergers at these lower levels are reported in Italy, the Netherlands and the UK. One important reason for organisational restructuring is that employers' associations have been under pressure from their member firms to economise on resources. In

response to these pressures, employers' associations in countries such as Austria, Denmark, Finland, Germany, Sweden, the UK (and Switzerland) have launched major reforms aimed at cutting budgets, membership dues and/or staff.

On the other hand, during the 1990s new federations were formed or split off from existing ones. For instance, in Ireland, associations representing the small firm sector left the main confederation in order to form a separate representative body for SMEs. New employers' organisations were created in the ICT sector in Italy and Sweden, and for the temporary work agencies in Germany and Luxembourg. Other Member States with many recent new organisations are Spain and Portugal <sup>(23)</sup>. In Portugal, four new peak associations have been set up, for SMEs in 1996; tourism in 1996; agriculture in 1995; and fishing in 2000. In general, there is quite some overlap in domains of representation, and intensive competition, between employers' associations representing large firms and those representing SMEs.

The most thoroughgoing changes, however, took place in the former communist countries during the transition to a market economy. Initially, so-called employers' organisations mainly represented State-owned enterprises, but privatisation has since resulted in a proliferation of employer and industry organisations in some countries, especially for SMEs. There are now three organisations in Poland and six or more in Hungary. Many organisations have essentially a business/trade role, focusing on economic issues and lobbying, rather than on employer issues and collective bargaining, though many participate in various national-level tripartite forums. The tripartite engagements may involve quasi-bargaining activities

and have influenced public policies regarding labour and employment law, and the direction of social and economic policies in the process of transition and the accession to the EU. However, the lack of strong and representative employers' organisations at national and sectoral level is a frequently noted feature of many CEE countries.

Regular national cross-industry bargaining with trade unions over substantive pay and conditions issues is part of the remit of central employers' bodies in Belgium, Finland, Greece, Ireland and Portugal (and outside the EU in Norway). In Luxembourg such activities are channelled through the tripartite commission deciding on the application of price indexation to (minimum) wages, benefits and pensions. Cross-industry bargaining over specific issues or procedural matters is part of the role of employers' confederations in Denmark, France, the Netherlands, Italy, Spain and, in recent years again, in Sweden <sup>(24)</sup>. While falling short of bargaining, employers' confederations entertain contacts with trade unions in various private and public forums in Austria and Germany. It is probably in the UK that the main employers' body has the least 'bargaining-like' role in any area.

In the new Member States, business and employers' organisations do not engage in bipartite national cross-industry bargaining with trade unions over pay and conditions — the main exceptions being Slovenia and Latvia (on minimum wages). Instead, there is a high degree of tripartism at the national level, with employers' bodies involved in negotiation and/or consultation processes with trade unions and governments. This may result in regular tripartite agreements on minimum wages, as in Hungary, or on wider issues, as in Slovenia. Less regular

(23) M. Behrens (2004), 'New forms of employers' collective interest representation', *Industrielle Beziehungen*, Vol. 11.

(24) See also A. Vatta (2001), *Gli imprenditori e la concertazione in Europa. Un'analisi comparata*, Rome, Ed. Lavoro.



or issue-specific tripartite national agreements have been concluded in Cyprus, Estonia, Latvia, Lithuania, Malta and Poland. Slovenia has tripartite national pay agreements, as well as bipartite national bargaining.

At the industry level, sectoral employers' organisations with a collective bargaining role are key components of the industrial relations systems of most EU-15 countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain and Sweden. Only in Ireland and in the UK, and in the special (small State) case of Luxembourg, are there hardly any sectoral employers' associations with a bargaining role. In these countries, collective bargaining occurs essentially at company level, though overlaid with cross-industry bargaining in Ireland (and occasionally also in Luxembourg with regard to indexation of wages and benefits to price developments). In the new Member States, sectoral bargaining has hardly developed, with the notable exceptions of Slovenia, Cyprus and, to a lesser extent, Slovakia. This is due to the fact that in most of these countries sectoral employers' organisations are either weak and lack the necessary resources to participate, or that they are denied the authority to conclude sectoral agreements on behalf of their members, as is often the case for instance in Hungary and in Poland.

### *2.2.2. Affiliation, organisation and reform patterns at the European level*

General private business interests were coordinated soon after the creation of the common market by the Union des Industries de la Communauté Européenne (UNICE). Reflecting a shift in focus with the advancement of the dialogue with trade unions, in 1987 the organisation accepted the role of 'Industrial and Employers' Association'. By that time,

most national industrial and employers' associations had already merged. Initially, UNICE restricted full membership to common market countries, but later also admitted member organisations from non-Member States, for instance, Norway, Switzerland and Turkey. In recent years, UNICE has conferred observer status on member associations from central and eastern Europe and will accept them as members in the future.

Today, the representation of employers' interests at the EU level is relatively comprehensive and united. UNICE represents almost all the main national cross-industry confederations of private sector employers and business in the EU-15 countries. In addition, it has member organisations in 7 of the 10 new Member States (Cyprus, the Czech Republic, Estonia, Hungary, Malta, Poland and Slovakia) and observer members in Latvia, Lithuania, Poland and Slovenia. Currently the organisation has a total of 35 national member organisations and four observers. UNICE acts as both an employers' organisation, engaging in social dialogue and, in special circumstances, negotiations with the ETUC, and as a trade or industry association, promoting its members' interests in a range of areas and seeking to influence EU decision-making on a variety of issues.

A separate European-level body representing SMEs, the European Association of Craft and Small and Medium-sized Enterprises (UEAPME), also exists. Since 1998, UEAPME and UNICE have cooperated closely in EU-level social dialogue and negotiations with the trade unions. Furthermore, the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP, Centre Européen des Entreprises Publique), which was founded in 1961, represents enterprises and organisations with public participation or carrying out activities of general economic

interest, irrespective of their legal or ownership status.

UEAPME has 77 national member organisations in all EU-15 Member States. The organisation only has members with observer status in the 10 new Member States. In addition it includes some European-level branch organisations. CEEP has both national federations and firms as its members. The organisation has not yet much extended beyond EU-15. Only in Hungary (and in Romania) has it admitted a full member.

In recent years, in addition to affiliation to their European peak associations, national business and employers' associations have also chosen to establish their own offices in Brussels for the purpose of representation, information exchange and lobbying. A similar development has occurred among national peak federations of the trade unions. In some cases, there is regional cooperation, for instance, in the group of Nordic countries. Another interesting development is found among Hungarian business and employers' associations. Notwithstanding their divisions, they decided in 1999 to create a joint representation in Europe in the run-up to EU membership.

At the European sectoral level, there are hundreds of organisations representing business interests. However, only a minority of these are employers' organisations, in the sense that they represent their members on employment issues or have relations with the trade unions. The main exceptions are the organisations in those sectors where a sectoral social dialogue has developed. There are currently 30 sectoral dialogue committees, in most of which joint texts (opinions, declarations, codes of conduct, etc.) on a range of issues (e.g. training, employment, fundamental rights or health and safety) have been reached. The importance and development of the EU sectoral social

dialogue is discussed in Chapter 3. The sectoral employers' organisations involved in the dialogue generally represent all EU-15 Member States, though their membership in the new Member States varies considerably.

Unlike their national counterparts and unlike the European industry federation, the sectoral employers' organisations at the European level operate autonomously from their cross-industry peak organisations. UNICE has not integrated the sectoral organisations and remains a federation of national (cross-industry) peak associations. However, UNICE does organise a so-called European employer network (EEN). This network for information exchange of some 150 sectoral employers' organisations (Fédérations européennes de l'industrie, or FEBIs) was set up in 1989 and works as a joint platform for information, support and coordination.

### 2.2.3. Membership developments

Until the 1990s, the *raison d'être* of employers' federations was mainly linked to the conclusion and administration of multi-employer collective bargaining. However, traditional multi-employer bargaining, which defined uniform working conditions, wages and working hours for entire sectors, has come under pressure (see below). Cross-national mergers and takeovers have produced more 'disembedded firms' whose loyalty with national associations may be lower. All mergers reduce membership and most exacerbate the differences between large and small firms, and complicate the association's governance if it has both small and large firms among its members. This may produce tensions in collective bargaining, but also because small firms depend on collective services provided by the association that large firms can produce more easily on their own if they need them. This is of course not new, but the differences and tensions have grown larger. Case studies

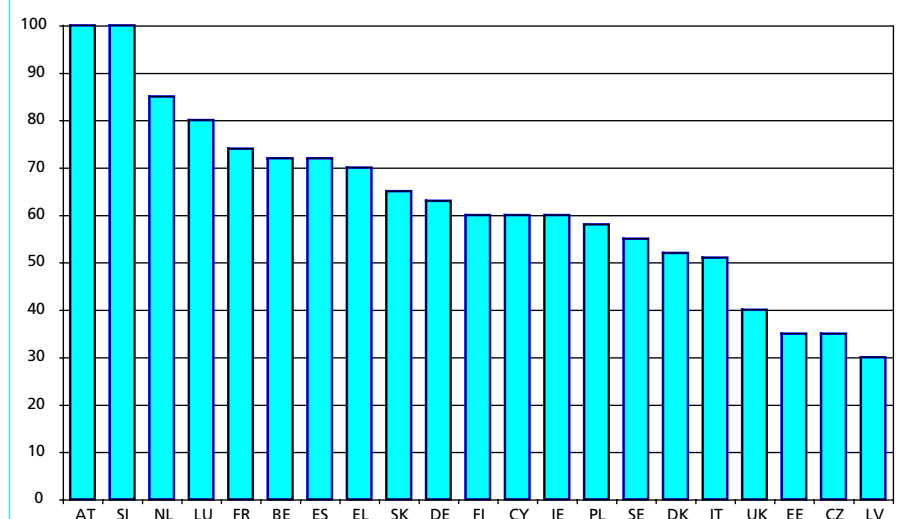
from various countries and sectors demonstrate a trend towards cost-cutting, lower staff-member ratios, growing cost-consciousness among member firms, a shift to services for payment (sometimes organised through affiliated commercial ventures) and a renewed emphasis on lobbying instead of mere representation.

The organisation rate or 'density' of employers' organisations is hard to assess, due to frequent lack of data and difficulties of definition, so the figures available need to be assessed with caution. In only a minority of countries is the membership of employers' organisations documented in official statistics. Consequently, if available at all, figures on absolute or relative membership are mostly based on self-reported data from the organisations themselves. Unlike trade union membership, there are no official statistics, recorded by national statistical offices, and there are no membership surveys, based on labour force sample surveys (as in the case of union membership). The European Commission does, however, carry out representativeness studies which provide another important source of data. Chart 1.4 is therefore based on the Commission's data as well as the research of Franz Traxler and his associates, with additional information from EIRO.

Similar to union density, measuring the proportion of all employees joining a union, employer density or the employer organisation rate can be defined as the proportion of all employers (firms) joining an employers' association. However, it would seem appropriate to take account of differences in firm size, since it would matter more in terms of influence and impact on unions, collective bargaining and on employees, when large, rather than small firms join. It is therefore common practice to measure the density or organisation rate of employers as the proportion of the national workforce employed by the member firms of employers' associations.

Not counting situations where the membership of employers' organisations is obligatory by law, the average EU employer rate of organisation is 60 % (no data available for Poland, Hungary, Lithuania and Malta). In other words, three out of five employees work in firms which join an employers' organisation. This average hides huge variations across Member States. While in Austria and Slovenia, due to compulsory membership in the chambers, the organisation rate of employers is (near) complete, high organisation rates of 70 % and more are also obtained in the Netherlands, Luxembourg, Belgium, France, Spain and Greece. Having slipped in recent times, organisation

Chart 1.4: The organisation rate of employers, around 2000



rates in Germany are still above 60 %. In the range between 50 and 60 % we find Cyprus, Ireland, Finland, Sweden, Italy and Denmark. With a slow but continuous decline, the organisation rate of British employers is now estimated to be 40 %. Still lower rates are reported for Estonia, Latvia and the Czech Republic, while there is no data available for Poland, Hungary, Lithuania and Malta. It should be stressed once more that these figures are crude estimates — measurement has not achieved the degree of precision that exists for trade unions, especially since nationwide (labour force or enterprise) surveys cannot be used and employers' associations themselves are reluctant to publish this data.

But even with these caveats it can be concluded that, with some exceptions, employers' associations are a well-established phenomenon in EU-15 and that the organisation rate of employers is fairly high and stable. In all but three countries for which we have data, the organisation rate of employers is higher than the union density rate, often by a wide margin. Only in Sweden, Finland and Denmark, does union density exceed the rate of organisation of employers. We saw earlier that these were the countries with the highest unionisation levels, still little effected by the decline that hit unions elsewhere in Europe and in the world.

One of the problems of employers' organisations in the CEE countries is that like trade unions, they find it hard to gain a foothold in the newly emerging private sector, either because these firms are exceedingly small and rapidly changing, or employers, especially in the international large firm sector, are reluctant to join or form associations for the purpose of collective services and representation. Further constraints are that these organisations often lack a mandate from their members and that their financial position is often too weak to

enable them to provide adequate services to member firms. Frequently, this creates obstacles to social dialogue, concertation and collective bargaining, our next subject.

### ■ 3. Collective bargaining, social dialogue and concertation

ILO Convention No 98 of 1949 defines collective bargaining as 'voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions by collective agreements'. Collective bargaining is thus a rule-making process based on joint decisions between independent organisations. When successful, it results in agreements which specify the collective rules and conditions applying to employment and employment relations in firms, i.e. conditions of work and rules governing the relations between employees and managers. Additionally, agreements usually also define the relationship between the negotiating organisations, for instance with regard to the renewal of agreements, dispute procedures, peace obligations, recognition and facilities. All this has no counterpart in individual bargaining between workers and managers.

Another important distinction is between collective bargaining and consultation. Consultation is an advisory process in which one party seeks the advice of the other, but retains the power of unilateral decision-making. Like collective bargaining it may take place in different contexts and at different levels, within firms, sectors or regions, and in local, national and international contexts of law-making and policy implementation.

Social dialogue, finally, is the broader process and may encompass both

collective bargaining and consultation. It can be organised as an autonomous, bipartite and self-governed process between workers and managers, and their representative organisations. But it can also take place in a tripartite setting with the participation of officials or agencies representing the government or the public realm. Information exchange through social dialogue can be combined with and prepare the ground for joint problem-solving, collective bargaining or unilateral decision-making. When successful, social dialogue is a process in which actors inform each other of their intentions and capacities, elaborate and exchange information provided to them, and clarify and explain their assumptions and expectations.

#### 3.1. Collective bargaining

Voluntary collective bargaining, as defined under ILO Convention No 98, plays a key role in industrial relations in all EU-15 Member States and is a defining element in social partnership. Article 4 of the ILO Convention calls upon States to take measures appropriate to national conditions 'where necessary, to encourage and promote the full development and machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements'. However, even in EU-15 there are large differences in the conditions and influence of collective bargaining, the level(s) at which bargaining takes place, the coverage of employees, its scope or content, and the nature of the very bargaining process, including the expression and regulation of conflict. Other differences refer to the degree of differentiation across sectors and firms, the coverage of the public sector or civil servants, and — not least — the role of the State and the law in defining organisational and bargaining rights, the implementation

and extension of negotiated agreement, and the definition of lawful strikes. This bewildering variety has remained outside the remit of the EU, but must be understood if unions or employers want to coordinate and cooperate across borders. In this first section we concentrate on bargaining coverage and the role of public policy.

### 3.1.1. Bargaining coverage

The coverage rate of collective bargaining is an indicator of the extent to which the terms of employment in an economy are regulated by collective agreement. Operationally, we define the coverage rate as the number of employees covered by a collective agreement as a proportion of all wage- and salary-earners in employment. This definition renders the measurement of bargaining coverage comparable with union and employer density. While union density is one of the indicators of potential bargaining strength and solidarity among employees, bargaining coverage measures the real rather than potential extent to which employees are subject to union-negotiated terms and conditions of employment. It may thus also be seen as a complementary indicator of union presence <sup>(25)</sup>.

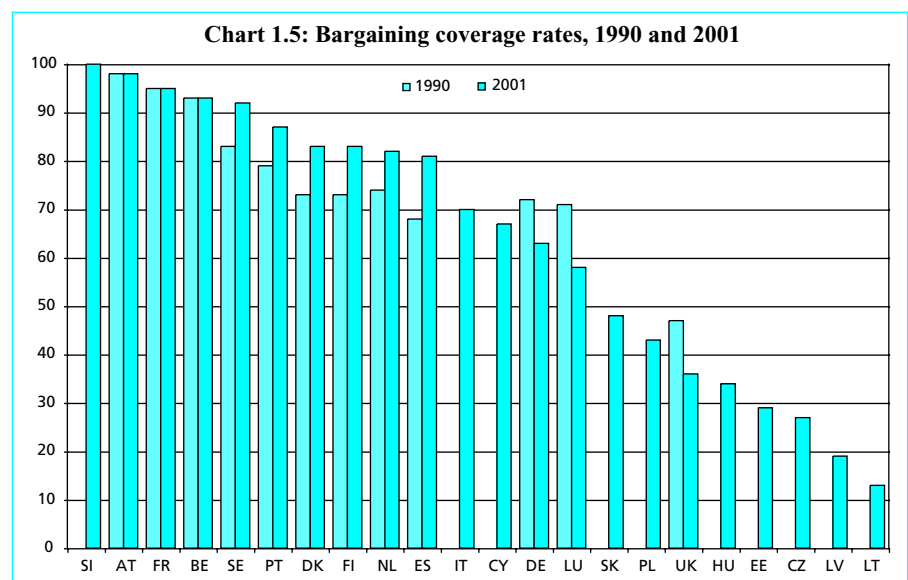
There are a number of reasons why employees may not be covered, even if collective bargaining takes place <sup>(26)</sup>. Firstly, unions and employers may be too weak to include all employees belonging to their domain of action. Secondly, the bargaining parties may explicitly exclude certain employee groups. In the past, they often excluded (part-time) employees working less than a certain number of hours per week, thereby excluding large numbers of women and young people. They may also decide to exclude managers or employees above a certain pay threshold. In such cases, the

employment terms are regulated by individual contract or by none at all. Thirdly, certain categories of employees may be legally excluded from the right to collective bargaining. This sometimes applies in particular to public sector employees or particular groups such as the police and the armed forces, whose employment terms are regulated unilaterally by the State.

As in the case of calculating union density and employer organisation rates, there are many data and measurement problems. Comparing across countries it seems useful to take account of the fact that some groups of employees may be excluded from collective bargaining (and from the right to strike). In that case it is necessary to calculate an adjusted coverage rate, i.e. the number of employees covered by a collective agreement as a proportion not of all employees but only of those with the right to bargain. We will see that in most Member States there is hardly a difference — since only very few are excluded. In some Member States, for instance in Austria, Germany, Hungary, Luxembourg or Spain, it does, however, make a difference when public employees without bargaining rights are taken out. Besides these adjust-

ment difficulties, a problem of comparability may also arise due to the fact that, under multi-level bargaining, many employees are covered by two (or more) agreements. This may cause double counting in statistics on coverage. Confusion may also derive from multi-annual agreements and missing specification of the date when agreements expire. Sometimes collective agreements are only reported in their first year of validity, thus excluding still valid multi-year agreements from an earlier year. In Chart 1.5 and Table 1.6, we have tried to include **all** collective agreements that are (still) valid during the year under consideration. Finally, we refer only to the **formal** coverage of collective agreements, as demarcated by their scope. Hence we do not consider the informal application of the terms of the agreement by firms not formally included by the agreement, though this may give collective bargaining additional representation and influence. Formal coverage does, however, include those employees covered by extension procedures (see below).

The aggregate or national rates of bargaining coverage for the 22 countries for which data are available are set out in Chart 1.5 and Table 1.6.



(25) R. J. Flanagan (1999), 'Macroeconomic performance and collective bargaining: an international perspective', *Journal of Economic Literature*, Vol. 37.

(26) See F. Traxler and M. Behrens (2002), 'Collective bargaining coverage and extension procedures', *EIRO- Eironline*, December.



TABLE 1.6: COLLECTIVE BARGAINING COVERAGE, EMPLOYERS' ORGANISATIONS AND UNION DENSITY

	1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100
Austria				U						Cov, E
Slovenia					U					Cov, E
France	U							E		Cov
Belgium						U		E		Cov
Sweden						E		U		Cov
Finland						E		U	Cov	
Netherlands			U					E	Cov	
Spain		U						E	Cov	
Denmark						E		U	Cov	
Luxembourg			U					Cov, E		
Ireland				U		(Cov)E				
Portugal			U			E		Cov		
Germany			U				Cov, E			
Greece			U				(Cov)E			
Cyprus						E	Cov, U			
Malta						(Cov)U				
Italy				U		E	Cov			
Slovakia				U	Cov		E			
Poland		U			Cov					
UK			U	Cov, E						
Hungary		U		Cov						
Czech Rep.			U, Cov	E						
Estonia		U	Cov	E						
Latvia		Cov	U	E						
Lithuania		Cov, U								

NB: Cov = bargaining coverage non-standardised; E = employer organisation rate (private sector); U = Union density rate. Between brackets: estimate of coverage rate based on employers' organisation rate (Greece, Ireland) or union density rate (Malta).

From a comparative perspective, the key finding is that in the EU two thirds of all employees are covered by collective agreement <sup>(27)</sup>. However, there is massive variation, from near 100 % in Slovenia, Austria and France to lower than 30 % in Estonia and the Czech Republic, and lower than 20 % in Latvia and Lithuania. The (weighted) average for the EU-15 is 78 %, for EU-10 the average is 35 %.

In comparison with union density, bargaining coverage is at least twice as high and there appears to be much more stability. It should be recalled that in the 1990s union density fell in

all EU Member States and the average EU rate stood at 26 % in 2001–02. The apparent stability of coverage rates hides contrasting developments, however. During the 1990s bargaining coverage increased in Denmark, Finland, Sweden, the Netherlands, Spain and Portugal, was stable in Austria and France (where a huge increase in the 1980s was the response to new legislation creating a duty to bargain for management), while coverage decreased in Germany, the UK and Luxembourg. In the UK, continuing the trend of the 1980s, bargaining coverage has shrunk from 49 % in 1990 to 36 % in 1998.

The demise of multi-employer bargaining and the failure by unions to secure recognition for collective bargaining from employers has created the conditions for decline. Data up to 2001 suggest that the decline stopped after 1998. Whether this is related to the new recognition procedure is hard to say. Under the 1999 Employment Relations Act, unions can be granted recognition as bargaining agents by the Conciliation and Arbitration Committee upon request, with or without a ballot. Until February 2004 there had been 347 applications and 81 ballots, of which 50 resulted in the union winning

(27) Between the weighted — 66 % — and unweighted — 64 % — average there is little difference. These averages are based on 22 EU Member States. No reliable estimates are available in the case of Ireland, Greece and Malta. It should also be noted that the available data for Belgium dates from the mid-1990s and assumes that no significant alteration of coverage has occurred. The Italian figure — 70 % — may be overestimated as it excludes the millions of workers in micro-firms. Most figures for the new Member States are rough estimates, based on national (non-standardised) data reported by EIRO.

recognition <sup>(28)</sup>. In Germany, the erosion of bargaining coverage was a phenomenon of the second half of the 1990s: the coverage rate fell from 72 to 63 % in the 'old' Federal Republic and from 56 to 44 % in the five new eastern *Länder* <sup>(29)</sup>. Most defections came from small and medium-sized firms and were related to the difficulty faced by employers' associations in binding employers to standardised collective agreements with the unions.

The context for bargaining in the new Member States from central and eastern Europe differs from that of EU-15 and Cyprus and Malta. Under the old regime, bargaining coverage was 100 %, although collective agreements often had little practical relevance and differed in their narrow focus on social welfare and health and safety at work. All countries but Slovenia saw a decline in bargaining coverage during the course of the transformation process. (The stability of coverage in Slovenia at an unrivalled level of 100 % is mainly based on the obligatory membership of chambers of commerce and industry, which has survived the transformation process but is set to change in the years ahead with voluntary employer organisation.) In the public sector there is often no meaningful collective bargaining, reflecting the old situation. Only Slovakia recently set the stage for collective bargaining in public services and in 2002–03 some national agreements were reached. The companies in the emerging private sector have been neither keen on entering single-employer bargaining nor willing and able to set up strong employers' associations which might conduct multi-employer bargaining on their behalf. A recent statistical study of the Ministry of Employment and Labour in Hungary

reported a further five-point drop in the coverage rate, from 45 to 40 % between 2001 and 2002 (adjusted rates). According to the study, this suggests that private-sector employers may be withdrawing from wage negotiations and that the current company bargaining structure provides no stable framework. In addition, many countries struggle with the problem of underpayment or delays in payment, even where minimum wages and collective agreements apply. One government survey in Poland found two thirds of audited companies in breach of contract, with a tendency of diffusion from small to larger firms. These problems will be further taken up in Chapter 6 of the report.

### 3.1.2. Coverage rates, union and employers' organisation and the role of extension

There appears to be only a weak relationship between union density and bargaining coverage. As one can see from Table 1.6, coverage rates exceed union density rates in all Member States (Latvia appears to be the only exception), often by a very wide margin, for instance in France, Spain, Portugal, Austria and the Netherlands. In a cross-national comparison of union density and coverage rates (22 EU countries), the correlation coefficient is .41.

There is a much closer relationship with the employers' rate of organisation. The correlation coefficient between the employer organisation rate and bargaining coverage (19 countries) is .76 and highly significant. Unfortunately, we have no time series on employer organisation coverage and some of the data may not represent the actual state of affairs, but in general the impression is one of much

greater membership stability among employers' organisations than in the case of trade unions.

Both employer organisation and bargaining coverage depend on the same condition: sectoral organisation. Simply put, the chances of employees having access to collective bargaining increase quite dramatically with multi-employer bargaining. Sectoral multi-employer bargaining dominates in all but 1 of the 10 Member States where coverage rates are above 70 %. The exception is France where there is a legal duty to bargain and the State plays a very large role in extending coverage (see below). Company bargaining prevails in seven Member States — Lithuania, Latvia, Estonia, Poland, the Czech Republic, Hungary and the UK — in which coverage rates are 40 % or lower. In between are countries in which sectoral multi-employer bargaining is less established (Slovakia), less relevant (Luxembourg, Cyprus) or being challenged (Germany). With a coverage rate of 63 %, or 68 % if we exclude the very small firms, Germany is still above the EU average.

In Europe, it is common for employers to voluntarily 'extend' negotiated agreements to both unionised and non-union workers. Voluntary extension to similar workers in the same firm is also recommended as good practice in ILO Recommendation No 91 of 1951. It also makes good sense from the employers' point of view, since union members-only contracts might be seen as discriminating against co-workers, who are not union members, and might unintentionally create an incentive for unionisation. *Erga omnes* or non-discriminatory application of agreements to employees 'in similar conditions' is legally required in Belgium, France, Luxembourg, the Netherlands,

(28) S. Overell, 'Consultants do battle with the brotherhoods', *Financial Times*, 26 April 2004.

(29) Data based on a survey of the Institute for Labour Market and Employment Research (IAB). See S. Kohaut and C. Schnabel (2003), 'Zur Erosion des Flächentarifvertrags', *Industrielle Beziehungen*, Vol. 11.

TABLE 1.7: LEGAL OR ADMINISTRATIVE EXTENSION OF COLLECTIVE AGREEMENTS

Denmark Sweden Ireland UK	No practice of extension of private-sector wage agreements. In Denmark, extension refers mainly to the transposition of EU directives. In Ireland, extension of minimum wage provisions of Joint Labour Committees has become rare since adoption of Minimum Wage Act 2000. In the UK, all extension provisions were abolished in the 1980s.
Austria Slovenia	Extension can be ordered by Austrian Federal Arbitration Office on application of one or both bargaining parties. In practice of little importance, because obligatory membership in Austrian Economic Chamber guarantees inclusive coverage. The same condition applies in Slovenia (but this may change if employers' side will be organised on a voluntary basis- outside the Chamber system).
Belgium	Extension is automatic if agreements are signed by all parties in Joint Industry Councils or in the National Labour Council. If not, the Ministry can extend multi-employer agreements by royal decree on application of one or more bargaining parties.
Finland	If agreements already cover 50 % or more employees in the sector, agreements are automatically binding for all firms and workers in their domain. The decision is taken by a special government body and can be appealed in the Labour Court.
France	On the request of one or more of the bargaining parties, addressed to the National Commission on Collective Bargaining, the Minister can extend agreements to entire sectors and/or enlarge agreements to different geographical regions or other economic sectors.
Germany	On the application of one or more of the bargaining parties and approved by a special committee for extensions, and if more than 50 % of the workforce is already covered, the Ministry can extend agreements to the entire sector. Since 1998, and only in the construction industry, the Ministry can extend minimum wage provisions at its own initiative.
Greece	The Minister can extend agreements at its own initiative, provided the agreement already covers more than 50 % in the sector or occupation.
Hungary	On application of one or more of the bargaining parties and after consultation with the subcommittee of the National Interest Reconciliation Committee, the Ministry can extend agreements to the entire sector. Applicants must provide proof of their representativity in the sector concerned.
Italy	The Constitution declares collective agreements signed by 'representative trade unions' generally binding on all employee categories covered by the agreement, but the relevant article (39) was never enacted. However, judges generally take minimum wage levels set by sectoral agreements as a reference in disputes.
Luxembourg	The Ministry can extend multi-employer agreements by decree on the application of one or more of the bargaining parties.
Netherlands	On the application of one or more bargaining parties, after (non-binding) advice of the (bipartite) Labour Foundation, and if 55–60 % or more of the workforce is already covered, the Ministry can extend agreements to entire sector.
Poland	The Ministry can extend multi-employer agreements to cover unaffiliated employers in a particular sector, if considered 'a vital social interest'.
Portugal	On its own initiative, the Ministry can extend agreements to the entire economic sector or geographical regions, and/or enlarge the agreement to different regions. Interested parties can appeal the decision.
Slovakia	On the application of one or more of the bargaining parties and recommended by a special tripartite committee for extension, the Ministry can extend agreements to employers with similar business activities and economic and social conditions.
Spain	Extension is automatic throughout the agreement's domain if signed by a majority of the representatives of each party to the agreement. Upon request by unions and/or employers, the Ministry can enlarge the agreement in cases where no bargaining exists.

Source: F. Traxler and M. Behrens (2002), 'Collective bargaining coverage and extension procedures'; EIRO - Eironline; OECD (2004), 'Wage-setting institutions', in *Employment outlook*, Paris, 17.

Austria, Poland, Portugal and Spain. In Italy the relevant constitutional article (No 39) has never been enacted, but as a rule judges take minimum wage provisions in agreements as benchmarks for their decisions.

As can be seen from Table 1.6, bargaining coverage nearly always exceeds the employer organisation rate. The exceptions are few:

Luxembourg, the three Baltic States and the Czech Republic. In addition to weak data, in these countries there may be a tendency among employers not to engage in bargaining with unions. These five countries have in common that they rely mostly on company bargaining and that extension mechanisms, even where they legally exist, do not therefore apply. Where bargaining coverage is in

excess of employer organisation rates, at least some non-organised employers apply the agreement negotiated by their organised competitors. They may do so voluntarily, under pressure of unions or in an attempt to attract good workers. As has been discussed in the report, *Industrial relations in Europe 2002*, many countries in Europe have procedures of legal or administrative extension of collective

agreements. Such public law provisions, which make the collective agreement binding for the entire sector or occupation, exist in 11 of the EU-15 countries (all but the UK, Ireland, Sweden and Denmark) and 4 EU-10 Member States (Slovenia, Slovakia, Hungary and Poland). In addition, Denmark has introduced an extension procedure for the purpose of implementing EU directives (see Table 1.7). In two countries — Austria and Slovenia — obligatory membership in employers' organisations is a functional equivalent to administrative extension and in Italy extension of contracts to employees in non-organised firms is based on judges' rulings — applying the minimum wage provisions in collective agreements also to employees working in firms not bound by them.

Table 1.7, based on the previous report and additional sources, shows the main variation in procedures. Public authorities, such as Ministries of Labour, play a crucial role in initiating the extension of an agreement in France, Greece, Portugal, and, to some extent, also in Slovakia. In these countries, and also in Spain, the Minister may also decide to 'enlarge' the agreement and apply its provisions to other sectors or regions. Several countries have established minimum requirements for extension, most commonly minimum rates for coverage of the relevant agreement prior to extension. Such requirements for representativeness apply in Finland, Germany, Greece, Hungary, Ireland, the Netherlands and Spain. Usually, the Minister must ask advice from the social partners and firms may appeal decisions. Social partners may advise on dispensations for small or starting firms, for instance in the Netherlands. Other minimum requirements are that the extension must be in the

'public interest' (Germany, the Netherlands, Poland) or must abolish disadvantages to employees or employers (Slovakia). The direct effect in terms of employees additionally covered by agreements varies. It is probably considerable in France, Spain and Belgium, although no reliable data are available. For Finland, the Netherlands, Hungary and Germany the additional effect on bargaining coverage is estimated at 19, 7, 4 and 1 percentage points respectively <sup>(30)</sup>.

One of the main conclusions of the 2002 EIRO study on the extension of collective agreements was that there is 'a high stability of extension provisions — the continuity is striking' <sup>(31)</sup>. This is remarkable in view of the turbulence in unionisation and collective bargaining. In recent years, there have been fierce debates on collective bargaining and extension in France, Germany, Hungary, the Netherlands, Poland, Portugal, and Hungary.

- In **France**, in the context of several initiatives to reform the existing collective bargaining system and make it more autonomous and representative, employers have proposed to create more possibilities for opt-outs, with the possibility of offering terms and conditions of employment below agreed, and in some cases, legally established minima. This issue has also emerged in other Member States. In the context of the Agenda 2010 labour market reform programme of the **German** Government, the issue has arisen whether sectoral agreements should legally be required to contain 'opening', 'hardship' or 'inability to pay' clauses. Unions, both in France and Germany, are strongly opposed. At present, the reform project of the French

employers confederation, MEDEF, seems stalled and in Germany the issue has been left to the social partners. In **Poland**, however, after months of debate, Parliament responded to employers' wishes and adopted a revised labour code introducing a rather far-reaching statutory 'hardship' clause. Accordingly, the signatory parties can agree to suspend a collective agreement for up to three years, if a company faces financial problems. This change presupposes the existence of worker representatives who can sign the suspension, but that there is no statutory workplace representation in Poland and there are no representatives in most firms. In **Hungary**, as in Germany, it has been suggested that more flexibility would make it more attractive for employers to join employers' associations and sign sectoral agreements, but so far no action has been taken. In the **Netherlands**, the issue of extending collective agreements resurfaces during each downward turn in the business cycle and has increasingly been associated with the issue of low representativeness of the unions, with less than 25 % of all employees joining a union. However, a recent study commissioned by the Dutch Ministry of Social Affairs and Employment found that most Dutch employers are rather satisfied with their (extended) sector-wide collective agreement <sup>(32)</sup>. Many appreciate the fact that extension supports equal contributions to joint funds, especially in matters of training and pensions. The survey also showed that a minority of employers is discontented and that some expect advantages from a shift towards company-level agreements. This group is large enough to make conflicts con-

(30) OECD (2004), 'Wage-setting institutions', Employment outlook, Paris, p. 17; The estimate for Hungary is based on 2002 figures released by the Ministry of Employment and Labour.

(31) F. Traxler and M. Behrens (2002), 'Collective bargaining coverage and extension procedures', op. cit.

(32) M. Heijnen and C. van Rij (2003), 'Ervaringen van werkgevers met CAO en AVV', Amsterdam, Regioplan.

cerning extension a rather permanent phenomenon. In recent years, employers in some branches (e.g. petrol stations, cleaning, transport, work agencies) have tried to escape from the obligations arising from extended sectoral agreements by negotiating separate collective agreements with non-mainstream trade unions. In one appeal case, the Minister of Social Affairs and Employment ruled that there was sufficient evidence to suggest that the 'employee association' at three temporary work agencies was not acting independently from employers. In **Portugal**, the discussion is related to the large role of the government in industrial relations, inherited from the (non-democratic) past. In **Spain**, the previous government had wanted to reform collective bargaining and scrap the principle of 'ultra-activity' (*ultraactividad*) which means that a collective agreement remains valid after its expiry, if it has not been renewed. If the end of an agreement would restore the *status quo ante*, employers would have less reason to speedily negotiate a new agreement. In the face of strong trade union opposition, the Spanish employers confederation (CEOE) backed off and signed in 2002 an agreement with the trade unions in which the principle of continued application of agreements was retained.

The 1994 OECD jobs study argued that extension stifles competition in product and labour markets, and called upon governments to discontinue this particular instrument for supporting sectoral bargaining. However, in a remarkable case, in 1997, the European Court of Justice (ECJ) defended extension on the

grounds that it is a linchpin of the European social model, as defined in Treaty Articles 2 and 3. The competition rules of the internal market do not in the opinion of the ECJ overrule this principle <sup>(33)</sup>. Careful empirical studies conducted at different times in the Netherlands have not been able to find an upward pushing effect on wages <sup>(34)</sup>. Supporting sectoral bargaining, it may even lower distributional conflict and investment losses (of workers in firms and firms in workers) connected to the 'hold-up' problem in bargaining. The so-called 'hold-up' problem arises from the fact that workers (employees) will tend to restrain their specific investments in the firm if they expect that, after having committed themselves, future bargaining over the distribution of the surplus will put them at a disadvantage. Such future bargaining is necessary, for instance, if the economy is hit by aggregate shocks such as unexpected inflation. Although it would be possible to write contracts for this and other contingencies at the micro level, 'it is desirable to delegate this task of adjusting contracts to aggregate shocks to corporatist organisations, so that this adjustment does not interfere with the idiosyncratic shocks', i.e. shocks that are specific to each firm or product group. Individual workers or local managers do not have much influence on negotiations which are conducted outside the firm, hence they cannot create a hold-up problem. However, in addition to sectoral negotiations conducted outside the firm, managers and workers, or their local representatives, can decide to adjust their contracts according to their specific needs when not doing so would yield separation (either the employee decides to quit or managers try to lay off the employee). This interpretation supports a multi-level

approach to bargaining and predicts that under conditions of sectoral bargaining there will be fewer separations and more investment in, for instance, training <sup>(35)</sup>. Extension and multi-employer bargaining have therefore been important instruments in defending sectoral bargaining and coordinating wage behaviour in Europe's labour markets. This will be discussed below.

### 3.1.3. Coverage of European agreements

Bargaining of a kind also occurs at the European level. ETUC, UNICE and CEEP, plus, more recently, UEAPME and the Eurocadres/CEC liaison committee, have negotiated a number of European agreements, primarily to propose and renew EU legislation in the employment and social field (see also Chapters 3 and 4 of this report). They have reached such agreements on parental leave, part-time work and fixed-term work, which have been given legal force through EU directives. In July 2002, a framework agreement on telework was concluded, which is being implemented by the members of the signatory parties in accordance with their own national procedures, rather than by means of an EU directive and national legislation. These various agreements have focused primarily on EU-15. However, the directives implementing the first three agreements form part of the *acquis communautaire* which is being adopted and implemented by the new Member States, while the signatories to the telework accord invited their members in the new Member States to implement the agreement. A similar European-level 'bargaining' process driven by the prospect of EU legislation has occurred on some occasions over specific issues in a number of

(33) EJC-C-219/97 Mij. Drijvende Bokken vs. Stichting Pensioenfonds voor Vervoer- en Havenbedrijven.

(34) R. Freeman, J. Hartog and C. Teulings (1997), 'AVV, spil in't spel', Economisch-Statistische Berichten, 30 July; M. Rojer (2002), 'De betekenis van de CAO en het algemeen verbindend verklaren van de CAO's', Ministerie van Sociale Zaken en Werkgelegenheid, The Hague, werkdocumenten No 271.

(35) C. Teulings and J. Hartog (1998), Corporatism or competition. Labour contract, institutions and wage structures in international companies, Cambridge, Cambridge University Press, p. 5.



sectors (for example, working time in civil aviation and maritime transport), while outside this process numerous joint texts of varying kinds have been concluded by the European sectoral social partners. As with cross-industry agreements, the primary focus has so far been on the current Member States. However, efforts are being made in the sectoral social dialogue to involve the new Member States.

Where EU agreements or legal texts are implemented by means of a national cross-industry or sectoral agreement, a problem of incomplete coverage may arise. While in Belgium this is solved by the legal status and full extension of such agreements when concluded in the National Labour Council, it has elsewhere required a specific extension procedure which did not previously exist. For instance, in early 2004, the Danish central organisations LO (unions) and DA (employers) signed an agreement on the incorporation of EU Directive 2002/14/EC, which establishes a general framework for informing and consulting employees, into the existing cooperation agreement between LO and DA. The existing agreement covered only an estimated 50 % of the Danish labour force in the private sector. The new agreement includes the innovation that employee groups outside LO may now obtain representation in company cooperation committees as members. This has until now been reserved for LO member unions, and LO has had mixed feelings about possible free rider effects of this extension of representation in response to an EU law. The implementation of the directive via the DA–LO cooperation agreement means that company-level joint cooperation committees will now have a duty to consult all groups of

employees in the enterprise and not only those who are covered by a collective agreement between LO and DA member organisations. It is further clarified that it should be possible for employee groups outside LO to obtain representation in the cooperation committee if there is consensus about such representation. In line with the directive, the cooperation agreement will provide that employees must be informed and consulted on the development of the undertaking's activities and economic situation; the situation, structure and probable development of employment; and decisions likely to lead to substantial changes in work organisation or in working and employment conditions. LO also sees the new agreement as an important step in using the DA–LO cooperation agreement as an instrument to implement future EU directives that concern relations between management and employees.

### 3.2. Coordination and centralisation of wage-bargaining <sup>(36)</sup>

In recent years, facing increased economic uncertainty and the economic downturn of 2001–03, many Member States have stepped up their attempts to improve coordination of wage-bargaining. Membership of the common currency has added to the urgency to get it right in wage-setting, as wages have become more important as an adjustment variable. One of the challenges for wage-bargainers as well as for governments has been to achieve higher levels of coordination in spite of current decentralisation trends in industrial relations and firms, without stifling the growing demand for flexibility and local variation. Quite different patterns can be observed.

Bargaining decentralisation may be accompanied by increased macroeconomic governance with the help of central organisations and the involvement of the government. If that is the case, confederations and central guidance, implicit or explicit via agreements, have not become obsolete. But their role in collective bargaining has become a different one — assisting the process of decentralisation by creating the conditions for stable organisation, dialogue and trust. This is what has been called 'organised decentralisation' and is designed to combine the need for greater flexibility and variation with the requirement of enhanced coordination across companies and sectors, and sometimes also across policy areas <sup>(37)</sup>. The opposite trend of 'unorganised decentralisation' is seen when the role of peak associations and sectoral organisations is diminished and individual contracting replaces collective bargaining and company bargaining supplants sectoral bargaining. Under such conditions, there is no possibility of explicit coordination, other than through the market or by force of law.

#### 3.2.1. The trend towards decentralised industrial relations

Decentralisation is often mentioned as the master trend in industrial relations. In many countries, this process first became noticeable in bargaining over working-time reduction in the 1980s, but has since been extended to matters of pay. It has been claimed that internationalisation, technological and organisational change, multi-tasking, teamwork and client-related work processes have made standardised solutions, negotiated for entire sectors, less feasible and efficient <sup>(38)</sup>. Reflecting growing diversity in the

(36) The focus in this section and the remainder of the chapter is on wage-bargaining. Other substantive issues in agreements between the social partners, e.g. working hours and arrangements, restructuring, social plans, training, equal opportunity, are discussed in Chapter 2 in relation to the Lisbon objectives of growth, employment and social inclusion.

(37) F. Traxler (1995), 'Farewell to labour market associations? Organised versus disorganised decentralisation as a map for industrial relations', in C. J. Crouch and F. Traxler (eds.), *Organised Industrial Relations in Europe. What future?, Hants, Vermont*, pp. 3–19.

(38) A. Lindbeck and D. J. Snower (2001), 'Centralised bargaining and reorganised work: Are they compatible?', *European Economic Review*, Vol. 45.

workforce, decentralisation has also changed the trade unions. Yet the main driving force has come from employers. Traditionally, the creation of a level playing field and the prevention of cut-throat competition based on low wages has been valued as one of the benefits of wage and working hours standards set by sectoral or national wage agreements. Increased international competition has made this less relevant. Instead, it has become more important for internationally competing firms to have the freedom to react speedily to wage competition from foreign firms. The introduction of performance related pay, and payment by results, has also supported the demand for company level bargaining.

- In a recent survey of employers and workers in **Finland**, the stabilising effect of collective agreements through the restriction on wage competition was praised by employers and employees, and on balance, both employers' organisations and unions express satisfaction with the Finnish system of multi-level bargaining, in which company bargaining is embedded in sectoral and national agreements. However, the study also found that most employers would like the system to become more flexible and that many wanted more room for wage incentives. Large internationalised firms especially would like to see movement towards a wage-bargaining system where the company level has a larger role than at present. The employees of these large firms do not favour such a development. Employees and trade union representatives have emphasised the position of the low paid. Centralised collective agreements might be seen as providing more bargaining power and greater protection for those employees and unions whose position on the

labour market is not very strong and, indeed, has proved most popular in sectors and firms where women and temporary workers make up a higher share of the workforce. It is to be noted that performance-related pay is quite widespread in Finland (affecting 50 % of white collar staff and 34 % of blue collar workers) and is accepted by a majority of employees and by the unions, though only if it affects a small part (5–6 %) of total earnings. The study also found that new firms and those with young workers showed a stronger preference for individual and company-level agreements. Professional workers and their unions, too, preferred stronger wage differentials in order to reward training, education and skills.

The **German** employers' federation in engineering (*Gesamtmittel*) mentions industrial peace as the principal advantage of sectoral bargaining. This is especially important for companies that are involved in 'highly sensitive' production alliances and high value networks that produce for export markets. The capacity of employers to take a strike, and respond with a lockout, appears to have decreased in the past two decades (39). Consequently, strike prevention has become more important. Other important advantages of sectoral bargaining mentioned by employers are legal and planning certainty. Yet, support for industry-wide collective agreements is waning, as is demonstrated by the increasing importance of associations of employers that do not require their members to comply with the conditions of collective agreements. It is for these reasons that German employers want more opening clauses in sectoral agreements. In a survey of 500 managing directors in the met-

alworking and electrical industry, conducted at the end of 2003, three out of four companies said that they deviated from the conditions on wages and/or holiday or Christmas bonuses stipulated in the collective agreement. Moreover, more than half of the companies reportedly applied their own working-time rules. Though the survey found no support for the thesis that German firms want to abolish industry-wide collective agreements, most managers stressed that they needed more flexibility within these agreements.

Small firms are less likely to join employers' associations. Union membership and formal rights of employee information and consultation are also less common. Employees in SMEs are usually only covered by collective agreements if there is a sectoral agreement, sometimes with the help of extension. Large firms can more easily bear the transaction costs associated with wage-bargaining, whereas it may be more efficient for smaller firms to 'buy' negotiating services collectively from employer associations and be insured against union pressure. However, these firms may be too small to attract union attention and high (perceived) costs may prevent new and small firms from entering employer associations, or they may decide to join employers associations that allow contractual opt-outs (e.g. Germany). Sometimes sectoral agreements differentiate between large and small firms. This happens in metal engineering in the Netherlands and is also quite common in Spain and France (where sectoral agreements often cover small and medium-sized firms only).

The level at which collective bargaining takes place can also be seen as the outcome of a bargaining process,

(39) K. Thelen and I. Kume (2003), 'The future of nationally embedded capitalism. Industrial relations in Germany and Japan', in K. Yamamura and W. Streeck (eds.), *The end of diversity. Prospects for German and Japanese capitalism*, Ithaca NY, Cornell University Press, pp. 183–211.

where employers and employees have (partly) different interests. Usually, trade unions prefer sectoral bargaining and this preference will be stronger when union representation in the enterprise is weak or not under the union's control. In this sense, the Scandinavian system of 'single channel' representation presents a better 'fit' to multi-level (industry and company) bargaining than the German or Dutch system of 'dual channel' representation. While the peace obligation may apply in both cases, based on agreement in one case and on the law in the other, German and Dutch unions fear that their policies might be undercut by works councils over which they exercise only limited control. This fear is stronger when there is competition between unions in the workplace. It is for this reason that trade unions have usually insisted on their prerogative in matters of bargaining over wages and working hours. The Italian situation, though based on single channel representation, presents another limitation. Here the largest union confederation (CGIL) opposes further decentralisation of bargaining because, in contrast with the prescription of the 1993 'incomes policy' pact, about half of the workers in firms above 10 employees, and nearly all in smaller firms, are excluded from company bargaining as they have no adequate representation. Under company bargaining, employees can make wage gains above the sectoral average determined by the government's forecasted inflation rates. Such gains have to be based on productivity improvements and can also include a significant performance-related element. Many of Italy's small firms and most workers in the south are *de facto* excluded and the induced wage drift in the south is estimated to run 2.5 % below the national average between 1995 and 2001 <sup>(40)</sup>.

### 3.2.2. Bargaining levels

The key picture which emerges from Table 1.8 is that the setting of wages and employment terms in the EU involves bargaining activities at different levels — the sector or branch of economic activity, supplemented with company or enterprise bargaining and, in nearly half of the EU economies, also with some form of national bargaining. After the eclipse of sectoral bargaining during the 1980s, the UK is the only Member State where all or nearly all bargaining takes place at the company level, presenting an industrial relations environment resembling the US system. Sectoral bargaining is however also very weak or marginal in Ireland, France, Poland, the Czech Republic, Estonia, and Lithuania. (Bargaining in large companies substitutes for sectoral bargaining in Malta and Luxembourg.) Of these countries, Ireland is the only one in which cross-industry agreements guide wage-setting at the company level.

Multi-employer bargaining at the sectoral level has remained the dominant type of wage-setting in EU-15, though it is rare that all bargaining occurs at one level. Instead, most bargaining systems are characterised by multi-level negotiations. Eight of the EU-15 have some wage-bargaining, though not necessarily on all occasions, at the cross-industry level, covering the whole economy (Finland, Ireland, Portugal and the Netherlands), the private sector (Belgium and Greece), or the entire industrial sector (Denmark and Sweden). There are large differences regarding the importance of the different bargaining levels within the various national bargaining structures. In EU-15, there are three countries (Belgium, Ireland and Finland) where, in 2004, the cross-industry level and two (France and

the UK) where the company level is dominant. In EU-10, the company-level nearly always dominates, except in Slovenia, Slovakia and Cyprus. In eight Member States (Austria, Denmark, Germany, Italy, the Netherlands, Portugal, Spain and Sweden) the sectoral level is the most important level of wage-bargaining, while in four countries (Luxembourg, Cyprus, Slovenia and Slovakia) there is either no predominant bargaining level or the dominant level varies from bargaining round to bargaining round between the cross-industry and the sectoral level (Finland).

There are also significant differences in the meaning and scope of sectoral bargaining within the different national contexts. In Ireland and the UK, and in most new Member States except Slovenia, sectoral bargaining is limited to a very few branches of activity only. In France sectoral bargaining covers in particular small and medium-sized companies, while many of the larger companies have a company agreement. In the Netherlands and Spain, large multinational firms usually negotiate a company agreement, even if there is a sectoral agreement in the branches in which they operate. There can also be significant differences between the various sectors <sup>(41)</sup>. The public sector, for example, has in most countries a rather centralised bargaining structure, while in sectors with a predominance of larger firms, the company level tends to have a greater influence on wage determination. Moreover, there are also variations in the geographical scope. While in most countries sectoral agreements are concluded at national level, in some countries (e.g. Germany, Spain and with regard to special low 'entry' wages also in Italy) there are sectoral wage agreements which are valid only in a certain region or province.

(40) P. Casadio (2002), *Wage formation in the Italian private sector after the 1992–93 income policy agreements*, revised version of paper presented at the ECB workshop on wage formation in Europe, Frankfurt, December 2001.

(41) P. Marginson and K. Sisson (2003), 'European integration and industrial relations', in J. H. H. Weiler, I. Begg and J. Peterson (eds.), *Integrating in an expanding Europe: Reassessing the fundamentals*, Oxford, Blackwell, pp. 169–90.



TABLE 1.8: LEVELS OF WAGE BARGAINING AND USUAL DURATION OF COLLECTIVE AGREEMENTS, 2003

	National	Sector	Company	Duration of contracts (years)
Belgium	***	**	*	2
Finland	***	**	*	2
Ireland	***		*	2
Slovenia	**	**	*	2
Greece	**	**	*	2
Netherlands	*	***	*	2
Denmark	*	***	**	3–4
Portugal	*	***	*	Variable
Spain	*	**	**	2–3
Slovakia	*	**	**	2
Hungary	*	*	***	2
Germany		***	*	1–2
Austria		***	*	1
Sweden		***	*	3
Italy		***	**	2
Cyprus		***	*	2–3
Luxembourg		**	**	Variable
France		*	***	2?
Czech Republic		*	***	Variable
Estonia		*	***	Variable
Latvia		*	***	Variable
Lithuania		*	***	Variable
Malta		*	***	Variable
Poland		*	***	Variable
UK			***	Variable

NB: \*\*\* = principle or dominant bargaining level; \*\* = important but not dominant level; \* = existing level of bargaining.

Sources: Adapted from EIRO publications.

- A particularly important recent development in sectoral bargaining is the use of **opening, hardship, inability to pay, opt-out or drop-out** clauses, which allow firms under certain conditions to negotiate lower pay or longer working hours with their workforce than stipulated in the sectoral agreements. Such opt-out clauses have become more prominent in recent years in Austria, France, Germany, Ireland, the Netherlands, and Spain, although it is not easy to establish the degree to which employers make use of them. In **Spain** most collective agreements, affecting as many as 70 % of all employees, have a so-called 'drop-out' clause, laying down situations in which companies may fail to fulfil wage guarantee clauses. A major innovation in the 2004 agreements in **Denmark** is that the parties at the local level may now conclude local agreements that deviate in

either direction, above and beneath the minimum conditions that are stipulated in the agreement. They must however inform the signatory parties at the higher level. This means more flexibility for firms, but at the same time the trade unions gain a stronger role for employee representatives, since such deviations can be concluded only in enterprises which have union-elected employee representatives and only by agreement. With regard to working-time arrangements, the Danish agreements signed in 2004 stipulate that, within the framework of a local agreement, the actual organisation of working hours may now be subject to direct agreement with the individual employee or groups of employees — a similar provision entered **Dutch** law and collective agreements after the adoption of the Working Time Act of 1996. For the employers, this is a step in the direction of 'individuali-

sation', while the trade unions are pleased to have maintained the collectively agreed framework. **Danish** employers dropped their demand for lower bonus payments for unsocial hours and inconveniences. These new provisions can be seen as an extension of decentralisation in the bargaining system, with the sectoral agreements increasingly acting as a framework for bargaining at enterprise level.

There are also significant differences in the relationship between the different bargaining levels. In many countries, such as Denmark and Sweden, there is a supplementary relationship, whereby the sectoral agreement determines a minimum wage and actual earnings are determined in company bargaining. By contrast, the cross-industry wage agreements in Belgium and Ireland, and the central agreement for 2004–05 in the Netherlands, determine a maximum

wage increase which sets the margin for wage negotiations at sectoral and at company level. In Spain, the central agreements for 2002 and 2003 define a target rate for wage increases determined by the government's inflation forecast and the cost of living adjustment if the latter exceeds the forecast. Some countries (for example, Denmark and Sweden) report a significant 'wage drift' between sectoral-level and company-level wage increases. In other countries, for instance Germany, Austria and Italy, the positive wage drift has become very small, with increases linked to productivity and usually limited to larger and particularly well-performing companies. Increasingly, there is negative drift as well, associated with opening clauses and local social pacts in which firms extract wage or working hours concessions from local bargainers in exchange for job or investment promises <sup>(42)</sup>. In Italy this development is related to so-called 'area contracts', in which some provisions of the nationwide sectoral agreements are suspended, and a lower wage rate is agreed, in exchange for regional investment and job creation.

There seems to have been a tendency towards a longer contract duration, usually from one to two or even three years (see Table 1.8). (In Denmark, current agreements expire after three years, instead of four in the 2000–04 agreements, moving from two-year agreements in the 1990s). In Spain, too, there is some pressure to move from one to two years. This is consistent with multi-level bargaining, in which frameworks are set for longer periods and adjustments can be made at lower levels. In some countries, for instance Belgium and Finland, bargaining levels (central and industry) alternate between even and uneven years. Only in Belgium, Luxembourg and Malta, adjustments are made on the

basis of an automatic price index. In Spain, the 'revision clause' in collective agreements in the private sector serve more or less the same function.

In conclusion, most countries have witnessed tendencies towards a decentralisation of wage determination, mostly by introducing more space for company bargaining within sectoral agreements, sometimes by explicitly introducing the possibility for 'opt-outs' under specified conditions of economic adversity. All this is supposedly increasing the flexibility of wage-setting. Overall, there has been remarkably little change in the importance of the principal bargaining levels. The UK is the only country in which the most important level of wage-bargaining switched from the sectoral to the company level, but that happened long before the 1990s. In France, a strong decline in sectoral wage-bargaining was observed during the 1990s, which did not mark a qualitative change since French sectoral bargaining has been highly fragmented for a long time. In the Netherlands, the breakdown of sectoral bargaining has been limited to some branches (banking, for example) while other sectors (such as commerce and catering) have tended to centralise wage-bargaining. There had always been an important market for company bargaining among multinational firms. In Sweden, cross-industry wage-bargaining disappeared in favour of sectoral bargaining at the beginning of the 1990s. In Denmark, cross-industry bargaining has not completely disappeared but may in fact have become more important in recent years. Here, decentralisation took the form of leaving more issues to be decided at the company level, above a specified minimum level. Multi-employer bargaining, even at a very general (cross-industry) level, has remained important for the funding of general purpose goods, some related

to the 'old' welfare system (early retirement, disability and sickness leave), some to the 'investment welfare state' (training, parental and educational leave). A similar development had characterised the Netherlands until 2002 and 2003 when the government stepped in with more heavy armour to phase out collective funding of provisions for the 'old' welfare state. In Italy, a national tripartite agreement concluded in 1993 and reaffirmed in 1998 laid down the rules for the bargaining system, affirming the primacy of sectoral-level bargaining with a supplementary role for productivity bargaining in companies. Finally, in Spain there has been a slow decrease in the importance of company agreements and simultaneously an increase in the importance of sectoral wage-bargaining, within a renewed cross-industry framework. In short, despite decentralisation and the advance of multi-level bargaining, most EU-15 countries have shown a remarkable stability in their wage-bargaining structure, the same stability observed in bargaining coverage. However, this picture does not hold for the far more unstable and decentralised situation prevailing in many of the new Member States.

### 3.2.3. The measurement of decentralisation

For reasons of comparison through time and across Member States it would be useful to design a common yardstick. This paragraph therefore presents an index of decentralisation <sup>(43)</sup>. Centralisation of wage-bargaining has a vertical and horizontal dimension, with centralisation of bargaining authority and organisational concentration as core variables. The vertical dimension refers to the level at which agreements or guidelines are negotiated and to the authority of the negotiating unions and employers' associations. The horizontal dimension

(42) W. Streeck and B. Rehder (2003), *'Das Flächentarifvertrag: Krise, Stabilität und Wandel'*, Industrielle Beziehungen, Vol. 10

(43) This follows the approach in T. Iversen (1999), *Contested economic institutions. The politics of macroeconomics and wage-bargaining in advanced democracies*, Cambridge, Cambridge University Press, pp. 48–57. A similar approach was suggested in J. Visser (1990), *'In search of inclusive unionism'*, Bulletin of Comparative Labour Relations, Vol. 18, Chapters 7 and 8.

### Box 1.1: The degree of centralisation of unions in collective bargaining over wages

To determine the degree of centralisation in multi-level bargaining, weights must be attached to each level reflecting the legal or customary bargaining authority at each level. Thus, if all authority is vested in organisations at the national level, it can be accorded the weight of '1', whereas if a level has no authority whatsoever it would be given a '0' <sup>(45)</sup>. Levels with real, but limited authority would be given weights between zero and one, so that

$$\sum_j w_j = 1, \text{ where } w_j \text{ is the weight accorded to each level } j.$$

The assignment of weights depends on the level at which bargaining takes place (national, sectoral or company) and the degree of enforceability of agreements or recommendations at each level <sup>(46)</sup>. At the national level, four possibilities are acknowledged: the union confederation negotiates a national wage agreement (0.4); the agreement contains 'opt out' clauses (0.3); it negotiates only minimum rates and/or issues non-binding (in legal terms) recommendations (0.2); it sets a procedural framework for negotiations (0.1), or it does none of these things (0). The same question, with the same scores, can be repeated at the sectoral level. Are any of the activities mentioned above taking place or is all bargaining left to the company level? In addition, the formal authority of the negotiating confederation (or union) is measured by answering six simple questions: (i) Are agreements legally enforceable? (is non-implementation punishable in court?) (yes = 0.1; no = 0); (ii) Do agreements or does the law prescribe a 'peace obligation' on lower-level bargainers (0.1/0)? (iii) Do affiliates (company representatives) ask permission from the confederation (union) to commence negotiations (0.1/0)? (iv) Does the confederation (union) participate in the preparation and formulation of bargaining on the demand of its affiliates (local representatives) or otherwise prescribe the bargaining space of lower level bargainers (0.1/0)? (v) Does the confederation (union) have a (central) strike fund of significant size, from which strikers, respectively unions or local organisations, can be reimbursed (0.1/0)? (vi) Does the confederation or union have the right to veto or end a strike, by withholding permission, funding or calling for arbitration (0.1/0)? The maximum score is set at  $2 \times (0.4 + 6 \times 0.1)/2 = 1$ .

For a complete measure of centralisation, these scores must be combined with information about the number of organisations (confederations,

unions or bargaining units) over which bargaining authority is divided. If all authority would be vested in one confederation and one union, it reaches the maximum score 1, but if authority at each level is fragmented among many organisations, it will be lower. A simple formula is to divide the bargaining authority  $w$  at level  $j$  by the number of organisations or units at that level. Our measure of centralisation would then become:

$$Cent = \sum_j w_j / n_j, \text{ where } n_j = \text{the number of confederations (unions) at level } j.$$

As noted by Iversen, the limitation of this index is that it assumes that all confederations, unions or bargaining units are of equal size and equal influence. It disregards the possibility that some confederations or unions dominate or lead the others, because of their larger size and resources. The counting of union organisations can be approached in a similar way as the economic concentration of firms or the political concentration of political parties with the so-called Herfindahl index, which weights large unions more than small <sup>(47)</sup>. The 'effective' number of union organisations  $N$ , i.e. those that are large enough to influence bargaining patterns, is defined as:

$$N = (\sum_i p_i^2)^{-1},$$

where  $p_i$  is the share of union (confederation) members organised by union (confederation)  $i$ . If  $N$  is substituted for  $n$ , the formula for centralisation is the following:

$$Cent = \sum_j w_j / N_j = \sum w_{ij} \times p_{ij}^2$$

This index <sup>(48)</sup> is theoretically well-founded as it measures the control over enterprise and/or industry bargaining by higher level agreements and organisations, and is well-adapted to the reality of multi-level bargaining systems, treating industry bargaining as nested in and potentially controlled by central bargaining, but also as a controlling force in its own right.

refers to the concentration or fragmentation of the negotiating parties at any given level. Where bargaining takes places at different levels, the authority and concentration of the actors at each of the levels needs to be taken into account.

The relationship between the confederations or peak associations of trade unions and employers and their affiliates or member organisations in the field of collective bargaining is deter-

mined to some degree by the formal provisions of the various organisations' constitutions, but also by less formal factors such as power resources, access to information, long-established routines and personal networks between organisational leaders. It has been argued that power in the union movement, for instance, gravitates from the sector unions to the national confederations if collective bargaining is dominated by central agreements during a considerable number of years <sup>(44)</sup>.

It cannot be assumed, however, that the power of the national confederations is identical with the general degree of centralisation of collective bargaining, because this also depends on employers. One of the social partners can be much more centralised than the other, even though some balance is likely to develop over time. With these caveats in mind, an attempt has been made in Box 1.1 to measure the degree of centralisation of the unions in matters of collective bargaining over wages.

(44) J. P. Windmuller (1975), 'The authority of national trade union confederations: a comparative analysis', in D. B. Lipsky (ed.), *Union power and public policy*, New York, New York School of Labor Relations, p. 98; also H. A. Clegg (1976), *Trade unionism under collective bargaining. A theory based on comparison of six countries*, Oxford, Blackwell, p. 54.

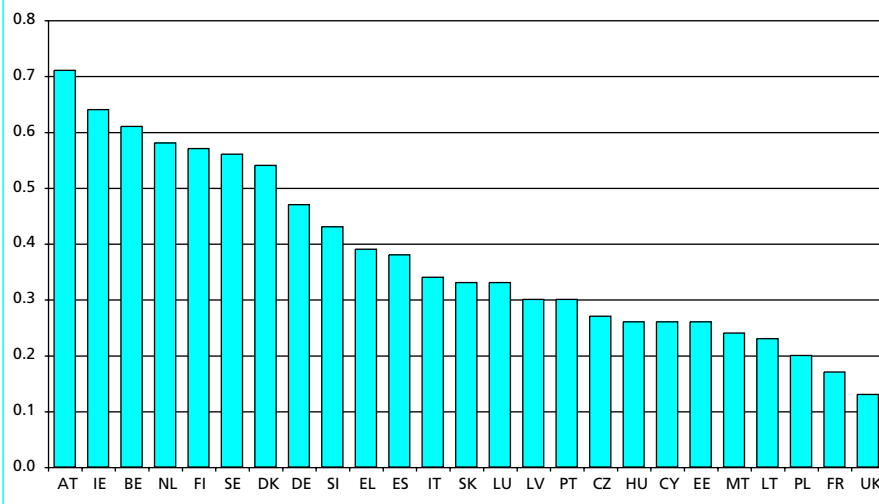
(45) At this point in time there is no bargaining authority above the national level. Union attempts to establish cross-national coordination of wage-bargaining will be discussed later in the chapter.

(46) With regard to enforceability the approach followed here is the one suggested by F. Traxler, B. Kittel and S. Blaschke (2001), *National labour relations in internationalised markets. A comparative study of institutions, change and performance*, Oxford University Press, although the number of items has been reduced.

(47) T. Iversen, *Contested economic institutions*, op. cit., p. 53; J. Visser, 'In search of inclusive unionism', op. cit., p. 172.

(48) In order to increase the distances at the low end of the scale (of very decentralised systems), Iversen's operational definition has been followed by taking the square root.

Chart 1.6: Centralisation of wage bargaining index, 2003



The results (see Chart 1.6 and Table 1.9) clearly show a group of EU Member States with a rather centralised organisation of unions and wage-bargaining: Austria, Ireland, Belgium, the Netherlands, Finland, Sweden, followed closely by Denmark, Germany and Slovenia. Ireland is the only country in this group without a strong sectoral framework for bargaining and Germany the only country without a cross-industry one. In nearly all countries, sectoral agreements have been loosened up, either moving towards setting minimum rates only (Denmark) or by creating more space for local bargaining (Austria, Germany, the Netherlands), sometimes with 'opt outs' that allow firms to set conditions beneath the agreed sectoral level. At the low end of the centralisation scale we find the UK and France as well as most new Member States, with the exception of Slovenia and Slovakia. Decentralisation is in these countries the product of the absence of both national and sectoral bargaining conditions and union fragmentation. Finally, in between, we find the southern Member States — Spain, Italy, Greece and Portugal — together with Luxembourg and Slovakia. One remarkable finding is that in these countries there has been an upward movement in centralisation during the 1990s, especially by setting a more binding sectoral frame-

work for wage-bargaining (Italy, Spain), in some cases supplemented by procedural guidelines or even substantive targets for wage-bargaining.

The overall picture is therefore not one of a general tendency towards decentralisation, at least not if all levels (cross-industry, sectoral and company) and the enforceability and formal power of the confederation and its affiliates are taken into account. By abandoning cross-industry bargaining, Sweden and Denmark (in the 1980s, not shown in Table 1.9) are the clearest cases of decentralisation — but coming from very high levels. In contrast, Ireland (in the late 1980s, not shown in Table 1.9), Belgium, Italy, Spain and Greece have moved in the other direction. If only the sectoral level is considered, a tendency towards more decentralisation is apparent, to some extent counter-vailed by the trend towards greater union concentration.

It should be stressed, again, that this description of trends is based on considering the role and organisation of trade unions and leaves employers out of the picture. It is possible to make a few general observations concerning the bargaining role of employers' organisations. In most Member States (Finland, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden, the UK, and all new Member

States except Slovenia) affiliated employers' organisations enjoy fairly substantial autonomy and probably operate more independently of their national confederations than the unions do. There may, however, be a quite significant degree of informal power sharing, based on personal relationships, network ties and frequent meetings between industrial relations/human resource management executives of largest firms. This can contribute to explicit or implicit coordination which will be considered in the next section.

The autonomy of sectoral (and regional) employers' associations in matters of collective bargaining manifests itself through a lack of formal powers of the confederations over their affiliates. Sometimes the affiliates are required to inform their peak association, but usually the latter has no power of sanction over their (larger) member organisations, nor do they offer positive sanctions, like a 'central strike or resistance fund' comparable to the more powerful and centralised union confederations. By contrast, in a number of Member States (Belgium, Denmark, Greece, Ireland, and also in Slovenia) the formal power of the national confederations over their affiliates is more substantial. This includes the right either to negotiate collective agreements directly or to impose certain bargaining goals on their affiliates (Belgium, Ireland). In Denmark, the confederation's power rests on the appointment of mediators in the case of conflict. (The same is true for the unions.) In Slovenia, the peak association directly organises companies and thus does not have to share power with sectoral employers' organisations, while the Confederation of Greek Industries signs sectoral collective agreements which are binding for its member associations. Although collective bargaining is mostly in the domain of its member organisations, the formal power to sign contracts is retained by the Austrian Chamber of Enterprises.

TABLE 1.9: CENTRALISATION OF WAGE BARGAINING, 1990–2003

		Weight national level	Weight sectoral level	Effective number of confederations	Effective number of unions	Index of centralisation
Austria	1990	0.4	1.0	1.0	8.5	0.72
	1995	0.4	1.0	1.0	8.3	0.72
	2003	0.4	0.8	1.0	7.9	0.71
Ireland	1990	0.4	0.2	1.1	4.6	0.63
	1995	0.4	0.2	1.1	4.8	0.64
	2003	0.4	0.2	1.1	5.3	0.64
Belgium	1990	0.4	0.6	2.3	5.6	0.53
	1995	0.4	0.6	2.3	5.2	0.54
	2003	0.6	0.6	2.4	5.2	0.61
Netherlands	1990	0.4	1.0	2.4	6.2	0.57
	1995	0.4	0.9	2.3	6.3	0.57
	2003	0.4	0.8	2.1	5.4	0.58
Finland	1990	0.7	0.7	2.8	10.5	0.59
	1995	0.5	0.7	2.7	10.1	0.54
	2003	0.7	0.7	2.9	8.9	0.57
Sweden	1990	0.9	0.9	2.2	6.3	0.74
	1995	0.3	0.9	2.3	5.9	0.53
	2003	0.4	0.9	2.6	5.6	0.56
Denmark	1990	0.3	0.9	2.0	7.7	0.52
	1995	0.3	0.9	2.0	7.4	0.52
	2003	0.4	0.7	2.0	7.1	0.54
Germany	1990	0.1	1.0	1.5	6.0	0.48
	1995	0.1	1.0	1.5	6.6	0.47
	2003	0.1	0.8	1.5	5.3	0.47
Slovenia	2003	0.3	0.4	2.0	10.0	0.43
Greece	1995	0.2	0.4	2.4	18.0	0.33
	2003	0.3	0.4	2.4	14.0	0.39
Spain	1990	0.1	0.3	3.0	9.2	0.26
	1995	0.1	0.3	3.0	8.3	0.26
	2003	0.3	0.4	3.0	8.3	0.38
Italy	1990	0.1	0.3	3.4	9.5	0.25
	1995	0.2	0.6	3.5	9.4	0.35
	2003	0.2	0.5	3.5	9.1	0.34
Slovakia	2003	0.1	0.2	1.1	11.0	0.33
Luxembourg	1995	0.1	0.6	2.5	8.3	0.33
	2003	0.1	0.6	2.8	8.3	0.33
Portugal	1990	0.5	0.4	1.8 <sup>(1)</sup>	12.5	0.24
	1995	0.5	0.4	1.8 <sup>(1)</sup>	11.8	0.26
	2003	0.1	0.4	1.9	11.1	0.30
Latvia	2003	0.1	0.1	1.2	15.0	0.30
Czech Rep.	2003	0.1	0.2	1.7	11.0	0.27
Hungary	2003	0.2	0.2	3.9	11.0	0.26
Cyprus	2003	0.1	0.4	2.9	12.0	0.26
Estonia	2003	0.1	0.1	1.9	9.0	0.25
Malta	2003	0.1	0.2	3.3	7.1	0.24
Lithuania	2003	0.1	0.1	2.2	11.0	0.23
Poland	2003	0.1	0.1	3.1	15.0	0.20
France	1990	0.1	0.1	7.1	8.3	0.16
	1995	0.1	0.1	6.7	7.7	0.17
	2003	0.1	0.1	6.2	8.3	0.17
UK	1990	0.0	0.2	1.5	14.5	0.12
	1995	0.0	0.2	1.4	11.1	0.13
	2003	0.0	0.2	1.4	11.1	0.13

NB: (1) Only UGT is involved in central pacts, while CGTP is opposed.

Source: Calculations by J. Visser (see text), see also Appendix Table A1.



### 3.2.4. *Explicit and implicit coordination of wage-bargaining*

Coordination based on shared understanding and mutual trust may be more important than centralisation of wage-setting. This is perhaps the strongest lesson from the experience of social pacts — many of which were fully unexpected and negotiated in rather fragmented and decentralised wage-setting structures <sup>(49)</sup>. A shared understanding of the economic and social context, and of key mechanisms driving growth, productivity and employment, greatly increases the probability of wage-bargaining being conducted in a cooperative way, in which each party has an eye on their own long-term self-interest and the common good, and not only to their short-term interest or purely sectional concerns. This is for instance the key principle of the Irish reports of the National Economic and Social Council, which preceded each of the six major national partnership agreements in that country <sup>(50)</sup>. The importance of independent, valid and reliable policy analysis and the ‘joint observation of (unpleasant) facts and messages’ in such bipartite and non-statutory organisations as the Foundation of Labour in the Netherlands can be of great help for the development of shared understanding.

Any form of commitment by separate organisations to undertake joint decisions can be classified as explicit coordination. Centralisation is only one — extreme — form of coordination, for instance, when coordination moves in the direction of a single policy controlled by a single agent or closely cooperating central organisations. But there are less ambitious forms of

coordination, for instance, if the social partners, with or without the government, accept joint rules by which decision-makers must abide or if they adopt joint targets and norms for their policy. Such a joint rule, target or norm can be the result of concertation and social dialogue, when participants are persuaded to move towards a congruent set of shared values and preferences. Or coordination can be implicit, based on the dominance or example of a particular union, employers’ group or sector and resulting in setting the trend, norm or target for others. This can be combined with lower levels of centralisation and explicit coordination, though some power and visibility of the trend-setting union, employers’ group or sector is needed. Alternatively, the trend or norm for pay developments can be determined by the government through explicit guidelines, a legal pay-indexation mechanism and/or the statutory minimum wage, though it would seem conceptually advisable to treat this separately, together with other possible means of government intervention (see below). Probably the weakest form of coordination occurs when social partners exchange information about their ambitions and capacity for punishing or rewarding, without actually reaching agreement or setting clear guidelines.

These considerations can be translated into the following scale for measuring bipartite coordination in wage-bargaining, distinguishing between explicit and implicit coordination and coordination between and within employers’ and union organisations <sup>(51)</sup>:

5 = explicit coordination between and within peak association of unions and

employers, through agreements at the national and sectoral level;

4 = explicit coordination between peak federations through agreements only at the national level or implicit coordination (without agreement) within confederations (unions or employers) at the national and sectoral level;

3 = implicit coordination through synchronisation of sectoral bargaining and pattern-setting;

2 = implicit coordination and irregular or incomplete pattern-setting;

1 = no coordination at the national or sectoral level.

If any collective bargaining is considered as a form of market coordination — against its alternative of individual contracting in unorganised markets — then it makes sense to consider also the extent of bargaining coverage. The second (weighed) coordination measure is obtained by multiplying the score on the coordination scale by the coverage rate <sup>(52)</sup>. Table 1.10 presents the results.

About half of all EU Member States have maintained or re-introduced some form of explicit coordination at the national level. In Finland, Ireland, Greece, Portugal (before 2001), and in 2003 also in the Netherlands, national agreements on wage policy have been concluded within the framework of tripartite cross-industry agreements. The two-year national agreements in Belgium move within a framework set by law. In Denmark, the sectoral agreements have since 2000 been supplemented by ‘climate agreements’ and other provisions negotiated and monitored at the central level. In

(49) For an overview, see G. Fajertag and P. Pochet (eds.) (2000), *Social pacts in Europe. New dynamics*, Brussels, European Trade Union Institute and Observatoire Social Européenne.

(50) See NESO (2003), *An investment in quality: services, inclusion and enterprise*, Dublin, National Economic and Social Council, March.

(51) A somewhat similar ranking has been proposed by L. Kenworthy (2001), ‘Wage-setting measures, a survey and assessment’, *World Politics*, Vol. 54.

(52) For the purpose of comparison with the centralisation score, and for the same reasons, Table 1.9 presents the square root of the weighed coordination index.



TABLE 1.10: COORDINATION OF WAGE BARGAINING, 2003

Types of coordination			
Finland	Explicit coordination through national wage agreements and sectoral coordination	5	0.64
Belgium	Explicit coordination in National Labour Council, little sectoral coordination	4	0.61
Slovenia	Explicit coordination through bipartite and tripartite national agreements	4	0.63
Denmark	Some explicit coordination and broad sectoral agreements and pattern-setting	4	0.58
Netherlands	Some explicit, but mostly implicit coordination and some pattern-setting by large employers and unions	4	0.57
Sweden	Implicit coordination within confederations (unions) and pattern-setting, aided by joint institutions	4	0.57
Austria	Implicit coordination through synchronisation of bargaining rounds and pattern-setting between sectors	3	0.54
Ireland	Explicit coordination through national wage agreements, coordination within sectors absent	4	0.49
Germany	Implicit coordination through comprehensive sectoral bargaining and pattern-setting	3	0.43
Spain	Some explicit coordination between confederations of unions and employers in recent years and weak pattern-setting in sectoral bargaining	3	0.48
Italy	Implicit coordination between major employers (through strongest regional and sectoral federations) and in principle trade union confederations	2.5	0.42
Portugal	Implicit coordination between major employers, little coordination between unions	2	0.41
Luxembourg	Implicit coordination among employees and employers, no sectoral coordination	2.5	0.38
Greece	Some explicit coordination, with government assistance, little sectoral coordination	2.5	0.37
France	Irregular implicit coordination through pattern-setting in the public sector and nationalised industries	1.5	0.37
Cyprus	Incomplete pattern-setting between sectors	2	0.36
Malta	Implicit coordination among unions and employers	2	0.35
Slovakia	No national coordination since 2000, some sectoral coordination	2	0.31
Hungary	Some national coordination through the tripartite body, no sectoral coordination	2	0.28
Latvia	Some national coordination, mainly on minimum wages	1.5	0.26
Poland	No national or sectoral coordination	1	0.21
UK	No national or sectoral coordination	1	0.19
Estonia	No national or sectoral coordination	1	0.17
Czech Rep.	No national or sectoral coordination	1	0.16
Lithuania	No national or sectoral coordination	1	0.11

NB: 5 = Explicit coordination between and within the peak association of unions and employers, through agreements at the national and sectoral level; 4 = Explicit coordination between peak federations through agreements at national level only, or implicit coordination in confederations (unions or employers) at the national and sectoral level; 3 = Implicit coordination through synchronisation of sectoral bargaining and pattern-setting; 2 = Some coordination through supervision and weak, irregular or incomplete pattern-setting; 1 = No coordination at the national or sectoral level. Weighted with coverage rate (coverage rates in Greece and Ireland are set at the level of employer organisation rates, in Malta at the level of the union density rate).

Spain, central agreements have set guidelines for wage conduct since 2001. In Slovenia (2002) and Hungary (2003), and in weaker versions also in Slovakia and Latvia, tripartite negotiations set the framework for minimum wages and some additional elements of wage-setting. In Italy, finally, tripartite negotiations in 2002 and 2003 have mostly concentrated on labour law reform, but also sought to influence the inflation targets set by the government. Almost all of these agreements re-

commend a policy of wage moderation in order to sustain non-inflationary economic development and to improve national competitiveness. In order to draw up macroeconomic guidelines and define concrete national target figures for wage increases, many Member States have tripartite or bipartite economic and social councils that provide macroeconomic expertise for the social partners (see Table 1.12, in the section on concertation). An attempt to create such a mechanism in

Germany, modelled on the Dutch Foundation of Labour, has failed.

In several Member States the peak organisations of unions and/or employers engage in implicit coordination. This is the case, for instance, in Sweden (unions), the Netherlands, Luxembourg and Malta (unions and employers' groups), Portugal and France (employers). Pattern-setting is reported in six Member States: Austria, Denmark, Finland, Germany, the Netherlands and Sweden. Usually,

the dominant sectors are industrial sectors such as metalworking or chemicals, which are exposed to international competition. Pattern bargaining also occurs through large (multinational) firms, as in the Netherlands, where such companies set the trend for wage increases. Sometimes, for instance in Sweden, the leadership of industry in wage-bargaining is supported by legal provisions supplying mediation services.

In the new Member States coordination is generally weak, with the exception of Slovenia. The tradition of national wage agreements, existing in Slovakia, faltered in the late 1990s and the last such agreement was concluded in 2000. Attempts to reach agreement in Poland stalled in 2003. In Hungary, however, there have been fresh initiatives. Usually the legal status of a national agreement is a non-binding recommendation to lower level bargainers, but there is little coordination, within or between confederations, or in sectors, to put pressure behind such recommendations or monitor their follow-up.

### 3.2.5. Recent developments in wage-bargaining — an overview

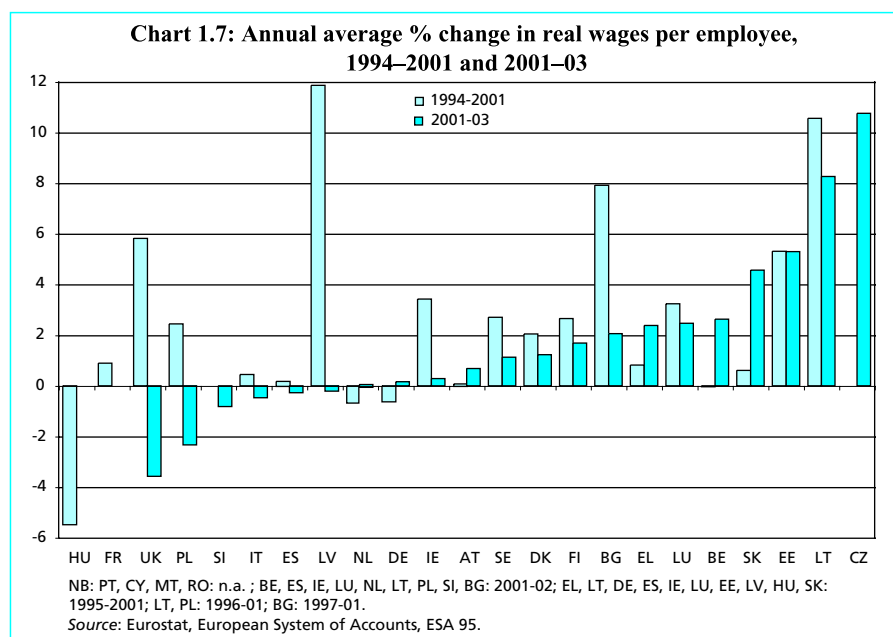
Wage-setting is arguably the area in which industrial relations and collective bargaining has the greatest direct effect on broader economic and social developments, influencing inflation, unemployment and social expenditure<sup>(53)</sup>. Its importance as a means of adapting to economic imbalances has increased with the progress of economic and monetary union (EMU) as euro-zone countries are no longer able to use exchange and interest rates to make such economic adjustments. The introduction of the euro has also added greater transparency to pay comparisons within Europe. Furthermore, the accession of the new Member States will add a new

dimension to wage-setting. Wages in these countries are in general considerably lower than the EU-15 average and there will be considerable interest in the effects of EU membership on wages and economic development in the new Member States and of the addition to the single market of a group of low-wage economies on developments in EU-15.

The EU's 2003–05 broad economic policy guidelines, adopted by the Council in June 2003, state that the maintenance of sound macroeconomic conditions depends on wage developments as well as on the policies pursued by the European Central Bank and national governments. The Council calls upon wage-bargainers to seek outcomes that contribute to stable macroeconomic conditions and 'employment-friendly' growth. Governments should promote the right framework conditions for wage negotiations among the social partners. Above all, nominal wage increases are consistent with price stability and productivity gains. In particular, labour cost developments should remain moderate in the context of a possible cyclical recovery in productivity or temporary increases in inflation (for instance, related to oil price hikes).

This would allow companies to increase job-creating investment. The guidelines also stress a perceived need to allow wages to better reflect productivity, taking into account productivity differences across skills and local or regional labour market conditions. Finally, the guidelines advise governments to 'foster the macroeconomic dialogue in a context of productivity-oriented wage policies'.

Across the current EU, nominal pay increases had moderated somewhat in 2002 following a rise in 2001. This reflects, with some delay, the worldwide economic downturn which began late 2000. The terrorist attacks on the United States on 11 September 2001, and the Middle East wars that followed, have added to the uncertainty facing European economies. In 2002 and 2003, there was a marked slowdown in economic growth. Taking inflation into account, real pay increases had not risen very high in 2001, despite worries about the erosion of wage restraint after entrance into the EMU had been secured. On average, wage moderation intensified in 2002, though there is considerable variation, especially outside the euro zone (see Chart 1.7). Adding productivity to the equa-



(53) This section is based on *Employment in Europe 2003. Recent trends and prospects*, published by the European Commission, DG Employment, and the *EIRO overview on pay developments in 2003* (Eironline, 2004).

tion, trade unions in most EU-15 Member States were unable to achieve wage rises equal to the sum of inflation and productivity increases in 2001 and 2002. It thus seems that the EU's key broad economic guidelines on pay — that increases in nominal wages should be consistent with price stability and that increases in real wages should not exceed growth in labour productivity — were by and large observed in most Member States. 2003 was a year when economic growth slowed further, whereas unemployment rose and inflation fell. This might be expected to offer a recipe for further wage moderation, as called for by the Broad Economic Policy Guidelines (BEPGs) and many governments.

The attainment of very low inflation has resuscitated an old fear, discussed at length by Keynes: the tendency of workers to resist cutting money wages even in the presence of very high rates of unemployment. When nominal rate increases are very low, the room for adjustment would seem restricted. This is probably the reason why there has been a tendency to prolong working hours as an alternative adjustment variable, leading to lower hourly wage rates.

The problem of limited nominal wage adjustment has come up in a number of euro countries. Excluding a downward adjustment of wages, the Spanish central agreement for 2003 mentions the intention to make greater use of shorter working hours (and reduced overtime) rather than wages or contracts as an adjustment variable in case of a downturn. In a Finnish study, based on a survey of the social partners and their members in 2003, it was found that adjustment to a downturn is expected to take place first of all through job losses and changes in employment levels, possibly also in working hours. Employees are not ready to accept downward flexibility of wages, even if low wages are compensated by public subsidies.

However, it seems to be gradually becoming more widely accepted that, under the conditions of EMU, there is scope for mechanisms that include partial nominal wage adjustments. Using tax reductions as part of collective wage agreements is considered a positive and effective measure to achieve moderate wage settlements. This is seen as another reason for national wage agreements and social pacts, which also involve the government.

In late 2002, the central organisations in **Finland** reached a new two-year agreement for 2003 and 2004, with moderate cost effects of 2.9 % in 2003 and 2.2 % in 2004. Union demands — improved redundancy compensation and minimum working hours — were partly met and the government helped by offering tax cuts and employment measures. The agreement was ratified by the membership and will be implemented through sectoral and, in some cases, company bargaining. It is interesting to note that this agreement, like its predecessors, encourages local negotiations over performance related pay, now quite widespread in Finland.

Wage-bargaining in **Belgium** follows a pattern of biennial national agreements, the last of which was concluded in January 2003, applying to 2003 and 2004. The agreement had to be within the parameters set by the government, based on the benchmarks of Belgium's three neighbours — Germany, France and the Netherlands. The negotiators settled for an indicative rate of 5.4 % cost increase over two years. Other issues related to harmonising conditions for blue- and white-collar staff, are training and greater flexibility in the application of the government's quota system for employment creation for young people and trainees in small and medium-sized firms.

In March 2003, the **Irish** social partner organisations ratified a new

national partnership agreement, called 'Sustaining progress'. It is an 18-month pay deal providing for increases of 7 %, along with measures in areas such as compliance procedures and statutory redundancy pay. The Irish Business and Employers' Confederation (IBEC) had insisted that 'deliverable mechanisms' be included in any new national agreement. With the help of new benchmarking procedures, the unions were able to secure public sector wage increases where they had lagged in past years.

In November 2002, the social partners and the government in the **Netherlands** reached an agreement for 2003, including a recommendation to lower level bargainers to settle pay increases within a limit of 2.5 % cost increases — the first such centrally agreed wage ceiling for a decade. (The 1993 'new course' agreement, recommending a 'zero' increase, had been a response to the 1991–93 recession and was negotiated without the government, albeit under a strong 'shadow of hierarchy' or threat of intervention.) A year later, it proved much more difficult to negotiate another tripartite agreement. Eventually, the social partners struck a deal, recommending a pay freeze in 2004 and a small increase, if the economy improves, in 2005. This compromise won a yes vote in a unique referendum among the membership of the Dutch Confederation of Trade Unions (FNV). As part of the agreement, the government softened its austerity measures in social security and health insurance that had already gained approval in parliament, and postponed its plan to phase out early retirement through punitive tax sanctions. However, the standstill in wage negotiations in the remainder of 2004 and 2005 was contingent upon reaching a new tripartite agreement on early retirement, by May 2004. When this proved impossible, the unions organised another referendum to reject the government's proposals and declared that they would break the standstill

on wages. The government threatened to retaliate by not extending collective agreements.

In late 2002, on the prompting of the government, a tripartite agreement was reached in **Hungary's** re-established National Interest Reconciliation Council. The agreement recommended to sector and company bargainers a 4.5 % wage increase in real terms, and a standstill in raising the level of the statutory minimum wage. In 2003, fewer than half of the collective agreements reported to the Ministry included provisions on annual wage increase, in contrast to 60 % in the previous year. The negotiated increases, however, were usually higher than the recommendations.

In June 2002, the government and social partners in **Slovenia** concluded an agreement on private sector pay for the period 2002–04. Under the deal, pay rises were to be linked to consumer price increases, while from 2004 pay would be adjusted in a new way aimed at helping Slovenia make a smooth transition to EU membership. This was taken up by a new tripartite social agreement for 2003–05, signed in April 2003 by the Slovenian Government and the social partners. This pact set the general direction for economic and social development and defines the tasks and responsibilities of the negotiating parties. The agreement's main aim is to achieve a balance between economic efficiency and social and legal security. It includes provisions on wage policy, employment, training, social dialogue, equal opportunities and taxation.

The central organisations in **Spain** concluded a cross-industry agreement in January 2003, laying down guidelines and criteria for lower-level collective bargaining in 2003. Like a similar one in 2002, the agreement puts pay moderation at the centre of bargaining, explicitly referring to the requirements of stability in the EMU. The agreement also advises lower-

level bargaining to promote increased employment stability in exchange for more flexible working time. As in 2002, this was a typical 'agreement to agree', emphasising the value of 'dialogue and social concertation on criteria and content applicable at the different levels of collective bargaining'. The agreement is valid for one year with the possibility of renewal or extension. An innovation is that it provides for the creation of a Monitoring Commission (*Comisión de Seguimiento*) for the purpose of promoting social dialogue; gathering and disseminating good practices related to equal opportunities; promoting the European-level social partners' July 2002 framework agreement on telework; and fostering the promotion of 'observatories' at national sectoral level. The new agreement reflects the spirit of various EU directives in calling for 'a suitable balance between flexibility and security, establishing frameworks that allow companies to adapt internally to changing circumstances'. Also in line with EU directives, the 2003 agreement calls for equal treatment and non-discrimination on grounds of gender, ethnic group or race, while promoting the content of the European declaration on the employment of people with disabilities, signed in May 1999 by EU-level social partners.

**Portugal** experienced a sharp deterioration in economic performance in 2002 and 2003, with soaring unemployment, a contraction in public expenditure and low productivity. The government has proposed a new 'social contract for competitiveness and employment', which is being discussed in the Standing Committee for Social Concertation. There appears to be no consensus, with one of the union confederations in favour and the other against, and with employers insisting that the peace clause issue has to be resolved first. Under the emergency conditions of entering the EMU, there had been a string of social pacts in the 1990s, the last one applying to 2001.

In February 2003, **Poland's** Minister of Labour proposed a 'pact for labour and development' and from May 2003 the Tripartite Commission for Social Issues has been involved. In September, employers' organisations and some trade unions reached a partial agreement on minimum wages, public sector pay increases and cuts in business taxes, which was accepted by the government. However, the NSZZ Solidarnoch trade union rejected the deal and withdrew from further negotiations. The future of the social agreement initiative is uncertain.

Although national-level tripartism is operational again in **Slovakia** after a two-year break in 1997 and 1998, the social partners and the government have not been able to reach a new general agreement since 2000. The government determined the rise of minimum wages (currently at 41 % of the estimated average monthly wage) unilaterally, setting an increase of over 10 % for 2003.

December 2003, the **Greek** Confederation of Labour (GSEE) invited the central employers' federations to start negotiations replacing the 2002–03 central agreement. That agreement dealt mainly with wages and working hours, but for 2004 the GSEE also seeks improved social insurance rights for teleworkers, in line with the autonomous EU agreement of July 2002.

A tripartite agreement on the reform of the sickness fund deficits was reached in **Luxembourg**, but not on wages. Some coordination is being achieved through the 'automatic' indexation system, adjusting all wages, pensions and benefits one month after the cost-of-living index in the previous six months has gone up by 2.5 %. The decision is taken in the tripartite Index Commission (*Commission de l'indice*) which meets every three months.

**Malta's** second largest union (UHM, Union of United Workers) has in



2004 proposed a social pact in view of EU accession, taking its example from Irish and Dutch social partnerships.

In July 2002, the **Italian** Government, employers' organisations and trade unions — with the notable exception of the largest union confederation (CGIL) — signed a major agreement on incomes policy, labour market reform, tax concessions, and investment and employment in the south of Italy. This 'pact for Italy' exempts small firms from the dismissal protection law under certain conditions, and offers a larger window for temporary contracts and work agencies, following the proposals in the 'Biagi law', so called after the labour lawyer Marco Biagi who was murdered in April 2002. Against the background of economic slowdown and rising inflation, the pact re-affirmed the principle of earlier agreements that pay rises in sectoral collective bargaining should stay within the government's inflation forecast. However, the unions have pressed for a revision since then. In June 2003, after five months of negotiations, Confindustria, the central employers' confederation of Italy and the three main trade union confederations, including the CGIL, signed a new agreement, aimed at relaunching development, employment and competitiveness, and seeking to influence the government's future economic policy. Both trade unions and employers' organisations are opposed to the government's reform plan to move more decision-making in these matters to the regions. The 2003–04 bargaining round in Italy struggled with the decline in concertation and there were sharp disagreements over how to compensate for the *ex post* excess in inflation at the time of a cyclical downturn. The CGIL and the other unions want to renegotiate the government's inflation target, but this is resisted by the government and by employers. In view of these differences, it is remarkable that the three trade union confederations and the employers' organisations in Italy's

small crafts business sector (around 1.5 million employees divided over 850 000 firms) signed a replica of the 1993 'incomes policy' agreement for the artisan sector in March 2004, setting the stage for firm-level bargaining and introducing joint union–employer bodies in small firms. In December 2003, sectoral employers' organisations and trade unions signed a renewal of the national collective agreements in the chemicals industry, without resort to any industrial action and before the old provisions were due to expire. The key provisions of the new agreement are the safeguarding of workers' purchasing power and the affirmation of the principle of social dialogue and negotiation without conflict. From January 2004, the parties will establish a joint committee to examine technical aspects of the application of the recent 'Biagi law' on the reform of the labour market.

New collective agreements for hourly-paid and salaried workers in the industrial sector were concluded on 1 February 2004 by the Confederation of **Danish** Industries (DI) and the Central Organisation of Industrial Employees (CO-I), a cartel of blue-collar and white-collar trade unions from various sectors in industry. The new agreements succeed the four-year deal of 2000. The key points of the new agreements are improvements in social policy, such as occupational pensions, parental leave and sick pay. The settlement prioritises the wish to maintain jobs and its provisions represent an increase in labour costs of nearly 1 % per year over its three-year term, leaving room for subsequent local pay negotiations which should ensure real wage increases without jeopardising the competitiveness of enterprises. An interesting aspect of industry bargaining in Denmark is that negotiations are preceded by so-called 'climate agreements' or 'agreements to agree' by the central organisations, DA for the employers, and LO for the unions. In particular, these agreements stress

the value of social dialogue as a mental framework for efficient collective bargaining and seek to diminish the risk of conflict — with unions clearly concerned about attracting foreign investment, especially where large industrial conflicts attract high publicity and have strong knock-on effects in the global network economy. Soon after these agreements, the two central organisations extended the agreement to the entire private sector. Following difficult negotiations, this deal was drawn up by the Public Conciliation Service (*Forligsinstitutionen*) and was subsequently put to a membership ballot. The settlement staved off the threat of industrial action. The two key issues were the introduction of a central fund for the payment of parental leave and benefits above the statutory level; and pay compensation in the event of unlawful strikes. Eventually employers conceded the first point and the trade unions the second. The overall settlement is notable for an increased focus on social issues, but also for the more central role taken by LO and DA compared to recent years.

The first sectoral three year collective agreements in the 2004 bargaining round in **Sweden** were signed in March in four industrial sectors — paper and pulp, steel and metals, chemicals and engineering. This result had become possible thanks to the conclusion of a central agreement for nearly one million blue-collar workers in the private sector between the Confederation of Swedish Enterprise (SN) and the Swedish Confederation of Trade Unions (LO), the first such agreement in over a decade. In February 2004, after three years of negotiations, this 'adjustment agreement' provides financial benefits and other support to workers who are made redundant. Under the adjustment insurance scheme, workers (with some seniority) who are covered by LO-negotiated agreements for blue-collar workers and are given notice of a collective or individual

redundancy in a situation of 'work shortage', will receive monetary support for training, finding a new job or starting an enterprise, or, in the case of older workers, pre-retirement. The company and the local trade union must apply together for this support. Employers will pay a contribution based on their wage bill to the insurance scheme; a bipartite foundation will be responsible for the administration of the new adjustment insurance. The 2004 agreements in industry provide for a 6.8 % pay rise in three years, plus working-time cuts worth half a percentage point. They followed the model of the three-year agreements concluded in 1998 and 2001. The average pay rise in the earlier agreements was 7.5 % in 1998 and 7 % in 2002. The new agreements establish joint funds for the improvement of skills development, health and safety, and parental leave. Similar agreements followed in commerce, banking, finance, media, and construction. Bargaining in these sectors had been held back by the State's Mediation Authority (*Medlingsinstitutet*), which prefers the industry agreements to be settled first. The agreements in metal engineering and other industrial branches had been prepared by the 'impartial negotiation leaders', an institution that was introduced by the 1997 industry agreement between 12 employers' organisations and eight trade unions. These impartial negotiation leaders replace the 'State mediators' found in other sectors of the Swedish economy. The industry agreement is widely thought to have prepared Sweden for joining the EMU and heightened international competition, which requires lower levels of conflict<sup>(54)</sup>. Following the 'no' vote in a national referendum, Sweden has, however, remained outside.

In February 2004, the collective bargaining parties in the metalworking industry in the **German** region of Baden-Württemberg signed new col-

lective agreements. The settlement, which was subsequently adopted as a 'pilot agreement' for other regions, provides for a pay increase of 2.2 % in 2004 and 2.7 % in 2005. Of each annual pay increase, 0.7 percentage points will serve to allow for a 'cost-neutral' adjustment to the introduction of the new pay framework agreement of 2002, which merges blue- and white-collar job categories into a single grading system. As part of the compromise, it was agreed that, deviating from the industry' standard 35-hours working week, up to 50 % of the employees in an enterprise can work up to 40 hours. Originally, the employers had asked for longer working hours and a general 'opening clause', with unlimited authority for local management and works councils to decide such matters. In the final settlement, the unions gained the concession that they and the employers' federation need to be informed and give their consent. Against the background of its defeat on the 35-hour week issue in eastern Germany in 2003, IG Metall regarded the outcome of the 2004 bargaining round as a moderate success. The dispute in the East German steel and metal industry had ended after four weeks when the trade union called off the strike. While employers in the steel industry conceded a gradual reduction, in the metalworking industry, employers conceded no reduction in the working week. It was IG Metall's worst defeat in decades.

### 3.3. Concertation, social pacts and the rise of the government

The overview on wage-bargaining showed that governments play an active role in influencing the outcome of collective bargaining in many EU Member States. They employ different instruments, varying from direct participation in negotiations (concerta-

tion) which may or may not lead to a social pact, agreement or contract, threats to withdraw support or offering compensation instead, to minimum wage legislation and indexation, or trying to use wage-setting in the public sector as a benchmark for private sector wage developments. Table 1.11 is based on the five-point scale proposed as follows:

5 = government imposes private sector wage settlements or suspends bargaining (involuntary wage freeze);

4 = government participates directly in private sector wage-bargaining and provides norms or ceilings, or tax-based compensation to achieve particular outcomes (social pacts);

3 = government determines wage-bargaining outcomes indirectly through minimum wage-setting, wage-setting in the public sector, or through threats of sanction (for instance, withholding extension or recognition);

2 = government sets minimum wage and provides institutional framework for national or sectoral collective bargaining (legal protection of agreements, extension), consultation or dialogue (recognition and consultation). (1.5 if only one of these applies);

1 = no role of government in wage-setting.

Table 1.11 shows that there is considerable variation across EU 15 Member States. In Belgium, Ireland, Portugal, Finland, Greece, followed by Italy, France, and Luxembourg the highest scores are reached, whereas the lowest scores on 'government intervention' are observed in the UK, Austria, Germany and Spain. The Netherlands, Denmark and Sweden occupy a medium position. Significantly, the most 'activist' governments are not in the 'neo-corporatist' Member States, with highly coordinated bargaining and

(54) N. Elvander (1999), *The industrial agreement: An analysis of its ideas and performance*, Sandviken, ALMEGAs förlag.



TABLE 1.11: GOVERNMENT INTERVENTION IN WAGE-BARGAINING

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Average 1990–2004
BE	3.0	3.0	3.0	3.0	5.0	5.0	5.0	5.0	5.0	4.0	4.0	4.0	4.0	4.0	4.0	4.1
IE	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
PT	4.0	4.0	4.0	3.0	3.0	3.0	4.0	4.0	4.0	4.0	3.0	4.0	4.0	4.0	4.0	3.7
FI	3.0	3.0	4.0	3.0	3.0	4.0	4.0	4.0	3.0	3.0	3.0	4.0	4.0	4.0	4.0	3.5
EL	3.0	3.0	3.0	3.0	3.0	3.0	3.0	5.0	3.0	3.0	5.0	3.0	3.0	5.0	3.0	3.4
IT	3.0	4.0	4.0	4.0	3.0	3.0	3.0	3.0	4.0	3.0	3.0	3.0	4.0	3.0	3.0	3.3
FR	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	4.0	3.0	4.0	3.0	3.0	3.0	3.0	3.1
LU	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	4.0	4.0	3.1
NL	2.0	2.0	3.0	3.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	3.0	4.0	2.3
DK	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	5.0	2.0	2.0	2.0	2.0	2.0	2.0	2.2
SE	2.0	3.0	3.0	3.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.2
ES	3.0	3.0	3.0	3.0	1.0	1.0	1.0	3.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	1.9
DE	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	2.0	2.0	2.0	1.5	1.5	1.5	1.6
AT	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
UK	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	1.5	1.2
EU-15	2.6	2.7	2.9	2.7	2.5	2.6	2.7	2.9	2.9	2.6	2.7	2.7	2.8	3.0	3.0	2.8
HU												2.0	2.0	4.0	4.0	3.0
SI												2.0	2.0	4.0	4.0	3.0
PL												2.0	4.0	2.0	2.0	2.5
SK												4.0	2.0	2.0	2.0	2.5
CZ												2.0	2.0	2.0	2.0	2.0
EE												2.0	2.0	2.0	2.0	2.0
LV												2.0	2.0	2.0	2.0	2.0
LT												2.0	2.0	2.0	2.0	2.0
MT												2.0	2.0	2.0	2.0	2.0
CY												1.5	1.5	1.5	1.5	1.5
EU-10												2.2	2.2	2.4	2.4	2.3

Source: Adapted from A. Hassel, *Negotiating wage restraint*, Habilitationsschrift Ruhr-Universität Bochum, 2003; updates for Greece and Luxembourg, and for 2001–04 all EU-10 and EU-15 Member States.

NB: 1 = No role of government in wage-setting; 1.5 = government only involved in minimum wage-setting;

2 = Government tries to influence wage-bargaining by providing institutional framework for consultation or dialogue;

3 = Government determines wage-bargaining outcomes indirectly through minimum wage-setting, tax-based incomes policies, or threats of sanction (positive or negative);

4 = Government participates directly in wage-bargaining, by providing norms or ceilings (social pacts);

5 = Government imposes private sector wage settlements or suspends bargaining (involuntary wage freeze).

centralised and concentrated social partners. Intervention is strongest, and most persistent, in the more 'peripheral States', which had to make the largest adjustment in their wage-setting system before entering the euro zone. The results of Table 1.11 also suggest that 'no or little' government intervention is an option both in relatively organised 'neo-corporatist' countries (Austria, Germany, to a lesser extent also in Sweden, Denmark and the Netherlands), and in countries that have tended to follow an unorganised free market course (UK, Spain).

Variation is also found in EU-10 where most Member States have only

limited instruments to influence wages and wage-bargaining is generally uncoordinated. Only in a few Member States (Slovenia, Hungary) have governments been active and successful in negotiating some kind of cross-industry pact. The national minimum wage is the most widespread instrument in seeking to influence wage developments. All new Member States, with the exception of Cyprus, have introduced a national minimum wage. (In Cyprus there are, however, minimum wages set for particular categories, including clerks, nurses and school assistants.) Usually, social partners have a say through tripartite bodies on shaping minimum wage decisions, but the government takes the final decision.

Since the adoption of a statutory minimum wage in Ireland and the UK, nine EU-15 countries now have a statutory minimum wage, which can also be seen as a form of coordination, since it functions as a reference point for the whole wage system. While in Belgium and Greece the minimum wage is set by binding national level collective agreements, in the other seven countries (France, Ireland, Luxembourg, the Netherlands, Portugal, Spain and the UK) the minimum wage has its basis solely in legislation. Therefore, the latter might be interpreted as a form of State-imposed coordination, though only in France is the impact very large. Finally, there are three countries

(Belgium, Luxembourg and Malta) that have a pay-indexation mechanism, according to which nominal wage increases are automatically and generally adjusted to inflation. In all other countries such 'centralising mechanisms' have disappeared, after having been quite important in the high inflation environment of the 1970s. However, in the post-EMU context the issue has not disappeared, especially in countries where there are significant differences between the national and the EMU inflation rate, or where government targets and actual price rises diverge. In Italy, the trade unions, especially the CGIL, have demanded an upward revision of the government's target rate, which since 1993 has been used as a benchmark for sectoral wage-bargaining. In Spain, most employees are covered by collective agreement with wage revision clauses (*cláusulas de revisión salarial*), which provide for additional pay rises when inflation exceeds certain limits. Their importance has increased in the context of wage-bargaining under EMU, since they make up the difference between actual consumer price inflation and the government's forecasted or target rate, which is often used as a benchmark for initial wage rises for the purpose of adaptation to the EMU conditions of stability and competitiveness.

Public sector wage-setting is another source of government influence, especially in the new Member States. The public sector is important in terms of relative size and because it employs the majority of union members. Although public sector wages are usually much lower, governments in the new Member States are not able to use public sector wage-setting in order to influence wage developments in the private sector. The two seem unrelated. In the private sector, collective bargaining, coordination and coverage are weak, and, in the public sector, the most common approach is

that wage scales and rates for public employees are set by government decree, after quasi-negotiations (Hungary, Estonia) or perfunctory consultations with the unions. Only in Cyprus and Malta is there free collective bargaining in the public sector, and both in Slovenia and Slovakia national agreements have set the stage for public sector wage-bargaining in recent years.

No trend towards less government intervention in wage-bargaining in EU-15 can be observed, although the instrument of a wage freeze, still employed in the 1970s and 1980s, has become rare in the 1990s. But governments have not been able to extract themselves from the domain of industrial relations and wage-setting. This means that governments must also be interested in the organisation and coordination of labour markets. The reason is that governments must worry about unemployment if they want to be re-elected and that social dialogue and coordinated wage-bargaining offered suitable starting points for negotiations about adjustments in response to shocks and turbulence<sup>(55)</sup>. But State intervention is a double-edged sword. Governments might achieve a higher control over the rate of change of wages, but in exchange they surrender control over other policy issues, especially regarding social protection. This may explain the increased interdependence between the domains of industrial relations, social protection and labour market governance, and between wage and social policy when it comes to bargaining.

The new scheme for additional maternity/paternity benefits in Denmark is a good example of the growing interaction between wage and welfare issues, and of the political pressure on social partners to assume a number of 'social policy' tasks. The most discussed aspect of the 2004

agreements in industry is the introduction of a provision, known as a **revision** or **mousetrap** clause, which allows the parties to reopen negotiations if parliament adopts legislation which changes the basis of the agreements — for example, by amending the rules on unemployment benefits during temporary lay-offs, the establishment of a central fund to finance additional parental benefits, or other initiatives which increase employers' costs. Such a clause was seen as necessary to secure the agreements' relatively long duration of three years. It was also meant as a warning to the political actors against intervention in matters of the traditionally autonomous sphere of regulating pay and working conditions. In this connection, the proposal of a central fund financed by employers collectively for additional parental benefits was a hotly debated issue. A similar approach is now being pursued in Sweden and the Netherlands. If the Swedish Government decides to introduce new sickness insurance rules or amend existing working-time legislation, the signatory parties to the 2004 collective agreements in Sweden may cancel them. In the Netherlands, the 'wage moderation promises' in the 2004–05 agreement have been made contingent on a new agreement on legislation supporting early retirement under some conditions and were withdrawn when this agreement could not be reached. These interdependencies between wage and social policy are also growing at the level of firms, for instance in Germany.

The incentives for social partners and governments to enter into agreements or social pacts post-EMU will in part depend on how future uncertainty is evaluated against past experience. If an asymmetric shock were to happen under monetary union, the 'one size fits all' monetary policy requires more flexibility through the deployment of other policy instruments. Fiscal policy

(55) *The role of government intervention in wage-bargaining has been analysed in the comparative study of A. Hassel, Negotiating wage restraint, Habilitationsschrift Ruhr-Universität Bochum, 2003.*

is a possible response to divergent cyclical developments in the euro zone, but is unlikely to be sufficient in itself to achieve stabilisation (and may be used to accentuate cycles). Hence, it is likely that extra or early wage restraint through coordinated policies may come to be seen as a necessary means of stabilising the economy. Governments will want to avoid the risk that occasional wage hikes occur 'by accident', because the fiscal and employment consequences are now much more difficult to handle. Extra wage restraint through coordination with central organisations of unions and employers is probably preferred over the longer and less predictable path towards slowing down wage growth through a rise in unemployment.

In sum, the mere uncertainty of the macroeconomic consequences of EMU and the perceived risk of large imbalances at specific occasions may imply a precautionary motive for this type of coordination<sup>(56)</sup>. Governments should be the actors most interested in finding a substitute for lost policy instruments (e.g. monetary policy, fiscal policy restraints). Employers may be less interested, as they are likely to see decentralisation as their first choice. Yet, they may see the benefits of achieving wage moderation through coordination rather than risking conflict in an economy in which reliability is at a premium. For trade unions, the exercise of wage restraint means a lot of stress, but in a situation when they are losing ground they may have an incentive to demonstrate their ability and legitimacy as national actors.

### 3.3.1. Consultation and representation on statutory bodies

Representation on statutory bodies is usually the prerogative of the national peak associations of employers and trade unions. In some cases, for

instance in the Netherlands, Denmark and Sweden, these tasks are now shared with sectoral unions and employer federations, as an expression of a trend towards decentralisation. As shown in Table 1.12, employers and unions enjoy formal representation on such bodies in almost all EU countries. While in most cases participation in such structures is formalised and the national peak associations are officially recognised as members of these bodies, trade union officials and employer representatives in the UK are appointed as competent individuals rather than as official representatives of their associations. The statutory bodies on which union and employers' representatives sit may be bipartite, tripartite or have a wider membership. They may have an advisory, consultative or negotiating and standard-setting role. Their remit may be general — as with the Belgian CNT/NAR, Greece's OKE, Hungary's OÉT, Ireland's NESR, Italy's CNEL or the Dutch SER — or relate to specific issues, for instance, with regard to economic development (Malta), social security administration (as in France, Germany, Greece and Italy), aspects of pay and incomes policy (Finland and Norway), minimum wage-setting or the application of labour law and the extension of collective agreements (Germany, Ireland, Luxembourg). In many new Member States, the tripartite body annually negotiates or advises the government regarding the increase of the national minimum wage and, in some cases, the index used to calculate the increase in remuneration of public service employees.

In recent times there are two major EU Member States in which the central employers' associations have scaled back their involvement in a number of such representative bodies. In 2001, France's MEDEF decided to withdraw from the direct management of the country's jointly run

social security fund-holding bodies. A little later, the employers' association for small and medium firms followed suit. A decade earlier, together with its decision to stop central wage negotiations, the Swedish Employers' confederation formally withdrew from consultation boards and other government bodies in an effort to distance itself from what it considered to be excessive corporatism. However, little has changed in practice since many employer representatives have continued to serve on governing bodies, but now in their personal capacity.

In all of the former State socialist countries, tripartite concertation came to be institutionalised in the wake of the democratic transition. Hungary did so already in 1988. These bodies are usually anchored in legal statutes, but the role played by them in practice fluctuates, partly depending on the political complexion of the government. Poland's Tripartite Commission for Social and Economic Issues was established as a forum for national social dialogue in 1994. The weakness of employer representation and conflicts between the unions obstructed the work of the Commission for many years. However, since 2001, the government has introduced new legal regulations in order to revitalise the Commission. There are now also some sectoral tripartite bodies. In July 2002, at the initiative of the Hungarian Government, an agreement was reached to renew the national-level tripartite dialogue within the framework of the National Interest Reconciliation Council (OÉT). Employees are represented by all six national trade union confederations that had been part of earlier national-level tripartite forums and employers are represented by all nine national organisations. Tripartite dialogue between trade unions, employers and the State has been operational in Slovakia for more than a decade, although there was a break in

(56) L. Calmfors et al. (2001), *The future of collective bargaining in Europe*, op. cit.

TABLE 1. 12: PARTICIPATION OF UNIONS AND EMPLOYERS IN TRIPARTITE BODIES

Tripartite bodies	
Austria	Numerous statutory 'corporatist' boards
Belgium	National Labour Council (CNT/NAR); various bodies at sectoral and regional level
Cyprus	Labour Advisory Board (ESS); Economic Consultative Committee; Social Insurance Fund Council
Czech Rep.	Council for Economic and Social Agreement
Denmark	Official Conciliation Service; several institutions under the auspices of the Ministry of Employment
Estonia	National Economic and Social Council (NESC)
Finland	Economic Council; Incomes Policy Settlement Commission
France	National Commission on Collective Bargaining; Unemployment insurance fund (UNEDIC); various social security fund-holding bodies
Germany	Parity committee for extension of collective agreements; social security administrative boards; labour courts and labour market board
Greece	Economic and Social Council (OKE); Mediation and Arbitration Service (OMED); Supreme Labour Council; Labour Inspectorate; Social Insurance Foundation (IKA)
Hungary	National Interest Reconciliation Council (OÉT)
Ireland	National Economic and Social Council (NESC); National Economic and Social Forum (NESF); National Centre for Partnership and Performance (NCPPE); Labour Relations Commission (LRC); Joint Labour Committees (JLC); Labour Court
Italy	National Council for Economic Affairs and Labour (CNEL); social security boards
Luxembourg	Economic and Social Council; Tripartite Coordinating Committee; Tripartite Index Commission; National Conciliation Office
Latvia	National Tripartite Cooperation Council
Lithuania	Tripartite Council; Commission of Labour Protection; State Social Insurance Council
Malta	Malta Council for Economic and Social Development, MCESD
Netherlands	Social and Economic Council (SER)
Poland	Commission for Social and Economic Issues
Portugal	Economic and Social Council (CES); Standing Committee for Social Concertation (CPCS)
Slovakia	Council for Economic and Social Concertation (RHSD); Agreement Extension Committee
Slovenia	Economic and Social Council (ESSS); Managing Board of Employment Agency; Agency for Pension and Disability Insurance; Agency for Health Insurance
Spain	Economic and Social Council (CES); National Institute of Employment (INEM); State Commission for Continuing Training (CEFC)
Sweden	Labour Court; authorities involved in the mediation process and occupational accidents/illnesses
UK	Participation of individual representatives in Low Pay Commission (LPC), Learning and Skills Council (LSC) and Health and Safety Executive (HSE)

Source: Database of the Institut des Sciences du Travail of the Université Catholique de Louvain (1997–2003) on behalf of the Employment and Social Affairs DG of the European Commission.

1997–98 and a new legal framework in 1999. At national level, the main forum for tripartism is the Tripartite Economic and Social Concertation Council, whose main activity consists of issuing opinions on measures proposed by the government in the field of economic and social policy, and, if possible, concluding 'general agreements' on such issues. There are also some efforts to support tripartism at the regional level, while public labour market bodies have a tripartite structure.

International organisations, in particular the EU and the ILO, have played an

important role in promoting the setting up of such institutions and have supported their development. However, the political stance of national governments is also decisive for tripartite bodies to play a significant role in setting the agenda for reform. Despite this political dependence, and in spite of some criticism of their excessively formal nature (see Chapter 6), after a decade or so of experience, it can be concluded that tripartite consultation has demonstrated its resilience and become a constant feature in the new Member States. (In Cyprus and Malta tripar-

tism has also taken root, informally in Cyprus and on a legal basis in Malta since 2000.) The weaknesses of these structures include the fragmentation of unions and employers' organisations in many countries as well as the poor state of the autonomous (bipartite) social dialogue at the national and especially sectoral level, something which has been stressed by the Commission in the run-up to enlargement. The Commission has indeed sought to actively promote the development of bipartite social dialogue in EU-10, and is continuing these efforts.

## ■ 4. Europeanisation

In addition, there are significant trends in European industrial relations that influence national developments. Already prior to economic and monetary union (EMU), national industrial relations generally followed one of two broad tracks: attempts at cross-border agreement among trade unions in continental welfare state countries to seek wage increases within specified parameters and thereby preventing social dumping; and the adoption of social pacts in peripheral or 'catch-up' countries, prioritising national competitiveness, addressing crisis situations and preparing for EMU membership. Viewed together, the two responses look like a dichotomy between 'Europeanisation' or 'nationalisation' of wage-setting and industrial relations. The first strategy, although it had the support of the European Trade Union Confederation (ETUC) and some of its most powerful national members and industry federations, was always very weak as it had to be based on coordination among trade unions. European employers' organisations and transnational firms were not able or willing to engage in bargaining or joint coordination. The second, national strategy, has its difficulties in the post-entry context, although it may be a very valuable strategy for the new Member States, especially if they are preparing for EMU membership. Already they are expected to join the second phase of the European exchange rate mechanism some time after accession, which makes exchange rate policies a matter of common concern, with procedures for surveillance and coordination. The preparation for membership brings the Maastricht convergence criteria into play. Although some EU-10 Member States have a tradition of social pacts

(Poland in the early 1990s; later also Slovakia and Hungary, and of course Slovenia) and institutional tripartism is a feature in all countries, there is still a way to go.

As EMU and economic coordination render labour costs and cost of living comparisons more feasible, there are obvious competitive and normative reasons for setting wages in line with or slightly below settlements reached in European neighbours. EU Member States have always been free to set pay awards compatible with historical productivity differences and with an element of 'catching up' on other countries. Convergence in Europe, apart from the acceptance and implementation of a common *acquis* of legal rules and standards, is in part built upon such competitive processes.

The social dialogue process and the European macroeconomic dialogue notwithstanding, concrete pay and conditions of employment are not subject to collective agreements at the European cross-industry or sectoral level. There are also no known cases of such concrete bargaining at European level within European companies, though a small but growing number of European works councils have reached some form of agreement on specific non-pay issues such as training or sexual harassment, while management increasingly deploys cross-border pay comparisons, and some unions are actively seeking to enhance transnational coordination of wage-bargaining.

For the European Metalworkers' Federation (EMF) the turning point came in the early 1990s, when the union was confronted with the triple pressure of the internal market, the recession and the preparation of EMU <sup>(57)</sup>. Several national wage-bargaining rounds ran into difficulties and wage-bargaining was no longer seen as just a national

issue. In response, the EMF started restructuring itself and began to discuss the potential for transnational coordination. The EMF started with a system for information exchange, the so-called European collective bargaining information network, followed by an exchange of observers and the adoption of common minimum standards, for instance on working hours (1996) and vocational training (2001). Since 1998, the EMF tries to ensure that national unions pursue a common strategy of demanding wage increases along the formula of productivity increases plus the inflation rate. The main goal of the coordination of collective bargaining is to avoid the downward competition between different national bargaining rounds. The EMF has no means of enforcing collective decisions on its individual national affiliates. However, it has established what can be described as a system of very soft sanctions. National members have the obligation to report to the Collective Bargaining Committee on national wage-bargaining rounds.

Other European industry federations, such as the European Mine, Chemical and Energy Workers' Federation (EMCEF), the European Federation of Public Service Unions (EPSU), and the European Transport Worker's Federation (ETF), have also stepped up their transnational coordination efforts. However, they do not try to coordinate wages. Only the exchange of information of the different ways of bargaining in individual countries, including the exchange of bargaining observers, is deemed a realistic possibility. The EPSU, which organises workers in the civil service from local to European government as well as in the health sector and general utilities such as energy and water, is struggling to preserve a system of integrated public services within EU Member States. Engagement in the European

(57) See T. Schulten (2002), 'Europeanisation of collective bargaining: An overview on trade union initiatives for a transnational coordination of collective bargaining policy', WSI Discussion Paper, No 101, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut in der Hans-Böckler-Stiftung.



social dialogue and lobbying the EU institutions are important elements of its work. A third strategy employed by EPSU is cooperation with other social movements. The federation took part in the European day of national action on the General Agreement on Trade in Services (GATS) organised by the European Social Forum on 13 March 2003 and the ETUC's European day of national action for a social Europe on 21 March 2003. The link with other social movements is also visible in relation to public procurement. EPSU together with several other European Industry Federations cooperated with a range of environmental and social movements such as Greenpeace Europe and the Social Platform, itself a network of European NGOs promoting the social dimension of the EU, in lobbying the EU Council of Ministers to amend the draft directive on public procurement towards the inclusion of social, ecological and fair trade criteria in the award of public procurement contracts. Finally, the drafting and debating of the Convention on the Future of Europe including a working group on 'social Europe' inspired EPSU, as part of a broad public service coalition, to demand that 'the social and economic value of services of general economic interest are protected and formally enshrined in any new constitutional framework in Europe' <sup>(58)</sup>.

Other unions are engaged in more classical union tactics. To mention only two: the European Federation of Trade Unions in Food, Agriculture, Tourism and Allied Branches (EFFAT) signed in December 2002 an agreement on vocational training with employers in the agriculture sector, to

be implemented by the social partners at the national level. Additionally, it negotiated and signed a voluntary code of conduct in relation to corporate social responsibility with employers in the sugar industry in February 2003 (see also Chapter 3). In early 2003, the European Transport Workers' Federation (ETF), on the other hand, organised a European-wide strike against the EU directive on the liberalisation of access to European ports and the market for dockworkers. Partly because of these and other national strikes, the directive was rejected in the European Parliament in the final reading in November 2003.

## ■ 5. Conclusion

In a changing international context it is not easy to derive clear principles from theory or identify which are the best examples to learn from. The debate on the idea that either full centralisation or full decentralisation presented the optimal solution to wage-bargaining – as defended in the famous Calmfors-Driffill hypothesis <sup>(59)</sup> – continues. While a number of econometric studies confirm the superiority of a fully centralised or fully decentralised bargaining model to intermediate ones <sup>(60)</sup>, other studies conclude that the hypothesis has not stood up to facts. For example, in a recent analysis, reported by the OECD, the authors find no robust association between institutional characteristics of wage bargaining and economic performance, and much instability over time <sup>(61)</sup>. There is indeed now a huge literature on this. In a

meta-analysis, Calmfors et al. (2001) found that results depended strongly on the indicators of centralisation and coordination used and the countries included in the analysis. A similar point is made by Flanagan (1999) in his overview. The analysis in Iversen (1999) and Traxler, Blaschke and Kittel (2001) suggests that, if combined with a strict monetary policy and provided that there is sufficient coordination across bargaining domains, wages set at the intermediate level of sectors (or large companies) may perform equally well or better than fully decentralised wage-bargaining (in terms of unemployment and inflation) <sup>(62)</sup>. This suggests that coordination plays an important role and that it may work as a substitute for centralisation, thus off-setting the drawbacks of a purely intermediate bargaining system.

An important lesson from cross-national comparative studies seems to be that coordination, based on shared understanding and mutual trust, may be more important than centralisation of wage-setting. This is perhaps the strongest lesson emerging from the experience of social pacts — many of which were fully unexpected and negotiated in rather fragmented and decentralised structures of wage-setting. A shared understanding of the economic and social context, and of key mechanisms driving growth, productivity and employment, greatly increases the probability of wage-bargaining being conducted in a cooperative way, in which each party has an eye to its own long-term self-interest and the common good, and not just to its short-term interest or purely sectional concerns. But the chance of

(58) EPSU (2002b), 'Services of general interest and the Convention on the Future of Europe — You can shape the future of Europe!', Brussels, EPSU General Circular No 13.

(59) L. Calmfors and J. Driffill (1988), 'Bargaining structure, corporatism, and macroeconomic performance', *Economic Policy*, Vol. 6.

(60) See, for example, 'Wage flexibility and wage interdependencies in EMU', *EU Economy Review* 2003.

(61) OECD (2004), 'Wage-setting Institutions', *op. cit.*

(62) L. Calmfors et al. (2001), 'The future of collective bargaining in Europe', *op. cit.*; R. J. Flanagan (1999), 'Macroeconomic performance and collective bargaining: an international perspective', *op. cit.*; T. Iversen (1999), *Contested economic institutions, The politics of macroeconomics and wage bargaining in advanced democracies*, *op. cit.*; F. Traxler, S. Blaschke and B. Kittel (2001), *National labour relations in internationalised markets*, *op. cit.*



creating and maintaining a cooperative 'mood of play' depends as much on institutions as on the disposition of wage-bargainers. Without supportive institutions, even altruistic wage-bargainers can find themselves drawn into a zero-sum conflict, in which the attempt of each agent to rationally advance its interests can lead to a collective outcome that is worse for all. The relevant institutions range from the type of joint foundations and councils for policy preparation and nationwide bargaining as exist in a number of countries; independent research bodies or committees of experts; the industrial relations machinery and law; structures of bargaining and coordination above the level of single firms; and joint investments in collective institutions for training, lifelong learning and enterprise-level partnership.

The hypothesis that either full centralisation or full decentralisation presents the optimal solution to wage-bargaining, is based on the assumption that parties adopt a non-cooperative bargaining approach. If a moderate degree of altruism is introduced — motivated by consideration of long-term, rather than immediate self-interest and by social responsibility — then even moderately coordinated bargaining may yield better outcomes, i.e. lower rates of unemployment and inflation. The real difference between centralised and moderately fragmented bargaining structures may be their vulnerability to shocks. While a cooperative mood of play can produce good results with any bargaining structure, in the face of major shocks the parties may revert to less cooperative forms of behaviour which, in systems with weak coordination, can have serious consequences.

There are large built-in tensions in both national and international coordination of collective bargaining. To the extent that there is continued decentralisation of actual bargaining levels, coordination costs will

increase. Continued decline in union membership relative to employment, especially in new and growing parts of the economy will weaken the legitimacy of moderating agreements struck by unions. A threat to national coordination is likely to be provided by the internationalisation of product and labour markets, which tends to liberate companies from their historical national roots. As a consequence, national governments will have less leverage to convince companies to accept a joint policy, for instance holding back extreme salaries and bonuses for top executives.

Increasingly, national frames of reference — as in a national wage policy that is developed for the sake of the national interest or social solidarity — may lose its economic, political and moral relevance for the strongest players in the economy, namely firms that are already strongly internationalised and the managerial and professional staff in these firms. This puts greater strains on the central organisations of employers and unions when they try to define and defend national guidelines for policy. This discussion suggests that coordination through social pacts and consensual norms as a precautionary wage policy may only work up to a point. Such coordination may represent an unstable equilibrium, which may easily break down once the levels of unionisation and coverage of collective agreements fall below a critical level. Another way of phrasing this conclusion is that wage moderation through coordination may increasingly come to require skilled government intervention, a 'shadow of hierarchy' and public policy support.

There is another lesson from comparative analysis. When tensions appear in centralised bargaining, there can be significant benefits in moving towards a form of 'organised decentralisation' rather than risk an 'unorganised' breakdown, withdrawal or erosion. Learning ahead of failure

means that elements of variation and flexibility must be introduced before the framework for centralised bargaining breaks down and one of the parties, in particular employers, decides to withdraw, either in one bang or by slowly investing less and less trust and resources in coordination policies among themselves and with the trade unions.

The final lesson from comparative experience concerns some of the ingredients necessary to achieve a successful system of coordinated decentralisation — both in the national and international context. To achieve successful devolution to lower bargaining levels and/or an upward shift to European-level dialogue and coordination, one needs stable and reliable partners, in whom one places confidence. Institution building through organisational reform and information exchange, together with mechanisms for conflict resolution and trust building, are crucial.



# The quality of industrial relations

## ■ 1. Introduction: Why quality?

The 'quality of industrial relations' is a topic attracting growing interest at the European level. This is largely a result of the growing recognition of the importance of social dialogue and social partnership to achieving the European Union's (EU) economic and social objectives, and as key ingredients of the good governance of economic change, labour markets and enterprises. As a consequence there is considerable interest in improving understanding of industrial relations practices, not least at a time when the EU has recently enlarged to 10 new Member States, where there is a need for capacity-building in the industrial relations field (see also Chapters 1 and 3).

The importance of social dialogue and social partnership has been recognised at the highest level in Europe. In 2002, the Barcelona European Council defined the European social model as comprising good economic performance, a high level of social protection, education, and social dialogue. Furthermore, in the communication, 'The European social dialogue, a force for innovation and change' <sup>(63)</sup>, the European Commission considers that social dialogue can be one of the driving forces behind successful economic and social reform. The communication highlights the role of social dialogue and partnership in addressing some of the key challenges facing Europe, for example, enhancing skills and qualifications, modernising work organisation, promoting equal oppor-

tunities and diversity, and developing active ageing policies (see Chapter 3).

The importance of social dialogue and social partnership are also recognised at the global level. The Chair's conclusions of the G8 Labour and Employment Ministers Conference in Stuttgart on 15–16 December 2003 declared that: 'successful economies in the 21st century will not be possible without a modern system of labour relations and efficient strategies to manage change pro-actively. Effective cooperation between employers and workers and their organisations on a partnership basis and the involvement of workers in accordance with national traditions and practices make an important contribution to promoting the quality of jobs. The report <sup>(64)</sup> of the International Labour Organisation's (ILO) World Commission on the Social Dimension of Globalisation published in February 2004 calls for a 'focus on people' and stresses that in the context of a strategy for change, strong representative organisations of workers and employers are essential for a fruitful social dialogue. It also emphasises that in the context of economic restructuring, the early involvement of workers' representatives can be beneficial for all and for the good functioning of companies, particularly during difficult transition periods.

The social dialogue or partnership perspective places industrial relations in the broader perspective of social and economic development. Traditional methods and practices of industrial relations — collective bargaining, the expression and resolu-

tion of conflict, representation, collective insurance and the handling of grievances — do not lose their importance, but are placed in a wider context. According to the Commission, quality in industrial relations is determined by the capacity to build consensus on both diagnosis and ways and means of taking forward the adaptation and modernisation agenda of the Lisbon strategy, coping successfully with industrial change and corporate restructuring <sup>(65)</sup>, and should reflect the desire not just to defend minimum standards, but also to promote rising standards and ensure a more equitable sharing of the benefits of progress <sup>(66)</sup>.

Although the quality of industrial relations is not easy to define precisely, it should show through in practical terms by improving the quality of the lives of citizens, for instance, the creation of more and better jobs, and higher levels of investment. Taking these elements together, it can be concluded that there are four main dimensions to the 'quality' of industrial relations:

- the creation of a sense of 'fairness' and 'trust' based on jointly agreed rules and partnerships which are mutually advantageous to employees and firms;
- the lowering of (transaction) costs related to the contracting and rewarding of labour and the resolution of conflict;
- the investment in institutions that give adequate flexibility to firms and

(63) COM(2002) 341 final.

(64) ILO (2004), *A fair globalisation — Creating opportunities for all, report of the World Commission on the Social Dimension of Globalisation*, Geneva, 24 February 2004.

(65) 'Social policy agenda', COM(2000) 379 final.

(66) Commission communication on 'Employment and social policies: a framework for investing in quality', COM(2001) 313 final.

employees, making it possible to adjust and seize new opportunities, and give firms and employees sufficient security for making longer term investments than otherwise would be the case;

- the achievement of the overall objectives of social and economic policy, for instance, as defined by the Lisbon strategy.

## ■ 2. Quality and the Lisbon strategy

At the Lisbon European Council held in the Spring of 2000, the EU set itself the strategic goal 'to become the most competitive and dynamic knowledge-based economy in the world, capable of economic growth with more and better jobs and greater social cohesion'. The achievement of the Lisbon objectives not only requires a common effort from Member States; its success also depends upon the contribution of 'autonomous', non-State actors and sectors in the economy, including firms, employees and the organisations that represent them, in other words, the social partners. As part of the implementation of the Lisbon agenda, the spring 2004 European Council <sup>(67)</sup> calls on Member States to build reform partnerships involving the social partners, civil society and public authorities in accordance with national arrangements and traditions. Such national reform partnerships should promote complementary strategies for change, addressing the broad range of policies — economic, social and environmental — encompassed by the Lisbon strategy. At the EU level, the social partners are involved through the Tripartite Social

### Box 2.1: Good governance and partnership — the involvement of the social partners in the EES

The contribution of the social partners to the effective governance of the European employment strategy (EES) is highly recognised (see also Chapter 3). The European Commission and Council's *Joint Employment Report 2003/04* indicates that the involvement of the social partners in developing the national action plans (NAPs) is progressing, and that their contributions to implementation are better presented and reported, but that their involvement could nevertheless still be improved.

In their first report on social partner actions in Member States to implement the employment guidelines, the cross-industry social partners stressed the following elements <sup>(70)</sup>.

The social partners were usually consulted during the preparation of the NAPs. In most countries, employers and trade union organisations submitted separate comments (Italy, Portugal, Spain, the Netherlands, and the UK) whereas in some (Belgium, Denmark and Sweden) joint social partner contributions were included as an integral part of the NAP in a summarised version and added as annexes. In Germany, Greece and Portugal the involvement of social partners improved compared with previous years.

In terms of quality, the consultation was seen as too superficial in several cases due to the absence of discussions with government (Austria), the lack of in-depth discussions on policy content (Denmark) or insufficient time for consultation (Finland, Belgium, the Netherlands).

Ways of involving the social partners did not change significantly with the synchronisation and streamlining of the broad economic policy guidelines (BEPGs) and the EES. No link could be perceived between social partner involvement in constructing the NAP employment and drawing up the national reports on implementation of BEPG, with the exception of Luxembourg where social partners delivered an opinion on the BEPGs. In Belgium, social partners explicitly asked to be involved, in both the preparation of the BEPGs and the evaluation of their implementation.

Bilateral and tripartite initiatives aimed at supporting employment and economic development through a comprehensive set of measures, were reported at national level or regional level in six countries. Concerning bilateral initiatives at national level, a collective agreement was signed in Finland and Belgium and a 'pact for development' concluded in Italy. In Belgium, a tripartite agreement including measures to create more jobs was prepared at national level, and bilateral or tripartite pacts for employment at regional level. In Spain, social partners signed an interconfederal agreement for collective bargaining containing common criteria for collective bargaining at national, provincial, regional and company levels on a wide range of labour-market-related issues. In the Netherlands, the social partners and the Dutch Government reached an agreement on measures to support economic recovery and increase employment. Discussions in view of a tripartite social pact for competitiveness and employment were at an early stage in Portugal.

Summit preceding the annual Spring Council (see also Chapter 3). At the 2004 Summit, the European social partners presented their second annual report on the implementation of their 2002 framework of actions on lifelong learning and a first report on social partner initiatives in Member States that are relevant for implementation of the European employment

guidelines <sup>(68)</sup>. In spite of many shortcomings, social partnership involvement and consultation over policy initiatives is a common feature of the European employment strategy (EES) (see Box 2.1). The joint decision to develop a European-wide 'partnership for change' in combination with corresponding national efforts <sup>(69)</sup> is an expression of this awareness.

(67) Presidency conclusions, *Brussels European Council, 25/26 March 2004*.

(68) ETUC, UNICE/UEAPME, CEEP (2004), *Framework of actions for the lifelong development of competencies and qualifications, Second follow-up report, 5 March 2004*; ETUC, UNICE/UEAPME, CEEP (2004), *2004 Report on social partner actions in Member States to implement employment guidelines, 5 March 2004*.

(69) Presidency conclusions, *Brussels European Council, 25/26 March 2004*.

(70) ETUC, UNICE/UEAPME, CEEP (2004), *op.cit.*

The Lisbon approach is also important in another sense. Based on the benchmarking approach used in the Treaty-based European employment strategy, the Lisbon European Council proposed the open method of coordination (OMC) as a means of 'spreading best practices and achieving greater convergence towards the main EU goals', whereby convergence is furthered through setting common objectives, targets and timetables, accompanied by a process of peer review, benchmarking and exchange of good practices. The OMC is a new mode of multi-level governance based on a mutual learning process through which domestic policy actors learn to respect each other's differences while accepting a common purpose and agenda for change. It is a way of dealing with the problems resulting from the integration of European markets in policy areas which already have long traditions at the national level, and where different national prefer-

ences and policy approaches make it difficult to adopt common European rules. The field of industrial relations shares these characteristics and it is therefore an interesting area in which to explore the use of some aspects of the OMC, in particular the process of benchmarking and best practice learning, supported by common indicators. While encouraging the autonomy of the social partners at the European level, the High Level Group on Industrial Relations and Change in the EU recommended some modest steps in that direction <sup>(71)</sup>. The view of the group was that it would raise awareness of common problems and provide useful solutions among social partners across Europe and contribute to mutual learning. The cross-industry social partners' framework of actions on lifelong learning is the first example of a social partner text to be implemented by an OMC adapted to the social partners (see Chapter 3).

What would be useful criteria for assessing the quality of industrial relations? This is a difficult question, largely due to the fact that such criteria have to be developed and shared by the industrial relations actors themselves if they are to serve as guidance for their action. The high level group suggested a list of 14 possible criteria (see Box 2.2), 10 of which were output-related and more or less derived from the EES guidelines. Criteria 11 to 15 relate to the quality of the institutions and the process of industrial relations: Are the negotiating organisations representative? Do the agreements which they negotiate offer wide-ranging coverage and protection, including to those with marginal positions in the labour market? Do these agreements offer effective low-cost mechanisms for the resolution of conflicts, for instance, without too much delay and undue (or expensive) recourse to litigation in courts? Do they encourage the participation and

### Box 2.2: The criteria for establishing the quality of industrial relations proposed by the High Level Group on Industrial Relations and Change in the EU

- the contribution made to social cohesion, competitiveness and socially sustainable economic growth;
- the extent to which full employment is an overarching objective while ensuring, at the same time, fair and decent terms and conditions of employment for all workers;
- the creation of quality employment by fostering the employability and the modernisation of the regulatory framework in line with the changing organisation of work;
- the promotion of active ageing with the aim of enhancing the capacity of and the incentives for older workers to remain in the labour force;
- the facilitation of better access for all workers, including those with atypical contracts, to lifelong-learning thereby increasing the proportion of the adult working-age population participating at any given time in education and training;
- a contribution to preventing skills shortages, including by promoting occupational and geographical mobility;
- effective preventive and active policy measures to promote the integration into the labour market of groups and individuals at risk or with a disadvantage, in order to avoid marginalisation, the emergence of 'working poor' and a drift into exclusion;
- appropriate measures to integrate into the labour market, workers with disabilities, ethnic minorities and migrant workers as regards their integration into the labour market;
- better application at workplace level of health and safety legislation, and more training and promoting measures for the reduction of occupational accidents and diseases (in traditionally high risks sectors);
- the mainstreaming of gender;
- highly-representative social partners, i.e. partners able to represent most employers and employees, either through direct membership or via other channels (e.g. support in industrial action);
- a wide coverage of collective bargaining, which includes all forms of atypical employment;
- improving ways of preventing and/or settling labour disputes, via non-judicial mechanisms, such as mediation, conciliation and arbitration in both collective and individual cases;
- improving the level of participation of employees in decision-making, including financial participation thereby enhancing the productivity of the workforce.

(71) *Report of the High Level Group on Industrial Relations and Change in the European Union, Employment and Social Affairs DG, European Commission, Brussels, January 2002, pp. 38–39.*



commitment of employees in the employing organisation and help to raise productivity? Some of these institutional questions have been covered in Chapter 1.

A report prepared for the European Foundation for the Improvement of Living and Working Conditions, discusses the quality of industrial relations under three different perspectives <sup>(72)</sup>: (a) the general EU policy context, in particular the involvement of the social partners in the implementation of the Lisbon agenda; (b) the specific outcomes, in particular those relating to the management of change, comprising the entire range of employment conditions and reconciliation of work and non-working life; and (c) the institutional framework, in particular the relationships between the various actors and levels in industrial relations. In a follow-up report, also for the foundation, the feasibility of developing a reliable set of social dialogue indicators on the actors, processes and outcomes has been explored <sup>(73)</sup>. Indicators and benchmarking techniques are of course used for a variety of purposes. As was emphasised in Chapter 1, the focus in this report is on their use for the specific purpose of facilitating international comparisons of actual outcomes — for instance, wage developments or earnings distributions or patterns of labour market reforms — achieved by rather different approaches in national industrial relations systems marked by diversity. Having developed some common indicators on union and employer organisation, bargaining strength and coverage, centralisation, coordination, the role of government, etc., in the previous chapter, the remainder of this chapter will be used to provide some promising examples of ‘quality’ outcomes <sup>(74)</sup>.

### ■ 3. Examples of quality in industrial relations

Along the lines of the above-mentioned quality elements of industrial relations, various examples illustrating the issues involved in collective bargaining at European and national levels show interesting developments testifying to the capacity of the social partners, often supported by labour law, to enhance their negotiation agenda. Such examples, which address some of the most important issues underlined by the high level group and by the Council with regard to quality in work and the challenges to be met in the context of the Lisbon strategy, are summarised below. The examples are not of course exhaustive, but concentrate on the best known areas. New issues are emerging which it will also be interesting to explore in the future — such as the potential impact of industrial relations on innovation — however, too little is currently known about these in order to address them here.

#### 3.1. Investment in work ability and training

In a number of Member States important actions have been undertaken by the social partners in order to enhance participation in the labour market. In Finland, next to ongoing improvements concerning vocational training as agreed by the central labour market organisations, a comprehensive approach has been undertaken in a number of programmes carried out on a tripartite basis to develop a better human resource management approach to employment. An important aspect of these programmes is the improvement of

‘work ability’ and professional skills. Various elements of this programme will be taken forward in a new generation of Finnish tripartite programmes on employee well-being, the improvement of productivity and the quality of working life. Action in education and training figures prominently in the latest 2002 national income agreement covering 2003 and 2004. In Denmark and Sweden, the social partners, often together with the public authorities, are involved in enhancing existing schemes for competence and skills development. Especially in the State and local government sector, the Danish social partners have taken major initiatives. In the Netherlands, collective agreements covering 35 % of employees include provisions on employability. In many sectors there are collective ‘development and training’ funds. In Germany, the social partners are strongly involved in campaigns to increase apprenticeship training and a path-breaking agreement on continuous training was signed in the metalworking industry of Baden-Württemberg. In 2003, employers and trade unions in France and Luxembourg concluded central agreements on continuous vocational training. The French central agreement was a significant event in so far as it was signed by all major trade union confederations, for the first time since 1995. The agreement establishes an individual training right for employees, based on a 20-hour ‘credit’ per year for training inside or outside the company after 12 months of service, with pro rata entitlement for part-timers. The agreement in Luxembourg — some provisions of which require implementation via legislation — includes new schemes for unpaid and individual training leave. A year earlier, in 2002, as a result of

(72) A. Weiler (2003), *Quality of industrial relations: Development of comparative indicators, report for the European Foundation for the Improvement of Living and Working Conditions, Dublin, mimeo, May 2003.*

(73) V. Cortebeek, R. Huys, G. Van Gyes and T. Vandenbrande (2004), *Quality of industrial relations: Country profiles, background paper of a data set commissioned by the European Foundation for the Improvement of Living and Working Conditions, Dublin, mimeo, March 2004.*

(74) *A multi-variate quantitative study, intended to discover causal relationships, is beyond the scope of this report, though it certainly offers material which might facilitate such analysis.*

tripartite discussions, Poland inaugurated its first national-scale programme for the vocational activation of young people, seeking to enable new labour market entrants to acquire their first work experience. In Portugal, and more recently in the UK, the government and social partners joined forces to improve initial and continuing vocational training.

In Belgium, the social partners took action with regard to setting aside training funds for employees and disadvantaged groups as well as supporting employers who seek work for redundant elderly workers through outplacements. In Greece, funds financed by the social partners can subsidise the employment of persons nearing retirement. In Italy, sector-wide funds are being used to promote the training of workers who are made redundant. A special foundation, set up by the social partners in Austria together with the public employment service, seeks to qualify the unemployed for targeted local labour demand. In Portugal, the new labour code negotiated between the government and social partners contains important provisions relating to training based on the employment and vocational training agreement concluded in February 2001. The Irish social partners are strongly involved in enhancing continuing training activities in enterprises. In May 2002, Irish employers launched a new initiative on upgrading the skills of employees in order to meet the requirements of a more knowledge-based economy. In Spain, following consultation of the social partners, a new funding scheme for continuous training has been set up, which gives greater responsibility to the regions and to individual employers.

Participation in continuing vocational training is more substantial in enterprises that have collective agreements or agreements between management and the workforce than in other com-

panies of all sizes without such agreements <sup>(75)</sup>. This finding clearly underlines the important role of social partnership in this policy area. Vocational training and lifelong learning have also been important topics for the European social partners (see Chapter 3). In March 2002 the cross-industry social partners adopted a framework of actions on the lifelong development of qualifications and competencies in the EU and two follow-up reports have been produced on implementation of the priorities identified. The European sectoral social partners have also addressed the topic through the adoption of joint texts (agriculture, banking, electricity) and developing practical tools such as manuals on training and tutorship (private security, cleaning indus-

try, construction). In many other sectors it is an important priority in their work.

### 3.2. New forms of work organisation and adapted working-time arrangements

The growth in 'atypical', 'non-regular' and other non-standard forms of employment — such as temporary work (mainly fixed-term contracts and temporary agency work), part-time work, telework, 'economically dependent' work but without an employment contract, on-call work — is a common long-term trend across the EU. However, the new forms of work are not growing equally across Member States (see Charts 2.1 and 2.2).

Chart 2.1: Share of temporary employment by contract duration, 2003

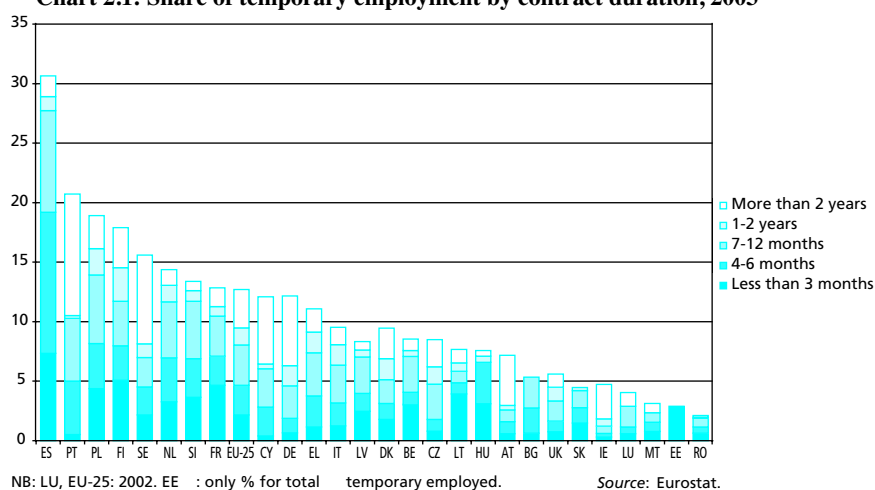
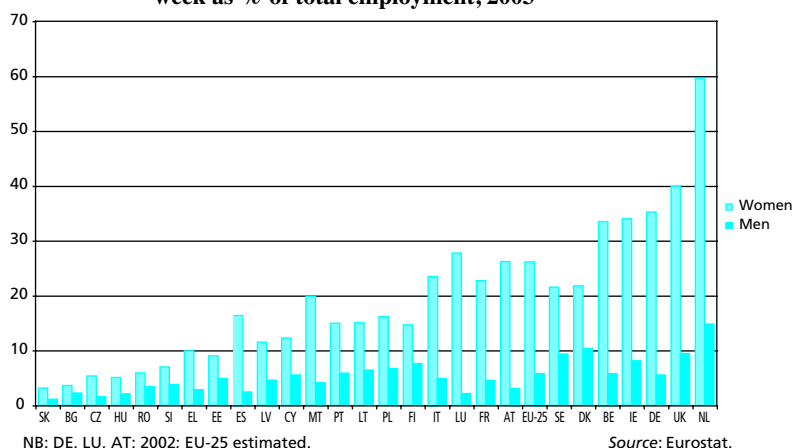


Chart 2.2: Share of persons working less than 30 hours per week as % of total employment, 2003



(75) Eurostat, Continuous vocational training statistics, reference year 1999.

On average, some 13 % of all employees in the EU were employed on temporary contracts in 2003. As shown in Chart 2.1, there is a huge variation across Member States, with very high rates in Spain, followed by Portugal, Poland, Finland, Sweden, the Netherlands, Slovenia and France, all with an above-average share of temporary employment, and a very low incidence of temporary contracts in the UK and in most of the new Member States. In most new Member States, this type of contract was virtually non-existent until the early 1990s (see Chapter 6). The opposite position of Spain (a high incidence of temporary work) and the UK (a low incidence) suggests that temporary work is being used by employers as a way of recruiting new labour market entrants to escape from highly protected standard jobs. The issue is then how 'security and flexibility' could be better redistributed between secure and insecure jobs. Chart 2.1 also brings out the variation in the use of very short temporary contracts — again, quite widespread in Spain but also in Poland. If employees end up having several short temporary jobs, incentives for investment in skills are likely to be poor. Part-time work (if defined as persons working less than 30 hours per week) accounts for 30 % of all female employment and 6 % of male employment in EU-15 (see Chart 2.2). There are massive variations across countries, with very high rates for the Netherlands, followed by the UK, Denmark and Ireland, and rather low rates in Greece, Spain, Portugal and Finland. The incidence of part-time employment in EU-10 is considerably lower, at under half the current EU figure. A common factor is that part-time work is predominantly a female phenomenon, as 33.5 % of all female employees work part-time (2002, Eurostat figure). At 10.3 % in 2002, the proportion in EU-10 is much lower and part-time employment would seem to be also associated with disabilities and other con-

ditions that constrain both men and women to work full-time. It would also seem that a larger proportion of part-time work is involuntary (see Chapter 6). Telework/telecommuting is also increasing, but differences in definition make comparisons difficult. According to the Commission, there are about 4.5 million employed teleworkers in EU-15, amounting to around 2.8 % of total employment. Telework is not yet, however, thought to have developed significantly in EU-10.

A number of reasons are often cited for the overall growth of these non-standard types of employment contracts (temporary work, on-call employment, self-employment contracts) such as employers' wish to achieve greater flexibility in order to help cover periods of varying workload and to access expertise and specialists, and the desire by employees to balance their work and meet other (family, study, social) responsibilities. The situation varies between countries and forms of work in terms of the extent to which employees positively choose new forms of work or accept them because they cannot find 'regular' work (see also Chapter 6).

A framework regulating a number of new forms of work is being created at EU level, seeking to promote new forms of work, prevent discrimination against the workers involved and promote quality and flexibility in such forms of work. Directives, based on social partner agreements, have regulated some aspects of part-time work (1997) and fixed-term work (1999). In July 2002, the European-level social partners concluded an agreement on telework, which is to be implemented by the national member organisations of the signatory parties within three years (see also Chapter 3.) The overall thrust of EU regulation is to promote equal treatment between employees on different types of employment contracts where possi-

ble and to make it easier for employees to accept non-standard forms of employment contracts.

At the national level, all EU-15 and some of the EU-10 regulate various aspects of new forms of work, with implementation of the above-mentioned EU directives leading to legislation even in countries which formerly had no regulation in this area. For instance, in Greece and Italy temporary agency work has only been formally permitted in recent years. In July 2003, new legislation regulating fixed-term and part-time employment came into force in Hungary. The new provisions of the labour code seek to transpose the EU directives on these issues, and also address the issue of telework. In Slovenia, as of January 2003, new legislation has been introduced which seeks to regulate temporary agency work, increase the flexibility of the Slovenian labour market and provide adequate protection for temporary agency workers. New legislation has been adopted on temporary agency work and fixed-term contracts in Poland.

While there has been a widespread tendency to promote and permit various new forms of work, this has generally been accompanied by the establishment of a number of rules for their operation, often with the possibility of deviating from the rules by collective agreement, as is the case in Germany, the Netherlands and Denmark, and is now under discussion in France. New regulations on temporary agency work in Germany, introduced in 2002, specify that temporary agency workers must be paid the same wages as 'permanent' employees, but that this rule can be deviated from by collective agreement. At present, the remuneration of workers hired out by commercial temporary work agencies in Germany is on average 30 % below the level paid in the user company. The new acts on part-time work and fixed-

term employment relationships, which came into force on 1 January 2001, are proving to be fairly effective in encouraging part-time work.

Changes have occurred in some Member States with a high level of regulation in areas such as fixed-term contracts, especially by relaxing the grounds on which such contracts are allowed, their length and renewal. Deregulation has usually been accompanied by re-regulation. In EU-10, the regulation of various new forms of work has been subject to rapid change in many cases in preparation for EU accession, including the implementation of the relevant EU directives. This has involved both new regulation and relaxation of previous restrictions.

Collective bargaining also plays a role in regulating new forms of work. As seen above, the issue has been an important one in negotiations between the European-level social partners. At national level, collective agreements have varying roles in this area. Aspects of part-time work are covered by agreements at various levels in countries such as Austria, Belgium, Denmark, Germany, Italy, the Netherlands and Spain. These include: assisting conversion into full-time contracts; maximum and minimum working times and overtime; part-time work for older workers; rights to reduce working time; and training provisions. Some collective agreements (mainly sectoral) include provisions on fixed-term contracts in countries such as Denmark, France, Italy, the Netherlands, Spain and Sweden, dealing with matters such as the maximum proportion of such contracts, limits on their duration and rules on circumstances in which they may be used.

While collectively agreed provisions on part-time and fixed-term work are often relatively well established, a

more recent trend is towards collective bargaining relating to temporary agency work. Specific sectoral collective agreements for the temporary agency work sector have been concluded in recent years in Austria, Belgium, France, Luxembourg, the Netherlands, Portugal, Spain and Sweden. These agreements tend to cover issues such as pay and conditions, benefits, representation rights and training. There are also some company-level agreements between individual temporary work agencies and trade unions, as in Germany at Randstad Deutschland and Adecco. Another approach to temporary agency work is to include provisions in the collective agreements of sectors and companies that use agency work. This is the case, for example, in many Italian sectoral agreements, specifying the conditions under which the use of temporary agency work is allowed or not allowed; the maximum number of agency workers permitted; and the conditions of pay and working hours.

Telework is another issue, which is increasingly subject to bargaining in some countries. Agreements providing for equal treatment with other employees and regulating matters such as the voluntary nature of telework, training, equipment, monitoring and health and safety have been signed in Austria (e.g. in electricity supply, telecommunications, information technology services, mineral oil production and information consulting); Denmark (in finance and commerce); Germany (in railways and at Deutsche Telekom); Italy (in commerce, public administration and for SMEs); Sweden (trade, commerce and services); and the UK (British Telecom). The implementation of the EU-level social partners' agreement on telework is stimulating further joint approaches on this theme (see Chapter 3).

Finally, in many Member States individual choices concerning working time,

the annualisation of working hour calculations and, often, also family-friendly working-time regimes are a matter of collective bargaining. In Finland, working life will be studied taking account of the long-range features of working-time development. Reference can also be made to e-work and telework, notably in Ireland and Finland, or to certain new forms of work such as on-call work, project work and combined work/training contracts in Italy. However, a Finnish tripartite working group failed to agree on the conditions to apply to a permanent sabbatical leave scheme, to succeed the current experimental system. The main issue of contention was the length of prior employment required for employees to be entitled to a sabbatical. In German collective agreements, a number of long-term working-time savings accounts have been developed which can help to better organise the work/life-balance. Also in Sweden, Finland and Luxembourg, this approach has been taken further. The three-year collective agreements concluded in Denmark in 2004, offer greater scope for negotiated flexibility at the local level and for individual choice in working-time arrangements. A similar choice approach already exists in many Dutch agreements. While in Sweden the government financially supports efforts to reduce involuntary part-time work, in Greece certain efforts are being undertaken in the public sector to create jobs on the basis of part-time work, which so far is not widely used. In Germany part-time work may also have increased as a result of the right to work part-time, already existing in the Netherlands since 1999 and now also under discussion in Austria. In Austria, Germany and Italy, nationwide collective agreements have recently been signed for temporary agency workers. The new labour code in Portugal, foresees, *inter alia*, the extension of fixed-term contracts to six years and a reduction of the period defined as



night work. Incentives also exist to encourage companies to convert fixed-term contracts into permanent ones. In Spain, within the most recent national framework agreement on collective bargaining, efforts to reduce recourse to temporary work are continuing.

### 3.3. Health and safety at work

In response to the Council resolution of 3 June 2002 on a new Community strategy on health and safety at work (2002–06)<sup>(76)</sup>, which calls on the Member States to ‘develop and implement coordinated coherent prevention policies, geared to national conditions, with measurable targets set in this context for reducing accidents at work and occupational diseases, especially in those sectors of activity in which rates are above average’, some Member States, especially the UK, Denmark, France, Greece and, to a minor extent, Portugal have set national targets for the reduction of occupational accidents and diseases. In Denmark, in 2001, the government took the initiative of regulating the ‘psychological work environment’, including sexual harassment and bullying. This provoked protests against the infringement of the bargaining autonomy believed to be typical of ‘the Danish model’. The subsequent agreement on these matters covering industrial sectors opened the usual channel for settling industrial disputes for dealing with these matters. In Finland, on the other hand, a legal approach was taken and in 2003 a new Act on occupational safety and health, extending the existing protection to issues such as the burden of work, working alone and harassment, was adopted.

Other countries have adopted a tripartite approach, for instance, in Luxembourg, in June 2001, tripartite

discussions resulted in agreement on a partial disability pension in addition to the existing full disability pension. Employers will be responsible for offering internal redeployment to employees in receipt of the partial disability pension. In the event of non-compliance, the employer will be liable to pay a compensatory tax of 50 % of the minimum wage for up to 24 months. In Sweden also the government launched tripartite talks with the social partners on the issue of ‘increased health in working life’ in November 2001, against the background of increasing levels of sickness absence. The intention was to put into effect an 11-point programme drawn up by the government. Earlier in the year, unions and employers in the private sector had signed an agreement improving the terms of the collective work injury insurance scheme. Changes have also been made in two other insurance schemes based on collective agreements, those covering sickness and redundancy. In February 2001, the Portuguese Government and social partners signed an agreement aimed at improving working conditions and health and safety at the workplace and combating accidents at work. The agreement provides for measures aimed at preventing and combating workplace accidents, and improving services designed to ensure health, safety and hygiene at the workplace. It also creates a number of joint bodies to implement its provisions. Policies in the field of health and safety are often combined with more and better training such as in Denmark and Sweden, modernisation of notifications of accidents (Spain), better supervision of health and safety matters (Finland), targeted information measures for small and medium-sized enterprises (the Netherlands) and upgrading safety management, training and consultation (Ireland, Austria).

In recent years some agreements addressing the issue of stress and excessive workloads have been reached (Belgium, Denmark, the Netherlands and Sweden). Increase of individual choices with regard to the elements laid down in collective agreements, e.g. less cash pay against better non-monetary working conditions and/or payments into pension funds, are aspects which are likely to be interesting for many workers. Inspiration could be provided by the 1999 agreement in the Dutch Foundation of Labour on a ‘multiple-choice model of employment conditions’ and hence could be developed further to increase the attractiveness of work and working environments.

In May 2004, the European social partners concluded an agreement on work-related stress which was, once formally adopted in October 2004. It will be implemented at the national level by their national affiliates. Such approaches are premised on the idea that good social policy, in this case adequate policies on health and safety, but extending to other matters affecting the ‘well-being’ of employees, contribute to sound economic policy. In simple terms, companies should be better off if their employees are happy.

### 3.4. Active ageing

To develop a sustainable employment culture, the short-term concerns of flexibility of companies and workers have to be balanced against medium- and long-term (lifetime) capacity empowerment in the context of a competitive environment and the continuous need to manage change. Attention to issues of training, health and safety, the work-family balance, and variation of working hours over the life cycle are all inter-related, even though they are often treated

(76) Communication from the Commission, ‘Adapting to change and work in society: a new Community strategy on health and safety at work 2002–06’, COM(2002) 118 final.



separately. Demographic developments mean that greater efforts are needed to bring about sustainable work organisations by optimising the experience and accumulated knowledge of all, including older workers, e.g. through career development, a reconsideration of the parameters for payment systems taking into account justified seniority and performance-related elements, and more possibilities for internal mobility as well as outplacement and mobility across firms or sectors. A stronger integration into collective bargaining of measures improving competence management and training is vital, as are the measures that reduce health risks and provide realistic alternatives for early retirement.

Employer-provided training is currently inversely related to age, but positively related to education levels and skills. In other words, those that need additional training most, tend to receive less of it. The social partners have a special role to play in abolishing age stereotypes and developing new forms of work and training in order to facilitate the continuous integration of ageing workers, including equal access to training opportunities, providing for flexible working-time schedules allowing workers to retain their health and to continue active participation.

Voluntary guidelines agreed by the European social partners in the commerce sector in March 2002 in support of age diversity stress the importance of an age-neutral approach to employment, recruitment, vocational training and the distribution of positions within companies. These guidelines may provide useful inspiration to social partners in other sectors. The cross-industry European social part-

ners will hold a seminar in 2004 at which they will discuss various case studies and explore the possibility of undertaking further actions (see also Chapter 3).

In view of demographic trends and in line with the recommendations of the report of the Employment Taskforce, the discussions between the European social partners exploring possible joint actions with regard to the ageing workforce could play an important role in helping to shift policies towards maintaining older workers in employment. In a large number of Member States (Finland, Netherlands, Greece, Belgium, Austria and Denmark) actions have already been undertaken to reverse recourse to early retirement, but these need to be enhanced and intensified <sup>(77)</sup>.

### 3.5. Equal opportunities and integrating people at a disadvantage in the labour market

In spite of the law, equal pay and equal opportunity between men and women is still elusive. Although social partners in many Member States (Belgium, Denmark, Finland, Sweden, Spain, Ireland at the cross-industry level) are seeking ways of addressing the issue and improving the situation through collective bargaining, EU-wide statistics show that the reduction of the pay and career gap is a slow and difficult process. Promising examples include a cross-industry agreement in France on gender equality and gender workforce composition signed in April 2004, covering matters such as narrowing the gender pay gap, preventing maternity leave from adversely affecting women's careers and addressing labour market

segregation. In Denmark, a nationwide agreement has been concluded which extends fully paid maternity/paternity benefits from 14 to 20 weeks, as well as introducing further pregnancy leave of four weeks for women. Swedish industry agreements foresee the establishment of joint funds for, *inter alia*, parental leave.

The European social partners are currently negotiating a framework of actions in this field, which should help to move forward in a more comprehensive and coordinated way than in the past, helping thereby to tackle the underlying factors leading to discriminatory behaviour. An EIRO comparative study on gender equality plans at the workplace finds that so far the issue is rarely dealt with in collective agreements above the company level <sup>(78)</sup>.

As emphasised in the employment guidelines, both governments and social partners are called upon to undertake action to improve the situation of immigrants and ethnic minorities in the labour market. A recent EIRO comparative report on migration and industrial relations <sup>(79)</sup> shows that the issue of migrant workers has not yet achieved a significant place on the social partners' agenda. Some positive developments have taken place at the cross-industry level in Belgium and, through a national agreement, in Denmark. In May 2002, Danish social partners and municipalities signed an agreement with the government to strengthen measures to integrate immigrants and refugees into the labour market. The agreement establishes a three-stage integration process, involving training and experience preparing for employment. A year earlier, the German Confederation of Trade Unions

(77) Report of the Employment Taskforce, chaired by Mr. Wim Kok, *Jobs, jobs, jobs — Creating employment in Europe, November 2003. On active ageing see also the communication of the Commission, 'Increasing the employment rate of older workers and delaying the exit from the labour market', COM(2004) 146 final.*

(78) EIRO (2004), Gender equality plans at the workplace, March.

(79) EIRO (2003), Migration and industrial relations, May.

(DGB) presented a new programme calling for the introduction of a federal immigration committee and quotas for certain types of non-EU immigrant workers. This programme comes at a time when the federal government as well as the Confederation of German Industries (BDI) have highlighted the need for future large-scale immigration and are seeking to find ways of attracting high-skilled foreign labour to Germany. The debate focuses not just on the rules governing immigration, but also seeks to offer foreign workers support for their integration into German society. In recent years, the Dutch Government has been adopting a tougher approach to the illegal employment of non-EEA foreign nationals. The Dutch Trade Union Federation (FNV) has focused attention on the circumstances under which illegal immigrants are being employed, and the central employers' federation, VNO-NCW, wants to relax regulations that hamper the arrival of high-skilled staff. In Greece and Ireland, nationwide non-discrimination agreements have been signed and, in Finland, the working conditions of migrant workers have been addressed at the central level. However, at the sectoral and company level attention to the migration issue is rare.

With a view to integrating and mobilising the full labour potential in the medium term the inclusion of this issue in the agenda of the social partners can be given more weight. A recent study for the Commission on the costs and benefits of diversity finds that workforce diversity policies identify important benefits that strengthen long-term competitiveness and, in some conditions, produce short- and medium-term improvements in performance<sup>(80)</sup>. In this light, a better integration of all groups into the labour market is not only a meas-

ure for social cohesion but also of paramount economic interest for the EU in general.

### 3.6. A culture for managing change

Change is a wide concept, covering many issues, including new technology, new working methods, the need for lifelong learning, and, sometimes, restructuring. In line with many other reports, and much academic research, the Employment Taskforce has underlined the need for Member States, social partners and enterprises to increase their capacity to anticipate, trigger and absorb change in a mutually acceptable way. This affects first of all company industrial relations and calls for responsible corporate management as well as provisions for the information and consultation of employees in enterprises and establishments (see Chapter 5). However, it is also an issue for collective bargainers, at all levels (company, regional, sectoral) and, as a way of promoting frameworks for action on particular issues, at the European level.

In response to the requirements and challenges of accelerated economic change and industrial adjustment, the nature of collective agreements has also gradually changed. Most agreements have become richer in the sense of addressing a wide range of issues. At the same time they have become more procedural — regulating how, rather than what must happen. The thorny issue of 'opening' or 'opt-out' clauses, discussed in Chapter 1, and the possibility of deviating from legal provisions by way of collective agreement are examples of this development. As a consequence, the role of central and sectoral organisations and wage-bargainers is also changing. Their role is becoming more one of an insurer of last resort, providing the

facilities and incentives for local initiatives as well as a balance between management and employees, making it possible for both to negotiate adequate and sustainable mixes of flexibility and security. In such a context, management and employees can be encouraged to take a longer-term view, anticipated by appropriate action and human resource management.

Social partners, often together with governments, are thus called upon to negotiate the right framework conditions, within which enterprises can be maximally empowered to create and maintain competitive jobs for all at fair working conditions and to be put in a position to recruit easily from the external labour market thus balancing internal company adjustment measures. There are already some encouraging examples, such as the adjustment agreement in the private sector in Sweden, discussed in Chapter 1. Built on an adjustment insurance scheme, workers who are made redundant can receive financial benefits, education and training, help to find a new job or to set up an enterprise. The Severance Act, negotiated in Austria by the social partners, also has the potential to increase flexibility and mobility in the labour market and increase re-employment possibilities for unemployed persons. So-called 'transfer social plans' are being developed by some German trade unions in order to assist works councils in cases of restructuring. In some Belgian agreements there are now provisions for the transition of older workers in cases of redundancy resulting from corporate restructuring into other jobs, with the help of training and personal coaching and as an alternative to early retirement. These efforts might be supported through territorial agreements, widening the scope for effective reconversion plans as for

(80) *The costs and benefits of diversity*, Brussels, Employment and Social Affairs DG, European Commission, November 2003.

instance initiated in France, and through a more pro-active use of severance payments linked to training and re-employment.

In an exploratory opinion of September 2003 the European Economic and Social Committee <sup>(81)</sup> emphasised the importance of social dialogue among all actors involved in order to cope with the causes and consequences of industrial change. The Barcelona European Council of March 2002 <sup>(82)</sup> invited the social partners to find ways of managing corporate restructuring through dialogue and a preventive approach. In response, the European social partners have issued some 'best practice' orientations on managing company restructuring, based on case studies (see Chapter 5).

## ■ 4. Conclusion

There are no quick fixes on how to handle the various challenges entailed by the innovative management of change. What is clear, however, is that with a view to achieving a competitive knowledge economy characterised by sustainable development, a partnership approach can complement the functioning of markets and reduce coordination and efficiency failures.

One of the key challenges is of course to strike a balance that does not stultify, but stimulates change. In other words, from the procedural point of view, 'high quality' industrial relations should have low transaction costs related to contracting, administration, regulation and conflict resolution of employment relations. In terms of outcomes, 'high quality' industrial relations should encourage an effective balance between flexibility for firms and security for employees, with a

view to supporting the objectives of competitiveness and employment.

The examples of industrial relations outcomes provided in this chapter demonstrate the large diversity of approaches — both bipartite and tripartite — being pursued by the social partners. This indicates that a variety of solutions can produce beneficial results. Social partners in the EU can, as a consequence, learn a great deal from each other, and the European social dialogue can make an important contribution to this process by promoting the exchange of best practice, and providing some coordination of the pursuit of certain shared objectives. Through the social partners' adoption of agreements and other joint texts, the European social dialogue can also help to stimulate national bargaining agendas. It will now be important to ensure effective interaction between the European and national levels of industrial relations players to ensure that these European level initiatives have a real impact.

(81) *Opinion of the European Economic and Social Committee on the practical application of the European Works Councils Directive 94/45/EC and on any aspects of the directive that might need to be revised, exploratory opinion, 24 September 2003.*

(82) *Presidency conclusions, Barcelona European Council, 24/25 March 2002.*



# European social dialogue developments

## 1. Introduction

The European social dialogue — the dialogue between management and labour at the European level — is a key feature of the European social model, and the participation of the social partners in EU policy-making through the social dialogue combines a number of values typical to most national industrial relations systems in Europe, namely responsibility, solidarity and participation. The European social dialogue acts as a complement to national industrial relations systems and has developed in tandem with European integration and the efforts to build the European internal market in order to ensure that it develops in a consensual manner.

The importance of the social dialogue is such that it is recognised in the Treaties. Article 138 of the EC Treaty provides the Commission with the task of promoting the consultation of management and labour at Community level and taking any relevant measure to facilitate their dialogue.

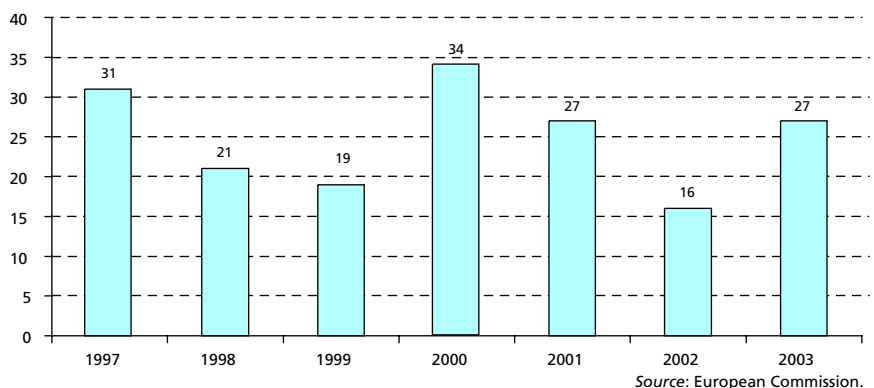
The European social dialogue in its current form has evolved considerably since its launch in 1985<sup>(83)</sup>. At that time there was little bilateral interaction between the social partners at cross-industry level, whereas now there is a great deal of active and regular dialogue between the cross-industry social partners. In addition, the sectoral social dialogue has expanded considerably, with four new sectoral social dialogue committees having been set up during the past two years, bringing the total to 30<sup>(84)</sup>. More than 50 % of the economy is now covered by these committees.

This is a welcome development, as the sectoral level is often the most appropriate level for the discussion of many labour market issues, which is why it has traditionally been the predominant level of collective bargaining in many Member States. The Commission's long-term aim is for all the main economic sectors to be covered by social dialogue committees<sup>(85)</sup>.

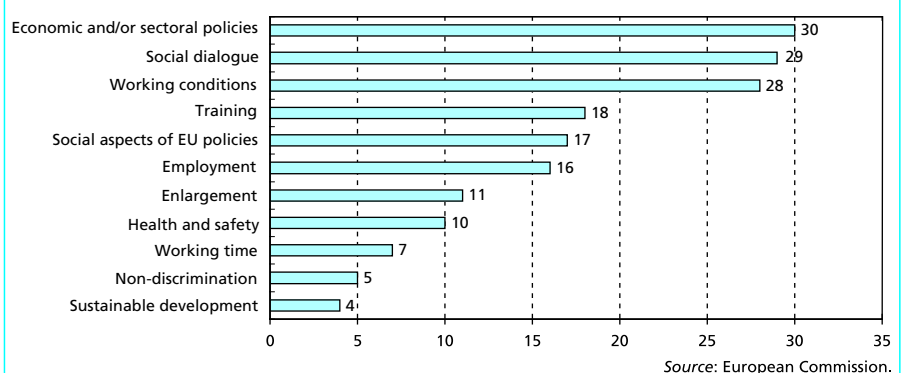
The work of the various social dialogue committees has resulted in the adoption of over 40 texts by the cross-industry social partners and over 300 by the sectors since the mid-1980s.

These take a variety of forms ranging from joint opinions, to guidelines, codes of conduct, and agreements. Some of these initiatives, such as three of the agreements concluded by the cross-industry social partners and those in the transport sector, have been implemented by Council directives. The topics covered by these texts are diverse, encompassing employment, working conditions, training, health and safety, working-time, social dialogue, as well as more sector specific concerns. Some of these texts are responses to Commission consultations under Article 138, whereas

**Chart 3.1: Number of sectoral texts per year, 1997–2003**  
Total: 175 documents



**Chart 3.2: Number of sectoral texts per area, 1997–2003**



(83) For an overview of the key stages in the evolution of the European social dialogue, see Box 3.3.

(84) For a full list of sectoral social dialogue committees, see Table 3.12.

(85) For an overview of the sectoral social dialogue, see 'The sectoral social dialogue in Europe', European Commission, 2003, [http://europa.eu.int/comm/employment\\_social/publications/2003/ke4702397\\_en.html](http://europa.eu.int/comm/employment_social/publications/2003/ke4702397_en.html)



others are purely autonomous initiatives or responses to Commission policy in specific sectors <sup>(86)</sup>.

One of the most significant developments during the last couple of years has been the decision by the cross-industry social partners to pursue a more 'autonomous' dialogue. In their joint contribution to the Laeken

European Council in December 2001, they indicated their intention to develop a more independent dialogue and these efforts culminated, in November 2002, with the adoption by the ETUC, UNICE/UEAPME and CEEP <sup>(87)</sup> of their first ever joint work programme covering the period 2003–05. (For further details on these organisations, see Chapter I.)

This development is significant as it marks the first time that the cross-industry social partners have decided to take a more proactive approach to their dialogue rather than simply responding to Commission consultations under Article 138. In terms of agenda-setting, the practical implications are that it will result in greater interaction between the social part-

**TABLE 3.1: EUROPEAN SOCIAL PARTNERS' JOINT WORK PROGRAMME 2003–05**

Chapters	Themes	Actions	Calendar
<b>Employment</b>	Employment guidelines	Reports on social partner actions in Member States to implement the employment guidelines (taking into account the cycle of three years)	2003–05
	Lifelong learning	Follow-up of 'framework of actions' and evaluation report	2003, 2004 and 2005
	Stress at work	Seminar with a view to negotiating a voluntary agreement	2003
	Gender equality	Seminar on equal opportunities and gender discrimination aiming at a framework of actions	2003
	Restructuring	Identify orientations that could serve as a reference to assist in managing change and its social consequences on the basis of concrete cases	2003
	Disability	Update of joint declaration of 1999 as a contribution to the European year on disability	2003
	Young people	Promoting young people's interest in science and technology to help address the skills gap through a joint declaration and/or awareness-raising campaign	2003–05
	Racism	Updating joint declaration of 1995 (with participation of candidate countries)	2004
	Ageing workforce	Seminar to discuss case studies and explore possible joint actions	2004
	Harassment	Seminar to explore the possibility of negotiating a voluntary agreement	2004–05
	Telework	Monitoring of follow-up to framework agreement	2003–05
	Undeclared work	Seminar aiming at a joint opinion	2005
<b>Enlargement</b>	Industrial relations	Joint seminars on industrial relations (case studies on different ways of articulating different levels of negotiations)	2003–05
	Social dialogue	Two enlarged social dialogue committees per year	2003–05
	Restructuring	Study on restructuring in candidate countries	2003–04
	Lifelong learning	Include candidate countries in follow-up to framework of actions	Seminar in 2004, inclusion in reporting 2005
	Implementation of legal <i>acquis</i>	Joint seminar on European works councils	2004
	EU social and employment policies after enlargement	Prospective reflection to identify issues that will arise in the EU after enlargement such as increase in diversity, migrations, cross-border work, etc.	starting in 2004
<b>Mobility</b>	Action plan on skills and mobility	Seminar to identify areas where joint actions by the social partners at EU level could help address obstacles to mobility (notably for managerial staff), including supplementary pensions	2003–05

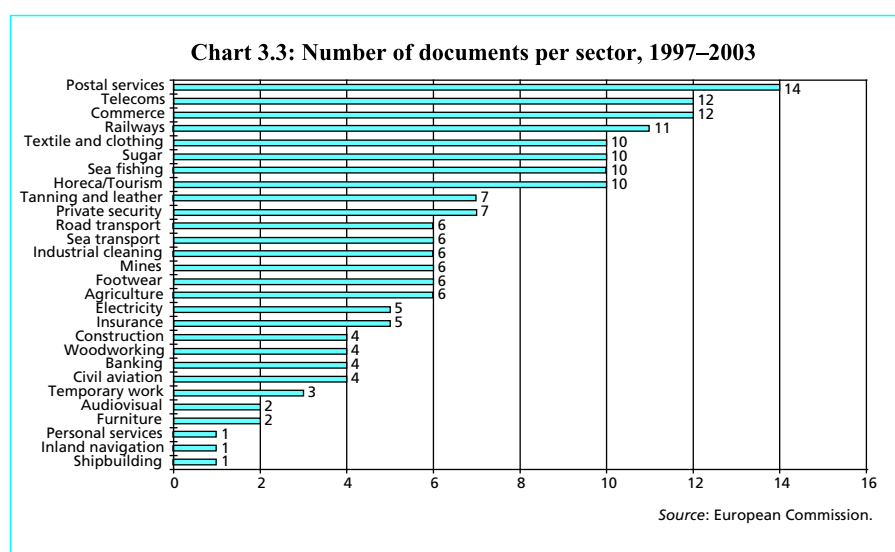
(86) For a full list of social partner consultations under Article 138, see Table 3.13.

(87) These abbreviations stand for the following: ETUC — European Trade Union Confederation; UNICE — Union of Industrial and Employers' Confederations of Europe; UEAPME — European Association of Craft, Small and Medium-Sized Enterprises; CEEP — European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest.

ners' priorities and those of the Commission so that when issues fall within both, the Commission's and the social partners' work programmes, the Commission will take account of the social partners' activities in deciding how to proceed, as was the case with the dossiers on restructuring and stress. The work programme is not however exhaustive as new priorities may emerge and the social partners will continue to respond as before to new Commission consultations. A growing number of sectors are also adopting their own work programmes.

Another significant evolution over the last few years concerns the nature of the texts adopted by the social partners. While the majority of social partner texts have tended in the past to be non-binding policy statements directed at either the European institutions, national authorities, or a mixture of both, more recently the social partners have begun to adopt an increasing number of 'new generation' texts (autonomous agreements, guidelines, codes of conduct, policy orientations) with commitments or recommendations directed at their members and which they undertake follow-up themselves. This is true of both the cross-industry and sectoral social partners.

It is however important to stress that the activities of the social partners are not confined to the adoption of joint texts. The social partners undertake many transnational joint projects, often with financial assistance from the Commission under its social dialogue, education and training, and health and safety budget headings. These projects consist of a large variety of activities, including the organisation of conferences, round tables, studies and publications, and the production of practical tools, such as vocational training and health and safety manuals, and guidance on procurement practices.



The transnational nature of these projects means that they make a very practical contribution to increasing the interplay between industrial relations actors at the European and national levels, promoting the exchange of experience and best practice, and improving understanding of European level policy at the grass-roots level. Furthermore, joint projects such as studies and conferences often culminate in the adoption of joint texts.

Although the social partners are increasingly developing proactive initiatives independently of the Commission's agenda, the topics addressed by the social partners over the last couple of years continue naturally to be strongly influenced by the Commission's priorities and work programme, outlined in its five-year roadmap, the social policy agenda (COM(2000) 379 final), and updated by the mid-term review of the social policy agenda (COM(2003) 312 final), adopted in May 2003.

Chart 3.3 provides an indication of the number of joint texts adopted per sector during the period 1997 and 2003. It should be stressed that these figures need to be interpreted with caution as they only refer to joint texts rather than joint projects, yet a sector with relatively few joint texts might nevertheless be very active

through the work it undertakes in joint projects. It should also be noted that this information is purely quantitative and includes all the joint texts adopted by the social partners, irrespective of qualitative considerations, including whether or not they include follow-up commitments.

Developments in the European social dialogue over the last couple of years can be summarised as a response to three main concerns: achieving the objectives of the Lisbon strategy; preparing for enlargement; and developing social dialogue as a way of improving governance at the European level.

## ■ 2. A response to three main objectives

### 2.1. Working towards the Lisbon objectives

Since the year 2000, social dialogue developments have been taking place against the backdrop of the EU's Lisbon strategy, which has the objective of making the EU 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by the year 2010. The Lisbon strategy seeks to regain the conditions for full

employment and to strengthen cohesion through an integrated approach to EU policy-making which ensures that the economic, social and environmental dimensions are taken into account in all Community policies. The Lisbon strategy views social policy as a productive factor, contributing to both economic competitiveness and a better and fairer society.

The Commission's communication on the social dialogue published in June 2002 entitled 'The European social dialogue, a force for modernisation and change'<sup>(88)</sup> stressed the role of the social partners at all levels in contributing to the attainment of the strategic objectives set in Lisbon and the social dialogue as the driving force behind successful economic and social reforms. Social

partners have a key role to play because they are close to the realities of the workplace and are therefore well-placed to assist the positive management of change by helping to find the right balance between the flexibility essential to businesses which are operating in a highly complex and changing environment, with the security needed by employees.

### Box 3.1: Tripartite concertation at the EU level

Tripartite concertation has a long history at European level, dating back to the 1970s. It refers to the dialogue between the social partners and European public authorities, and is distinct from bipartite social dialogue.

Tripartite concertation at EU level has been extended in recent years and there are now four fields in which tripartite concertation takes place — macroeconomics, employment, social protection and education and training — each of which comprises both a technical and political level.

Since 1997 the European Council presidencies have been inviting the social partners to meet with the troika (the previous, present and following presidencies) on the eve of European Council meetings in order to discuss issues on the European Council agenda. The conclusions of the Nice European Council held in December 2000 provided for an annual social summit with the social partners prior to each spring European Council. Such meetings have been organised in March 2001 in Stockholm, in December 2001 in Laeken, and in March 2002 in Barcelona.

The June 2002 communication on social dialogue<sup>(89)</sup> stressed the importance of rationalising and improving tripartite concertation between the social partners and the public authorities. As a result, some important changes have taken place in the organisation of tripartite concertation during 2002–03. Most importantly, a proposal for a Council decision annexed to the communication takes up the suggestion of the social partners in their Laeken contribution of December 2001, and seeks to institutionalise the summits held over the last few years by setting up a Tripartite Social Summit for Growth and Employment. The Council decision was adopted on 6 March 2003, enabling the first tripartite social summit to be held on 20 March 2003<sup>(90)</sup>. The decision indicates that these summits are to be jointly chaired by the President of the Council and the President of the Commission. The two social partner delegations comprise 10 representatives each from European cross-industry organisations either representing general interests or more specific interests of supervisory and managerial staff and small and medium-sized enterprises at European level. The technical coordination is provided for the employees' delegation by the ETUC and the employers' delegation by UNICE. The Council decision states that the ETUC and UNICE shall ensure that the views expressed by the specific and sectoral organisations are fully taken into account in their contributions and shall, where appropriate, include representatives from some of these organisations in their delegations.

The establishment of the tripartite social summit provides a new framework for European tripartite concertation. The idea is for all the different types of concertation to feed into the new tripartite social summit, with the aim of ensuring greater consistency in tripartite concertation and enabling the social partners to make a more integrated contribution to the various components of the Lisbon strategy.

The discussions at the first summit centred on the social partners' contributions towards the implementation of economic and social reform, and their achievements since the Barcelona Council in 2002, including the initiatives upon which they have made a start within the framework of their first joint work programme for 2003–05. The social partners also presented the first annual follow-up report on the implementation of the framework of actions on the lifelong development of competencies and qualifications.

In response to concerns among some Member States about the current economic and employment situation in Europe, it was decided at the European Council meeting in October 2003 that an extraordinary summit would be held on 11 December 2003 in order to obtain the views of the social partners with regard to restoring the potential for economic and employment growth. The summit discussed the Commission's proposal for a European initiative on growth, designed to stimulate economic recovery within Europe, and the final report of the Employment Task Force set up in March 2003. The 'Kok report' as it is commonly referred to, takes stock of the present situation in the EU labour market, analyses the main reasons why the EU risks not meeting all of its employment targets and identifies concrete reforms<sup>(91)</sup>.

At the March 2004 tripartite social summit, the social partners endorsed the idea of a 'Partnership for Change', which stresses the role of partnership as the best way of addressing the challenge of economic growth and competitiveness, and the importance of deepening existing practices and traditions of partnership, and maximising existing social dialogue processes — both cross-industry and sectoral — with a view to ensuring the effective implementation of the necessary reform measures. The parties reaffirmed their commitment to the Lisbon agenda and the need for Member States to step up their efforts to achieve the Lisbon objectives. It was agreed that the theme of partnership for change should be followed up at subsequent summits.

(88) COM(2002) 341 final.

(89) COM(2002) 341 final.

(90) OJ L 70, 14.3.2003, p. 31.

(91) Jobs, jobs, jobs — Creating more employment in Europe, report of the Employment Taskforce, November 2003, [http://europa.eu.int/comm/employment\\_social/employment\\_strategy/task\\_en.htm](http://europa.eu.int/comm/employment_social/employment_strategy/task_en.htm).

The communication made various recommendations for enhancing the social partners' involvement in the different aspects of the Lisbon strategy, including the establishment of a new Tripartite Social Summit for Growth and Employment, set up in March 2003, to be held on the eve of each spring European Council. The purpose of the tripartite social summit is to ensure greater consistency in the various concertation processes and to enable the social partners to make a more integrated contribution to the various components of the Lisbon strategy.

In the 2002 communication, the Commission encourages the social partners to put forward points for action at the European level and to address the following subjects which are important for achieving the Lisbon objectives: preparing for entry into the knowledge society by recognising the vital role of lifelong learning and the acquisition of skills; incorporating mobility and career pathways into discussions on working conditions; active ageing; promoting equal opportunities; taking into consideration employment and wider access to the labour

market; promoting sustainable development; incorporating quality as a factor in global performance both in aspects of work organisation and in health and safety; and, worker involvement and the negotiated anticipation of change.

In 2004, the Commission adopted its most recent communication on social dialogue, entitled 'Partnership for change in an enlarged Europe — Enhancing the contribution of European social dialogue' <sup>(92)</sup>. As the mid-term point of the Lisbon strategy approaches and against the backdrop of the recent enlargement of the EU to ten new Member States, the communication takes stock of the European social dialogue, particularly in view of the recent calls for a partnership for change to help deliver the reforms necessary to enable the Lisbon objectives to be met on schedule. It complements the earlier communications by focusing on ways of improving the impact and effectiveness of the European social dialogue. In view of the increasing adoption by the social partners of new generation texts which the social partners undertake to implement themselves at the

national level, the communication stresses the importance of good quality industrial relations at the national level and the need to maximise synergies between the European social dialogue and other levels of social dialogue, in particular national, sector and company levels and makes proposals for achieving this, especially with regard to capacity-building, awareness-raising, transparency and the follow-up given to social partner texts.

The themes identified by the cross-industry social partners in their work programme and the topics addressed by the sectoral social partners in their joint texts and projects during the last couple of years reflect the priorities of the Lisbon strategy and seek to make a contribution to achieving its objectives.

## 2.2. Responding to the challenge of enlargement

Preparation for the enlargement of the EU on 1 May 2004 also featured high among the European social dialogue activities over the last couple of years, and was, indeed, one of the main concerns of the Commission's

**TABLE 3.2: DESCRIPTION OF TRIPARTITE CONCERTATION PRACTICES AT EUROPEAN LEVEL**

<b>Macroeconomic issues</b>	Following the European Council of Cologne in June 1999, a macroeconomic dialogue was set up to encourage growth and employment, involving the social partners in the discussion of economic, monetary, budgetary and fiscal policy. Technical meetings take place with the Employment Committee (EMCO) and the Economic Policy Committee (EPC), and political-level meetings with the Employment and the Economic and Financial Affairs Ministers, the Commission and the European Central Bank.
<b>Employment issues</b>	The decision setting up the Tripartite Social Summit for Growth and Employment abolished the Standing Committee on Employment (SCE) and established a tripartite dialogue on employment along the lines of the macroeconomic dialogue. Technical meetings take place with the EMCO, and political-level meetings with the Informal Employment and Social Affairs Council usually held at the beginning of each presidency.
<b>Social protection issues</b>	Tripartite concertation in the field of social protection was strengthened in 2002, in particular by the closer association of the social partners in the work of the Social Protection Committee, and in the preparation and implementation of the national action plans for social inclusion. Technical meetings take place with the Social Protection Committee, and political-level meetings with the Informal Employment and Social Affairs Councils.
<b>Education and training issues</b>	A Council decision taken on 29 November 2002 established a new process of structured dialogue between the troika of ministers, the social partners and the Commission. The first political level meeting was held on 5 February 2003, at which all parties expressed a desire to promote ongoing concertation on the questions of lifelong learning, the development of competencies, and research.

(92) COM(2004) 557 final.

June 2002 communication which stressed the need to strengthen the capacities of social partners in the new Member States.

This enlargement presents a challenge for European industrial relations because of the considerable differences between the industrial relations systems of most of the new Member States compared with those of the majority of EU-15. In particular, EU-15 tend to have strong traditions of bipartite collective bargaining and the predominant level of bargaining has generally been the sectoral one. The rates of workers covered by collective agreements tend to be high, and this is true even of countries with relatively low rates of unionisation due to the regular use of extension procedures (see Chart 1.5 in Chapter 1 for data on bargaining coverage rates in the EU).

In contrast, the industrial relations picture in many of the new Member States is very different. The main form of social dialogue in these countries is tripartite, and bipartite dialogue at national and sectoral level is relatively new and under-developed. Where collective bargaining occurs, it generally takes place at company level. The role of collective bargaining is therefore fairly limited and the coverage rate is low (estimated to be 25–30 % on average). Slovenia is an exception, because of the compulsory nature of collective bargaining. Although the possibility for extension procedures is provided for in the legislation of many of these countries, they are rarely used. The situation is compounded by the weakness of the social partner organisations and their limited financial resources, a situation which has not been assisted by the considerable decline in unionisation during the 1990s and the difficulties faced by employers' organisations in recruiting members.

These weaknesses pose a challenge in terms of the effective participation of

the social partners from the new Member States in the European social dialogue, including their ability to implement and monitor new generation texts effectively, and their capacity to make use of the possibility provided in some EU directives for certain provisions to be implemented by collective bargaining.

As a consequence of the challenges presented by this latest enlargement, as will be demonstrated later, enlargement has been a high priority for both the Commission and the social partners.

### 2.3. The contribution of social dialogue to improving governance

Over the last few years a parallel, but related, debate has been taking place on improving European governance, with a growing concern to ensure the application of the principle of subsidiarity, the notion that decisions should be taken at the lowest appropriate level and as close as possible to the citizen. As part of this debate, the 'White Paper on European governance' <sup>(93)</sup> adopted in July 2001 stressed the importance of effective consultation for improving the quality of legislation and has advocated the use of co- and self-regulation mechanisms. The White Paper states that 'the social partners should be further encouraged to use the powers given under the Treaty to conclude voluntary agreements'.

The social dialogue consultation mechanisms predated the governance debate and were in fact pioneering in this respect. Indeed the social dialogue is recognised as constituting a special form of co- and self-regulation. This is due to the special nature of the social partners compared to other pressure or interest groups which

stems from their ability to take part in collective bargaining. It is largely for this reason that the social dialogue has a specific Treaty basis in Articles 138 and 139.

The Commission's June 2002 communication on the social dialogue stresses the important contribution of the social dialogue to better governance and makes various recommendations for improving the involvement of the social partners. The August 2004 communication complements this by recommending ways of improving the impact of the results of the social dialogue.

As the debate on European governance has evolved, a growing recognition and advocacy of a larger variety of governance instruments has also emerged, including a range of 'soft' law measures, such as the open method of coordination (OMC), which was strongly recommended by the High Level Group on Industrial Relations and Change for use by the social partners <sup>(94)</sup>.

The OMC is an instrument which was originally devised with governments in mind as a tool for helping to implement the Lisbon objectives, but it can also be adapted to use by the social partners. It is a method of peer review, which entails setting certain targets or benchmarks (quantitative where possible) and regularly reporting on progress towards them. It is a useful way of achieving progress in areas in which legislation may not be the most appropriate solution, often because Member States already have a complex and diverse array of measures in place, but in which they or the social partners nevertheless have an interest in working together at the European level, either because of the cross-border implications of certain policies which require international cooperation, or because European

(93) COM(2001) 428 final.

(94) The report of the high level group can be found at the following website: [www.europa.eu.int/comm/employment\\_social/social\\_dialogue/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/social_dialogue/index_en.htm)



societies face certain common problems, such as adapting to technological change, declining birth rates, and ageing populations.

The OMC could be useful for the social partners because it provides a pragmatic way of making progress in areas in which the policy space is already densely occupied, and responds effectively to the growing view that the European level should serve to facilitate the effective exchange of best practice between national, local and enterprise level and thereby promote mutual learning. For the OMC to work, however, commitment is necessary among the parties concerned.

The final section of the chapter discusses the trend among the European social partners towards the use of a greater diversity of instruments, including 'new generation' texts which they undertake to follow up themselves.

### ■ 3. Policy developments: working towards the Lisbon objectives

#### 3.1. Lifelong learning and mobility

The Lisbon objective of becoming a dynamic, knowledge-based economy requires investment in human resources, in other words the promotion of education and training in order to ensure that employees possess the new skills which are required in a knowledge-based economy. Ensuring that they remain employable throughout their working lives is a lifelong process. Many of the social partners' activities therefore represent a response to this challenge.

In March 2002, the cross-industry social partners, the ETUC, UNICE/UEAPME and CEEP, adopted the framework of actions for the lifelong development of competencies and qualifications. The text stresses the

importance of the principle of the shared responsibility of all players for lifelong learning (e.g. the social partners at national, sectoral and company level, public authorities, employers and individual employees). It emphasises that the lifelong development of competencies depends on the implementation of the following four priorities:

- identification and anticipation of competencies and qualification needs;
- recognition and validation of competencies and qualifications;
- information, support and guidance;
- resources.

This framework of actions is innovative both in terms of the content of the text and as an instrument. With regard to the content, it seeks to go beyond the earlier approach which prevailed in the social partners' joint opinions adopted between 1985 and 1995, which tended to adopt a narrower view of vocational training and to focus on issues such as the right to training and equal access. In contrast, in the framework of actions, the social partners have adopted a broader approach by considering the issue of training from the angle of learning, both formal and informal; and by introducing the concept of 'competencies' which have to be validated and recognised so as to facilitate geographical mobility; by extending the scope to all categories (young people, employees, job-seekers) and all age groups; and by adopting a multi-level approach (national, regional, local and company).

As an instrument, this framework of actions is also significant as it is the first time that the cross-industry social partners have decided to implement one of their texts via the open method of coordination (OMC). The member organisations of UNICE/UEAPME, CEEP and the ETUC undertake to promote the framework in Member States at all appropriate lev-

els taking account of national practices. At European level, the social partners will continue to contribute to ongoing discussions on transparency and recognition of competencies and qualifications. The social partners have agreed to monitor progress towards achieving the four priorities on an annual basis (reporting in February–March each year) and will, after three annual reports, evaluate the impact on both companies and workers. This evaluation can, if necessary, lead to an update of the priorities identified. The social partners' ad hoc group on education and training will be responsible for the evaluation, which will be presented in March 2006.

In their joint work programme the social partners indicate that they will include the new Member States in the reporting activities from 2005 onwards and a seminar was held in May 2004 in order to prepare for their inclusion.

The first and second follow-up reports were produced in March 2003 and 2004 respectively. National efforts have been building on previously existing initiatives, and both reports reflect the diversity of Member States' industrial relations systems and a variety of priorities as a result of differing national circumstances and needs.

The first report indicated that considerable efforts had been made:

- to disseminate the text (e.g. translate it, hold information meetings, analyse and discuss the priorities);
- to discuss the text among the social partners and to integrate the priorities in collective agreements;
- to promote the approach and priorities through tripartite concertation with public authorities;
- to follow up certain priorities through more focused projects by the social partners either jointly or individually.

TABLE 3.3: SOCIAL PARTNER JOINT TEXTS ADOPTED BETWEEN JANUARY 2001 AND JUNE 2004 <sup>(95)</sup>

Sector	Title of joint text
Agriculture	European agreement on vocational training, December 2002
Banking	Joint declaration on lifelong learning, November 2002
Civil aviation	Joint opinion on the crisis in air transport, October 2001 Joint letter to Commissioner de Palacio supporting the bottom-up approach for functional blocks of airspace in the single European sky policy, October 2003
Cleaning industry	Joint declaration on employment, February 2001 Common recommendations of the European social partners for the cleaning industry, March 2002 Framework programme of the social dialogue committee in the cleaning industry, March 2004
Commerce	European agreement on guidelines on telework in commerce, April 2001 Voluntary guidelines supporting age diversity, March 2002 Joint statement on corporate social responsibility, November 2003 Statement on promoting employment and integration of disabled people in the European commerce and distribution sector, May 2004
Construction	Recommendations to the national federations regarding implementation of Directive 2001/45/EC on 'working at heights', April 2003 Joint declaration regarding the proposed COM(2001) 386 — 2001/0154/CNS directive of 11 July 2001 relating to entry and residence conditions for workers who are nationals of other countries, June 2003 Joint statement on the European Commission's proposal for a directive on services in the internal market, COM(2004) 002, April 2004 Joint statement on the European Week for Safety and Health at Work — 2004, April 2004
Cross-industry	Joint contribution by the social partners to the Laeken European Council, December 2001 Declaration of the social partners for the European year of people with disabilities: promoting equal opportunities and access to employment for people with disabilities, January 2003 Framework of actions on the lifelong development of competencies & qualifications, March 2002 Framework agreement on telework, July 2002 Orientations for reference in managing change and its social consequences, October 2003 Framework agreement on work-related stress, October 2004
Electricity	Joint declaration on the conference on the social implications of the restructuring of the electricity sector in the candidate countries, 2002 Eurelectric-EPSU-EMCEF joint declaration on telework, 2003 Joint statement of Eurelectric, EMCEF and EPSU and final report on the study on lifelong learning in the electricity sector, 2003 Joint declaration on equal opportunities and diversity in the electricity sector, June 2003 Joint statement on the future skills needs in the European electricity sector, June 2004
Footwear	Existing code of conduct for the footwear sector extended to organisations representing the footwear retail sector, February 2002
Horeca	Common position on the Commission communication on tourism, 2001
Local & regional government	CEMR-EPI/EPSU joint statement on telework, January 2004
Mines	Joint positions in the context of the draft directives on the management of waste and greenhouse gas emissions trading, 2002 Joint position on training and continuing training, April 2003
Personal services	Code of conduct — guidelines for European hairdressers, June 2001
Postal services	Equal opportunities in the postal sector: good practices, 2001
Private security	Joint declaration on the European harmonisation of legislation governing the private security sector, December 2001 Code of conduct and ethics for the private security sector, July 2003
Railways	Agreement on certain aspects of the working conditions of railway mobile workers assigned to interoperable cross-border services, January 2004 Agreement on the European licence for drivers carrying out a cross-border interoperability service, January 2004
Road transport	Joint declaration on the road safety action programme, September 2003 Joint declaration on post-enlargement in the road transport sector, September 2003 Joint recommendations of the European social partners to the representatives of management and trade unions in local public transport companies in the EU on insecurity in local public transport, November 2003
Sugar	Common position on the generalised system of preference for clear and consistent rules of origin conceived as an essential counterpart to the opening of borders, 2001 Joint declaration on the impact of enlargement for the sugar industry, 2002 Code of conduct on corporate social responsibility in the European sugar industry, February 2003 Joint position paper on the Commission communication relating to reform of the COM in sugar, December 2003
Telecommunications	Guidelines for telework in Europe, February 2001 Guidelines for customer contact centres, June 2004
Temporary work	Joint declaration on the development of the sectoral social dialogue, July 2001 Joint declaration — objectives of the European directive on private agency work, October 2001

Although it was still early to detect particular trends resulting directly from the adoption of the framework of actions, it appeared to be providing an impetus for debates between the social partners at national level on the development of competencies and qualifications, and in some cases activities were being organised around the four priorities identified at European level.

The second follow-up report indicated that activities in the bipartite social dialogue had been less geared in the second year towards the dissemination of the framework of actions and focused more on competence development at different levels. Different means had been used to that end, including collective agreements, joint projects, the establishment of discussion forums and the development and promotion of concrete tools to help companies develop learning activities. National social partners had been actively involved in tripartite activities, including the design of public policies on education and training in several countries. The second report also included some information on initiatives taken at the European sectoral level.

Lifelong learning is of course also a key issue for the sectors and therefore featured in the work of the majority of the sectoral social dialogue committees. The various sectors have undertaken numerous joint projects, culminating in some cases in the adoption of joint texts. In some instances, reference was made to the cross-industry framework of actions.

In the agriculture sector, the social partners signed a European agreement on vocational training in December 2002 which seeks to raise the level of qualifications of agricultural workers and to facilitate their mobility within the EU. The agreement is to be implemented in accordance with national procedures and practices and proposes a number of initiatives and practical recommendations

to national social partners, national authorities and the Commission with regard to skills assessment, the validation of vocational skills, the transparency of diplomas, and qualifications. With a view to facilitating mobility, the agreement proposes a model for an agricultural worker's booklet of vocational qualifications and skills. Mobility is not only essential for adapting to structural changes, it is also important for helping to resolve the problem of the shortage of skilled labour in the sector.

Social partners in the banking sector have prepared an inventory of the legislative framework and practices on lifelong learning in their sector in 18 countries, and adopted a joint declaration on lifelong learning in this connection in November 2002. This joint declaration recognises the importance of training to companies' competitiveness and aims to promote a culture of continuing training. It identifies the same four main themes as those in the cross-industry social partners' framework of actions, but takes into account the specificities of this particular sector.

European social partners in the postal sector have also been inspired by the framework of actions and the sectoral social dialogue committee's new website includes a questionnaire which seeks to collect examples of best practices on training and skills development in the sector. More than 50 good practices have already been collected.

Social partners in the electricity sector commissioned a study on lifelong learning and vocational training needs in their sector, which resulted in the adoption of a joint statement in June 2003. The study was drawn up on the basis of the responses received to questionnaires sent to electricity companies in several countries. Training is an important issue for the electricity sector as the liberalisation of energy markets has considerably

changed the context in which electricity companies now operate, and in order to remain an attractive employer and to maintain the competitiveness of the industry, the electricity sector must find suitable ways of ensuring that staff have the skills which are needed in this new context. The text identifies the challenges relating to the needs of older workers, female employees and young workers entering the industry. The electricity social partners intend to use the conclusions of the study to explore further the question of lifelong learning at a joint workshop aimed at exchanging examples of best practice.

Social partners in the mines sector adopted a joint position on training and continuing training in April 2003 stressing the importance of training to economic and social development, the need for new social skills in addition to the more traditional technical occupational skills and the need for training content to adapt to the needs of the information society.

In the construction sector, the European social partners have developed a brochure on tutorship for building and public works companies. The brochure has been developed because the sector suffers from image problems which means that at the same time as many skilled workers over the age of 50 are leaving the industry, many younger workers are leaving the sector either during training or after just a few years' of work. This results in wasted resources for the different vocational training systems and a lower return on businesses' investments in human resources. The brochure has therefore been designed in order to provide the construction sector's social partners and businesses with information and tools to help them address these problems through tutorship. It includes examples of best practice.

Employers in the construction sector, represented by FIEC (European Construction Industry Federation), have organised a number of 'thematic visits', designed to share and spread best practices in vocational training. These visits have also helped to identify certain problems facing the construction industry, and have included a large number of participants from FIEC member federations from the candidate countries in the run-up to enlargement.

Furthermore, the texts of other sectors include references to lifelong learning/training even if it is not necessarily the primary concern of the text in question, as in the case of the code of conduct on corporate social responsibility in the European sugar industry adopted in February 2003.

Similarly, the code of conduct and ethics for the private security sector adopted in July 2003 addresses the question of vocational training, stressing the need for appropriate training in order to ensure minimum standards of professionalism in the sector. It indicates that in the absence of national regulations or standards, companies should, at a minimum, provide a level of training corresponding to the training manual developed by the social partners in the sector in 2001 on basic training requirements for private security guards.

Finally, the common recommendations for the cleaning industry adopted in March 2004 also stress the importance of vocational training to promoting professionalism which is in turn fundamental to ensuring the sustainable development of the sector. In this text, the sectoral social partners refer explicitly to the cross-industry framework of actions and declare their intention to actively pursue work in this area with a view to promoting the development of vocational training at all levels.

### 3.2. Telework: modernising employment relations

Another important aspect of the Lisbon agenda concerns the modernisation and improvement of employment relations, a topic on which the Commission consulted the social partners in 2000. During 2001, the social partners informed the Commission that they wished to negotiate their own agreement, which culminated in the adoption by the ETUC (along with the Eurocadres/CEC liaison committee), UNICE/UEAPME and CEEP of the framework agreement on telework signed on 16 July 2002.

In the preamble, the social partners state that in line with the EU's Lisbon strategy, the agreement is a contribution to preparing the transition to a knowledge-based economy and society. The agreement defines the scope of telework and establishes a general European framework for teleworkers' conditions of employment. It covers eight areas: employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training and collective rights. It aims to ensure that teleworkers are afforded a general level of protection equivalent to workers working on the employer's premises.

Like the previous framework agreements on parental leave, part-time work and fixed-term work, it was negotiated following a consultation of the social partners under Article 138 of the EC Treaty on *Modernising and improving employment relations*. However, this agreement departs from the three other agreements as it is the first time that the social partners have decided to implement an agreement via the first implementation route in Article 139(2) of the EC Treaty, namely in accordance with the 'procedures and practices specific to management and labour and the Member States'. The three previous agreements have all been imple-

mented via the second route, namely by Council directives.

The main difference between this implementation method and that used for the three other agreements is that it is the social partners themselves — more specifically, the national members of the European signatory organisations — who will implement the agreement, rather than Member States. Indeed, in the vast majority of Member States, the three previous agreements were implemented either by revising existing legislation or introducing new laws.

The social partners have three years in which to implement the agreement — until July 2005 — and they then have a further year — until July 2006 — to produce a joint report on implementation.

At the time of writing, the UK, Sweden and the Netherlands had adopted non-binding guidelines agreed jointly by the main peak social partner organisations. Although the UK guidelines are non-binding, the fact that the Confederation of British Industry (CBI) and the Trades Union Congress (TUC) have decided to agree the guidelines together, with the Department of Trade and Industry's (DTI) support for publication, has been considered to be significant in the British industrial relations context. The Swedish and Dutch guidelines are intended to serve as recommendations for lower levels of bargaining, at either sectoral or company level, but have no binding force in themselves. In Ireland, the social partners will update the existing non-binding code of practice dating from 1999. In mid-2004, cross-industry negotiations had been initiated in Austria, Belgium, Finland, Greece, Ireland, Iceland, Luxembourg and Norway. In Denmark, Germany and Sweden the issue is expected to be taken up in the sectoral collective bargaining rounds during 2004. In Portugal, the recently amended labour



code includes 10 articles dealing specifically with telework. In Hungary, also the labour code has been amended to include provisions on telework, and similar steps are under way in the Czech Republic.

While telework is still a relatively undeveloped form of work in some countries, in others, existing collective agreements already address the issue. This is the case, for example, with regard to the electric power-supply, telecommunications, information technology services and mineral oil production sectors in Austria. Similarly, in some countries, company level agreements address the issue <sup>(96)</sup>.

Some European sectoral social partners have also addressed the issue of telework. The commerce and telecommunications sectors adopted joint texts in 2001 prior to the cross-industry agreement as a response to the Commission consultation. Their texts highlight similar issues to the cross-industry agreement, including the voluntary nature of telework, the principle of equitable treatment with other employees, costs involved, equipment, confidentiality, health and safety considerations, access to training and collective rights.

The guidelines on telework in the telecommunications sector foresaw a follow-up and the findings produced in 2003 indicate a high level of implementation of the guidelines in the 17 large traditional operators in the sector. The report explains that in all cases telework is voluntary, the principle of equitable treatment is respected, the equipment is always provided by the company and the costs are generally borne by it. In each instance, teleworkers have equal access to training and career opportunities, health and safety rules are applied, measures have been taken to ensure

that teleworkers do not experience exclusion or isolation, in all companies teleworkers must respect the confidentiality of all data, and they benefit from the same collective rights.

More recently, social partners in the electricity (2003) and local and regional government sectors (2004) adopted very similar joint texts welcoming the cross-industry agreement and calling on their members to implement it in their sectors in accordance with national procedures and practices specific to management and labour by the July 2005 implementation deadline for the cross-industry agreement. Both sectors also undertake to monitor the implementation of the agreement in their sectors in 2005. The similarity of the two sectors' approaches has been influenced by the fact that employees are represented by the same trade union organisation, EPSU (European Federation of Public Service Unions) <sup>(97)</sup>.

### 3.3. Restructuring: Anticipating and managing change

Corporate restructuring is a crucial issue in the framework of the fulfilment of the Lisbon objectives with regard to both its economic and social implications, and particularly in view of the likely consequences of EU enlargement. Restructuring has therefore been an important discussion topic for the cross-industry social partners and was included in their joint work programme. The social partners' deliberations on restructuring were, however, originally triggered by a Commission consultation under Article 138 of the EC Treaty on *Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring* launched in January 2002. This consultation paper explains that the Lisbon

strategy is based on a positive approach to change. Change is viewed as contributing to innovation, increasing productivity (by modernising the organisation of work), and raising profitability, and should therefore be embraced, anticipated and managed responsibly.

During 2002–03, the cross-industry social partners held three seminars examining case studies of restructuring and, on 29 October 2003, they presented a joint text to the Commission entitled 'Orientations for reference in managing change and its social consequences', which includes an annex with 10 case studies on which the orientations were based (for more information on the case studies, see Chapter 5).

The orientations stress the need for explaining the reasons for change in good time to workers or their representatives; the need for good information and consultation of workers throughout the process of change; and the need to maintain and develop workers' competences and qualifications in order to develop their employability. It also addresses the territorial dimension (the economic and social repercussions of restructuring on the regions in which they are based) and the specific circumstances of SMEs.

These orientations constitute a first step towards identifying and developing best practices on anticipating and managing restructuring throughout Europe. The cross-industry social partners' work programme foresees two further initiatives relating to this topic, namely a study on restructuring in the new Member States, and a joint seminar on the implementation of the European works councils directive, which will also involve further work on themes relevant to the topic of

(96) See, *Industrial relations developments in Europe 2002*, European Foundation for the Improvement of Living and Working Conditions and the European Commission, 2003.

(97) In the electricity sector trade unions are also represented by EMCEF (European Mine, Chemical and Energy Workers' Federation).



restructuring. The framework of actions on the lifelong development of competencies and qualifications, adopted prior to the orientations, is also relevant to this issue in view of the importance of continuous training to ensuring the employability of employees.

At the sectoral level, the electricity social partners organised a joint conference on the social implications of the restructuring of the electricity sector in the candidate countries, in Budapest, in September 2002, which resulted in the adoption of a joint statement. Case studies were presented on the effects of liberalisation and privatisation on companies, employees and customers in the EU, and the preparation of the candidate countries for EU membership was also discussed. In 2003, three workshops were held in Prague, Bucharest and Tallinn in order to discuss the social implications of the internal electricity market.

In May 2003, the telecommunications social partners organised a conference in Cyprus on 'Social dialogue: a key factor for success in restructuring European telecommunications companies'.

The code of conduct on corporate social responsibility in the European sugar industry adopted in February 2003 also includes a section on restructuring. The code stresses the need for restructuring to take place in a socially responsible way, including the importance of timely information and consultation and the need to improve the employability of employees. The code is accompanied by an annex of examples of good practice, several of which address cases of socially responsible restructuring.

Finally, some of the European social

partners have undertaken unilateral initiatives, such as the conference held by EMCEF in April 2004 exploring good practices for informing and consulting workers in cases of restructuring.

### 3.4. Corporate social responsibility (CSR)

Another topic attracting growing interest among the social partners and which can make a contribution to the Lisbon objectives, but also the European strategy for sustainable development and better global governance, is corporate social responsibility (CSR). This is the concept whereby companies, often in response to market pressures, acknowledge the importance of sustainability issues and their role in addressing them, by integrating social and environmental concerns in their business operations and their interaction with their stakeholders on a voluntary basis.

Following the appeal for CSR launched at the Lisbon Summit in March 2000, the Commission published a Green Paper seeking to launch a debate on the concept and to obtain stakeholders' views on how it should be taken further at European level. This was followed up in 2002 by the adoption by the Commission of a communication outlining its strategy <sup>(98)</sup>.

The social partners began by addressing the issue of CSR in the context of global social governance. The question of fundamental rights, including in the context of business relations of EU-based firms with third countries, had already been explored by several sectors prior to the launch of the Commission's initiatives on CSR and had resulted in the adoption of charters and codes of conduct in the textile/clothing, tanning/leather, and

footwear sectors. In the footwear sector, the original code of conduct on child labour was extended in scope in 2000. In the codes of all three sectors, the European social partners call on their members to comply with the core labour standards as defined in International Labour Organisation (ILO) Conventions, namely the abolition of forced labour, the freedom of association and the right to collective bargaining, the abolition of child labour and non-discrimination in employment.

The tanning/leather code of conduct goes beyond these core labour rights as it includes clauses on reasonable working hours, decent working conditions and decent remuneration. The tanning/leather and footwear (2000) codes foresee the possibility of the European social partners organising training and awareness-raising programmes. They both also call on member organisations and enterprises to integrate the code in their relations with suppliers or sub-contractors and indicate the need for independent verification of the implementation of the code in order to ensure credibility.

The implementation of these codes has gradually been gathering pace. For example, some training and awareness-raising projects (some of which are ongoing) have recently been undertaken by the social partners in the textile/clothing and tanning/leather sectors to promote the implementation of these codes in the candidate countries, such as Bulgaria and Turkey.

The commerce sector had also undertaken various initiatives, including the adoption of three joint statements on combating violence, combating child labour and combating racism and xenophobia, as well as an agreement on fundamental rights

(98) 'Promoting a European framework for corporate social responsibility: Green Paper', COM(2001) 366 final and 'Corporate social responsibility: A business contribution to sustainable development', COM(2002) 347 final.

and principles at work. Like some of the codes of conduct mentioned above, the latter text urges companies and workers in the European commerce sector to comply with the main ILO conventions, including the development of their own codes of conduct for their business relations with third countries. In March 2002, the woodworking sector adopted a code of conduct calling on their members to actively encourage companies and employees in the sector to observe the main ILO conventions.

A growing interest in the broader issue of CSR is now evident among some of the European sectoral social partners. Indeed CSR opens up two new dimensions for the European social partners. Firstly, it opens up the possibility of the social partners' agreements having an impact beyond the EU's borders. Secondly, it opens up potential new areas for negotiation, such as the wider concept of quality and sustainable development issues.

The sugar sector has been the first to undertake a CSR-specific effort to ensure the voluntary respect of certain social standards, by adopting a code of conduct on CSR in February 2003. The text sets a series of voluntary minimum standards for affiliated sugar companies in a number of areas including human rights, education and training, health and safety, pay and working conditions, restructuring and social dialogue. It also states that the European sugar industry expects socially responsible behaviour from its suppliers and seeks thereby to contribute to promoting the concept of CSR at the global level. The preamble states that the code is intended to serve as a vehicle for exchanging experience in order to help develop best practice.

The code foresees regular annual assessment of its implementation at European level, and the first follow-up report was formally approved in February 2004. The purpose of the first report was to describe the measures taken during 2003 to disseminate knowledge and awareness of the code prior to its entry into force on 1 January 2004, rather than to assess the application of the various norms at this stage. A collection of good practices, which are intended to provide a source of inspiration for companies, has been annexed to the code and will be regularly updated.

The report explains that during 2003, members of the employers' social working group, which comprises company human resource directors or individuals responsible for social affairs within federations, have spent considerable time in explaining and promoting the concept of CSR to the managements of different companies and human resource directors in the sugar industry with the aim of having the concept gradually integrated into the human resource policy of companies. Contacts were also made in some instances with trade union organisations, external bodies or public authorities. The code has been translated into 14 European languages, it has been posted on the websites of the European social partners — CEFS (employers) and EFFAT (trade unions) <sup>(99)</sup> — and has received press coverage. The social partners in the sector have found that the existing structures at both the European level (the sectoral social dialogue committee) as well as those at national level were adequate for implementing and monitoring the code. Furthermore, in June 2004, the social partners in the sugar sector opened a website for their social dialogue to help raise its visibility and their work on CSR.

The commerce sector has also begun to explore the wider concept of CSR, with the organisation in November 2003 of a conference devoted to the subject, at the end of which the commerce social partners adopted a joint statement which urges all commerce companies in Europe to implement CSR policies. The European social partners undertake for their part to promote CSR in business activities, and to raise awareness, for example, through the convening of round tables and the collection and dissemination of good practices. The success of the statement is dependent on the commitment of the social partners and, it suggests, that where European works councils exist, they can play a positive role. The follow-up given to the joint statement will be monitored on a regular basis.

Further projects on CSR are under way in the tanning/leather, banking and Horeca sectors. The postal services sector is seeking to gather examples of CSR best practices which are to be published on their sectoral social dialogue committee's new website. In addition, certain trade union and employers' organisations have been exploring the implications of CSR on a unilateral basis.

Several of the European social partners — UNICE, CEEP, UEAPME, Eurocommerce, ETUC, CEC/ Eurocadres — took part in the EU multi-stakeholder forum on CSR, the aim of which was to promote innovation, transparency and convergence of CSR practices and instruments. Launched by the Commission in October 2002, the forum completed its work in June 2004. The Commission is scheduled to publish a communication in early 2005 assessing progress in the implementation of its CSR strategy and proposing the next steps to be taken.

(99) CEFS stands for the *Comité européen des fabricants de sucre*, and EFFAT stands for the *European Federation of Trade Unions in the Food, Agriculture and Tourism sectors and allied branches*.

These efforts in the field of CSR are partly a reflection of a new phenomenon in social regulation emerging at the transnational company level over the last 10 years or so towards the increasing adoption of corporate codes of conduct intended to serve as guidelines to companies concerning labour practices in their supply chains. Codes of conduct such as these are attracting considerable analytical interest as sources of social regulation, however, the question of their effectiveness and credibility has come under scrutiny and was part of the mandate given by the Commission to the EU CSR forum.

With a view to the future, the promotion of CSR and its integration in daily business management requires the development of new CSR-related professional skills. In addition to a

need for CSR management specialists in firms and CSR performance assessors, such as social auditors and analysts, every manager and employee will need to acquire new skills to be able to understand and manage CSR issues in their work. As a consequence, CSR-related training will need to be included as a new lifelong learning issue. The emergence of new CSR-related professions will also have consequences in terms of professional recognition. These are all issues which are likely to be addressed by the social partners in the coming years.

Until now research has tended to focus essentially on the definition of CSR and the reasons why it makes good sense for businesses. The concept of CSR has, however, evolved to embrace environmental as well as social issues (sustainable develop-

ment) and the key question concerns how to integrate these issues as well as the involvement of all relevant stakeholders in company management. CSR is beginning to be linked to the global social governance debate<sup>(100)</sup>. Developments in CSR and the linkage with other fields such as corporate governance and industrial relations are now beginning to be examined more closely. In the field of industrial relations, in the coming years, it will be interesting to examine questions such as the role of European social partner texts and international framework agreements between multinational enterprises and international trade unions in transnational social regulation, the impact of these agreements on the various levels of industrial relations, the relevant actors, and the cooperation between trade unions and other stakeholders.

**TABLE 3.4: SOCIAL PARTNER TEXTS ON CSR AND RELATED TOPICS**

Footwear	Charter on the employment of children (Extended to cover footwear retailing as well as manufacture in 1998)	1995, updated in 1996
Commerce	Joint statement on combating violence in commerce	1995
Commerce	Eurocommerce and Euro-Fiet joint statement on combating child labour	1996
Textile & clothing	Code of conduct — a charter by social partners in the European textile/clothing sector	1997
Commerce	Eurocommerce and Euro-Fiet agreement on fundamental principles and rights at work	1999
Commerce	Joint statement on combating racism and xenophobia	2000
Footwear	Code of conduct — a charter by social partners in the footwear sector	2000
Tanning & leather	Code of conduct in the leather and tanning sector	2000
Woodworking	Code of conduct — a charter for the social partners in the European woodworking industry	2002
Sugar	Code of conduct — corporate social responsibility in the European sugar industry	2003
Commerce	Eurocommerce and Uni-Europa Commerce joint statement on corporate social responsibility	2003

(100) See *International Labour Organisation (2004), A Fair Globalisation — Creating opportunities for all, report of the World Commission on the Social Dimension of Globalisation, Geneva, 24 February 2004*, <http://www.ilo.org/public/english/wcsdgl/index.htm>

### 3.5. The ageing workforce

Long-term demographic trends in Europe, in particular longer life-expectancy and declining birth rates, mean that European populations are ageing and that an increase in the employment rates of older workers is crucial for the economy as a whole in order to make use of the full potential of labour supply to sustain economic growth, tax revenues and social protection systems. The promotion of active ageing is reflected in two complementary targets that the EU has set itself. The 2001 Stockholm European Council agreed that 50 % of the EU population in the 55-64 age group should be in employment by 2010, and the 2002 Barcelona European Council concluded that the effective average age at which people should stop working in the EU should be raised by five years by this date.

In February 2004, the Commission adopted a communication entitled 'Increasing the employment of older workers and delaying the exit age from the labour market' <sup>(101)</sup>, which urges Member States — in line with the European employment strategy — to take urgent action to develop active ageing policies and stresses, among other things, the importance of social partnership. It indicates that the social partners have an important role to play through collective agreements on interconnected issues such as wage-setting, including the weight given to seniority, work organisation and improvements in safety and working conditions, lifelong learning, the removal of incentives for early retirement, higher pension entitlements for people to stay in work longer, as well as flexible retirement schemes combining gradual retirement with part-time work. The social partners can also help to promote best practice in relation to age management. The communication urges

the European social partners to complement the initiatives taking place at national level.

The subject of older workers has begun to attract the attention of some of the European social partners, with the adoption by the commerce sector in March 2002 of voluntary guidelines supporting age diversity. These guidelines seek to promote and recommend best practice concerning older workers for the benefit of both companies and employees when addressing the age aspects of human resource management. They include the principle of non-discrimination, an age-neutral approach to employment, recruitment, and vocational training, and the need for flexible working-time arrangements. The commerce social partners also undertake to continue exploring measures aimed at giving older workers the possibility to remain in active working life.

The social partners have also begun to address the issue in their work on lifelong learning. For example, both the cross-industry framework of actions on the lifelong development of competencies and qualifications and the electricity social partners' joint statement on lifelong learning address the need to adapt training systems to the needs of an ageing workforce.

The subject of active ageing can therefore be expected to be developed further by the European social partners in the near future. Indeed, it has been included in the cross-industry social partners' work programme as they intend to hold a seminar in 2004 at which they will discuss various case studies and explore the possibility of undertaking further actions.

### 3.6. The quality of employment and services

The notion of quality — of work, of social policy and of industrial relations — are important principles in the Lisbon strategy and the Commission's social policy agenda, and are an integral part of the idea of strengthening the role of social policy as a productive factor.

The work of several sectors has sought to promote the quality of work. For example, the sugar sector's above-mentioned code of conduct on CSR seeks to improve the quality of work in the European sugar industry. In the private security sector, the code of conduct and ethics adopted in July 2003 recommends a series of minimum standards to companies and employees in order to ensure a necessary degree of professionalism and quality. The code covers a range of issues, including selection and recruitment, vocational training, social dialogue, working conditions, salaries and income, health and safety, equal opportunities and non-discrimination, work organisation and relations with clients, the police and other security firms.

In March 2004, with similar concerns regarding the quality of working conditions and the image and professionalism of the sector, the European cleaning industry social partners agreed on some common recommendations exploring areas for further development, including the question of working patterns, health and safety issues and the need to promote social integration and combat discrimination. The recommendations have served as a basis for the sector's work programme, which proposes a more concrete framework of actions and initiatives on these topics.

The private security and cleaning industry sectors share another common difficulty with regard to the

(101) COM(2004) 146 final.



tendency for procurement choices in these sectors to be based purely on cost considerations. This has implications for the quality of working conditions of employees in the sector as well as the quality of the services provided. Both sectors have therefore produced manuals on selecting best value in public tendering which are intended to raise awareness among awarding authorities of the importance of quality considerations in the choices made by them. The social partners are making efforts to ensure that the manuals are translated into as many languages as possible and are distributed widely at the national level.

In September 2003, the social partners in the local public transport sector organised a joint conference on 'Quality at work and quality of services' during which best practices were presented in four fields: vocational training; equal opportunities and balance between working life and family life; work organisation; and health and safety. The parties involved will further develop their dialogue on this complex and interdependent topic which is crucial in a context of growing commercial competition.

### 3.7. Health and safety

Health and safety standards are part of the notion of high quality work and this is a topic which features in the activities of virtually all the sectors. This is also an area in which the social partners have over the years produced a large number of guides and practical tools (for example, in the agriculture, construction and cleaning industry sectors).

The European social partners in the construction sector have been, for example, developing common projects to improve health and safety at the workplace and to reduce the economic cost of work-related accidents since the early 1990s. More recently, in 2002, they produced a guide of best

practices to help companies and employees involved in the construction process to implement the directive on mobile construction sites (Directive 92/57/EEC of 24 June 1992) more effectively and to thereby reduce the number of occupational accidents. Another initiative in the sector consists of the recommendations adopted by the construction social partners in April 2003 regarding the meaning of certain definitions necessary for the implementation of Directive 2001/45/EC on 'working at heights'. These recommendations provide practical assistance to national federations and companies in the sector clarifying how the European level legislation should be interpreted, transposed and implemented in the Member States.

The personal services sector is currently preparing a study on the feasibility of a website collecting official information relating to the sector, such as legislation in the Member States concerning occupational diseases, collective agreements negotiated at national level by the social partners, etc. Another project in the sector seeks to develop better ergonomic tools and furniture in order to reduce occupational risks such as repetitive strain injury.

In the railway sector, two significant Article 139(2) agreements were adopted by the sectoral social partners in January 2004. The first, concerns certain aspects of working conditions of mobile railway workers assigned to cross-border interoperability services. This agreement seeks to establish common minimum health and safety standards for mobile workers in the European railway freight market, which was liberalised in March 2003. With the second agreement, the social partners agreed on the use of a European licence for drivers carrying out a cross-border interoperability service, which is based on common health and safety conditions and common competence standards.

The social partners have requested that the first agreement on working conditions be implemented in accordance with the second implementation option in Article 139(2) of the EC Treaty; it will therefore in principle be transformed into a Council decision so that the provisions will apply to all railway undertakings and thereby create a level playing field for all operators in the European railway market. In contrast, the second agreement on the drivers' licence, going beyond the scope of Article 137 of the Treaty, will be implemented in accordance with the first implementation method described in Article 139(2), namely the procedures and practices specific to management and labour in the Member States. The agreement has influenced the legislative proposal adopted on 3 March 2004 by the Commission on the certification of train drivers.

Finally, in October 2004, the cross-industry social partners adopted an agreement on work-related stress. These negotiations were originally triggered by a Commission Article 138 consultation launched in December 2002 on stress and its effects on health and safety at work. The agreement which has been reached is the cross-industry social partners' second autonomous agreement to be implemented in accordance with the procedures and practices specific to management and labour in the Member States. The objective of the agreement is to provide employers and workers with a framework to identify and prevent or manage problems of work-related stress. The content of the agreement is described in greater detail in Chapter 4. The agreement is to be implemented within three years of its signature and, in the fourth year, a full report on the implementation actions taken will be prepared by the Social Dialogue Committee (SDC). In addition, a yearly table will be prepared by the SDC summarising the ongoing implementation of the agreement.



### 3.8. European employment strategy

The European employment strategy (EES) launched at the Luxembourg Jobs Summit in November 1997 is the tool for coordinating national employment policy priorities at European level. As part of the EES, a set of employment guidelines are drawn up each year setting out common priorities for Member States' employment plans. Each Member State then draws up a national action plan (NAP) which describes how these guidelines will be put into practice nationally. The NAPs generally serve as baseline documents but are rarely the central instrument for discussing and defining national employment priorities.

The contribution of the social partners to the effective governance of the Strategy (through consultation) and to the objectives of the Strategy is highly recognised. The Commission's joint employment report 2003/04 indicates that the involvement of the social partners in developing the NAPs is progressing, and their contributions to implementation are better presented and reported, but that their involvement could nevertheless still be improved. Participation has either developed within an established institutional set-up, or has focused on specific action. European social partner involvement has been strengthened by the adoption of their joint work programme 2003–05 and the institutionalised Tripartite Social Summit for Growth and Employment, which regularly meets on the eve of the spring European Council (see also Box 2.1, Chapter 2).

In March 2004, the European cross-industry social partners — ETUC, UNICE/UEAPME, CEEP — produced their first report on how the national social partners were involved in the preparation of the 2003 NAPs, and this was presented to the spring summit of the European Council. The report indicates that national social partners from 14 Member States (Austria, Belgium, Denmark, Finland,

Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, the Netherlands and the UK) reported on their involvement in the preparation of the NAPs for employment and on key initiatives taken at national, local, sectoral and company levels, which contributed to implementation of the European employment guidelines. The report explains that the social partners were usually consulted during the preparation of the NAPs. In most Member States, employers and trade union organisations submitted separate comments (Italy, Portugal, Spain, Netherlands, UK), whereas in some (Belgium, Denmark, Sweden), joint contributions were included as an integral part of the NAP in a summarised version and added as annexes. In Germany and Greece, the involvement of the social partners improved compared with previous years, and in Portugal also to a certain extent. In some cases the consultation was seen as too superficial due to the absence of discussions with government (Austria), the lack of in-depth discussions on policy content (Denmark), or insufficient time for consultation (Finland, Belgium, Netherlands).

## ■ 4. Responding to the challenge of enlargement

Preparations for enlargement have been an important feature of the work of many sectors as well as the Commission during the last couple of years.

### 4.1. Social partner initiatives with regard to enlargement

One of the main challenges for the social partners has been to identify their counterparts in the new Member States with whom a dialogue can be established, which is not always

a simple task as in many of these countries bipartite national and sectoral level social dialogue is virtually non-existent. Numerous sectors — including commerce, private security, cleaning industry, postal services, fisheries, textile, footwear, tanning/leather and banking — have undertaken conferences, forums, and round tables in order to try to identify their counterparts.

While some European sectoral social partner organisations have members in virtually all of the new Member States, others have none at all. In general, the trade unions have found it easier to identify counterparts than employers, partly as a result of the fact that following the dismantling of the former planned economies, employers' organisations are a new phenomenon in many of these countries. Indeed, historically, the legitimate actors on the employer side were the chambers of commerce and industry.

Some sectors have undertaken joint initiatives seeking to prepare for the consequences of enlargement on their particular sector. For example, the construction social partners have sought to address the implications for their sector of the large new pool of labour which enlargement will entail. The rail, road and inland waterway transport sectors have studied questions linked to the risks of 'social dumping' and suitable methods for dealing with it. In the rail sector, the social partners have addressed the problems of competition and the opening up of markets, and in the telecommunications and electricity sectors, the impact of liberalisation and privatisation have been discussed.

In some sectors, the social partners have gone beyond discussions and undertaken joint measures together. For example, in the textile and clothing sector, the code of conduct on fundamental rights adopted in 1997 by the European social partners has been extended to the new Member

TABLE 3.5: SOCIAL PARTNER INITIATIVES TO PREPARE FOR ENLARGEMENT

Sector	Initiative
Agriculture	Conference on involving the candidate countries and the social partners in the social dialogue, Budapest, January 2000 Social dialogue in agriculture with a view to EU enlargement, 2002
Banking	Bilateral round tables, Hungary, Czech Republic, Poland, Malta, Slovenia, Slovakia, 1999–2002
Civil aviation	Conference on the social dialogue in industry, September 2000 Seminar on the social dialogue in the European common aviation area, September 2001
Cleaning industry	Joint declaration on enlargement, with the social partners undertaking to cooperate in order to contribute to structuring the sector in the candidate countries, January 2001 Training sessions on the theme of the social dialogue and enlargement, September and October 2002
Commerce	Round tables and seminars: Estonia and Hungary 1998, Czech Republic and Poland 1999, Lithuania and Slovakia 2000, Latvia and Slovenia 2002
Construction	Conference 'Enlargement: chance or risk', Berlin, 2002 Round table, Warsaw, 2002
Cross-industry	Warsaw Conference, March 1999 Bratislava Conference, March 2001 Five cross-industry employers' round tables, 1997–2001 ETUC study on the relocation of enterprises, 2001 CEEP seminar on services of general interest, 1999 and 2001 Five national seminars, 2004
Electricity	Conference on the social implications of restructuring in the electricity sector in the candidate countries, Budapest, September 2002 Three regional workshops (Prague, Bucharest, Tallinn) on the social implications of the internal electricity market, 2003
Footwear	First economic and social forum, Prague, November 2001 Second economic and social forum, 2004
Furniture	Seminar on extending the social dialogue to central and eastern Europe, Budapest, July 2002 Fostering the social dialogue in the furniture sector, 2003
Horeca	Seminar on the European social dialogue, organised by EFFAT, with representatives of Hungarian trade unions, Brussels, May 2000 Initial meeting of Horeca associations with their counterparts in the candidate countries with a view to preparing an enlarged sectoral social dialogue at European level, 2002
Live performing arts	Conference on moving towards enlargement of the European social dialogue in the arts, Brussels, 2003
Media	Status of workers in the media, arts and entertainment sector in the applicant countries, 2002 The prospects of the European social model in public service broadcasting: a challenge to the enlargement process, 2004
Mines	Promotion of sustainable development and its social aspects in the mining industry with a view to EU enlargement, 2002
Postal services	First conference on enlargement and the social dialogue, Bucharest, 2001 Second conference on enlargement and social dialogue, 2003
Private security	Training sessions on the social dialogue and enlargement, October 2002
Railways	Information seminars in the candidate countries, 2004
Sea fishing	Round table on the sectoral social dialogue and enlargement, Malta, 2002 and Riga, 2003
Sea transport	Seminar on the social aspects of employment, Brussels, May 2002
Sugar	Conference on the impact of enlargement on the sugar industry, Bratislava, November 2002 Impact of EU enlargement on employment, 2002
Tanning/leather	First economic and social forum, Hungary, September 2001 Second economic and social forum, Bucharest, October 2002 Third economic and social forum, 2004
Telecommunications	Seminar on the implications of the liberalisation of markets, Hungary, October 2001
Textiles/clothing	Seminar on the social dialogue and fundamental rights, Turkey, 2000 First economic and social forum, Poland, May 2002 Second economic and social forum, 2004

States. Thematic seminars have also been organised in Turkey, with the aim of carrying out a comparative analysis of working conditions in the sector.

Table 3.5 provides a non-exhaustive overview of some of the initiatives undertaken by the social partners in order to prepare for enlargement.

#### 4.2. Commission initiatives to prepare for enlargement

The Commission has undertaken various initiatives to help prepare the European social dialogue and the social partners for enlargement.

First of all, it has sent a consistent political message to the public authorities and social partners in the candidate countries concerning the importance of social dialogue to the Community *acquis*. It has stressed the importance of the candidate countries developing stronger bipartite structures, and the importance of the social dialogue to the legal *acquis*, as many Community directives specify that they may be implemented in the Member States by means of legislation or agreements between the social partners.

The Commission has also stressed the need for capacity-building among social partners in these countries in its 2002 and 2004 communications on the social dialogue and has undertaken various kinds of activities in order to help the social partners in this respect. It is, however, important to

note that as the social partners are autonomous and the social dialogue in the EU is based on the freedom of the right to association, capacity-building is essentially a bottom-up process depending on the efforts of the social partners themselves.

The Commission has constantly endeavoured to promote capacity-building by insisting on the use of the Phare programmes to fund projects on the social dialogue <sup>(102)</sup>. Projects to promote national, sectoral and/or regional social dialogue have been undertaken in the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. As most of the projects have only been finalised recently, it is still too early to know the outcomes. The types of initiatives undertaken by these projects include the provision of support for setting up sectoral dialogue committees, training the social partners in consultation, negotiation and language skills, and strengthening the public authorities' administrative capacity for social dialogue.

Through its social dialogue budget headings, the Commission has also co-financed many of the above-mentioned joint initiatives of the social partners in EU-15 to help them prepare their sectors for enlargement (see above). More recently, the Commission has co-financed a couple of capacity-building projects in the new Member States organised by the International Training Centre of the International

Labour Organisation. One project is aimed at trade unions in the commerce sector, and the other is aimed at cross-industry employers' organisations. Both projects seek to train social partner representatives from the new Member States in negotiating skills, and to provide them with the skills to act as trainers themselves when they return to their respective countries.

Further to membership, social partners in the new Member States are now eligible to apply for grants from these budget headings. These budget headings are intended to finance specific projects, and cannot therefore finance operational expenditure. Nevertheless, the projects they fund can be useful for activities such as training and awareness-raising measures, which are also an important aspect of capacity-building.

At the cross-industry social partners' Bratislava Conference in March 2001, the social partners called for enlarged meetings of the cross-industry Social Dialogue Committee. The Commission responded by organising enlarged meetings in January 2002 and January 2003. Following the signature of the accession treaties in April 2003, candidate country social partner representatives have been entitled to participate as observers in the Social Dialogue Committee, as well as in the sectoral social dialogue committees, in the run-up to enlargement.

TABLE 3.6: TIMETABLE FOR THE PHARE TWINNING PROJECTS ON SOCIAL DIALOGUE

	CY	CZ	EE	HU	LV	LT	MT	PL	SK	SI
No of projects related to SD		1	1	1	1	1		1	2	1
Project start date		2001	2001	2001 *	2001	2002		2001	2000 2001	2001
Project end date		2002	2003	2004	2003	2003		2002	2001 2003	2002-03

\* A new project was submitted in 2003, about which no information is available.

(102) The Phare programme is a pre-accession instrument financed by the European Communities to assist the applicant countries of central Europe in their preparations for joining the EU.

The Commission has also sought to improve knowledge and awareness of industrial relations in the new Member States through various publications, including a special *European social dialogue newsletter* in 2000 devoted to this subject and its *Industrial relations in Europe* reports. The European Foundation for the Improvement of Living and Working Conditions is also undertaking a great deal of work on increasing knowledge of industrial relations in these countries. Finally, the Commission has provided grants to projects resulting in publications aimed at improving knowledge on industrial relations in the new Member States (e.g. by the ILO, academic institutions, etc.).

Finally, building on the social partners' 1999 Warsaw Conference and their 2001 Bratislava conference <sup>(103)</sup>, in January 2004 the Commission organised a large-scale conference on the social dialogue in an enlarged Europe, involving some 250 participants, including 180 social partner representatives from the EU and the acceding countries in Ljubljana. The aim of the conference was to highlight the important role of social dialogue as an instrument of social policy in the run-up to enlargement.

The conference stressed the following elements:

- the importance of strong social dialogue to achieving the Lisbon objectives and reconciling economic performance and social progress;
- the need to strike the right balance between bipartite and tripartite social dialogue;
- the need for autonomous, well-

structured and representative social partner organisations which are capable of taking part in the European social dialogue;

- the need to expand the subjects discussed in the social dialogue committees in order to take account of the specific interests of the new Member States;
- the need to step up exchanges and initiatives aimed at strengthening links between social partners in EU-15 and new Member States.

A report of the conference proceedings will be published in 2004.

### ■ 5. European social dialogue as a form of better governance: the trend towards 'new generation' texts

As explained earlier in the chapter, a new trend has been emerging in recent years towards the adoption of more ambitious texts by the social partners. This section discusses and seeks to clarify certain aspects of these new instruments.

The trend towards the adoption of more ambitious texts by the social partners is demonstrated firstly by their success in negotiating several framework agreements which have been implemented by Council directives, making them binding and applicable to all concerned workers. At the cross-industry level this includes the agreements on parental leave (1995), part-time work (1997) and fixed-term work (1999) negotiated by UNICE/

UEAPME, CEEP and the ETUC. At the sectoral level this includes the two framework agreements on working time negotiated by the sea transport (1998) and civil aviation (2000) sectors. In addition, the European social partners in the railway sector have jointly requested that their agreement on certain aspects of the working conditions of railway mobile workers assigned to interoperable cross-border services be implemented by Council decision (2004).

Another illustration of this new trend is the increasing adoption by the social partners of 'new generation' texts which make recommendations to their members and which they undertake to follow up themselves, rather than relying on the EU institutions and Member States. At the cross-industry level this includes the *Framework of actions on the lifelong development of competencies and qualifications*, adopted in February 2002, the *Framework agreement on telework*, adopted in July 2002, and the *Framework agreement on work-related stress*, adopted in October 2004.

At the sectoral level, examples include: the codes of conduct in the textile/clothing (1997), tanning/leather (2000) and footwear sectors (1996, 2000); the agreement on the improvement of paid employment in agriculture (1997); the telework guidelines in the telecommunications sector (2001); the agreement on vocational training in agriculture (2002); the sugar sector's code of conduct on CSR (2003); the commerce sector's joint statement on CSR (2003); and the railway sector's Article 139 agreement on the European licence for drivers carrying out a cross-border interoperability service (2004).

(103) The Warsaw Conference held in March 1999 was the first conference on the role of the social partners in the enlargement process. It was organised at the joint request of the social partners with Commission support. It constituted a decisive point of departure for the social dialogue in the candidate countries, following which the social partners launched numerous initiatives both jointly and individually. The Bratislava Conference of March 2001 provided a follow-up to the Warsaw Conference and assembled social partners from the EU and the 13 candidate countries. The aim was to present and discuss the main results of a joint study, *Social dialogue and consultation in the candidate countries, status and prospects, which took stock of the consultation and social dialogue systems and practices in the candidate countries. The concluding statement which was adopted made suggestions for practical action. For more information, see European social dialogue newsletter — special edition of September 2000 — 'Preparing for enlargement', [http://europa.eu.int/comm/employment\\_social/enlargement/socialdialogue\\_front\\_en.htm](http://europa.eu.int/comm/employment_social/enlargement/socialdialogue_front_en.htm)*



### Box 3.2: Representativeness

The question of the representativeness of the organisations consulted under Article 138 is fundamental as it constitutes the basis of the legitimacy of the social partners for consultation by the Commission and for their bipartite contractual commitments. As a consequence, whenever an application to set up a sectoral social dialogue committee is made, the Commission sends the social partner organisations concerned a questionnaire to enable them to evaluate the extent to which they meet the criteria for establishment, particularly their capacity to negotiate agreements or their representativeness which determines the relevance of the social dialogue. Some 50 European-level organisations are now consulted in accordance with Article 138 of the EC Treaty, and are listed in the annex to the communication (COM(2004) 557 final).

In order to define the representativeness of the social partners to be consulted, the Commission carried out a study in 1993 on the representativeness of the European cross-industry organisations. In 1997, the Commission decided to update the results of this study and to examine representativeness at the sectoral level. The Institute of Labour Sciences at the Catholic University of Louvain-la-Neuve (UCL) was commissioned to conduct the research and their network of national experts collect the data on the basis of questionnaires prepared by the UCL team. The social partners at

both national and European level are consulted on the validity of the results. The UCL has conducted studies in more than 20 sectors.

The following sectoral representativeness studies have been carried out:

1999: construction, commerce, telecommunications, postal services and textile-clothing sectors.

2000: civil aviation, railways, sea transport, road transport, inland waterways, banking, insurance.

2001: electricity, hairdressing, local public services, hotel, restaurants, cafés, agriculture.

2003: private security, central public services.

2004: cleaning industry, temporary work, culture and media (ongoing).

The following monographs have been carried out on social partners in the candidate countries:

2003: cross-industry social partners, textiles and commerce sectors.

2004: road transport, construction and electricity sectors (ongoing).

The existing studies are available at the webpage of the UCL: <http://www.trav.ucl.ac.be/recherche/dg5-part2.htm>.

The adoption of these texts means that new territory is being entered at the European level and more can be expected in the future. Indeed, the cross-industry social partners' joint work programme for 2003–05 refers to a further voluntary agreement (harassment), framework of action (gender equality), and other non-binding instruments.

The Commission has welcomed this new willingness among the social partners to assume greater responsibility for following up their texts, stating in its June 2002 communication that, 'as a rule, negotiation is the most appropriate means for settling questions related to work organisation and employment relations at both multisectoral and sectoral level' <sup>(104)</sup>. However, the Commission has also stressed that special consideration should be given to the question of how to implement the texts adopted by the European social partners. In its 2004 communication on the social dialogue, the

Commission stresses the importance of structured reporting with regard to all new generation texts, urging the social partners to systematically include detailed follow-up and reporting provisions in such texts and proposing support of various kinds.

#### 5.1. A large variety of titles and follow-up provisions

At present the new generation texts are characterised by considerable diversity with regard to their titles, their format and the degree of precision of the follow-up provisions.

The diversity of titles is a reflection of the rather loose terminology currently employed by the social partners, a difficulty identified by the Commission in its June 2002 and August 2004 communications.

This diversity is demonstrated by the different approaches of two sectors — commerce and telecommu-

nications — with regard to the same topic, namely telework. Both sectors adopted joint texts on this subject in 2001 addressing similar concerns to the cross-industry agreement adopted the following year. Although broadly similar in terms of content, the European agreement on guidelines on telework in commerce does not include any specific follow-up provisions and consists instead of non-binding guidelines for the industry. In contrast, although the title of the guidelines for telework in Europe adopted by the telecommunications social partners suggests that this is a weaker instrument than the commerce sector text, the follow-up provisions are in fact more explicit, recommending implementation of the guidelines by telecommunications companies by a given date (end of 2001), albeit on 'a voluntary basis and according to each country's laws and collective bargaining practices', and specifies a date for monitoring of the adoption of the guidelines in 2002. Eighteen months

(104) COM(2002) 341 final.



after adoption of the guidelines, a questionnaire was sent to all the companies in the sector, to which the 17 large traditional European operators responded. The findings indicate a high level of implementation of the guidelines.

The range of follow-up provisions foreseen by the social partners is also demonstrated by the various sectoral codes of conduct which have been adopted. At one end of the spectrum, the code of conduct on corporate social responsibility in the European sugar industry adopted in February 2003 includes very clear follow-up provisions. It indicates that the social partners will undertake joint assessments of the implementation of the code of conduct at European level by a system of annual reports to be presented in February of the following year within the framework of the sectoral social dialogue committee at a meeting specifically devoted to the subject. It also explains the purpose of the first report, when it is to be presented and how the reporting system will function (February 2004). The first report has been produced on schedule and fulfils the undertaking made in the code of conduct.

The three codes of conduct in the textile/clothing, tanning/leather and footwear sectors also contain detailed follow-up provisions. In each case, the European social partners indicate the date by which they undertake to promote and circulate the codes. The three codes also explain that the follow-up will take place within the framework of the European sectoral social dialogue committee, that the implementation of the codes will be evaluated on a yearly basis, and they indicate the date by which the first evaluation should take place. Both the tanning/leather and footwear codes state that for credibility, implementation of the

codes has to be controlled in an independent fashion.

In contrast, the follow-up and reporting provisions in some texts are much vaguer, with the social partners simply undertaking to regularly discuss the follow-up given, or undertaking to follow it up but without giving any indication as to how often. Some texts include no follow-up provisions at all.

It should be stressed, however, that the purpose here is not to suggest that joint texts with more general statements concerning follow-up are necessarily less effective than those with more precise provisions. Indeed, it could well be the case that sectors with relatively vague commitments end up following up their texts effectively. Equally, experience shows that it is not because monitoring commitments have been included that they have necessarily been followed up in practice. The main intention here is simply to illustrate the variety of formal implementation and monitoring provisions which currently exist in the social partner texts.

## 5.2. Typology of the results of European social dialogue

The Commission's 2004 communication on social dialogue addresses the issues outlined above and proposes a typology of European social dialogue results in order to improve transparency and assist understanding of the social dialogue outcomes. This typology identifies four broad categories of social partner texts, each of which have sub-categories: agreements implemented in accordance with Article 139(2); process-oriented texts; joint opinions and tools; and procedural texts. It should, however, be pointed out that the rather loose use of terminology by the social partners in the titles of their texts makes it difficult to

categorise them and some overlap categories.

The new generation texts fall within the categories of 'autonomous agreements' and 'process-oriented texts'.

### 5.2.1. Agreements implemented in accordance with Article 139(2): minimum standards

The texts in this category establish minimum standards and entail the implementation of certain commitments by a given deadline. Article 139(2) makes it clear that two main types of agreement fall within this category, the main difference relating to the method of implementation foreseen.

The first kind of agreements are implemented at the joint request of the signatory parties by a Council decision (in practice so far by Council directives) on a proposal from the Commission. This category includes the three cross-industry framework agreements on parental leave, part-time work and fixed-term contracts, as well as the sea transport and civil aviation sector agreements on working time, and the railway sector agreement on the working conditions of mobile workers assigned to cross-border interoperable services. The three cross-industry framework agreements were negotiated as a result of a Commission consultation under Article 138, whereas the sectoral agreements make use of the space left to the social partners by a directive <sup>(105)</sup> to adapt the Community provisions to the specific needs of the sector.

In most Member States these agreements have been implemented either by revising or introducing new legislation. The responsibility for ensuring that these agreements are transposed and implemented lies with the

(105) In this instance Directive 93/104/EC concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993).

Social dialogue outcomes	
Agreements establishing standards Article 139(2) of the Treaty	Agreements implemented by Council decision
	Autonomous agreements
Process-oriented texts	Frameworks of action
	Guidelines and codes of conduct
	Policy orientations
Joint opinions & tools	Joint opinions
	Declarations
	Tools
Procedural texts	Rules of procedure

Member States, even in cases where the provisions are implemented through collective bargaining by the social partners. As a legislative act adopted by the Council is required to ensure the implementation of agreements in this category, they can only fall within the areas in which the Community institutions have competence to act and which are listed in Article 137 of the EC Treaty.

Responsibility for monitoring these agreements lies with the Commission, although the social partners are systematically consulted on the implementation reports. The Commission's June 2002 communication states that 'the Commission believes that the social partners who triggered the regulatory text hold special responsibility for its implementation' and that Member States should associate the social partners in the transposal at national level of Community texts that result from negotiated agreements.

The ETUC's European Trade Union Institute (ETUI) has already produced its own monitoring reports on the parental leave, part-time and fixed-term work agreements through its Netlex network of national legal experts. The agreement on working time in civil aviation and the agreement on working conditions in the railway

sector indicate that the social partners will undertake evaluations of the implementation of these agreements.

The second category of agreements ('autonomous' agreements <sup>(106)</sup>) are implemented via the first implementation option in Article 139(2), namely in accordance with 'the procedures and practices specific to management and labour and the Member States'. This means that it is the social partners themselves who are responsible for implementing and monitoring these agreements. The framework agreement on telework of July 2002 is the first cross-industry example of this type of agreement. In October 2004, they adopted their second agreement of this kind, on work-related stress. The question of effective implementation and monitoring is particularly important in the case of agreements of this kind which have been negotiated subsequent to a Commission consultation under Article 138. While respecting the autonomy of the social partners, the Commission also has a monitoring role with regard to this type of agreement to assess the extent to which it has effectively contributed to the achievement of the Community's objectives.

The agreement on the European licence for drivers carrying out a

cross-border interoperability service is a sectoral example of this type of agreement, but not one triggered by an Article 138 consultation. This agreement has provided important input to the directive proposed by the Commission.

### 5.2.2. Process-oriented texts

This category consists of a variety of joint texts which are implemented in a more incremental and process-oriented way than agreements. In these texts, the European social partners make recommendations of various kinds to their members for follow-up, and they should involve regular evaluation of the progress made towards achieving their objectives in order to ensure they have a real impact.

Texts of this kind can be useful in areas in which legislation at European level may not be the most appropriate solution, often because of the complex and diverse array of measures already in place in the Member States, but in which the social partners may nevertheless have an interest in working together. They can also assist the exchange of good practice and mutual learning. As the discussion above demonstrates, there is currently considerable variety in the titles employed by the social partners as well as the precision of the follow-up provisions of the texts falling within this second category.

There are three main types of instrument falling within this category.

#### Frameworks of action

Frameworks of action consist of the identification of certain policy priorities towards which the national social partners undertake to work. These priorities serve as benchmarks and the social partners report annually on the action taken to follow-up these texts. There is so far one cross-indus-

(106) The cross-industry social partners have referred to these texts as 'voluntary agreements' in their 2003–05 work programme.

TABLE 3.7: AGREEMENTS IMPLEMENTED IN ACCORDANCE WITH ARTICLE 139(2): MINIMUM STANDARDS

Type of agreement	Examples
<b>Agreements implemented by Council decision</b>  Implemented by Council decision, monitored by the Commission	<ul style="list-style-type: none"> <li>• framework agreement on parental leave, 1995;</li> <li>• framework agreement on part-time work, 1997;</li> <li>• framework agreement on fixed-term work, 1999;</li> <li>• European agreement on the organisation of working time of seafarers, 1998.</li> <li>• European agreement on the organisation of working time of mobile workers in civil aviation, 2000;</li> <li>• agreement on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services <sup>(107)</sup>.</li> </ul>
<b>Autonomous agreements implemented by the procedures and practices specific to management and labour and the Member States</b>  Implementation and monitoring by the social partners	<ul style="list-style-type: none"> <li>• framework agreement on telework, 2002;</li> <li>• agreement on the European licence for drivers carrying out a cross-border interoperability service, 2004;</li> <li>• framework agreement on work-related stress, 2004.</li> </ul>

try example, namely on lifelong learning, adopted in February 2002. This establishes four priorities for implementation at different levels and annual reports will be drawn up in order to carry out regular, systematic assessment of the action taken and the progress achieved. After the third annual report, the social partners will evaluate the impact on both companies and workers, which can, if necessary, lead to an updating of the priorities identified in March 2006.

#### Guidelines and codes of conduct

Guidelines and codes of conduct make recommendations to national affiliates concerning the establishment of standards or principles. In some cases these are intended to serve as minimum European standards or principles to be implemented at national or company level. In other cases they seek to promote higher standards than those provided for in existing legislation.

These texts may be adopted either in areas where the diversity and complexity of national legal situations and existing arrangements means that they may be the most realistic approach (code of conduct and ethics

for the private security sector), or alternatively, they may be adopted on new topics which are relatively unregulated at national level (guidelines for telework in telecommunications and the European agreement on guidelines on telework in commerce). Such texts may in some instances help to prepare the ground for future Community legislation.

This category also includes codes of conduct intended to promote the implementation in companies' supply chains of existing internationally agreed standards in the area of labour law established by international conventions (e.g. in the footwear and tanning/leather sectors). The content of some of these codes of conduct goes beyond the core ILO conventions.

#### Policy orientations

This sub-category refers to texts in which the social partners pursue a proactive approach to promoting certain policies among their members. The texts explain how these will be promoted (e.g. collection and exchange of good practice, awareness-raising activities) and how the social partners undertake to assess the follow-up given and its impact.

#### 5.2.3. Joint opinions and tools: Exchange of information

This category consists of social partner texts and tools which contribute to exchanging information, either upwards from the social partners to the European institutions and/or national public authorities, or downwards, by explaining the implications of EU policies to national members. The instruments in this category do not entail any follow-up provisions.

##### Joint opinions

This category includes the majority of social partner texts adopted over the years such as their joint opinions and joint statements, which are generally intended to provide input to the European institutions and/or national public authorities. These include texts which respond to a Community consultation (Green and White Papers, consultation documents, communications), which adopt a joint position with regard to a given Community policy, which explicitly ask the Commission to adopt a particular stance, or which ask the Commission to undertake studies or other actions.

(107 ) Implementation by Council decision requested at the time of writing.

TABLE 3.8: PROCESS-ORIENTED TEXTS

Type of text	Examples <sup>(108)</sup>
<b>Frameworks of action</b> — working towards common priorities  Follow-up and annual reporting by the social partners	<ul style="list-style-type: none"> <li>• Framework of actions on the lifelong development of competencies and qualifications, 2002.</li> </ul>
<b>Guidelines, codes of conduct</b> — establishing standards or principles  Regular follow-up and reporting by the social partners	<p>Establishing new European standards or principles:</p> <ul style="list-style-type: none"> <li>• recommendation framework agreement on the improvement of paid employment in agriculture, 1997 <sup>(1)</sup>;</li> <li>• agreement on promoting employment in the postal sector in Europe, 1998;</li> <li>• guidelines on telework in telecommunications, 2001;</li> <li>• European agreement on guidelines on telework in commerce, 2001;</li> <li>• code of conduct — guidelines for European hairdressers, 2001;</li> <li>• voluntary guidelines supporting age diversity in commerce, 2002;</li> <li>• joint declaration on lifelong learning in the banking sector, 2002;</li> <li>• European agreement on vocational training in agriculture, 2002 <sup>(1)</sup>;</li> <li>• code of conduct on CSR in the European sugar industry, 2003;</li> <li>• code of conduct and ethics for the private security sector, 2003;</li> <li>• electricity sector joint declaration on telework, 2003;</li> <li>• local and regional government joint statement on telework, 2004;</li> <li>• statement on promoting employment and integration of disabled people in the commerce and distribution sector, 2004;</li> <li>• guidelines for customer contact centres (telecommunications), 2004.</li> </ul> <p>Promoting and enforcing existing internationally agreed standards:</p> <ul style="list-style-type: none"> <li>• code of conduct on child labour in the footwear sector, 1996;</li> <li>• code of conduct for the European textile/clothing sector, 1997;</li> <li>• agreement on fundamental rights and principles at work, in the commerce sector, 1999;</li> <li>• code of conduct in the leather and tanning sector, 2000;</li> <li>• code of conduct in the footwear sector, 2000;</li> <li>• code of conduct — a charter for the social partners in the European woodworking industry, 2002.</li> </ul>
<b>Policy orientations</b> — the proactive promotion of policies  Regular follow-up and reporting by the social partners	<ul style="list-style-type: none"> <li>• joint recommendation on apprenticeship in the sugar sector, 1998;</li> <li>• electricity sector joint declaration on equal opportunities/diversity, 2003;</li> <li>• orientations for reference in managing change and its social consequences, 2003 (cross-industry social partners);</li> <li>• joint statement on CSR in commerce, 2003;</li> <li>• common recommendations of the European social partners for the cleaning industry, 2004.</li> </ul>
<p>(1) Although these texts are referred to as 'agreements', they have been included in this category as their provisions appear to consist mainly of recommendations to their members and do not include a date by which implementation of the various objectives must be accomplished.</p>	

(108) Some of these texts do not include detailed provisions on follow-up and reporting, but have been included because they consist of recommendations to their members.

### Declarations

This category refers to texts which are essentially declarations — usually directed at the social partners themselves — outlining future work and activities which the social partners intend to undertake (e.g. the organisation of seminars, round tables, etc.).

### Tools

This category refers to the tools developed by the social partners, such as guides and manuals, providing practical advice to employees and companies on subjects such as vocational training, health and safety and public procurement, often with the assistance of Community grants. The social partners sometimes undertake promotional activities to raise awareness of their existence. These tools can make a practical contribution at the grass-roots level, for example by helping to explain the implications of EU legislation on certain topics, or helping to exchange knowledge of good practice.

### Procedural texts

This final category consists of texts which seek to lay down the rules for the bipartite dialogue between the

parties. This includes the cross-industry social partners' agreement of 31 October 1991, which made proposals for the revision of the policy-making procedures in the EC Treaty in the social policy field. These proposals were incorporated virtually verbatim into the Treaty on EU by the Intergovernmental Conference of 1991. This category also includes the social partner texts which determine the rules of procedure for the sectoral social dialogue committees.

### 5.3. Summing-up

The trend towards the adoption of more ambitious texts by the social partners is still a recent phenomenon, and further developments can be expected, both in terms of the number of texts adopted and the clarity of drafting. In particular, there is a need for a more consistent use of terminology in order to facilitate comprehension of these texts to those not directly involved in the social dialogue. If these texts are to have an optimal impact, it is also important for them to include clear and detailed follow-up provisions, which is not at present always the case.

The question of the impact of the European social dialogue is attracting growing interest, and this is indeed one of the main issues addressed by the most recent Commission communication on the social dialogue. It will be important over the coming years to examine the follow-up given in practice by the social partners to their texts.

## 6. Conclusion:

### The contribution of the European social dialogue to the Europeanisation of industrial relations

The European social dialogue is an important tool for economic and social modernisation, for anticipating and managing change, and for achieving the Lisbon objectives. This chapter has demonstrated the considerable activity over the past couple of years in the European social dialogue, in particular, the large number of joint

TABLE 3.9: JOINT OPINIONS AND TOOLS

Type of instrument	Examples <sup>(109)</sup>
Joint opinions	<ul style="list-style-type: none"> <li>• Position on training and continuing training (mines), 2003;</li> <li>• joint declaration on the European harmonisation of legislation governing the private security sector, 2001;</li> <li>• joint declaration on the objectives of the European directive on private agency work (temporary work sector), 2001;</li> <li>• joint opinion of the European social partners in aviation, 2001.</li> </ul>
Declarations	<ul style="list-style-type: none"> <li>• Joint declaration on the social partners of the cleaning industry and EU enlargement, 2000;</li> <li>• joint statement and final report on the study on lifelong learning in the electricity sector, 2003.</li> </ul>
Tools	<ul style="list-style-type: none"> <li>• Selecting best value — a guide for organisations awarding contracts for cleaning services (cleaning industry), 2003;</li> <li>• training kit of basic office cleaning techniques (cleaning industry), 2001;</li> <li>• European vocational training manual for basic guarding (private security), 2001;</li> <li>• brochure on tutoring in the construction industry, 2004;</li> <li>• website of the postal sector social dialogue committee, 2003.</li> </ul>

(109) This list is not exhaustive and only provides a few examples.



texts adopted by the European social partners and the large number of joint projects undertaken by them relating to the Lisbon strategy and preparing for enlargement. The chapter has also explained the qualitative change in their dialogue: while their joint texts were previously directed primarily at the European and national public authorities, they are increasingly adopting so-called new generation texts which make recommendations to their members and which they seek to follow up themselves. The European social dialogue is therefore now characterised by a greater variety of instruments. Another important change is that whereas in the past, social dialogue at the European and national levels was rather disconnected, now there is greater interaction between the two, with the European social dialogue having a greater impact than before on national social dialogue. This means that the national social partners now have a greater need to engage at the European level, but also that the impact of the European social dialogue will, in the future, largely depend on the way in which its results are reintegrated at the national level.

All this activity is contributing to the Europeanisation of industrial relations, along the lines identified in Chapter 1. More specifically, rather than resulting in convergence — in other words the vertical or upward transfer of authority — the European social dialogue is helping to bring the European level closer to national or local discussions and practices, and national and local actors closer to each other, while respecting national and cultural differences. As explained in Chapter 1, this view of Europeanisation is a horizontal one, implying better coordination across national borders, which can be more easily reconciled with the overall trend towards decentralisation in industrial relations.

In concrete terms, by helping to bring together social partners from different countries, the European social dialogue helps to promote mutual learning among the actors, both with regard to understanding better the perspectives of their counterparts on the other side of industry, but also by increasing their understanding of different national traditions and cultures and what happens beyond their borders. Over time, the social partners at different levels and on both sides of industry have come to realise the benefits of being involved in this process of Europeanisation, in particular the benefits of exchanging best practice and learning from other national experiences. The new generation texts, by involving the national social partners more directly in the follow-up of their texts, should intensify this process further by implicating the social partners at different levels more intensely in joint cooperation.

**TABLE 3.10: THE IMPLEMENTATION AND MONITORING PROVISIONS OF ARTICLE 139(2) AGREEMENTS: MINIMUM STANDARDS**

Text	Implementation and monitoring provisions	Implementation
<b>Agreements establishing minimum standards implemented by Council decision</b>		
Framework agreement on parental leave, 14 December 1995	<i>The ETUC, UNICE and CEEP request the Commission to submit this framework agreement to the Council for a decision making these requirements binding in the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland.</i>	<b>Council Directive 96/34/EC of 3 June 1996</b> Commission implementation report published in June 2003
Framework agreement on part-time work, 6 June 1997	<i>The ETUC, UNICE and CEEP request the Commission to submit this framework agreement to the Council for a decision making these requirements binding in the Member States which are party to the agreement on social policy annexed to the protocol on social policy annexed to the Treaty establishing the European Community.</i>	<b>Council Directive 97/81/EC of 15 December 1997</b> Commission implementation report published in February 2003
Framework agreement on fixed-term work, 18 March 1999	<i>The ETUC, UNICE and CEEP request the Commission to submit this Framework agreement to the Council for a decision making these requirements binding in the Member States which are party to the agreement on social policy annexed to the Protocol (No 14) on social policy annexed to the Treaty establishing the European Community.</i>	<b>Council Directive 1999/70/EC of 28 June 1999</b> Commission implementation report due in spring 2004
European agreement on the organisation of working time of seafarers, 30 September 1998	<i>... Whereas Article 4(2) of the agreement on social policy provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission ...</i>	<b>Council Directive 1999/63/EC 21 June 1999</b> Implementation by 30.6.2002. No monitoring foreseen so far by the social partners.
European agreement on the organisation of working time of mobile workers in civil aviation, 22 March 2000	<i>... Having regard to the fact that Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission,</i> <i>Having regard to the fact that the signatory parties hereby make such a request</i>  <i>The parties shall review the above provisions two years after the end of the implementation period laid down in the Council decision putting this agreement into effect.</i>	<b>Council Directive 2000/79/EC 27 November 2000</b> Implementation by 1.12.2003. Social partners' evaluation end 2005/beginning 2006.
European agreement on certain aspects of the working conditions of railway mobile workers assigned to interoperable cross-border services, 27 January 2004	<b>Having regard to:</b> <i>the fact that Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission, the fact that the signatory parties hereby make such a request.</i>  <b>Follow-up of the agreement:</b> <i>The signatory parties will follow the implementation and application of the agreement in the framework of the Sectoral Dialogue Committee set in accordance with Commission Decision 98/500/EC.</i>  <b>Evaluation:</b> <i>The parties shall evaluate the above provisions two years after the signature of the present agreement in the light of the first experiences of development of interoperable cross-border services.</i>  <b>Revision:</b> <i>The parties shall review the above provisions two years after the end of the implementation period laid down in the Council decision putting this agreement into effect.</i>	<b>Adoption of a Council directive foreseen</b>

**Autonomous agreements establishing minimum standards implemented by national procedures and practices**

Framework agreement on telework, 16 July 2002	<p><b>Implementation and follow-up:</b>  <i>In the context of Article 139 of the Treaty, this European framework agreement shall be implemented by the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee Eurocadres/CEC) in accordance with the procedures and practices specific to management and labour in the Member States. This implementation will be carried out within three years after the date of signature of this agreement. Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement.</i></p>	<b>National members of the signatory organisations</b>
Agreement on the European licence for drivers carrying out a cross-border interoperability service, 27 January 2004	<p>The agreement shall be implemented by the CER-affiliated companies pending a European directive. For the part covering the scope of this agreement, both parties want the directive to be written on the basis of this agreement.</p> <p>The text formalises existing and often comparable practices implemented by several railway companies and constitutes a framework for the new interoperability practices. If a new European directive covers certain points set out in this agreement, the new directive will be applied.</p> <p><b>Follow-up of the agreement:</b>  A committee composed of representatives of all parties having taken part in drawing up the agreement shall meet every six months, during the first two years, under the auspices of the Committee on Social Dialogue, to discuss problems linked to the implementation of this agreement and shall examine the main experiences of the interoperable services.</p>	<b>CER-affiliated companies</b>
Framework agreement on work-related stress, October 2004	<p><b>Implementation and follow-up:</b>  <i>In the context of Article 139 of the Treaty, this voluntary European framework agreement commits the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee Eurocadres/CEC) to implement it in accordance with the procedures and practices specific to management and labour in the Member States and in the countries of the European Economic Area.</i></p> <p>The signatory parties also invite their member organisations in candidate countries to implement this agreement.</p> <p>The implementation of this agreement will be carried out within three years after the date of signature of this agreement.</p> <p>Member organisations will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare a yearly table summarising the ongoing implementation of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee during the fourth year.</p>	<b>National members of the signatory organisations</b>

TABLE 3.11: THE FOLLOW-UP PROVISIONS OF PROCESS-ORIENTED TEXTS

Text	Follow-up provisions
<b>Frameworks of action — working towards common priorities</b>	
Framework of actions for the lifelong development of competencies and qualifications, March 2002	<p><b>Actions and follow-up:</b></p> <p>The member organisations of UNICE/UEAPME, CEEP and ETUC will promote this framework in Member States at all appropriate levels taking account of national practices. Meetings can be organised at national level for presentation of this document. Given the interest of the matter under consideration, the social partners also decide to transmit this document to all interested players at European and national levels. The social partners will draw up an annual report on the national actions carried out on the four priorities identified. After three annual reports, the social partners will evaluate the impact on both companies and workers. This evaluation can lead to an update of the priorities identified. The ad hoc group on education and training will be entrusted with this evaluation, which will be presented in March 2006.</p>
<b>Guidelines, codes of conduct — establishing new European standards or principles</b>	
Recommendation framework agreement on the improvement of paid employment in agriculture in the Member States of the European Union, 24 July 1997	<p>The signatory parties agree to take concerted action to implement measures to improve the employment situation in the agricultural and rural sector in the European Union.</p> <p>The signatory parties recommend, having regard to national practices and circumstances, the national and/or regional and/or provincial professional and trade union organisations representing employers and workers in the agricultural sector in the Member States of the European Union to develop negotiations of collective agreements on improving paid employment in agriculture, including its working conditions, on the basis of this text.</p> <p>In particular, the signatory parties recommend that, at the time of negotiations conducted at national and/or regional and/or provincial level, they lead to the conclusion of agreements on the adaptation of working time on the basis of the minimum provisions proposed below.</p> <p><b>Provisions relating to the implementation of this recommendation framework agreement:</b></p> <p>Given the changing economic background to this recommendation framework agreement, the signatory parties ask the Joint Committee on Social Problems affecting Agricultural Workers in the European Union to examine the situation in the Member States in the various areas affected by this text every two years from the standpoint of both national legislation and applicable collective agreements.</p>
Agreement between the trade unions and the employers in the postal sector in Europe — promoting employment in the postal sector in Europe, 29 October 1998	<p>The postal employers, management and trade unions represented in the Joint Committee on Postal Services ... conclude a framework agreement for the promotion of employment in the postal sector, in order to implement at the national level on the basis of the following provisions ...</p> <p>Every year Communications International, Eurofedop and the postal employers, who have signed this agreement, will review this agreement in order to further develop the progressive nature of the philosophy contained herein. ... The results and conclusion of this process will be published and distributed as a report of the Joint Committee on Postal Services.</p> <p>This framework agreement will be effective as of 1 June 1998.</p>
Guidelines for telework in Europe in telecommunications, 7 February 2001	<p>The Sectoral Social Dialogue Committee recommends these guidelines for adoption by the end of 2001, on a voluntary basis and according to each country's laws and collective bargaining practices.</p> <p>The SDC agrees to monitor the adoption of these guidelines in 2002.</p>
European framework agreement on guidelines on telework in commerce, 26 April 2001	<p>Social partners for commerce in different Member States of the European Union have chosen or may choose to regulate telework in various ways, through particular agreements on appropriate levels or through integrating telework issues in existing collective agreements or recommendations. Whatever approach is selected, the following guidelines are recommended when introducing and implementing telework.</p>
Code of conduct — guidelines for European hairdressers — 'How to get along code', 26 June 2001	<p>The guidelines set out below are recommendations jointly addressed by UNI-Europa and CIC Europe to the employers and the employees active in the hairdressing sector, as well as to the national organisations that represent them. These guidelines lay down standards for behaviour for the activities in the hairdressers' sector. Consequently, UNI-Europa and CIC Europe strongly recommend that their constituents live up to these guidelines and implement them in their daily practice.</p> <p>UNI Europa and CIC Europe will follow up the code in the framework of the European sectoral social dialogue.</p>
Voluntary guidelines supporting age diversity in commerce, 11 March 2002	<p>... Eurocommerce and Uni-Europa agree that the following guidelines are recommended for the benefit both of enterprises and employees when approaching the age aspects of human resources management.</p> <p>... Eurocommerce and Uni-Europa are committed to improving the employment and employability of all workers, and in this way are helping to support European Community policies in this area. They will continue to explore measures aimed at giving ageing workers the possibility to remain in active working life.</p>
Joint declaration on life-long learning in the banking sector, 2002	<p>Bank social partners should consider the following principles, rights and responsibilities ...</p>

Text	Follow-up provisions
European agreement on vocational training in agriculture, 5 December 2002	<p><b>Subject and field of application:</b> The present European agreement, concluded in accordance with the provisions of Article 139 of the Treaty, is intended to propose to national organisations representing agricultural employers and employees, the authorities in the Member States and the Commission a number of initiatives relating to vocational training for agricultural workers.</p> <p><b>Implementation of this agreement:</b> In accordance with the provisions of the first part of Article 139(2) of the Treaty, implementation of this agreement shall be in accordance with the procedures and practices proper to the social partners at national level and to the Member States. To ensure this implementation, the signatory organisations propose that the national social partners work jointly and, if necessary, in cooperation with the competent State authorities. To facilitate the implementation of this agreement, the signatory organisations shall set up a follow-up commission within the Sectoral Social Dialogue Committee in Agriculture. This commission will circulate to the national social partners documents relating to the organisation of vocational training in the different Member States and will be available to advise them about how to achieve practically the objectives set out in this agreement. An assessment of the implementation of this agreement will be drawn up in three years.</p>
Code of conduct on CSR and the European sugar industry, 7 February 2003	<p><b>Monitoring, assessment, updating:</b> The EFFAT and the CEFS will, within the context of their Sectoral Social Dialogue Committee, ensure the monitoring of the progressive implementation of this code of conduct and the regular updating of the examples of good practice. To this effect the EFFAT and the CEFS will conduct a joint assessment of the implementation of the code of conduct at European level, in the form of an annual report covering the calendar year and to be presented in February of the following year, within the framework of the Sectoral Social Dialogue Committee, at a meeting specifically devoted to this subject. This annual report will be prepared on the basis of data collected by the European social partners. To this effect, every year the EFFAT and the CEFS will designate an ad hoc group which will be responsible for the process of collecting, preparing and presenting these data and including two Sectoral Committee members from each organisation. This code of conduct will come into effect on 1 January 2004. The year preceding this date will be devoted to prepare for its implementation. The first report, to be presented in February 2004, will take stock of the activities undertaken so far and the monitoring structures jointly arranged at European level to ensure adequate communication, promotion and training on the CSR code of conduct. The examples of good practice will also be updated as needed.</p>
CoESS and UNI-Europa code of conduct and ethics for the private security sector, 18 July 2003	<p><b>Implementation and follow-up of the code of conduct:</b> CoESS and UNI-Europa believe that the social partners of each company have a particularly important role to play in the implementation of this code. CoESS and UNI-Europa wish to place emphasis on the need for companies and employees to incorporate the principles of this code in their activities. They also emphasise the need for national employer and trade union organisations to promote this code's application to the greatest extent possible. CoESS and UNI-Europa undertake, on a regular basis, to monitor and evaluate the implementation of this code within their social dialogue. To this end, it is critical that monitoring and preliminary evaluations take place both at company level and at national level.</p>
Eurelectric-EPSU-EMCEF joint declaration on telework, 2003	<p>EPSU/EMCEF and Eurelectric call upon their affiliated member organisations to implement the inter-sectoral agreement in accordance with the national procedures and practices specific to management and labour as referred to in the agreement before 16 July 2005. EPSU/EMCEF and Eurelectric will monitor the implementation of the agreement in the electricity sector through the sectoral social dialogue committee.</p>
CEMR-EP / EPSU joint statement on telework, 13 January 2004	<p>EPSU and CEMR-EP will encourage their members to use the agreement when discussing the introduction or management of telework, devising policies or concluding agreements on telework in the local and regional government sector, in accordance with the national procedures and practices specific to management and labour. CEMR-EP and EPSU will monitor developments and undertake a first assessment in 2005.</p>
UNI-Europa Commerce and Eurocommerce statement on promoting employment and integration of disabled people in the European commerce and distribution sector, 28 May 2004	<p><b>Implementation:</b> Promoting employment and integration of disabled people in European commerce and distribution will remain as a subject for the European social dialogue for commerce. To follow up on this statement, the European social partners call on their affiliated employers' organisations and trade unions to:</p> <ul style="list-style-type: none"> <li>• convene round table discussions to provide European social partners with feedback on best practice approaches;</li> <li>• collect and disseminate good practices on support for the employment and integration of disabled people in working life;</li> <li>• include the promotion of the integration of disabled people into social dialogue;</li> <li>• present this statement to European works councils, where they exist and encourage a discussion;</li> <li>• monitor developments related to this statement on a continuous basis.</li> </ul>



Text	Follow-up provisions
UNI-Europa and ETNO guidelines for customer contact centres, June 2004	<p>These guidelines are a set of broad principles relating to the customer contact business. The aim of the guidelines is to set a high business standard and recognise those customer contact centres that are committed to the key principles embodied in that standard. We are convinced that those that commit to the guidelines will be the leaders in the field and as such will be attractive to business partners, potential employees, employment agencies, the community and their customers. Our objective is to encourage all employers operating customer contact centres to commit to these guidelines.</p>
<b>Guidelines, codes of conduct — promoting and enforcing existing internationally agreed standards</b>	
Child labour — a charter by European social partners in the footwear sector, 7 March 1995 updated 13 December 1996	<p>The social partners will further see that the present charter be implemented separately as well as jointly through a social sectoral dialogue at all levels.</p> <p>The CEC, the ETUC/TCL and their respective national affiliated federations shall circulate this charter in all relevant languages, particularly in companies represented by the above organisations, further recommending that these companies include this charter in the terms of purchase with their subcontractors and suppliers.</p> <p>The CEC and the ETUC/TCL agree to carry out an assessment of the charter's implementation as part of the social dialogue at European level, at the latest one year following the signing of the agreement ...</p>
Code of conduct — a charter by social partners in the European textile/clothing sector (July 1997)	<p><b>Circulation and promotion:</b></p> <p>Euratex and the ETUF/TCL commit to promote and circulate this charter in the relevant languages and at all levels by 31 December 1997 at the latest.</p> <p>Euratex and the ETUF/TCL call on their respective member organisations to adopt this charter and to encourage its progressive implementation at companies' level.</p> <p><b>Follow-up and assessment:</b></p> <p>Euratex and the ETUF/TCL agree to follow up, in the framework of the social sectoral dialogue at European level, the progressive accomplishment of the implementation of this charter.</p> <p>To that effect Euratex and the ETUF/TCL will conduct a yearly evaluation of the charter's implementation, the first evaluation will take place no later than 10 July 1998. The results of such an evaluation will be reported on in the framework of the social sectoral dialogue.</p>
Eurocommerce and Euro-Fiet: agreement on fundamental rights and principles at work, 6 August 1999	<p>Eurocommerce and Euro-FIET recommend to their members to actively encourage companies and workers of the European commerce sector to comply, whenever possible, with the following fundamental rights, embodied in ILO conventions, including developing their own codes of conduct for their business relations with third countries ...</p> <p><b>Promotion and dissemination:</b></p> <p>Eurocommerce and Euro-FIET shall promote and disseminate this joint statement.</p> <p>Eurocommerce and Euro-FIET recommend to their respective member organisations to endorse this joint statement and to encourage its implementation.</p> <p><b>Implementation and assessment:</b></p> <p>Eurocommerce and Euro-FIET will regularly discuss the implementation of this joint statement. On the basis of the discussion on its implementation, the parties will, in the framework of their European social dialogue, evaluate the implementation and, if necessary, make recommendations or undertake any relevant actions.'</p> <p>The Sectoral Social Dialogue Committee recommends these guidelines for adoption by the end of 2001, on a voluntary basis and according to each country's laws and collective bargaining practices.</p> <p>The SDC agrees to monitor the adoption of these guidelines in 2002.</p>
Code of conduct in the leather and tanning sector, 10 July 2000	<p>Cotance and ETUF/TCL call on their members to actively encourage companies and workers of the European leather and tanning sector to respect and to include, directly or indirectly (including sub-contracting) in their possible codes of conduct in all countries, worldwide, in which they operate the following ILO conventions ...</p> <p><b>Circulation, promotion and implementation:</b></p> <p>Cotance and the ETUC/TCL commit themselves to promote and to circulate the code in the relevant languages at all levels, by 31 December 2000, at the latest.</p> <p>Cotance and the ETUF/TCL call on their respective members ... to adopt this code and to encourage its progressive implementation at company level.</p> <p>Cotance and the ETUF/TCL will call on their member organisations to integrate the code as a prerequisite in all contracts with their sub-contractors and their suppliers. Cotance and the ETUF/TCL will thus encourage the companies to make sure that the code is understood by their sub-contractors/suppliers and their respective workers.</p> <p><b>Follow-up, assessment and redress mechanisms:</b></p> <p>Cotance and the ETUF/TCL agree to follow up, in the framework of the social sectoral dialogue at European level, the progressive accomplishment of the implementation of the present code of conduct.</p> <p>To that effect, Cotance and the ETUF/TCL will conduct at least a yearly evaluation of the implementation of the present code, the first taking place no later than 30 June 2001. ...</p> <p>Cotance and the ETUF/TCL agree that the implementation of the results of the code have to be controlled in an independent fashion, guaranteeing the credibility of the control to all interested parties.</p>

Text	Follow-up provisions
<p>Code of conduct — a charter for the social partners in the footwear sector, 17 November 2000</p>	<p>The CEC and the ETUF/TCL call on their members to actively encourage companies and workers of the European footwear sector to comply with the following ILO conventions ....</p> <p><b>Circulation, promotion and implementation:</b> The CEC and the ETUF/TCL commit to promote and to circulate the code in the relevant languages and at all levels by ... at the latest.</p> <p>The CEC and the ETUF/TCL shall call on their respective member organisations to adopt this code and to encourage its gradual implementation at company level.</p> <p>The CEC and the ETUF/TCL shall organise, if needed, training and awareness programmes.</p> <p>The CEC and the ETUF/TCL shall call on their member organisations and companies to include this code as a prerequisite into all contracts with suppliers or sub-contractors. The CEC and the ETUF/TCL shall encourage companies to ensure that the code is understood by the said suppliers/sub-contractors and by their respective workers.'</p> <p><b>Follow-up, assessment and appeal mechanisms:</b> The CEC and the ETUF/TCL agree to follow up, in the framework of the sectoral social dialogue at European level, the gradual fulfilment of the implementation of this code of conduct. In case of complaints, it is asked for a communication to be addressed to one of the social partners, specifying the nature of the complaints; a discussion will follow in the framework of the European social dialogue.</p> <p>To this effect, the CEC and the ETUF/TCL will conduct an evaluation of the implementation of the present code, at least once a year in the framework of the European social dialogue; the first evaluation will take place no later than 17 November 2001. ...</p> <p>The CEC and the ETUF/TCL agree that, in case of control, the implementation of the results of the code will have to be monitored by institutes or organisms that are recognised and active on a worldwide level and that are independent of industry and of trade unions, hence guaranteeing the credibility of the control to all interested parties. The selection of such institutes or organisms will be decided upon in common agreement between the CEC and the ETUF/TCL.</p> <p>The CEC and the ETUF/TCL can decide, jointly and freely, to consider, in the framework of the European sectoral social dialogue, any new initiative that might be carried out as an extension of the code's implementation.</p>
<p>Code of conduct — a charter for the social partners in the European woodworking industry, 20 March 2002</p>	<p>CEI-BOIS and EFBWW call upon their members actively to encourage the enterprises and workers in the European woodworking industry to observe the following ILO conventions ....</p> <p><b>Dissemination and promotion:</b> CEI-BOIS and EFBWW have undertaken to disseminate this charter in the appropriate languages at every level by 30 June 2002.</p> <p>CEI-BOIS and the EFBWW will call upon their respective member organisations to adopt this charter and encourage its progressive application at enterprise level.</p> <p><b>Follow-up and evaluation:</b> CEI-BOIS and the EFBWW have agreed, under the sectoral social dialogue, to monitor the progress made in implementing this charter.</p> <p>To this end, CEI-BOIS and the EFBWW will carry out an annual evaluation of the charter's implementation, for the first time on 30 June 2003 at latest. The findings of this evaluation will be reported in the sectoral social dialogue. They will be able to request any technical assistance required for this purpose from the Commission and the Member States.</p> <p>CEI-BOIS and the EFBWW, in the context of the European sectoral social dialogue, may decide jointly and freely to take any other initiative in connection with implementation of this charter.</p>
<p><b>Policy orientations: the proactive promotion of policies</b></p>	
<p>Joint recommendation on apprenticeship in the sugar sector, 1998</p>	<p>... the European social partners in the sugar sector recommend to sugar companies:</p> <ul style="list-style-type: none"> <li>• to maintain the already considerable effort undertaken by some of them in the field of apprenticeship — or any other training process for young people — in terms of number and the quality of the training;</li> <li>• whenever economically and socially feasible, to make a significant effort to offer young people more training periods and places as apprentices in order to improve their skills on the labour market.</li> </ul> <p>Every year, the European social partners conduct a review of the measures implemented and the results achieved.</p>

Text	Follow-up provisions
Electricity sector joint declaration on equal opportunities/diversity, 2003	<p>... EPSU/EMCEF and Eurelectric recommend that the social partners at the appropriate level assign a high priority to the issues raised in this declaration.</p> <p>... collective agreements and other initiatives could be some of the instruments in this regard. Such considerations include the development of tools and methods necessary to reach equality.</p> <p><b>2003 actions</b></p> <ul style="list-style-type: none"> <li>• EPSU/EMCEF and Eurelectric have decided to continue to work on addressing the issues raised in this statement. A study into diversity issues will be undertaken in 2003.</li> <li>• The social partners will work together to contribute to redress any gender pay gap.</li> <li>• EPSU/EMCEF and Eurelectric further recommend that the statement is taken as a basis for measures to address equality, diversity and ageing challenges at national and company level.</li> </ul> <p>Future evaluations are recommended.</p>
Orientations for reference in managing change and its social consequences (cross-industry social partners), 2003	<p>The orientations drawn up by the social partners are based on the lessons learnt from these 10 case studies and are intended to be disseminated to all the actors concerned.</p>
Joint statement on corporate social responsibility in the commerce sector, November 2003	<p><b>Monitoring and assessment:</b></p> <p>To follow-up on this joint statement the European social partners will endeavour to:</p> <ul style="list-style-type: none"> <li>• convene round table discussions, exploring concrete measures to promote corporate social responsibility;</li> <li>• collect and disseminate good practices;</li> <li>• ensure monitoring of the follow-up of the European social dialogue for commerce related to corporate social responsibility;</li> </ul> <p>To monitor and assess on a regular basis the follow-up to this statement.</p>
Common recommendations of the European social partners for the cleaning industry, March 2004	<p><b>Why common recommendations?</b></p> <p>The EFCL and UNI-Europa ... would like to achieve the following aims through this document:</p> <ul style="list-style-type: none"> <li>• to formalise a series of fundamental principles which have guided their work for over 10 years of European social dialogue;</li> <li>• give a political framework to their future activities;</li> <li>• address a series of recommendations to cleaning companies, their employees, as well as to their clients (public and private) and to public authorities (European, national and local).</li> </ul> <p><b>Implementation and follow up</b></p> <p>This document is not an end in itself, but aims to provide a framework for a sustainable and harmonious development of the profession. Its adoption by the EFCL and UNI-Europa is a mark of their goodwill and that of their respective members, to integrate the objectives and the principles it contains in their future initiatives and to ensure their promotion amongst all those concerned, including those from outside the profession.</p> <p>Most of the common recommendations are primarily aimed at cleaning companies, their personnel as well as the social partners of the sector, at national and European level. However, the realisation of the general objectives that it sets and the sustainable development of the profession also rely on the development of initiatives aimed at reinforcing the cooperation with public authorities (national and European) as well as to raise the awareness of purchasers of services (public as well as private) to the realities of the profession.</p> <p>The first step of implementing these common recommendations is the adoption of a European Social Dialogue Committee work programme which proposes a more concrete framework of actions and initiatives which fully integrates the principles and objectives they set.</p> <p>Lastly, the EFCL and UNI-Europa consider these common recommendations as a dynamic document and intend to evaluate, at regular intervals, the appropriateness of the principles and objectives that they pose in light of the realities of the profession and its developments.</p>

### Box 3.3: Key stages in the evolution of the European social dialogue

**1985** — The launch of the bipartite dialogue, initiated and supported by the Commission, and traditionally known as the ‘Val Duchesse’ process, after the place where the first meeting was held. The social partners begin to adopt non-binding joint opinions.

**1991** — Against the background of the 1991 Intergovernmental Conference, the social partners negotiate the agreement of 31 October 1991, proposing reforms to the Treaty decision-making provisions in the social policy field. The social partners’ proposals are incorporated virtually verbatim into the protocol on social policy annexed to the Treaty on EU.

**1993** — Commission communication concerning the application of the agreement on social policy (COM(1993) 600 final) clarifies certain aspects of the new social policy provisions.

**1994** — The Treaty on EU enters into force.

**1995** — Successful negotiation of the parental leave agreement, the first Article 139 framework agreement implemented by Council directive.

**1996** — Commission communication concerning the development of the social dialogue at Community level (COM(1996) 448 final).

**1997** — Successful negotiation of the second framework agreement implemented by directive — on part-time work.

**1997** — The provisions of the protocol on social policy are incorporated into the Amsterdam Treaty as Articles 138 and 139.

**1998** — Commission communication on adapting and promoting the social dialogue at Community level (COM(1998) 322 final) defines the criteria for the establishment, composition and operation of sectoral social dialogue committees and constitutes a new departure for the development of sectoral social dialogue at European level. These new committees replaced the previously existing joint committees (for example, on sea transport, civil aviation, inland waterways, road transport, railways, telecommunications services, social problems of agricultural workers, social problems in sea fishing and postal services).

**1999** — Successful negotiation of the third framework agreement implemented by directive — on fixed-term work.

#### 2000

**March** — At the Lisbon Summit of the European Council, Heads of State and Government set out a 10-year strategy for the economic and social development of the EU. The common vision requires an integrated approach across a range of economic, social and environmental policy areas, in order to achieve sustainable economic growth, more and better jobs, with greater social cohesion. The successful implementation of the Lisbon strategy requires the active involvement of the social partners.

**December** — Adoption of the social policy agenda, COM(2000) 379 final, the Commission’s five-year roadmap in the social policy field, which underlines the importance of social dialogue as a productive factor promoting competitiveness. Promotion of the notions of quality of work, quality of social policy and the quality of industrial relations.

#### 2001

**December** — ‘joint contribution’ of the social partners to the Laeken European Council indicating their wish to pursue a more autonomous dialogue and to draft their own work programme.

#### 2002

**February** — Presentation by the High Level Group on Industrial Relations and Change in the EU of its report to the Commission.

**March** — Adoption by the cross-industry social partners of the framework of actions on the lifelong development of competencies and qualifications, the first joint text to be implemented by the open method of coordination.

**June** — Publication of the Commission communication, ‘The European social dialogue, a force for innovation and change’ (COM(2002) 341 final), describing the contribution of the social dialogue to achieving the Lisbon objectives, improving governance and making recommendations for strengthening social dialogue in an enlarged Europe.

**July** — Adoption of the framework agreement on telework, the first autonomous agreement.

**November** — Adoption by the European cross-industry social partners of their first joint multi-annual work programme for the period on 2003–05.

#### 2003

**March** — First Tripartite Social Summit for Growth and Employment meets.

**May** — Commission communication, ‘Mid-term review of the social policy agenda’ (COM(2003) 312 final). Promotion of the ‘costs of non-social policy’ and continuing promotion of the notion of quality, including in industrial relations, stressing the need to develop indicators and increase understanding of different industrial relations practices, particularly in view of enlargement.

#### 2004

**August** — Adoption of the Commission Communication ‘Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue’ (COM(2004) 557 final). It calls on the social partners to make a concrete contribution to achieving the Lisbon objectives and proposes ways of enhancing the impact of the results of the European social dialogue.

**October** — Adoption of the framework agreement on work-related stress, the second autonomous agreement.

TABLE 3.12: THE SECTORAL SOCIAL DIALOGUE COMMITTEES

Sectors	Employees' organisations	Employers' organisations	Date of creation
<b>Agriculture</b>	EFFAT	GEOPA/COPA	1999
<b>Audiovisual</b>	EFJ, EURO-MEI, FIA, FIM	ACT, AER, CEPI, EBU, FIAPF	2004
<b>Banking</b>	UNI-Europa	EACB, ESBG, FBE	1999
<b>Civil aviation</b>	ECA, ETF	ACI EUROPE, AEA, CANSO, ERA, IACA	2000
<b>Cleaning industry</b>	UNI-Europa	EFCI	1999
<b>Commerce</b>	UNI-Europa	Eurocommerce	1999
<b>Construction</b>	EFBWW	FIEC	1999
<b>Electricity</b>	EMCEF, EPSU	Eurelectric	2000
<b>Footwear</b>	ETUF/TCL	CEC	1999
<b>Furniture</b>	EFBWW	UEA	2001
<b>Horeca</b>	EFFAT	Hotrec	1999
<b>Inland waterways</b>	ETF	EBU, ESO	1999
<b>Insurance</b>	UNI-Europa	ACME, BIPAR, CEA	1999
<b>Live performance</b>	EAEA	Pearle	1999
<b>Local and regional government</b>	EPSU	CEMR	2004
<b>Mines</b>	EMCEF	APEP, Euracoal, Euromines, IMA	2002
<b>Personal services</b>	UNI-Europa	EU Coiffure	1999
<b>Postal services</b>	UNI-Europa	PostEurop	1999
<b>Private security</b>	UNI-Europa	CoESS	1999
<b>Railways</b>	ETF	CER	1999
<b>Road transport</b>	ETF	IRU	1999
<b>Sea fishing</b>	ETF	Europeche/Cogeca	1999
<b>Sea transport</b>	ETF	ECSA	1999
<b>Shipbuilding</b>	EMF	CESA	2003
<b>Sugar</b>	EFFAT	CEFS	1999
<b>Tanning and leather</b>	ETUF/TCL	Cotance	2001
<b>Telecommunications</b>	UNI-Europa	ETNO	1999
<b>Temporary work</b>	UNI-Europa	Euro CIETT	2000
<b>Textile and clothing</b>	ETUF/TCL	Euratex	1999
<b>Woodworking</b>	EFBWW	CEI-Bois	2000



TABLE 3.13: SOCIAL PARTNER CONSULTATIONS UNDER ARTICLE 138

Date	Subject	Social partners' contribution	Result
1993	European works councils	Opinion following attempt at negotiations	Council Directive 94/45/EC Council Directive 97/74/EC of 15 December 1977 extending, to the UK and Northern Ireland, Directive 94/45/EC
1995	Reconciling working life and family life	Framework agreement on parental leave (14.12.1995)	Directive 96/34/EC (UK: 97/75/EC) Implementation deadline: 15.12.1999
1995	Adaptation of the burden of proof in cases of discrimination based on sex	Separate opinions	Directive 97/80/EC (UK: 97/75/EC) implementation deadline: 1.1.2001
1995	Flexibility in working time and workers' security	Framework agreement on part-time work (6.6.1997)  Framework agreement on fixed-term work (18.3.1999)  Failure of negotiations on temporary work (May 2001)	Directive 97/81/EC (UK: 98/23/EC) Implementation deadline: 20.1.2000  Directive 1999/70/EC Implementation deadline: 10.7.2001  Proposal adopted by the Commission on 20 March 2002. Political agreement yet to be reached in Council
1996	Prevention of sexual harassment at work	Separate opinions	Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
1997	Worker information and consultation		Directive 2002/14/EC Implementation deadline: 23.3.2005
2000	Protecting workers against employers' insolvency	Separate opinions	Council Directive 2002/74/EC of the European Parliament and the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer
2000	Modernising and improving employment relations	Framework agreement on telework (July 2002)	Social partners' agreement to be implemented by national social partners. Implementation deadline: 16.7.2005
2000	Protecting workers against the risks connected with exposure to asbestos at work	Separate opinions	Common Position (EC) No 53/2002 of 23 September 2002 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work
2000	Health and safety at work for the self-employed	Separate opinions	Council recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers
2001	Protecting employees' personal data	On 27 August 2001 the Commission launched a first stage consultation of the social partners Separate opinions Second phase of consultation in progress	
2002	Anticipating and managing change. A dynamic approach to the social aspects of corporate restructuring.	Orientations for reference in managing change and its social consequences (October 2003)	

	Subject	Social partners' contribution	Result
2003	Portability of supplementary pensions	First stage consultation of the European social partners (SEC/2002/597 published on 27.5.2002)  Separate opinions  Second stage consultation of the European social partners adopted by the Commission on 12.9.2003	No negotiations by the social partners. Commission to consider whether to propose a directive
2003	Stress and its effects on health & safety at work	Framework agreement on work-related stress (October 2004)	Social partners' agreement to be implemented by national social partners. To be implemented within 3 years, plus 1 year for monitoring.
2004	Extension of the scope of the directive on carcinogenic substances (90/394/EEC)	First stage of consultation April - July 2004 Second stage of consultation - 2005	In progress
2004	Psychosocial risks, harassment & violence at work	First phase of consultation scheduled in November 2004	
2004	Revision of the working time directive	First phase of consultation launched in December 2003 Second phase of consultation May-July 2004. Social partners declined invitation to enter negotiations.	Commission adopted a proposal in September 2004 amending the working time directive.
2004	Revision of the European works councils directive	First phase of consultation launched in April 2004	In progress

# Review of legislation 2002–04

## ■ 1. Introduction

In spite of the growing significance of other forms of EU intervention in the social sphere, legislative action at EU level remains of paramount importance. This is illustrated by the fact that, between June 2002 and the time of publication of this report, 25 legislative dossiers have either been launched by the Commission, debated by the EU institutions, or finalised. The largest number of legislative dossiers have been adopted in the field of health and safety (11) and labour law (11), followed by free movement and social security for migrant workers (4), and equal treatment (2 dossiers).

Recent years have witnessed the emergence of 'soft' instruments in the social policy area, the most innovative of which is the open method of coordination (OMC), which is used in the areas of employment, social inclusion, social security and healthcare. These non-binding processes can contribute to achieving convergence in employment standards within the EU, one of the primary goals of most legislative measures. Legislation continues, however, to be indispensable, primarily to deal with issues and realities of a transnational nature (for example, the European works councils directive, the European company directive, free movement issues), as well as to address basic fundamental rights (for example, gender equality, protection of privacy of workers, anti-discrimination issues, collective rights, etc.).

The role of EU legislation is evolving. The traditional objective of classical EU labour law instruments — creating a level-playing field through setting minimum standards — remains important, but European legally binding provisions increasingly pursue

other European policy goals, such as modernising the regulatory framework, developing social dialogue at all levels, finding new balances between flexibility and security, and increasing the adaptability of workers, etc.

This interaction between 'hard' and 'soft' forms of EU intervention is positive and innovative. The legislative techniques used by the EU are being adapted to these new roles, especially by giving leeway to social partners' interventions at different stages of the legislative process (from the very start of the decision-making process, to the implementation and application phases).

Many of the instruments detailed in this chapter illustrate this positive evolution of European labour and social law.

## ■ 2. Labour law

### 2.1. Information and consultation of workers

#### 2.1.1. *Adoption of the national information and consultation directive*

On 11 March 2002, the European Parliament and the Council adopted Directive 2002/14/EC establishing a general framework for informing and consulting employees. The directive lays down minimum requirements for the information and consultation of employees in undertakings and establishments located in the Community. It includes arrangements for regular, ongoing information and consultation of workers' representatives in undertakings with at least 50 employees, or establishments with at least 20 employees. It covers the economic and financial situation of the company, the probable development of employment within the company, any anticipatory measures envisaged, and any decision affecting employment contracts.

The adoption of the new directive is a major landmark in the development of EU social policy. It brings to an end a protracted and difficult debate over the desirability of an EU-wide framework for national-level information and consultation rules. The directive has finally reached the EU statute book almost seven years after the idea of such a measure was first put forward in the European Commission's April 1995 medium-term social action programme — and nearly three and a half years after the Commission initiated the legislative process in November 1998 by formally proposing a draft directive. Throughout this period, the proposal for the directive provoked sharp differences of view between employers' organisations and trade unions, as well as between EU Member States.

The Community rules in force for more than 25 years on information and consultation of employees in the event of collective redundancies and of transfers of undertakings will thus be supplemented and covered by general and permanent procedures<sup>(110)</sup>.

The impact of the directive in Member States will be uneven. For most of EU-15, it will force an adaptation of existing rules with a view to developing an anticipative approach and the strategic information and consultation provided for in the directive. The United Kingdom and Ireland, as well as the new Member States which joined the EU in 2004, will however have to introduce considerable changes to their industrial relations and labour law systems, as they do not have general and permanent mechanisms for informing and consulting employees, nor a statutory general entitlement for stable employee representation at the workplace. The directive relies on such a representation mechanism, the creation of which constitutes a significant challenge. It should also help to promote a gradual change of attitude among employers and employee representatives towards a more participatory and constructive relationship.

(110) See Chapter 5 for further information on these directives.

### 2.1.2. European cooperative society

Regulation (EC) No 1435/2003 and supplementing Directive 2003/72/EC concerning the European cooperative society (SCE) were adopted on 22 July 2003. The regulation lays down the rules governing the Constitution and the functioning of the SCE and the directive deals with employee involvement.

#### Impact of the new instruments

These legal instruments will allow cooperatives operating on the territory of more than one Member State to acquire a single legal identity in accordance with Community law. Cooperatives will be able to carry out their activities throughout the internal market with a single legal identity, regulation and structure; they will be able to expand and restructure their cross-border operations without having to set up a network of subsidiaries, which takes a great deal of time and money. Member States now have three years in which to transpose the provisions of the directive into national law. The status of the ECS will thus become operational in 2006.

The EU has 300 000 European cooperatives, which play an important part in the economy as they employ 2.3 million people and provide services to 83.5 million members. The new statute will also constitute an ideal legal instrument for companies of any kind, which hope to regroup to ensure a joint future, and will allow groups of at least five European citizens from several Member States to create an ECS. European cooperatives could be created starting from zero (but also via a merger or by converting an existing company), either by physical or legal persons.

With regard to employee involvement, the texts follow very closely the model of the European company (SE), adopted on 8 October 2001. The arrangements for workers' involvement in the SCE must be subject to a negotiation between the boards of the participating entities and their employees' transnational representation. These negotiations shall be carried on in parallel to the process of establishing the SCE. If the parties do not reach an agreement, a set of subsidiary rules modelled after the standard rules in the SE directive will apply, covering information, consultation and, in some cases, participation. A few adaptations have nevertheless been made

to take into account certain ways of creating an SCE which have no equivalence in the SE statute, namely the creation *ex novo* of an SCE in which natural persons participate.

### 2.1.3. Revision of the European works councils directive

On 19 April 2004 the Commission launched the first stage consultation of the European social partners concerning a possible revision of the 1994 European works councils directive.

The European works councils directive was adopted in 1994 in order to give employees access to information and consultation at the transnational level at which key decisions affecting their enterprises were increasingly being taken. In spite of some shortcomings, impressive progress has been achieved under the directive.

European works councils (EWCs) have been established in some 650 major European companies and groups, thereby laying the foundation for the development of genuine transnational social dialogue at the enterprise level. EWCs have demonstrated their value, not only in securing information and consultation for employees, but, equally significantly, in providing a mechanism through which effective engagement between management and employees at the transnational level can make a significant positive contribution to company development, particularly to the successful management of change <sup>(111)</sup>.

The challenge now is to ensure that this potential of EWCs is fully realised in the future. In the Commission's view, companies can best face the challenges ahead if employees are fully involved in the life of the enterprises in which they work. The proven value of EWCs as a vehicle for ensuring such involvement must, as a consequence, be developed.

The Commission therefore decided to launch the formal consultation of the Community social partners on the review of the directive. The issue is how social dialogue at the enterprise level can best be provided for in the future. The social partners themselves are best placed to determine the optimum conditions for fostering such dialogue, as they are closest to the

realities of the workplace. The Commission is convinced that, perhaps more than in any other area, the social partners have a crucial role to play in securing the future successful operation of EWCs. The European social partners have also been exploring the closely related issue of managing restructuring and change, which is discussed later in this chapter.

## 2.2. Working time

### 2.2.1. Codification of existing directives

A codified version of the directives concerning certain aspects of the organisation of working time (93/104/EC and 2000/34/EC) was adopted on 4 November 2003 (Directive 2003/88/EC). There were no amendments in substance to those directives.

### 2.2.2. Review of the 1993 directive

On 30 December 2003, the Commission issued a communication on the re-examination of the 1993 EU working time directive, in which it invited comments from national interested parties and from the European social partners on the directive's reference periods for calculating average working time, the possibility of allowing individuals to opt out from the maximum 48-hour week, recent European Court of Justice (ECJ) case law regarding on-call working, and measures to improve work-life balance.

Following the outcome of this consultation, on 19 May 2004, the Commission adopted a second stage consultation of the social partners at Community level. In this document, the Commission strongly encourages the European social partners to undertake negotiations with a view to reaching an agreement. The document anticipated the possible content of a Commission proposal in the event that the social partners decided not to negotiate. The social partners were asked to give their

(111) See Chapter 5 for further information on the development of European works councils.

views or communicate their intention to negotiate by 6 July 2004.

In response to the Commission's consultation document, the social partners declined the invitation to enter into negotiations in this field with a view to reaching a European agreement, and asked the Commission to adopt a proposal for a directive.

As a consequence, on 22 September 2004, the Commission adopted a proposal amending the working time directive.

The 1993 EU Directive 93/104/EC on certain aspects of the organisation of working time aims to ensure a better level of health and safety protection for workers by limiting excessive working hours, providing for sufficient rest breaks, and regular organisation of work. Its main provisions include:

- a minimum rest period of 11 consecutive hours for each 24-hour period;
- a rest break where the working day is longer than six hours;  
a minimum rest period of one day per week;
- maximum weekly working hours of 48 hours on average, including overtime, over a reference period not exceeding four months;
- four weeks of paid annual leave;
- an average of no more than 8 hours of work at night in any 24-hour period.

The text of the directive states that two of its provisions are to be reviewed before 23 November 2003. These are:

- derogations from the four-month reference period for the application of Article 6 of the directive (the maximum 48-hour working week), whereby Member States may allow the reference period to be extended to six months or, by collective agreement, to 12 months;
- an option for Member States of not applying Article 6 if the individual worker consents to this (i.e. the 'opt-out' from the 48-hour maximum working week).

There have also been important recent ECJ rulings regarding the definition of working time with regard to on-call working, notably the judgments in the *Simap* case on 3 October 2000 and the *Jaeger* case on 9 October 2003. These rulings essentially

stated that on-call working should be considered to be working time, even where the employee is provided with a bed to sleep in on the employer's premises during periods of non-working. The Commission therefore believes that in the light of these cases the time has come to review the directive.

The proposal adopted by the Commission on 22 September 2004 therefore covers three issues: on-call time, reference periods and the individual opt-out.

Concerning on-call time, the proposal inserts two new definitions: "on-call time" and the "inactive part of on-call time", and a new article defines that the inactive part of on-call time shall not be regarded as working time, unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the two sides of industry determines otherwise.

With regard to the reference period, the proposal leaves the current four-month reference period for the application of maximum weekly working time, but allows Member States to extend the reference period to twelve months. The proposal also leaves unchanged the possibility of extending the reference period to twelve months by collective agreement and specifies that whenever the duration of the employment contract is less than one year, the reference period cannot be longer than the duration of the employment contract.

Finally, concerning the individual opt-out, the proposal establishes that the implementation of the individual opt-out must be expressly foreseen by a collective agreement or an agreement between the two sides of industry, in accordance with national law and/or practice. In cases where there is no collective agreement in force and there is no workers' representation within the undertaking or the business that is empowered, in accordance with national law and/or practice, to conclude a collective agreement or an agreement between the two sides of industry on the issue, the individual opt-out remains possible.

The conditions for the application of the opt-out are, however, tightened: a prohibition of signature of the employment contract or during any probation period; a maximum limit of 65-hours of weekly working time in any one week; and an obligation to keep a record of the effective number of hours worked.

### 2.3. Employee protection in the event of the employer's insolvency

In 23 September 2002 a directive was adopted amending Directive 80/987/EEC relating to the protection of employees in the event of the insolvency of their employer (Directive 2002/74/EC).

Directive 80/987/EEC seeks to provide employees with a minimum degree of protection under Community law in the event of their employer becoming insolvent. To this end, it requires each Member State to put in place an institution to guarantee employees, whose employer has become insolvent, the payment of their outstanding claims to remuneration for a specific period.

The rules for the organisation, financing and operation of the guarantee institutions are decided by each Member State, but they must comply with certain principles laid down in the directive.

The directive also contains provisions concerning the protection of certain social security entitlements.

The amendments introduced in 2002 take account of changes to insolvency law in the Member States, the dynamism of the internal market, the need for consistency with other Community directives on labour law, and the case law of the Court of Justice.

The most important amendments are:

- a new concept of insolvency, based on that used in Council Regulation (EC) No 1346/2000, henceforth covers all procedures, whether or not those procedures have been instituted with a view to the liquidation of the assets (the original directive was limited to liquidation procedures);
- a simplification of several core articles;
- a new provision specifying the competent guarantee institution in cases with a cross-border dimension;
- a new provision providing for administrative collaboration between the Member States in cross-border situations.

Directive 80/987/EEC will have to be transposed by the Member States before 8 October 2005.



## 2.4. Temporary work

Following the breakdown of negotiations between the European social partners in 2001 on the topic of temporary work, the Commission presented a proposal for a directive establishing a general principle of non-discrimination of temporary workers on 20 March 2002.

### Content of the proposal and state-of-play

According to this principle, a temporary worker shall not be treated in a less favourable manner regarding working conditions, than a comparable worker of the user undertaking. Derogation can be made if the worker has an open-ended contract with the temporary work agency as well as if the social partners conclude a collective agreement with equivalent protection.

Following the opinion of the European Parliament at its first reading, the Commission modified the proposal to take on board some of the amendments proposed by Parliament. In the modified proposal of 28 November 2002, the Commission introduced various clarifications, as well as substantive changes to the content of some of the provisions. The main one is as follows: for the purposes of applying the equality principle, the comparison shall be made with the working conditions which the temporary worker would have been entitled to had he or she been recruited directly by the user undertaking, rather than with a comparable worker in the user undertaking.

The debates in the Council have proved to be extremely difficult and progress has been slow. At the time of publication, the Council had not yet reached a common position.

## 2.5. Restructuring

In January 2002, the European Commission launched a consultation with the European social partners concerning the anticipation and management of the social effects of corporate restructuring.

### Content of the consultation and state-of-play

For the Commission, developing a positive approach to corporate restructuring 'implies combining in an effective and balanced manner the interests of businesses, faced with changes in the conditions governing their activity, and those of employees, threatened with the loss of their jobs'. The consultation document noted that a range of existing EU policies are relevant to restructuring, including:

- EU legislation requiring the information and consultation of employees;
- EU-level social dialogue;
- the observation and analysis of industrial change, through the establishment of the new European Monitoring Centre on Change;
- the EU Structural Funds;
- competition policy;
- the promotion of corporate social responsibility.

In addition to these policies, the Commission wanted to examine the scope for establishing Community-level principles of good practice during restructuring based on procedures already developed in the Member States and experience within companies operating in the EU. The consultation document identified four main areas for consideration:

- measures to promote employability and adaptability, and restructuring on the basis of 'lowest social cost';
- the effectiveness of regulatory approaches, including the identification of obstacles to restructuring in a socially positive way;
- responsibility for the impact on localities and commercial networks (sub-contractors etc.);
- the 'modalities of implementation', including the involvement of employees, fair compensation where job losses cannot be avoided, whether EU-level dispute resolution machinery would be useful, and good practice within small and medium-sized enterprises.

The consultation document sought the views of the social partners on the usefulness of establishing at EU level 'a number of principles for action which would support business good practice in restructuring situations', and asked 'whether they consider that agreements between the social partners at cross-industry or sectoral level represent the appropriate way of proceeding', as favoured by the Commission.

Following three joint seminars organised in 2003 on good practices in the field of restructuring, the European-level social partners agreed on a text in October 2003 entitled 'Orientations for reference in managing change and its social consequences'. They also included the issue in their joint work programme for 2003–05 <sup>(112)</sup>.

## 2.6. Protection of workers' personal data

The second stage of the Commission's consultation of the social partners on the question of personal data protection in the employment context, launched on 30 October 2002, was concluded in January 2003.

The majority of the consulted employers' organisations did not see any need for a Community directive on this subject. As regards the trade unions, they were strongly in favour of a Community directive aiming at improving the working conditions within the EU.

Since there was no agreement between the social partners to engage in negotiations, the Commission services undertook further consultation with interested stakeholders (Member States, independent experts, etc.). As legally prescribed, the Commission formally requested the opinion of the Article 29 working party on the envisaged framework of principles and rules in this area. The Article 29 working party's opinion of 24 September 2003 noted that the issue of workers' data protection can be addressed by a new legal Community framework, which would provide the opportunity for the desirable development of the existing general principles.

The Commission has still to decide on what follow-up should be given to the above-mentioned consultation of the social partners.

(112) See Chapter 3 for a general discussion of European social partners' activities in the area of restructuring, and Chapter 5 for a more in-depth discussion of the cross-industry social partners' Orientations and case studies.

## ■ 3. Implementation of Community labour law

### 3.1. Transposition reports

In accordance with Article 211 of the Treaty, the Commission monitors the Member States' implementation of Community law and regularly prepares reports for the Parliament and Council. The social partners are consulted during the preparation of the reports. During the period 2002–03, reports have been issued on the implementation of Directive 97/81/EC concerning the framework agreement on part-time work and on the implementation of Directive 96/71/EC on the posting of workers.

### 3.2. Coordination of the implementation of directives

The work of the Commission is not restricted to the preparation of reports. It also provides support for the Member States in the transposition of directives. During 2002–03, an ad hoc group of national experts was set up in order to coordinate the implementation of the European Company statute (SE) of 2001 <sup>(113)</sup>.

#### Implementation of the SE directive

At the request of the Council, the Commission set up an expert group composed of national experts and social affairs counsellors in order to provide a forum for discussing the arrangements for the transposition of directive 2001/86/EC into national legislation. Since the transposition involves provisions with a transnational dimension, the expert group has endeavoured to seek ways of avoiding any contradictions between the various national systems by exchanging information and coordinating the transposition work.

The expert group had an informal status, and the role of the Commission was limited to providing it with logistical support

and helping to develop its ideas. The Commission has not sought to interfere with the transposition of the directive at national level in any way, nor to intervene in the right of interpretation of the ECJ, or other courts concerned. The same applies to the experts in the expert group who, in their countries, are responsible, either for producing draft legislation or monitoring discussions between the social partners as part of agreement-based transposition.

The expert group had an extremely productive exchange of views in a remarkable spirit of cooperation on the basis of 21 working documents presented by the Commission and the delegations. Ten days of meetings were held, during which the main issues arising from the implementation of the directive were extensively discussed. The consensual approach with the objective of simplifying what, in any event, will be a complex corpus of legal provisions allowed the expert group to draw up a series of conclusions on the most problematic provisions of the directive.

These conclusions are, in fact, simple reminders to all who are or will be involved in the legislative work leading to the implementation of the directive in all countries concerned by it. They are by no means binding and do not in any way exonerate Member States from the responsibility of ensuring its correct transposition and application, and they do not exempt the Commission from its obligation to monitor that work.

Following this exhaustive work, a five-day seminar was held in Brussels in May and June 2003 with experts from the new Member States and candidate countries. A similar seminar was held in October for the social partners and experts from these countries.

### 3.3. The challenge of enlargement

The year 2003 was crucial for all acceding countries in terms of completing the transposition of the EU labour law *acquis*. With the aim of enforcing the implementation procedure and offering the support of the Commission's services, the Director-General of the Employment and Social Affairs DG visited all the candidate countries. As a follow-up to these visits, and at the specific request of the various countries, bilateral

meetings were organised to discuss and offer assistance on questions arising during the transposition of the labour law directives into national law.

The directors-general from the acceding countries were invited to the two meetings of directors-general for industrial relations in May and in November 2003 to discuss new developments in the field of industrial relations with their colleagues from EU-15.

In December 2002, in cooperation with the TAIEX office, the Employment and Social Affairs DG organised a seminar on information and consultation with the acceding countries. The objective of the seminar was to provide a discussion forum for the exchange of information and experience between the existing and future Member States. The seminar was organised with experts from acceding countries.

## ■ 4. Health and safety of workers

### 4.1. A new Community strategy on workers' health and safety for the period 2002–06

On 11 March 2002 the Commission adopted a communication entitled 'Adapting to change in work and society: a new Community strategy on health and safety at work 2002–06' <sup>(114)</sup>.

In this new strategy, which seeks to respond to the EU's aim, as agreed at the Lisbon European Council, of improving both the quantity and quality of employment, the Commission adopts a broad approach to well-being in the workplace. This approach takes into account changes in the world of work and the emergence of new, particularly psychosocial, risks aiming thereby to improve the quality of work, one of the essential elements of which is a healthy and safe working environment.

(113) OJ L 294, 10.11.2001, p. 22

(114) COM(2002) 118 final, 11 March 2002.

The Commission is basing this strategy on a consolidation of the culture of risk-prevention (including psychological and social risks such as stress, harassment and violence), on a combination of different policy tools (such as social dialogue or corporate social responsibility), and on the creation of partnerships between all interested parties in the field of health and safety. The new strategy thus shows that an ambitious social policy is a factor contributing to competitiveness and that, conversely, the absence of policy ('non-policy') gives rise to costs which weigh heavily on the economy and society as a whole.

On 3 June 2002, the Council adopted a resolution on the new strategy for 2002–06, in which it welcomed the Commission's communication and called on the Member States, the social partners and the Commission to actively promote health and safety at work. In a resolution of 23 October 2002, the European Parliament also welcomed the Commission's initiative, but called on it to draw up a detailed action plan with financial commitments and a timetable for each major proposal. The Committee of the Regions and the European Economic and Social Committee also endorsed this new strategy on 3 and 17 July respectively.

## 4.2. Risks from exposure to physical agents

The Commission's initial proposal, which is based on Article 118a (now Article 137) of the Treaty, takes the form of an individual directive within the meaning of Article 16(1) of the framework Directive 89/391/EEC.

The proposal seeks to protect the health and safety of workers against the risks arising from exposure to physical agents. It applies to four agents: noise (risks to hearing); vibrations (risks to the hand, arm and whole body); electromagnetic fields and optical radiation (risks to health from induced currents in the body, shock and burn hazards and from absorption of thermal energy).

The provisions concerning vibrations, electromagnetic fields and optical radiation are new, whereas those dealing with noise already existed in Council Directive 86/188/EEC.

In general terms, the Council has chosen to concentrate on one agent at a time, starting with vibrations. All the delegations as well as the Commission accepted this approach, which consists of negotiating single components of the Commission's proposal on an individual basis, but without dispensing with the other elements, which remain on the Council's agenda.

## 4.3. Mechanical vibrations

On 25 June 2002, the European Parliament and the Council adopted Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (the first element in the Commission proposal).

The directive aims to protect workers from risks to their health and safety, particularly musculoskeletal, neurological and vascular disorders, resulting or likely to result from exposure to mechanical vibrations. It applies to vibrations transmitted to the hands and arms as well as to the entire body. Specific prevention measures must be taken to ensure that the exposure limit values applying to vibrations cannot be exceeded.

To take account of the technical difficulties involved, the directive provides for a transition period of six years for equipment made available to workers three years after the targeted date of transposal in respect of which the exposure limit values cannot be observed, taking account of technical progress and/or the implementation of organisational measures. This transition period can be extended to nine years for equipment in the agricultural and forestry sectors.

Finally, Member States have the option, under duly justified conditions, of allowing for derogations from application of the exposure limit value for the airline industry and shipping only.

## 4.4. Noise

On 6 February 2003, the European Parliament and the Council adopted Directive 2003/10/EC on the minimum health and safety requirements

regarding the exposure of workers to the risks arising from physical agents (noise) (the second element in the Commission proposal).

This directive, which reduces the exposure limit value from 90 to 87 decibels and lays down two exposure action values, will replace Directive 86/188/EEC on the protection of workers from the risks related to exposure to noise at work.

It imposes certain obligations on employers, such as risk assessment, reduction of exposure, training, information and consultation of workers. Some of these obligations must be met when one of the action values is reached or exceeded.

All fields of activity are now covered by the provisions of the directive (the airline industry and shipping were excluded from the scope of Directive 86/188/EEC). However, in order to take account of the particular features of the music and entertainment sectors, and to enable the directive's provisions to be applied correctly and effectively, a specific code of conduct setting out practical guidelines will have to be drawn up by the Member States in consultation with the social partners, and in line with national laws and practices, with a view to helping workers and employers in these sectors to achieve the levels of protection laid down in the directive.

## 4.5. Electromagnetic fields

On 17 December 2003, the Council adopted its common position on the proposal for a directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

The present proposal constitutes the third phase of the general approach adopted by the Council, namely to introduce a separate, individual directive for each physical agent.

The common position on the proposal for a directive, which applies to all areas of activity without exception, lays down limit values for exposure to electrical, magnetic and electromagnetic fields which are static or magnetic or vary in time, with frequencies of up to 300 GHz.

The common position also sets action values which require employers to take pre-

ventive measures as provided for in the directive. Employers are also required to adequately inform workers likely to be exposed to these particular risks.

#### 4.6. Asbestos

On 27 March 2003, the European Parliament and the Council adopted Directive 2003/18/EC amending Directive 83/477/EEC.

The directive introduces a single exposure limit for workers (i.e. 0.1 fibres/cm<sup>3</sup> over an eight-hour period), whereas the initial directive provided for two limits. The new directive broadens the scope to cover the airline industry and shipping.

The directive also provides for the simplification of certain administrative procedures in the event of low-intensity and sporadic exposure, sets out a reference method for determining the airborne concentration of asbestos, and contains more detailed requirements concerning the training of workers.

Furthermore, and without prejudice to the application of other Community provisions on the marketing and use of asbestos, the new directive prohibits activities which expose workers to asbestos fibres during the extraction of asbestos or the manufacture and processing of asbestos products (including products containing intentionally added asbestos), with the exception of the treatment and disposal of products resulting from demolition and asbestos removal.

#### 4.7. Carcinogens

On 20 March 2003, the Commission adopted a modified proposal (COM(2003) 127) concerning the codified version of Directive 90/394/EEC and of its two amendments (Directives 97/42/EC and 1999/38/EC) on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

This modified proposal takes account of the work already carried out in the Council, and the formal or editorial amendments proposed by the Consultative Working Party of Legal Services, where justified.

The European Parliament endorsed the proposal on 2 September 2003.

#### 4.8. Stress and its effects

In December 2002, the Commission launched, in accordance with Article 138 of the EC Treaty, the first phase of the Community-level consultation of the social partners with regard to stress and its effects on health and safety at work.

On 17 September 2003, UNICE/UEAPME, CEEP and the ETUC confirmed to the Commission that negotiations had begun with a view to reaching an agreement on stress at work. The negotiations reached a successful conclusion on 27 May 2004, and the agreement was formally adopted in October 2004. The agreement is to be implemented via the first implementation option in Article 139(2), namely in accordance with the procedures and practices specific to management and labour in the Member States. The agreement is to be implemented within three years of the signature of the agreement. A yearly table will be prepared by the Social Dialogue Committee summarising the ongoing implementation of the agreement. During the fourth year, a full report on the implementation actions taken will be prepared (see also Chapter 3).

The agreement states that its aim is to increase the awareness and understanding of employers, workers and their representatives of work-related stress, and to draw their attention to signs that could indicate problems of work-related stress. Its objective is to provide employers and workers with a framework to identify and prevent or manage problems of work-related stress.

Stress is defined as 'a state, which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them'. The agreement stresses the complexity of the phenomenon and therefore deliberately does not provide an exhaustive list of potential stress indicators. It states, however, that high absenteeism or staff turnover, frequent interpersonal conflicts or complaints by

workers are some of the signs that may indicate a problem of work-related stress.

The agreement refers to the Framework Directive 89/391/EEC according to which all employers have a legal obligation to protect the occupational health and safety of workers. This duty applies to problems of work-related stress in so far as they entail a risk to health and safety.

Measures for preventing, eliminating or reducing problems of work-related stress include:

- management and communication measures such as clarifying the company's objectives and the role of individual workers, ensuring adequate management support for individuals and teams, matching responsibility and control over work, improving work organisation and processes, working conditions and the environment;
- training managers and workers to raise awareness and understanding of stress, its possible causes and how to deal with it, and/or to adapt to change;
- provision of information to and consultation with workers and/or their representatives in accordance with EU and national legislation, collective agreements and practices.

#### 4.9. Self-employed workers

On 18 February 2003, the Council adopted Recommendation (EC) No 2003/134 concerning the improvement of the protection of the health and safety at work of self-employed workers.

The recommendation calls on the Member States to promote all measures aimed at preventing the risks of accidents or occupational diseases to which self-employed workers are exposed. To the extent that the essential provisions of current Community legislation on health and safety, based on Article 137 of the EC Treaty, apply only to employed persons and hence exclude self-employed workers, the Council calls on the Member States to encourage prevention and promote measures aimed at safeguarding the health and safety of self-employed workers, particularly awareness-raising campaigns, training and health surveillance.

#### 4.10. Explosive atmospheres

On 25 August 2003, the Commission issued, in accordance with Directive 1999/92/EC, a non-binding guide of good practice to assist the Member States in drawing up their national policies on the protection of workers at risk from explosive atmospheres <sup>(115)</sup>.

This guide covers explosion prevention and protection, assessment of explosion risks, the employer's duties to safeguard the safety and health of workers, the duty of the employer responsible for the workplace to coordinate all measures where workers of several undertakings are present at the same workplace, the zoning of places where explosive atmospheres may occur, and the way in which the employer must produce the explosion protection document.

#### 4.11. Schedule of occupational diseases

On 19 September 2003 (COM(2003) 3297 final), the Commission adopted a recommendation concerning the European schedule of occupational diseases.

In particular, this recommendation calls on the Member States to introduce the European schedule set out in Annex I as soon as possible into their national laws, regulations or administrative provisions concerning scientifically recognised occupational diseases liable for compensation and subject to preventive measures.

This new schedule updates the existing schedule, dating from 1990, in order to take account of scientific and technical progress which has enabled a better understanding to be gained of how certain occupational diseases arise. It also responds to the need to prevent occupational diseases, as set out in the Community strategy on health and safety at work 2002–06. The Member States are called on to draw up quantified national objectives, with a view to reducing the rates of recognised occupational diseases, and promoting an active role for national healthcare systems, particularly by improving diagnosis.

(115) COM(2003) 515 final, 25 August 2003.

(116) OJ L 269, 5.10.2002, p. 15.

(117) COM(2003) 657 final, 5 November 2003.

(118) OJ C 270, 25.9.2001, p. 150.

#### 4.12. Advisory committee for safety and health at work

On 22 July 2003, the Council adopted a decision setting up an advisory committee for safety and health at work.

The aim of this new advisory committee, which merges the two existing advisory committees (namely the Advisory Committee on Safety, Hygiene and Health Protection at Work (ACSHH) and the Safety and Health Commission for the Mining and Other Extractive Industries), is to assist the Commission in the preparation and implementation of activities in the fields of safety and health at work, and to facilitate cooperation between national administrations, employers' organisations and trade unions. The Committee's remit covers all public and private sectors of the economy.

### ■ 5. Equality for women and men

#### 5.1. Revision of the 1976 directive

On 23 September 2002, the European Parliament and the Council adopted the directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions <sup>(116)</sup>.

The directive incorporates a number of the developments made in this field by the jurisprudence of the Court in recent years, and updates the legislation so that key provisions and definitions are consistent with those used in the recent anti-discrimination legislation adopted under Article 13 of the Treaty (Directives 2000/43/EC and 2000/78/EC).

#### 5.2. Equal treatment in the access to and supply of goods and services

On 5 November 2003, the Commission adopted a proposal for a directive implementing the principle of equal treatment for women and men in the access to and supply of goods and services <sup>(117)</sup>.

The proposal is made under Article 13 of the Treaty for adoption by the Council following consultation with the Parliament. It is the first time that legislation has been proposed to combat discrimination based on gender outside the employment field, and it follows on from Directive 2000/43/EC adopted by the Council in 2000, which prohibits race discrimination in a number of fields, including employment and goods and services. At the time of publication, the Council has reached a common position.

### ■ 6. Free movement and social security for migrant workers

#### 6.1. Proposal for a directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

The Commission submitted its proposal to the Council on 2 July 2001. The proposal is based on Articles 12, 18(2), 40, 44 and 52 of the EC Treaty <sup>(118)</sup>. After reaching political agreement on 22 September 2003, the common position was adopted on 5 December 2003.

The aim of this directive is to combine in one piece of legislation, all the rules concerning the residence rights of EU citizens wishing to live in another Member State of



the EU (workers, self-employed persons, pensioners, students, the non-active, etc.). The directive will result in changes to Regulation (EEC) No 1612/68 concerning the free movement of workers, and will revoke Directive 68/360/EEC on the residence rights of workers and their family members.

The new directive will in general incorporate the *acquis* concerning the residence rights of workers and their family members; although in some places the adopted text grants fewer rights to citizens in comparison to the original proposal of the Commission (e.g. in relation to protection against expulsion on the grounds of public policy, public security or public health). It also provides for big steps forward, especially the granting of a permanent residence right for all EU citizens after five years of residence in a Member State.

## 6.2. The coordination of social security schemes

On 21 December 1998, the Commission presented a proposal for a regulation to simplify and modernise the coordination rules contained in Regulation (EEC) No 1408/71. The Council and the European Parliament formally adopted the regulation on 29 April 2004 through the co-decision procedure.

Regulation (EEC) No 1408/71 provides for the coordination of national social security schemes in order to ensure that the application of the different national legislations does not adversely affect persons exercising their rights to free movement within the EU.

Since its adoption in 1971, the regulation has undergone a considerable number of amendments in order to take account of changes to national legislation, improve certain provisions, remedy deficiencies or cover the situation of particular categories of persons. The goal pursued by coordination must also be adapted to changes in the EU as a whole.

The new Regulation (EEC) No 883/2004 on the coordination of social security systems, contains a fundamental reform and simplification of the rules for coordination in the field of social security improving the protection for the citizen. The regulation will only be applicable once the necessary implementing provisions are adopted, i.e. probably not before the end of 2006.

## 6.3. Extension of Regulation (EEC) No 1408/71 to third-country nationals

Regulation (EC) No 859/2003 which extends the provisions of Regulation (EEC) No 1408/71 to legally resident third-country nationals was adopted by the Council on 14 May 2003.

## 6.4. European health insurance card

Further to the decision of the Barcelona European Council to create a European health insurance card, the Commission adopted on 17 February 2003 a communication which includes a roadmap and timetable for the gradual introduction of a European health insurance card. On 1 June 2004, the European health insurance card was launched in 13 Member States. It replaces the current E-forms needed for healthcare during a temporary stay in a Member State other than the one of insurance (E111, E110, E128 and E119). The 12 other Member States which do not use national health insurance cards, have been granted transitional periods which may not extend beyond 31 December 2005. In order to facilitate the introduction of the European health insurance card, a regulation amending Regulation (EEC) No 1408/71 in respect of the alignment of rights and the simplification of procedures was adopted on 31 March 2004. A special website on the European health insurance card has been created: [http://europa.eu.int/comm/employment\\_social/healthcard/index\\_en.htm](http://europa.eu.int/comm/employment_social/healthcard/index_en.htm).

## 7. The European Convention and Intergovernmental Conference on the Future of Europe

Following Declaration 23 to the Treaty of Nice and in accordance with the arrangements of the Laeken Declaration on the Future of the EU, adopted on 15 December 2001 by the Heads of State or Government, the Convention on the Future of Europe submitted a comprehensive draft Treaty establishing a Constitution for Europe in July 2003. This document, which has been elaborated during the 18 months of work of the Convention, presided by former French President Valéry Giscard d'Estaing, has been welcomed by the European Council of Thessaloniki in June 2003 as a 'good basis for starting the intergovernmental conference', which subsequently opened on 4 October 2003.

The intergovernmental conference made a series of adaptations to the text of the Convention and took final decisions on the ultimate version of the Constitutional Treaty. After temporary suspension following the December 2003 Brussels European Council, which failed to bring about an overall compromise, the intergovernmental conference finally reached agreement on the future Constitution on 18 June 2004. The Treaty establishing a Constitution for Europe was signed in Rome on 29 October 2004.

The Treaty provides for a series of significant changes in the field of employment and social affairs. It contains a progressive formulation of the Union's values and objectives, including the principles of justice, solidarity, non-discrimination and equality between women and men among its basic values. The important objectives of the Union comprise the promotion of the well-being of its peoples, full employ-

ment and social progress, a social market economy, sustainable development, the fight against social exclusion and discrimination, social justice and protection, equality between women and men, solidarity between generations, the protection of children's rights and the promotion of economic, social and territorial cohesion, and solidarity among Member States.

The Constitution makes it clear that the social policy competences attributed by the Constitutional Treaty belong to the category of shared competences, which empower the Union to legislate and adopt legally binding acts in this area. Member States continue to have the power to act in this domain to the extent that the Union has not exercised its competences. The draft Constitution emphasises the importance of participative democracy and instructs the Union's institutions to promote the role of the social partners at Union level and to facilitate their dialogue, while respecting their autonomy.

The text fully integrates the Charter of Fundamental Rights — solemnly proclaimed at the margins of the European Council of Nice on 7 December 2000 by the presidents of the European Parliament, the European Council and of the Commission — into the future Constitution. This means that it becomes a direct source of Community law, which is another important reform with considerable positive implications for the field of employment and social affairs.

The charter largely does away with the often arbitrary distinction between economic, social and cultural rights on the one hand, and civil and political rights on the other. By recognising the specific rights of the elderly, of young people and of persons with disabilities, as well as rights to education, the right to seek work, the right to information and consultation of workers, the right of collective bar-

gaining and action, the right of access to placement services, the right to protection in the event of unfair dismissal, the right to fair and just working conditions, or the rights to access to healthcare and to services of general economic interest, it will reinforce the social dimension of the integration process and serve as a driving force for measures which seek to give practical effect to these principles.

As far as the more technical Part III of the draft Constitution is concerned, the explicit recognition of several principles of general application should be highlighted, some of which are of the greatest relevance for employment and social affairs. New 'mainstreaming' provisions stipulate that in all its activities, the Union 'shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.' It shall also aim 'to eliminate inequalities, and to promote equality, between men and women' and 'combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

With regard to services of general economic interest, 'to which all in the Union attribute value as well as their role in promoting social and territorial cohesion', the draft Constitution calls upon the Union and its Member States to 'take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions.' As another major innovation, it confers powers upon the Union to define these principles and conditions on the basis of which the services of general economic interest should operate.

The open method of coordination (OMC) is introduced formally in several policy domains, including employment policy, with the draft Constitution stipulating that European

laws or framework laws — the convention provided for a completely new typology of legal acts — 'may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.'

Finally, it should also be noted that the legislative procedures have been modified with regard to the coordination of social security systems — the scope of which has been formally extended to the self-employed, migrant workers and their dependants — and to non-discrimination. As far as the latter is concerned, the European Parliament will have to give its consent to any measure the Council intends to adopt (Parliament is at present only consulted). With regard to the former, the normal co-decision procedure (which is simplified and henceforth called the 'legislative procedure') will in principle apply. However, where a member of the Council considers that a draft European law or framework law in this field would affect fundamental aspects of its social security system or the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the procedure is suspended. After discussion, the European Council, within four months of this suspension, either refers the draft back to the Council, which terminates the suspension, or requests the Commission to submit a new draft.

The Treaty establishing the Constitution will enter into force on 1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step.

## ■ ANNEX (A)

### Main social provisions of the draft Treaty establishing a Constitution for Europe, as elaborated by the European Convention (with the exception of Part II: the Charter of Fundamental Rights)

#### The Union's values

##### Article I-2

The Union is founded on the values of respect for human dignity, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

#### The Union's objectives

##### Article I-3

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.
3. The Union shall work for sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights, in particular the rights of the child, as well as to strict observance and the development of international law, including respect for the principles of the United Nations Charter.
5. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Constitution.

#### Categories of competence

##### Article I-12

(...)

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by Part III, which the Union shall have competence to provide.

(...)

#### Areas of shared competence

##### Article I-14

(...)

2. Shared competence applies in the following principal areas:

(...)

(b) social policy, for the aspects defined in Part III,

(c) economic, social and territorial cohesion,

(...)

## The coordination of economic and employment policies

### Article I-15

(...)

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.
3. The Union may take initiatives to ensure coordination of Member States' social policies.

## The social partners and autonomous social dialogue

### Article I-48

The Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.

## Equality between women and men

### Article III-116

In all the activities referred to in this part, the Union shall aim to eliminate inequalities, and to promote equality, between women and men.

## Social clause and social dialogue

### Article III-117

In defining and implementing the policies and actions referred to in this part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

## Anti-discrimination

### Article III-118

In defining and implementing the policies and activities referred to in this part, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

## Services of general economic interest

### Article III-122

Without prejudice to Articles I-5, III-166, III-167 and III-238, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to commission and to fund such services.

## Non-discrimination

### Article III-124

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers assigned by it to the Union, a European law or framework law of the Council may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after obtaining the consent of the European Parliament.
2. By way of derogation from paragraph 1, European laws or framework laws may establish basic principles for Union incentive measures and define such measures, to support action taken by Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of their laws and regulations.

## Free movement of workers

### Article III-133

1. Workers shall have the right to move freely within the Union.
2. Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment shall be prohibited.
3. Workers shall have the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;
  - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in European regulations adopted by the Commission.
4. This article shall not apply to employment in the public service.

### Article III-134

European laws or framework laws shall establish the measures needed to bring about freedom of movement for workers, as defined in Article III-18. They shall be adopted after consultation of the Economic and Social Committee. Such European laws or framework laws shall aim, in particular, to:

- (a) ensure close cooperation between national employment services;
- (b) abolish those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) abolish all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as impose on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) set up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

### Article III-135

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

### Article III-136

1. In the field of social security, European laws or framework laws shall establish such measures as are necessary to bring about freedom of movement for workers by making arrangements to secure for employed and self-employed migrant workers and their dependants:
  - (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the different countries;
  - (b) payment of benefits to persons resident in the territories of Member States.
2. Where a member of the Council considers that a draft European law or framework law referred to in paragraph 1 would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the procedure referred to in Article III-396 shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:
  - (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-396, or
  - (b) request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.



## Employment

### Article III-203

The Union and the Member States shall, in accordance with this section, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article I-3.

### Article III-204

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article III-203 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article III-179(2).
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with Article III-206.

### Article III-205

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

### Article III-206

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article III-179(2).
3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.
4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may adopt recommendations which it shall address to Member States.
5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

### Article III-207

European laws or framework laws may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. They shall be adopted after consultation with the Committee of the Regions and the Economic and Social Committee. Such European laws or framework laws shall not include harmonisation of the laws and regulations of the Member States.

### Article III-208

The Council shall, by a simple majority, adopt a European decision establishing an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. It shall act after consulting the European Parliament. The tasks of the Committee shall be:

- (a) to monitor the employment situation and employment policies in the Union and the Member States;
- (b) without prejudice to Article III-344, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article III-206.

In fulfilling its mandate, the Committee shall consult the social partners. Each Member State and the Commission shall appoint two members of the Committee.

## Social policy

### Article III-209

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, 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 Union and the Member States shall act taking 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 Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action of the Member States.

### Article III-210

1. With a view to achieving the objectives of Article III-209, the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article III-283;
- (i) equality between women and men with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. For the purposes of paragraph 1:

- (a) European laws or framework laws may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) in the fields referred to in paragraph 1 (a) to (i), European framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework laws 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. In all cases, such European laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.
- 3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1 (c), (d), (f) and (g), European laws or framework laws shall be adopted by the Council acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee. The Council may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1 (d), (f) and (g). It shall act unanimously after consulting the European Parliament.
- 4. A Member State may entrust management and labour, at their joint request, with the implementation of European framework laws adopted pursuant to paragraphs 2 and 3 or, where appropriate, with the implementation of European regulations or decisions adopted in accordance with Article III-212.

In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, or a European regulation or decision implemented, 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 framework law, regulation or decision.

5. The European laws and framework laws adopted pursuant to this article:
  - (a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium of such systems;
  - (b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.
6. This article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

### **Article III-211**

1. The Commission shall promote the consultation of management and labour at Union level and shall adopt any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. For the purposes of paragraph 1, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.
3. If, after the consultation referred to in paragraph 2, the Commission considers Union action desirable, 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 the consultation referred to in paragraph 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article III-212(1). 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 III-212**

1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.
2. Agreements concluded at Union 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 III-210, at the joint request of the signatory parties, by European regulations or decisions adopted by the Council on a proposal from the Commission. The European Parliament shall be informed. Where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article III-210(3), the Council shall act unanimously.

### **Article III-213**

With a view to achieving the objectives of Article III-209 and without prejudice to the other provisions of the Constitution, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this section, particularly in matters relating to:

- (a) employment;
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;
- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed. Before delivering the opinions provided for in this article, the Commission shall consult the Economic and Social Committee.

### Article III-214

1. Each Member State shall ensure that the principle of equal pay for female and male workers for equal work or work of equal value 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. European laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. They shall be adopted after consultation of the Economic and Social Committee.
4. With a view to ensuring full equality in practice between women and men in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

### Article III-215

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

### Article III-216

The Commission shall draw up a report each year on progress in achieving the objectives of Article III-209, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

### Article III-217

The Council shall, by a simple majority, adopt a European decision establishing a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The Council shall act after consulting the European Parliament. The tasks of the Committee shall be:

- (a) to monitor the social situation and the development of social protection policies in the Member States and within the Union;
- (b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
- (c) without prejudice to Article III-344, to prepare reports, formulate opinions or undertake other work within the scope of its powers, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

### Article III-218

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

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

### Article III-219

1. In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.
2. The Commission shall administer the Fund. It shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of Member States, trade unions and employers' organisations.
3. European laws shall establish implementing measures relating to the Fund. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

## ■ ANNEX (B)

### **Main social provisions of Part II of the draft Treaty establishing a Constitution for Europe (Charter of Fundamental Rights of the European Union)**

#### **Protection of personal data**

##### **Article II-68**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

#### **Right to education**

##### **Article II-71**

1. Everyone has the right to education and to have access to vocational and continuing training.
- (...)

#### **Freedom to choose an occupation and right to engage in work**

##### **Article II-75**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

#### **Non-discrimination**

##### **Article II-81**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Equality between women and men**

##### **Article II-83**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

#### **Integration of persons with disabilities**

##### **Article II-86**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

#### **Workers' right to information and consultation within their undertaking**

##### **Article II-87**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.



## Right of collective bargaining and action

### Article II-88

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

## Right of access to placement services

### Article II-89

Everyone has the right of access to a free placement service.

## Protection in the event of unjustified dismissal

### Article II-90

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

## Fair and just working conditions

### Article II-91

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

## Prohibition of child labour and protection of young people at work

### Article II-92

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

## Family and professional life

### Article II-93

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

## Social security and social assistance

### Article II-94

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

## Healthcare

### Article II-95

Everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

### Access to services of general economic interest

### Article II-96

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the constitution, in order to promote the social and territorial cohesion of the Union.

TABLE 4.1: TRANSPOSITION OF EUROPEAN DIRECTIVES, JULY 2004

DIRECTIVES	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK	CY	CZ	EE	HU	LV	LT	MT	PL	SK	SI
<b>1. LABOUR LAW</b>																									
<b>Directives in force:</b>																									
80/987 – Insolvency employer	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
91/383 – Temporary employment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
91/533 – Written statement	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
93/104 – Working time	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C
94/33 – Protecting young people at work	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
94/45 – European works councils (97/74 - UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR	C	C	C	C	C	C	C	C	C	C
96/71 – Posting of workers (deadline: 16.12.1999)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	N	C	C	C	C
97/74 – Extension 94/45 to UK (deadline: 15.12.1999)	C	-	C	-	C	-	-	-	C	-	-	-	C	-	C	-	-	-	-	-	-	-	-	-	-
97/81 – Part-time work (deadline: 20.1.2000) (98/23-UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR	C	C	C	C	C	C	C	C	C	C
98/23 – Extension 97/81 to UK (deadline: 7.4.2000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-
98/50 – Transfers of undertakings 2 (deadline: 17.7.2001)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
98/59 – Collective redundancies – codification – OJ 98.225 16-21	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
99/63 – Working time of seafarers (deadline: 30.6.2002)	C	C	C	C	C	N	C	N	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
99/70 – Fixed-term work (deadline: 10.7.2001)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/34 – Excluded sectors 93/104 (date transposition: 1.8.2003)	IC	C	C	N	C	IC	N	C	N	IC	C	C	C	C	IC	C	C	N	C	C	C	C	C	C	C
00/79 – Agreement on working time civil aviation (1.12.2003)	C	C	IC	N	C	IC	N	N	IC	N	N	N	C	N	IC	C	C	C	C	N	C	N	C	C	C
01/23 – Transfer of undertakings (codification 77/187 et 98/50)																									
<b>Directives for which the transposition deadline has not yet expired:</b>																									
01/86 – Involvement employees - European company statute (8.10.2004)																									
02/14 – Information and consultation of employees (23.3.2005)																									
02/74 – Insolvency employer (modif. 80/987) (8.10.2005)																									
<b>2. EQUAL TREATMENT MEN AND WOMEN</b>																									
<b>Directives in force:</b>																									
75/117 – Equal pay	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
76/207 – Access to employment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
79/7 – Social security	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
86/378 – Occupational social security schemes	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	N	C	C	C	C
92/85 – Pregnant workers	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
96/34 – Parental leave (97/75 - UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR	C	C	C	C	C	C	C	C	C	C
96/97 – Occupational social security schemes (modification 86/378)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	C	N	N	C	C	C
97/75 – Extension 96/34 au RU (deadline: 15.12.1999)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-
97/80 – Burden of proof (deadline: 1.1.2001) (UK: 98/52)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR	C	C	C	C	C	C	C	C	C	C
98/52 – Extension 97/80 to UK (22.07.2001)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-
<b>Directives for which the transposition deadline has not yet expired:</b>																									
02/73 – Modification Dir 76/207 (deadline: 5.10.2005)																									
<b>3. NON-DISCRIMINATION/EQUAL TREATMENT ARTICLE 13 EC</b>																									
<b>Directives in force:</b>																									
00/43 – Race - (deadline: 19.7.2003)	IC	C	N	N	C	C	N	C	N	C	N	N	IC	C	C	N	C	N	C	N	C	C	C	C	C
00/78 – General framework equal treatment in employment & occupation (2.12.2003)	IC	C	N	N	C	C	N	C	N	C	N	C	IC	C	C	N	C	N	C	C	C	C	C	C	C
<b>4. FREE MOVEMENT OF WORKERS</b>																									
<b>Directives in force:</b>																									
68/360 – Restrictions on movement and residence	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
98/49 – Supplementary pensions rights (deadline: 25.1.2002)	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
<b>5. HEALTH AND SAFETY AT WORK</b>																									
<b>Directives in force:</b>																									
83/477 – Asbestos	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
86/188 – Noise	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/391 – Framework	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/654 – Workplaces	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
89/655 – Work equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/656 – Personal protective equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
90/269 – Manual handling of loads	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
90/270 – Display screen equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
90/394 – Carcinogens	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C
91/322 – Indicative limit values	C	C	C	NR	NR	NR	C	C	C	NR	C	NR	C	C	C	C	C	C	C	C	C	C	C	C	C
91/382 – Asbestos	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/29 – Medical assistance on board of vessels	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/57 – Construction	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
92/58 – Health and safety signs	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/91 – Drilling	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
92/104 – Mining	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C
93/103 – Fishing vessels	C	C	C	C	C	C	C	C	NR	C	NR	C	C	C	C	C	N	C	C	C	C	N	NR	C	C
95/63 – Amendment of work equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
97/42 – Amendment of carcinogens	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C
98/24 – Chemical agents 5 (deadline: 5.5.2001)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	N	C	C	C
99/38 – Amendment of carcinogens (29.4.2003)	C	N	N	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C	C	C	N	C	C	C

DIRECTIVES	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK	CY	CZ	EE	HU	LV	LT	MT	PL	SK	SI
<b>HEALTH AND SAFETY AT WORK</b>																									
<b>Directives in force (continued):</b>																									
99/92 – Explosive atmospheres (deadline 30.6.2003)	C	C	C	C	C	C	C	C	N	C	N	C	C	C	C	C	N	C	C	C	C	C	C	C	C
00/39 – First list of indicative occupation exposure limit values chemical agents Commission directive (deadline: 31.12.2001)	C	C	C	C	C	N	C	C	C	C	N	C	C	C	C	C	C	C	C	N	C	C	C	C	C
00/54 – Biological agents (7th - 89.391) [codification]	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C
<b>Directives for which the transposition deadline has not yet expired:</b>																									
2001/45 Second amendment of work equipment (19.7.2004)								C	C				C					C	C	C		C	C	C	
02/44 – Vibration (deadline: 06.7.2005)																									
03/10 – Noise (15.2.2006)																				C					
2003/18 Second amendment of asbestos (15.04.06)																									
<b>DIRECTIVES</b>	<b>BE</b>	<b>DK</b>	<b>DE</b>	<b>EL</b>	<b>ES</b>	<b>FR</b>	<b>IE</b>	<b>IT</b>	<b>LU</b>	<b>NL</b>	<b>AT</b>	<b>PT</b>	<b>FI</b>	<b>SE</b>	<b>UK</b>	<b>CY</b>	<b>CZ</b>	<b>EE</b>	<b>HU</b>	<b>LV</b>	<b>LT</b>	<b>MT</b>	<b>PL</b>	<b>SK</b>	<b>SI</b>
% national legislation communicated (1.1.2004)	91.8	91.8	89.8	89.8	93.9	87.8	91.8	91.8	87.8	91.8	81.6	91.8	93.9	93.9	89.8										
% transposition lacking (1.1.2004)	8.2	8.2	10.2	10.2	6.1	12.2	8.2	8.2	12.2	8.2	18.4	8.2	6.1	6.1	10.2										
C = Communication of national legislation																									
D = Derogation																									
IC = Incomplete/partial communication																									
NR = Directive not relevant to a particular country																									
N = No communication of national legislation																									

# Corporate ownership and industrial relations in the EU: national trends and European policy developments <sup>(119)</sup>

## ■ 1. Introduction

Across Europe, companies and their employees are facing constant pressures to adapt to change and to restructure their operations. These pressures stem from the intensification of international competition, the liberalisation of markets, currency fluctuations, technological progress, reduced government support, and the shift from an industrial to a knowledge and information-based economy. Adaptation to change and restructuring are often essential to the survival of firms. Restructuring at company level can take a number of forms: mergers and acquisitions (M&As); rationalisations and closures of sites and divisions in large companies; moves into new lines of business; an increase in sub-contracting of non-core operations; and internal changes, such as the move towards devolved business units.

As mentioned in Chapters 2 and 3, as part of the so-called Lisbon strategy the EU has set itself the objective of becoming 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by the year 2010. Economic and social renewal is fundamental to this strategy and strengthening competitiveness and cohesion are its dual guiding principles. The Commission therefore advocates a positive approach to change. Corporate restructuring is a driving force for change. However the Commission's view is that change

needs to be anticipated and managed. Properly taking into account and addressing the social impact of restructuring greatly contributes to its acceptance, thereby enhancing its positive potential as well as lowering its human and societal costs. Fostering and facilitating structural change, notably by easing its social consequences, is now explicitly recognised by EU industrial policy as one of its key objectives <sup>(120)</sup>.

The form restructuring takes is diverse and is influenced by national institutional frameworks among which there remains a high degree of distinctiveness even in an era in which the globalisation of economic activity has increased. Across the Union there are marked differences in the way that firms are financed and owned and also in the way that managements are required to inform and consult their workforces and deal with other aspects of the industrial relations system. In relation to corporate ownership patterns, companies based in systems in which relations between owners and managers are generally distant and where financial performance is used as the primary indicator of the health of the firm are those most likely to undertake rapid and radical restructuring. In contrast, companies, where owner-management relations are stable and close, are more likely to restructure incrementally. In terms of industrial relations systems, firms in countries that have deregulated labour markets and where employees have relatively little scope to exercise their 'voice', tend to restructure their operations quickly

and dramatically. This contrasts with the more consensual and gradual approach required of firms with a strong tradition of 'social dialogue'.

Although rooted in diverse institutional frameworks, companies in the EU are facing similar pressures to adapt to change. As a consequence, some common trends can be identified across countries in the extent and forms of restructuring at firm level. However, in spite of these convergent pressures, a high degree of diversity persists with national industrial relations institutions proving to be resilient. The process of change is in fact rather uneven and occurring at differing paces across countries. In addition, there is a high degree of diversity within countries between international and domestic firms, and between large and small firms.

This suggests that the ways in which company restructuring occurs reflects a complex interaction of factors at different levels and that national level systems are not, therefore, the sole shapers of the way that firms respond to pressures to restructure their operations. Firstly, they are supplemented by rules agreed at European level through, for example, European works councils and transnational information and consultation procedures, as well as cooperation at sub-national level, for example, with local and regional authorities. Other European influences are felt through common rules on competition, mergers and acquisitions. Secondly, it is not only rules — whether national or European — which matter in deter-

(119) The first part of this chapter on the interaction between corporate ownership and industrial relations is based on a contribution by Dr Tony Edwards of King's College, University of London.

(120) Communication from the Commission, 'Fostering structural change: an industrial policy for an enlarged Europe', COM(2004) 274 final, 20 April 2004.



mining how firms respond; the role of individuals — among both management in influencing shareholder attitudes and trade unions/employee representatives in mediating between employees and management — is also important.

This chapter has two main purposes. Firstly, it examines the interaction between corporate ownership patterns and industrial relations and trends in company-level industrial relations in the EU. In view of the relatively recent transformation of the economic systems of the new Member States, this section focuses mainly on EU-15. Secondly, the chapter seeks to provide an overview of EU policy developments and describes the main initiatives taken by the European institutions and the European social partners relating to company level industrial relations and corporate social responsibility, with a view to promoting the anticipation and responsible management of change. The chapter concludes by exploring some of the implications of these policies for company-level industrial relations in the new Member States.

## ■ 2. The interaction between corporate ownership patterns and industrial relations

Within any national business system, there is a degree of interdependence between institutions in various spheres of the economy, with the nature of the institutions in one sphere influencing the nature of those in others.

Corporate governance is usually understood as the system by which companies are directed and controlled. In the light of the recent corporate scandals, it is now a major global

issue and poor corporate governance performance by some companies has greatly undermined confidence in capital markets. Within the EU, Member States have different systems of corporate governance, which, to some extent, reflect their different cultures. Furthermore, views differ in Member States with regard to the roles of corporations and the way in which industry should be financed. In recent years, corporate governance has been a growing subject of debate.

In relation to restructuring and change, of particular importance is how corporate ownership patterns inter-relate with industrial relations and employee and union representation in particular. With regard to corporate ownership patterns, one distinction that is often made is between 'insider' systems in which there are close and stable relations between owners and senior managers, and 'outsider' systems in which shareholders have fluid and distant relations with managers. The first group contains a number of variants: the German system where banks are key players in owning and controlling firms; the Swedish system where investment foundations play a similar role; and France where the State has often played a key role in the strategies of large firms, as again became clear in the recent rescue plan for Alstom. As argued above, in these systems, responses to the pressures of globalisation and intensified competition tend to be incremental and evolve over time. Moreover, restructuring is carried out in such a way that allows a range of 'voices' to be heard, particularly those of employees through statutory rights to be represented on company boards or through meaningful involvement in decision-making by employees' representatives entitled to be informed and consulted on major changes, for example. Thus insider arrangements tend to be compatible with industrial relations systems that afford scope

for employee consultation and involvement.

In outsider systems, on the other hand, of which the UK and Ireland are examples, company level restructuring tends to be more radical and is carried out more quickly. Moreover, the way that outsider systems are structured gives shareholders greater influence over management decisions than other groups are able to exercise and, consequently, restructuring is often geared towards maximising 'shareholder value' without consideration for other stakeholders' value. As a consequence, outsider systems have tended to coincide with industrial relations systems that afford employees fewer and weaker 'voice' mechanisms within companies than has been the case in insider systems.

The corporate ownership patterns in Europe loosely grouped under the insider category are evolving in different directions and at varying paces. There are a number of forces for change: greater foreign ownership, particularly in the form of financial institutions from other countries; the internationalisation of domestic firms, including the raising of finance in other countries; privatisation, which has increased the exposure of formerly State-controlled firms to financial institutions; and reforms to the rules of corporate governance, which may be introduced through changes to merger and takeover codes. These changes, however uneven, present a challenge to national systems of industrial relations that have rested on stable and close relations between owners and managers, as changes in corporate ownership patterns appear to have some knock-on effects on the nature of industrial relations practices. The nature of corporate ownership patterns and industrial relations systems in the EU, and the extent to which these are changing are considered in the next section.

### ■ 3. The diversity of national corporate ownership patterns and industrial relations frameworks

Considerable diversity is evident in the nature of the national business systems within the EU. In the following section, the distinction between insider and outsider systems of corporate ownership mentioned above is used. With regard to industrial relations, a distinction is made between those systems that are characterised by a strong degree of social partnership, those systems in which employee influence is exerted through unions that engage in adversarial relations with employers, and those systems that allow for relatively little employee voice. Countries are categorised according to these distinctions and also by the degree to which they are changing.

It should, however, be pointed out that reality is more complex. This means that countries characterised as possessing a tradition of social partnership also have some degree of adversarial bargaining, while examples of companies with strong social partnership can be found in countries considered to have weaker traditions of employee involvement. Although this distinction simplifies some of the complexities of national industrial relations systems, it does nevertheless serve to highlight important differences.

#### 3.1. Stable insider systems with strong social partnership

Three countries can clearly be characterised as combining an insider system of corporate ownership with a tradition of social partnership that shows little signs of change. **Austria** is one of these. Ownership is highly concentrated in Austria, with the gov-

ernment and families featuring as key shareholders in many firms. As Table 5.1 shows, 86 % of publicly quoted companies have an owner who controls at least a quarter of the shares, the threshold that tends to make it difficult for another firm to launch a takeover, while 68 % of firms have an owner controlling more than half of the shares (Table 5.3). In **Luxembourg**, too, there is a system of stable and concentrated ownership, with 'collective investment funds' and the State being the key owners of firms. **Denmark** is another illustration; the high proportion of family owned corporations (see Table 5.4) is a key aspect of the system of 'personal stakeholder capitalism'. Among those Danish companies that are not family-owned, the distinction between different types of shares — those with special voting rights and those without (A and B shares) — reinforces the concentration of control amongst insiders. Takeovers, particularly hostile ones, are rare in all three countries, meaning that there is no large 'market for corporate control', nor are there many signs of significant change towards the outsider system.

All three countries combine the insider system of corporate ownership with a well-entrenched system of social partnership. Rights for a range of stakeholders, as opposed to simply

shareholders, mean that restructuring is influenced to some extent by the concerns of employees. For example, when a firm in Austria wants to engage in restructuring that adversely affects employees, they must first institute a 'social plan' that is arrived at through a process of consultation with employee representatives and sets out how the company intends to deal with issues such as redundancies and redeployment. In all three countries (Austria, Luxembourg and Denmark) there are formal provisions allowing employee representatives to sit on the board of companies and to therefore exert influence over strategic decisions. The importance of the stakeholder tradition shows little sign of being eroded in any of the three countries, and the systems are all characterised by a good degree of stability. Hence, these three countries can be characterised as stable insider systems with strong traditions of social partnership. Accordingly, the way that restructuring occurs is primarily through gradual and incremental changes arrived at largely through consensus.

**TABLE 5.1: LISTED COMPANIES WITH A BLOCKING MINORITY OF AT LEAST 25 %**

Share (in %) of all listed companies	
Belgium	93.6
Austria	86.0
Germany	82.5
Netherlands	80.4
Spain	67.1
Italy	65.8
Sweden	64.2
UK	15.9
United States – NYSE	7.6
United States – Nasdaq	5.4

Source: M. Becht (2004), 'Reciprocity in takeovers', in G. Ferrarini, K. Hopt, J. Winter and E. Wymeersch (eds.), *Modern company and takeover law in Europe*, Oxford, Oxford University Press.

### 3.2. Evolving insider systems with strong social partnership

A further five countries share many of the same characteristics as those discussed in the previous section but differ in that they are experiencing more

significant changes in the nature of the corporate ownership patterns and industrial relations frameworks and more radical patterns of restructuring. One example is **Sweden**, a country that is characterised by a high degree of concentration. Table 5.1 shows that very nearly two thirds of

companies have one shareholder controlling at least a quarter of the shares, with family-based foundations and the State being key owners of firms (see Table 5.4). The links between owners and management in Swedish firms have tended to be close and stable. The distinction between A and B shares noted in the case of Denmark is also very important in Sweden. There are pressures for change, particularly through the internationalisation of large Swedish companies, many of which are listed on foreign stock markets and have located key strategic functions abroad. Perhaps more significantly, many Swedish companies have made sweeping cuts in response to changes in product market conditions. But even in these cases, the way that these processes are handled within Sweden is still strongly influenced by the Swedish system of social partnership and collective bargaining, which includes worker representation in the boards of companies and strong consultation rights.

**Finland** is another example of an evolving insider system with a strong tradition of social partnership. Traditionally, families and the State have had a key role in many industrial groups within Finland (see Table 5.4), forming close and stable linkages

**TABLE 5.2: MEDIAN SIZE OF THE LARGEST ULTIMATE OUTSIDE VOTING BLOCK FOR LISTED INDUSTRIAL COMPANIES**

Median size in % of total votes	
Italy	54.5
Germany	52.1
Austria	52.0
Belgium	50.6
Netherlands	43.5
Spain	34.2
France (CAC40)	20.0
UK	9.9

NB: The United States (both NYSE and Nasdaq) were below the 5 % disclosure threshold

Source: M. Becht & A. Roell (1999), 'Blockholdings in Europe: an international comparison', *European Economic Review*, Vol. 43.

**TABLE 5.3: VOTING POWER CONCENTRATION: % OF COMPANIES FOR WHICH THE LARGEST VOTING POWER STAKE IS IN GIVEN RANGE**

	0–25	26–50	51–75	76–100
Austria	14.0	18.0	54.0	14.0
Germany	17.5	18.3	25.5	38.7
Netherlands	35.8	24.8	19.7	19.7
United States – NYSE	94.8	3.5	1.5	0.2
United States – Nasdaq	92.4	3.5	1.5	0.6

Source: Becht and Roell (1999), *op. cit.*

**TABLE 5.4: OWNERSHIP OF THE HUNDRED LARGEST COMPANIES IN ELEVEN EUROPEAN MEMBER STATES**

	Dispersed ownership	Dominant ownership	Family-owned	Foreign-owned	Cooperative	Government-owned
Austria	0	7	25	38	10	20
Belgium	4	20	6	61	3	6
Denmark	10	9	30	23	17	11
Finland	12	25	23	11	10	19
France	16	28	15	16	3	22
Germany	9	30	26	22	3	10
Italy	0	22	20	29	0	29
Netherlands	23	16	7	34	13	7
Spain	6	22	8	45	5	14
Sweden	4	31	18	14	12	21
UK	61	11	6	18	1	3

Source: T. Pedersen and S. Thomsen (1997), 'European patterns of corporate ownership: A 12-country study', *Journal of International Business Studies*, Vol. 28.

with management in the firms that they owned. This has been complemented by the system of co-determination, which has acted as a brake on the speed of change and requires workers to be consulted meaningfully. Also in Finland, employees are represented in the boards of companies employing more than 150 employees. However, the changes in Finland appear to have been more marked than in Sweden, driven primarily by the sharp increase in the shareholding in Finnish companies by American pension funds but also by foreign direct investment. In some foreign-owned firms there are instances of restructuring being carried out with only minimal compliance with the system of co-determination.

A similar picture of an evolving insider system is evident in **Belgium**. Traditionally, one of the key characteristics of corporate ownership is what is known as the 'shareholding cascades', at the centre of which are holding companies and family-based foundations, and to a lesser extent industrial companies. Within the cascades, 'stakes are concentrated into powerful control blocks through business group structures and voting pacts' <sup>(121)</sup>. One consequence of this ownership structure is the limited 'market for corporate control' since it is difficult for an outsider to buy into the 'cascades' unless she has the agreement of firms within these arrangements. In addition, a number of features of Belgian law restrict the ability of companies to launch hostile takeover attempts for other companies, and many leading shareholders acquire legal instruments that enable them to avoid undesired takeovers. In the industrial relations sphere, there is still a strong basis for social partnership. One source of this is that works councils have to be consulted before

any change affecting the enterprise is taken. Recently, there have been a number of instances of very severe restructuring in Belgium, some of which has occurred within foreign-owned firms, particularly the notorious Renault-Vilvoorde case. The extremely high proportion of foreign ownership (see Table 5.4) has made this an emerging trend. Moreover, among Belgian firms there is some evidence that share values are more important drivers of restructuring than general economic conditions. While this has caused important changes in the Belgian business system, there is a continuing tradition of social concertation. In sum, restructuring is evident in Belgium, but the increased attention to shareholder value has not removed the key characteristics of the Belgian system of corporate ownership and social concertation continues to shape the way in which restructuring takes place.

Many observers see **Germany** as the classic case of the insider model. The role of the banks in owning and controlling firms is one distinctive element. Traditionally, the big national banks held a significant stake in many large German firms, but this has diminished in recent years. For instance, between 1992 and 1999, the share of chairpersons of supervisory boards of 40 large German companies who were bank representatives fell from 44 to 23 % <sup>(122)</sup>. In addition, under corporate governance guidelines adopted in 2002, executives are encouraged to hold no more than five supervisory board seats. For the development of small and medium-sized firms — the *Mittelstand* — the regional banks have remained important. In general, the role of the banks is not confined to their role as shareholders or lenders, however, since many small shareholders sign over

their voting rights to the banks who exercise them by proxy. In addition, there is a high degree of ownership by founding families and agencies of the State (see Table 5.4). Cross-shareholdings between companies are also a key element of the German system.

While the 'productionist, long-term, consensus orientation' <sup>(123)</sup> remains a feature of the German system, there are some signs of change. One of these is the beginning of a move towards hostile takeovers. The takeover of Mannesmann by Vodafone in February 2000 was a dramatic change, as it was the first successful hostile takeover by a foreign firm and demonstrated that there was no political defence against such attempts. Other signs of change include the emergence of investor relations departments along Anglo-Saxon lines in many large companies; the gradual weakening of the structures of cross-shareholdings and interlocking directorates; and the rhetoric of shareholder value and the adoption of international (or American) accounting standards in large, internationalised firms. However, these changes are quite limited as there is a very narrow base for a shareholder value economy in Germany because of the limited role of the equity market for company financing and the central pillars of German corporate ownership — the dominating role of banks, the system of co-determination (with board representation for workers in companies with more than 500 employees and a strong bargaining position for works councils on some of the main issues related to restructuring) and the company-centred management system — are not crumbling. Recent studies among Germany's 100 largest firms have shown that the process of internationalisation has drawn the

(121) EIRO (2002) 'Industrial restructuring: the impact of variations in forms of corporate governance — Belgium', [www.eiro.euro-found.eu.int/2002/09/word/be0207304s.doc](http://www.eiro.euro-found.eu.int/2002/09/word/be0207304s.doc), 2002.

(122) M. Höppner (2003), *Wer beherrscht die Unternehmen?*, Frankfurt a/M, Campus Verlag — Reihe Max Planck Institut, 138.

(123) U. Jurgens, K. Naumann and J. Rupp (2000), 'Shareholder value in an adverse environment: the German case', *Economy and Society*, Vol. 29.



works councils deeper in a process of social dialogue and negotiation with management and that most works councils have been ready to accept the need for adjustment <sup>(124)</sup>.

While corporate ownership in the **Netherlands** is generally quite concentrated as is characteristic of insider systems (see Table 5.2), the form and nature of the ownership of Dutch companies varies greatly according to their size. Among large firms, there has been a very significant rise in the shareholdings of foreign investors; recent estimates suggest that over half of the shares in quoted Dutch firms lie in foreign hands. However, among small and medium-sized firms research shows that the majority remains family-owned. Even when we exclude small and medium-sized firms from the analysis, this holds true: among firms with more than 100 employees, 50 % are family-owned <sup>(125)</sup>. Thus the changes in ownership have mainly occurred in large firms. As is the case in Germany, takeovers have not been a common feature of the Dutch economy. The first hostile takeover attempt took place as recently as 1988, and almost all stock market listed companies are protected against hostile takeovers through statutory measures such as issuing shares with no voting rights attached, issuing priority shares to entrusted officials, and issuing preferred shares to a friendly third party, usually a foundation. A contrast with the British outsider system shows through in the case of Shell; the 40 % of the company owned by the British group Shell Transport and Trading is traded widely and there is no distinction between shares, whereas the 60 % accounted for by Royal Dutch Petroleum has priority shares that make up only a very small proportion of the capital but have special voting

rights <sup>(126)</sup>. However, in the past 10 years the positive attitude towards these protective measures has changed and some investors like pension funds have started to press listed companies to lower their barriers to hostile takeovers and have had some success. As in Germany, the network ties between banks and industry, based on 'interlocking positions' of a small elite on the supervisory boards of Dutch firms, have loosened and the position of the commercial banks have become less central <sup>(127)</sup>. In 2003, a voluntary code was adopted in order to limit the number of boardroom positions any one person can occupy. One other notable sign of change is the trend towards managers of large companies being rewarded with large packages of share options and other profit-related bonuses. In some Dutch companies, active on foreign markets, this has become the primary way in which managerial pay is constituted and created considerable tension in the overall policy of wage moderation.

One check on the influence of shareholder value in the Netherlands has been the legal basis for employee representation. Works councils have the right to discuss and give advice on all major decisions, including investments and restructuring. In some cases, this means in fact a temporary veto power for a period during which the company and workers' representatives should seek an agreement. If the company does not follow this advice, the works council can challenge the decision in court. According to law, the works council is entitled to recommend or oppose the designation of all the members of the supervisory board in large companies, a power which it exercises on an equal footing with shareholders. A new merger code (giving unions the right to be

informed and consulted) was introduced in 2001. While this did not fundamentally change the rights of employees, it provided greater clarification on employees' rights in this respect. To summarise, there has been a shift in the balance of power within corporations in the Netherlands that has increased the pressure on management to carry out restructuring in order to deliver greater shareholder value, though this does not constitute radical change. The continuing tradition of social partnership provides employees with significant rights to influence the nature of corporate restructuring.

### 3.3. Evolving insider systems with adversarial management-union relations

The third group of countries are similar to the second insofar as they possess insider systems of corporate ownership that are evolving, but differ from them in that there is not such a well-embedded system of social partnership. Rather, employee influence over restructuring tends to be mainly exercised through trade unions in collective bargaining. **Portugal** and **Greece** are both examples of this group. In Greece, the State, families and private foundations are key owners of firms and takeovers are rare. In Portugal, the State is also a key player and there is hardly a market for corporate control. In the industrial relations arena, both countries have mechanisms designed to promote consultation, but employee influence stems primarily from the strength of unions to exert pressure on employers through collective bargaining and through exercising pressure on the government. These are key influences on restructuring patterns, which have

(124) W. Streeck et al. (2003), 'Germany Ltd. is passé', Max Planck Research, 2/2003.

(125) EIRO (2002) 'Industrial restructuring....', op. cit.

(126) M. Becht (2004) 'Reciprocity in takeovers', in G. Ferrarini, K. Hopt, J. Winter and E. Wymeersch (eds.), *Modern company and takeover law in Europe*, Oxford, Oxford University Press.

(127) E. M. Heemskerk, R. J. Mokken and M. Fennema (2003), *From stakeholders to shareholders: Corporate governance networks in the Netherlands 1976-96*, University of Amsterdam, research paper, <http://ssrn.com/abstract=411580>.



TABLE 5.5: PATTERNS OF CORPORATE OWNERSHIP IN EU-15

Country	Key features of the system
Austria	The <i>Hausbanken System</i> of investment banking has been a stable source of funds for firms, many of which are privately owned. Consequently, the stock market is not well developed; the ratio of market capitalisation of publicly quoted firms to GDP is only 15 %. There is not a well-developed market for corporate control and owners tend to have close and stable relations with senior managers.
Luxembourg	'Collective investment funds' and the State are the two main players in the ownership of firms. Senior managerial positions tend to be very secure and, while there are few formal barriers to hostile takeovers, they are unknown in Luxembourg.
Denmark	The system has been characterised as 'personal stakeholder capitalism' with a high degree of family ownership. This is particularly the case amongst the SMEs that dominate the industrial structure. Takeovers have increased slightly but hostile ones are very rare.
Sweden	A distinctive feature of corporate ownership in Sweden has been the role of 'investment foundations'. While there is a reasonably high incidence of M&As, particularly cross-border ones, there remain significant barriers to hostile takeovers. Independent shareholder associations have continued to become more active over the last three decades or so.
Finland	There has been a significant erosion of the role of the State and major banking and finance groups in owning and controlling Finnish firms. In their place have come pension funds and other financial institutions, particularly foreign ones. Related to this has been a growth in M&As (often cross-border in nature), though hostile ones are still quite rare. An emerging shareholder value orientation is evident.
Belgium	The main forms of corporate ownership are through holding companies and families, with shareholdings being concentrated and coordinated through networks and pacts. This 'pyramid' or 'cascade' structure of ownership creates a strong barrier to hostile takeovers, and there is no real market for corporate control.
Germany	One distinct feature of the corporate governance system is the way it incorporates rights for a range of stakeholders. This is reliant upon highly concentrated ownership patterns, particularly among banks, while networks of cross-shareholdings and interlocking directorships are common. There are some modest signs of change, however, in the direction of the outsider system.
Netherlands	The system is notable for the vast differences between SMEs, which are often controlled by families, and large firms, which are characterised by very high ownership by foreign institutions and individuals. Among the latter, there are some moves towards a shareholder value orientation. However, this is normally exercised by 'voice' rather than 'exit'.
Portugal	Among large firms the State is a key player, owning 23 % of shares, and foreign parties now control 13 %. Small firms are commonly sole proprietorships. There are also numerous small, individual shareholders. A market for corporate control is not well developed and hostile takeovers are particularly rare.
Greece	The State remains an important owner of Greek firms, as do families. In addition, there are a small number of private foundations that control some Greek firms. Takeovers are rare and relations between shareholders and management are close and stable. There is little to indicate significant change in these respects.
Italy	Family-owned groups are one of the distinguishing features of corporate ownership in Italy while, despite privatisation, the State retains an important stake in many firms. The result is a very high degree of concentration of ownership: six out of 10 stock market-quoted companies have one shareholder with more than 60 % of the shares. This concentration acts as a barrier to hostile takeovers.
Spain	Recent developments, such as privatisation and increasing investment by financial institutions (particularly foreign ones), have eroded the influence of the State and holding companies. Now, shareholdings are much more dispersed. Greater importance appears to be accorded to these shareholders by management, and the latter's pay is increasingly taking the form of stock options.
France	The role of the State in owning and controlling large French firms has been greatly reduced by privatisation. Managers are increasingly influenced by the demands of institutional investors, paying out a rising proportion of profits in dividends and having their own pay tied explicitly to share prices. There has also been a growth in M&As, though in the 1990s only two a year on average were hostile in nature.
Ireland	Industrial groups and families, along with the State, are key features of corporate ownership in Ireland. Foreign ownership is also very high, largely through foreign direct investment. Relations between managers and shareholders in publicly limited companies are fluid and arms-length, with a growing incidence of M&As. Senior managerial pay is often linked explicitly to share prices.
UK	Shareholdings tend to be highly dispersed, with pension funds holding relatively small stakes in a range of firms. There is a well-developed market for corporate control, with very weak barriers to hostile takeovers. Shareholding tends to be fluid, exemplified by the rush out of firms undergoing restructuring. Managerial remuneration is very strongly tied to measures of shareholder value.

Source: Adapted from EIRO (2002), 'Corporate governance systems and the nature of industrial restructuring', Dublin, September 2002, <http://www.eiro.eurofound.eu.int/2002/09/study/tn0209101s.html>.

grown more prevalent in recent years. One source of change in both countries but particularly in Portugal has been the growth of foreign ownership, while another has been the increase in the volume of mergers and acquisitions.

In **Italy**, a very highly concentrated picture of corporate ownership is evident, with this organised through 'pyramidal groups'. Only a few years ago, the largest shareholder in publicly quoted companies held an average of 48 % of the total voting rights; the largest three shareholders together held 62 % of the voting rights <sup>(128)</sup>. The tradition of family ownership also shows through very strongly and relatively few companies are quoted on the stock market. The role of the State and public ownership has been significant, though the privatisation programme during the past decade has eroded this element. In the industrial relations arena, similarly to Greece and Portugal, employees can use the information and consultation provisions laid down in law in cases of restructuring, but any significant influence they exert is generally through the trade unions.

Interlocking directorates are a key feature of the **Spanish** variant of the insider system. These tend to take place across industrial sectors, but especially within capital-intensive firms, and the system is facilitated by the controlling influence of holding companies and by the role of 'bank-led economic development and high State intervention' <sup>(129)</sup>. This system of ownership was quite compatible with employees having the right to be informed of changes of ownership on the same terms as shareholders and to issue a report setting out their views on proposed restructuring plans. However, recently, both the sys-

tems of corporate ownership and industrial relations have changed significantly: in relation to the former, a marked increase in foreign ownership of Spanish companies and a greater dispersal of shares is notable (Table 5.4); in relation to the latter, the government has sought to make it much easier for employers to make collective redundancies. In addition, some big Spanish companies have reformed their governance structures by dismantling control structures that impeded takeover attempts.

The last decade or so has witnessed some significant change in the **French** business system, particularly in the area of corporate ownership. A number of aspects of this changing picture are evident. One is the significant reduction in state ownership of large French companies; the government's privatisation programme in the mid-1990s eroded the central role of the State in the running of large French firms. A further key indicator of change relates to the ownership pattern; until recently, cross-shareholdings between firms dominated the pattern of ownership, with the shareholders of many big industrial firms being other big industrial firms, but this has declined from more than 30 % in 1990 to closer to 20 % by 2000. In the place of cross-shareholdings, foreign investors are now the key owners of large French firms quoted on the stock market, with American pension funds particularly influential. The ownership by foreigners of share capital on the French stock exchange has risen sharply during the last ten years or so to the point where more than one in every three shares in French companies is held by foreigners, a higher proportion than in most comparable countries <sup>(130)</sup>. A third aspect of the changes has been the growth in the number of M&As in

France. Traditionally, M&As were extremely rare, but a number of foreign firms have acquired French ones, and there has also been a significant growth in takeover bids on the stock market (although it is difficult to speak of a genuine market for corporate control in France comparable to the prevailing situation in the American and British stock exchanges). The rights of employees to be consulted about restructuring are significant. Employee representatives must be informed if restructuring is to take place as a result of a merger or a takeover, and consultation with the *comité d'entreprise* must occur prior to shareholders and the public being informed. However, the opinion of the *comité d'entreprise* does not have to be taken on board by the company and any substantive influence on how firms actually restructure tends to come from unions. Thus in those few sectors and firms where unions are strong, employee representatives are able to shape the way restructuring takes place, but in the majority they are not able to do so.

Overall, these changes have meant that many French firms are undergoing significant change, with greater pressure to deliver shareholder value influencing managers. An example of the mantra of creating shareholder value being put into practice is the increase in the percentage of corporate gross income paid out to shareholders as dividends. According to figures from the national statistical bureau, INSEE, this ratio rose from 22.8 % in 1994 to 41 % in 2000 for non-financial companies, and increased in broadly equivalent terms, but from a higher base, for finance companies: 33.4 to 61 % <sup>(131)</sup>. Some of the pressures for change have come into conflict with the principle underlying company law that prioritises the

(128) M. Bianco and P. Casavola (1999), 'Italian corporate governance: Effects on financial structure and firm performance', *European Economic Review*, Vol. 43.

(129) R. Aguilera (1998), 'Directorship interlocks in comparative perspective: the case of Spain', *European Sociological Review*, Vol. 14.

(130) F. Morin (2000), 'A transformation in the French model of shareholding and management', *Economy & Society*, Vol. 29.

(131) EIRO (2002), *Industrial restructuring ...*, op. cit.

concept of the 'company interest', which is supposed to prevent shareholders' interests dominating. This gives managers some protection from the pressure of shareholders. However, the indications are that these changes have had a marked impact. France has witnessed a rapid change from a 'financial network economy' to a 'financial market economy' and the shareholding model of the largest French groups is today rapidly disintegrating <sup>(132)</sup>.

### 3.4. Outsider systems with deregulated labour markets

The remaining two countries are quite different from the previous thirteen in two key respects; they are both outsider systems and labour markets are relatively deregulated with little formal scope for employee voice. In **Ireland**, the key elements of the outsider system are present, albeit one with a high degree of family ownership among small and medium-sized firms. It is distinguished by the very high degree of foreign ownership, from the UK, and particularly the United States. Formal channels through which employees can exercise influence are rare among the foreign-owned firms. Within the context of the social partnership approach followed in Ireland in recent decades (see Chapter 1), attempts have been made to extend the same cooperative approach to the level of the enterprise on a voluntary basis. In joint statements, the central organisations of employers and unions welcomed the development of 'employee involvement' in firms, including provisions for information and consultation, but this was not followed to a great extent in the private sector.

The key feature of corporate ownership in the **UK** is that shareholdings tend to be highly dispersed across a range of financial institutions and individuals, with it being quite rare for any one shareholder to own a controlling stake (see Tables 5.1, 5.2 and 5.4). Overall, 70 % of the holdings in UK listed companies are held by financial institutions, with each one tending to hold a very small proportion of the stock of a particular company <sup>(133)</sup>. Of all EU Member States, the UK has the most advanced market for corporate control. Ownership of shares tends to be fluid and there is a high incidence of mergers and acquisitions. In comparison with other European countries, the barriers to takeovers, particularly hostile ones, are weak. In general, the relationship between the senior management team and shareholders is often characterised as arm's length. In other words, the close relationships that exist in some other European countries, often involving key shareholders sitting on the board of the companies, are rare. In part, this is a consequence of the highly dispersed nature of shareholdings, since no one small shareholder has a strong incentive to closely monitor management. Thus the 'voice' of particular shareholders within the company tends to be weak. This is not to say that shareholders' demands are not influential over management; indeed, the weakness of employee rights in the British system means that shareholder concerns dominate managerial actions in general and the nature of restructuring in particular; the rights for employees to vote, and potentially block, restructuring that exist in some countries — for example through participation of workers in boards — are absent in the UK. The influence of shareholders is generally exercised through the threat of 'exit'; that is, shareholders can sell their stake to a

potential hostile bidder, leading to the existing management team being replaced.

It can be argued that the fluidity of shareholdings in general and the threat of exit in particular has made it difficult for British firms to build partnership arrangements with their workforces. While some UK companies have been able to reconcile shareholder demands with a partnership approach, in other cases, shareholder pressure has undermined partnership relations of the kind which have endured under more concentrated forms of ownership.

Recently, employee influence in general, and in influencing the nature of restructuring in particular, appears to have grown modestly. The rights that employees have in cases of insolvency, stemming partly from European directives, allow for a 'voice by non-shareholder constituencies' <sup>(134)</sup>, particularly employee representatives. Thus this has a particular impact on major corporate restructuring in relation to cases of potential or actual liquidation. The future impact of the 'information and consultation directive' in the UK, which will generalise involvement rights and extend worker representation remains to be seen. Moreover, the role of shareholders is not always as distant and arms-length as is often portrayed; some pension funds have a formal policy of investing 'in companies that are poorly performing but are fundamentally sound', with the aim of improving performance and delivering long-term shareholder value through better management and corporate governance. In this process, a team of specialist professionals liaise closely with fund managers to monitor company direction and performance. So there are moves, albeit limited, towards something of

(132) F. Morin (2000), *op. cit.*

(133) J. Armour, S. Deakin and S. Konzelmann (2003) 'Shareholder primacy and the trajectory of UK corporate governance', British Journal of Industrial Relations, Vol. 41.

(134) J. Armour et al. (2003), 'Shareholder primacy ...', *op. cit.*

TABLE 5.6: SYSTEMS OF EMPLOYEE REPRESENTATION IN RESTRUCTURING IN THE EU

Country	Key features of the system
Austria	Employee rights are quite strong, works councils have the right to be consulted prior to significant restructuring and in firms of 20+ employees there must be a 'social plan' designed to ease the impact on employees. Transfers of undertakings and collective redundancies must be agreed with the works council (establishments employing five employees). If there is no agreement, the issue is decided by a conciliation body. Consultation processes often lead to compromises over management's plans, while employee representatives on supervisory boards can also influence restructuring.
Luxembourg	In firms with 1 000+ employees or where the State has a larger than 25 % share, a third of the members of the board of directors must be elected by employees, who then have formal voting rights on investment and restructuring plans. In all firms with 15+ employees, there must be staff delegates appointed which have consultation powers. The combined effect of these industrial relations structures and the low level of unemployment have meant that restructuring tends to be resolved in a consensual manner.
Denmark	In companies with more than 35 employees, employees elect up to a third of members of the company board, which can vote on all aspects of restructuring. In addition, in enterprises of 35+ employees there must be a works council established through a 'cooperation agreement' and employers must inform the council about any changes that affect the organisation of work. While employee representatives only have the power to delay and not veto the changes, in practice employers often use these discussions to seek a compromise agreement.
Sweden	Employees are able to shape restructuring through the process of co-determination, through which consultation with employee representatives must take place on all 'important changes'. Unions often manage to secure concessions from management concerning its original plans, for example over the number of employees affected by restructuring. The very broad coverage of union membership and collective bargaining means that this influence is widespread across sectors and firms. There is also workers' representation (2-3 seats) on the board when the company or the group of companies has more than 25 employees. In the case of a group, the representation is made at that level.
Finland	'Personnel representatives', one quarter or up to four representatives may be nominated onto the 'administrative bodies' that govern the company with 150+ employees. Perhaps more importantly, the system of co-determination means that in 30+ firms, employers must consult over restructuring, and the strong position of union representatives means that in most cases management's proposals must also be subject to negotiation. This results in a 'cooperation plan' that sets out the form and consequences of any restructuring.
Belgium	Works councils must be consulted three months prior to any instance of restructuring and the consequences of restructuring must be discussed with employee representatives, often leading to a restructuring or social plan. One aspect of these plans is that they must set out 'a new approach to organising working time in such a way as to more effectively distribute work within the enterprise'. Following the closure of the Renault plant at Vilvoorde in 1997 these rights have been strengthened.
Germany	Employee rights stem partly from the system of plant-based works councils. Employers are obliged to inform works councils in advance of any restructuring plans that affect employees, and must negotiate an <i>Interessenausgleich</i> ('reconciliation of interests') that sets out the process of change and spells out the implications for employees. In the absence of an agreement, <i>inter alia</i> , on collective redundancies, the issue is decided by a conciliation body. Employee rights also stem from their representation on supervisory boards in large firms (usually one third of the seats but one half in mining and steel sector). However, the practical impact of these formal rights varies from firm to firm.
Netherlands	Works councils have the right to 'give advice' on all major decisions, and if management does not follow this advice, the council can take the case to a court. In addition, on issues related to restructuring (transfers, closures, investments, etc.), the works council has the right of suspensive veto (usually one month). Works councils also have a right of veto over the co-option of members of the supervisory board in companies with 100+ employees.
Portugal	A number of formal mechanisms exist for employees to exert influence over corporate restructuring (mainly through workers' commissions), stemming from a number of articles of the constitution and subsequent legislation. These commissions have the right to 'submit opinions' on management's plans. However, in practice these commissions cover only a small minority of workplaces and employee influence depends primarily on how well organised trade unions are at firm level.
Greece	Through the introduction of works councils in the 1980s, employers must consult with their workforces before undertaking any restructuring that leads to group dismissals. However, employee influence over the consequences stems largely from collective bargaining. Where unions are well organised, they are able to ameliorate the effects on employees of restructuring, often using political pressure as a key tactic in the bargaining process, but this influence varies across firms.
Italy	The principal way in which employees are able to influence restructuring is through collective bargaining, at both company and sectoral levels. In doing so they can use the information and consultation procedures laid down by law, such as those relating to collective dismissals. Complementing the role of collective bargaining are the company level information and consultation procedures.
Spain	Formally, employees have the right to receive the same information as the shareholders. Management must allow worker representatives to formally set out their views in writing if the changes affect employment, but this report is not binding on management. Only when restructuring leads to significant changes to the terms of statutory collective agreements is there an obligation on management to reach agreement with employee representatives before introducing them. Collective dismissals are strongly regulated in Spain, but recent reforms have made it easier for managers to make redundancies.



Country	Key features of the system
France	<i>Comité d'entreprises</i> have the right to be informed and consulted three months prior to any restructuring. Since 2001, they have the same prerogatives as other minority shareholders and a work's council delegation has access (a right of discussion) to the company boards. In public companies, employee representatives hold one third of the seats on the board. However, employee representatives appear to have only a limited effect on changing management's plans in practice. Some instances of unions appealing to politicians for support and works councils have had some success in the courts in arguing that the process of consultation was not followed fully.
Ireland	There is very little in the way of formal, institutional power to affect corporate restructuring, with a minimalist legal framework based on the EU directives on transfer of undertakings and collective redundancies. Where unions are well organised, they have the ability to exert some influence, and this is particularly the case in 'social partnership' deals. Such social partnership arrangements may be strengthened by the EU directive on information and consultation, but currently these arrangements lack strong institutional foundations. There is a stronger employee influence in the public sector, with a legal obligation for the employer to consult and inform, and a right to employee participation on the boards of certain State enterprises.
UK	There is a minimalist legal framework. Such rights as exist stem from EU directives on the transfer of undertakings, collective redundancies and the forthcoming implementation of the information and consultation directive. Therefore, the ability of employee representatives to influence restructuring stems from unions' strength at firm and plant level, meaning that there is considerable variation in this respect. Recently, the limited growth of 'partnership' deals at firm level has afforded employee representatives a modest increase in influence over restructuring.
Source: Adapted from EIRO (2002) 'Corporate governance systems and the nature of industrial restructuring', Dublin, September 2002, <a href="http://www.eiro.eurofound.eu.int/2002/09/study/tn0209101s.html">http://www.eiro.eurofound.eu.int/2002/09/study/tn0209101s.html</a> .	

an insider model. Overall, though, the UK system is similar in many respects to that in the United States: shareholdings are dispersed and fluid; there is an active market in corporate control; managerial remuneration is in large part tied to shares and profit-related bonuses; relationships between management and shareholders are arm's length; and employee rights are generally weak.

### 3.5. Summary

One common tendency is that in many countries which are considered to possess an insider system of corporate ownership, some of the characteristic features of outsider systems are becoming more evident. This is particularly true of France, but there also clear signs in Sweden, Finland, Germany and the Netherlands. This is the key pattern and constitutes a process of convergence along Anglo-Saxon lines. However, these developments are occurring in highly uneven ways with change being much more detectable in large, internationalised companies than in small and medium-sized ones, and with strong countervailing tendencies based on institu-

tionalised mechanisms for union and employee representation and consultation within enterprises. Moreover, in many insider systems, for instance in Austria, Belgium or Denmark, little change is observed, and even in an outsider system such as the UK, there appear to be some limited moves in the direction of the insider voice. Overall, then, change is not occurring in a tidy, convergent way, and diversity both across and within EU Member States remains a key feature.

Generally, the predominant picture across the EU appears to be that changing external pressures do not radically alter the basic nature of industrial relations frameworks. Indeed, many firms in insider systems, and even some in outsider systems, are willing to use collective bargaining and other mechanisms that promote dialogue to facilitate change. Corporate ownership patterns and industrial relations frameworks therefore appear to be becoming hybridised as they evolve in response to both external challenges and also to the actions of actors and firms within the system.

This discussion has sought deliberately to provide an overview of the main trends and variations in the nature of corporate ownership patterns and industrial relations institutions in the EU Member States. Such an overview is of necessity simplified, leaving out many details. The overview showed significant diversity across the EU and demonstrated that there is considerable change with more emphasis being put on shareholder value, but with significant variation in the presence or even strengthening of mechanisms supporting the 'voice' of other stakeholders. Hence, the direction and pace of change is not the same everywhere. The true picture of the interrelationship between corporate ownership patterns and industrial relations is complex and there are other social and cultural factors that matter as well. For example, in a study of corporate governance and employment relations in seven UK firms, the findings of Deakin et al. <sup>(135)</sup> suggest that although the national institutional framework is an important influence on employment relations, corporate actors nevertheless have a 'strategic space' within which to develop solutions. Their research

(135) S. Deakin R. Hobbs, S. Konzelmann and F. Wilkinson (2001), 'Partnership, Ownership and Control: The Impact of Corporate Governance on Employment Relations', Working Paper No 200, Centre for Business Research, University of Cambridge.



indicates that the attitude of management, and the managing of shareholders' attitudes in particular, is important. Similarly, strong trade unions, with a good understanding of the industry and company as well as the ability to manage and mediate between both employees and managers, are crucial. This finding was also apparent in the study of the approach of German works councils to company restructuring and adaptation to international competition <sup>(136)</sup>. Finally, they also suggest that certain environmental factors, such as the firm's market and regulatory frameworks, may influence the terms and conditions for, and the durability of partnership.

### 3.6. The new Member States

What are the implications of this discussion for the new Member States? The change from traditional public sector management to outsider forms of corporate ownership is already in evidence in the new Member States both through the growing importance of foreign direct investment by multinational corporations (MNCs) and by portfolio investment by financial institutions in domestic companies. These pressures not only have direct effects, but also serve to inform the choices of policy-makers as to the desirability of these distinct models in the continued creation of institutional frameworks in the fields of corporate governance and industrial relations. One implication concerns the extent to which the new Member States are characterised by systems of social dialogue and partnership. Where this is the case, the evolution of the corporate ownership system towards outsider norms presents a challenge to the institutions promoting dialogue and partnership. In other new Member States where such institutions are absent or extremely weak, the moves towards outsider systems of corporate ownership would seem to create fewer tensions, but other

countervailing tendencies, arising from politics or union pressure, more along the model found in southern Europe, may be found. Perhaps the most likely outcome of enlargement is that a further range of hybridised models will emerge, creating even more diversity across the EU.

### 3.7. Policy implications

Although further research into these issues continues to be necessary in order to fully understand the links between corporate ownership patterns and industrial relations as well as the interplay of other factors, the variations and trends which have been identified above have implications for policy.

Firstly, social partnership appears to be well-rooted. In most of EU-15, it has the status of a 'value' and is part of the industrial relations culture. In addition, by helping to generate trust, social partnership serves a functional purpose in helping to bring about more consensual adaptation to change. It is therefore something which needs to be encouraged, particularly in the new Member States, most of which have rather weak traditions of social dialogue (see Chapters 1, 3 and 6).

Secondly, the diversity and trends identified demonstrate the importance of institutional design, as the rules in place, particularly for employee information and consultation, clearly do influence the way in which restructuring occurs. For national and European policy matters it is extremely important to find the right mix, as there is probably no 'one-size-fits-all' policy or institution. With the purpose of creating an anticipative approach to managing change, a broader base for the acceptance of change and lowering social and personal costs, well-designed European rules on information and consultation

can play a supporting role. In this context the general framework for informing and consulting employees in companies situated in the EU established by EU Directive 2002/14/EC, offers not only protection for employees, but also a business tool for anticipating and managing change. It provides for minimum standards of information and consultation of employees, while leaving considerable leeway for Member States and their individual businesses to apply the rules in a way best suited to them.

Thirdly, the fact that the responses to similar pressures are not uniform, in conjunction with the growing evidence of a modest growth in employee influence in the UK — a country with relatively weak employee rights — demonstrates that other, non-institutional factors also matter. This evidence indicates that the role and attitude of individuals is important, suggesting that education and awareness-raising with regard to the instrumental role and benefits of social dialogue and partnership are also important avenues for encouraging responsible corporate behaviour, including the responsible anticipation and management of change in cases of restructuring.

## ■ 4. EU initiatives in the field of company-level industrial relations

The EU has adopted several important initiatives over the years in the field of company-level industrial relations, relating in particular to worker information and consultation. In recent years the EU has adopted a more anticipative approach. The most recent EU legislation promotes upstream worker involvement, notably on strategic issues and on the foreseeable evolution of employment within companies. It seeks to ensure

(136) W. Streeck et al. (2003), 'Germany Ltd ...', *op.cit.*

the timely development of the employability and adaptability of the European workforce to help it successfully face the challenges of change. A distinction is made between legislative and non-legislative developments.

#### 4.1. Legislative developments

*Collective redundancies directive of 1975* <sup>(137)</sup>: The directive provides that an employer who envisages collective redundancies must provide employee representatives with specified information concerning the proposed redundancies and must consult with the workers' representatives in good time with a view to reaching an agreement. These consultations should cover ways of avoiding or of reducing the redundancies and of mitigating their consequences by recourse to social accompanying measures aimed at, in particular, aid for redeployment and retraining of the redundant workers.

*Transfers of undertakings directive of 1977* <sup>(138)</sup>: The directive provides that both the transferor and transferee must provide specified information to the representatives of employees affected by the proposed transfer and, if either party envisages measures in relation to the employees, their representatives must be consulted with a view to reaching agreement.

*The European works councils (EWCs) directive of 1994* <sup>(139)</sup>: The directive applies to undertakings or groups with at least 1 000 employees and at least 150 employees in each of two Member States. It allows for the establishment of a European works council — representing of employees in the Member States where the group has operations — which must be informed and consulted on the progress of the business and any significant changes envisaged. To date, European works councils have

been established in some 650 transnational groups (see Table 5.7 and Box 5.1. and 5.2).

*European company (SE) of 2001* <sup>(140)</sup>: The directive provides for rules on information, consultation and possibly participation in the European company (SE). When an SE is to be created, negotiations between management and employees' representatives must start as regards employees' involvement in the future SE. If the negotiations fail, standard rules will apply, according to which a representative body for the employees shall obtain information and be consulted on transnational matters. Board representation shall apply according to the standard rules if employees have previously had such a right in any of the participating companies.

*Information and consultation directive of 2002* <sup>(141)</sup>: The directive seeks to strengthen dialogue within enterpris-

es and ensure employee involvement upstream of decision-making with a view to better anticipation of problems and the prevention of crises. It applies to undertakings with at least 50 employees or establishments with at least 20, and provides that employee representatives be informed and consulted on developments relating to the economic situation of the undertaking, the development of employment and decisions likely to lead to changes in work organisation or contractual relations. The deadline for transposition of the directive by the Member States is March 2005.

*European cooperative society (SCE) of 2003* <sup>(142)</sup>: Directive providing for rules on information, consultation and possibly participation in the European cooperative society (SCE). The directive contains a similar model regarding employees' involvement to that of the SE.

**TABLE 5.7: NUMBER OF EUROPEAN WORKS' COUNCIL AGREEMENTS IN 2002, BY COUNTRY**

Country	Number of EWC agreements
<b>EU</b>	
Germany	155
France	78
UK	70
Belgium	70
Netherlands	46
Sweden	35
Italy	31
Ireland	28
Finland	22
Austria	12
Denmark	10
Luxembourg	9
Spain	5
Greece	1
<b>Non-EU</b>	
Norway	11
Switzerland	6

Source: Opinion of the European Economic and Social Committee on the 'Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised' (exploratory opinion) of 24 September 2003, EESC (EC) No 1164/2003. Some of the EESC's figures are derived from the ETUC Infopoint database and the European Trade Union Institute, *European works councils – facts and figures*, Brussels, November 2002.

(137) Consolidated by Council Directive 98/59/EC of 20.07.1998, OJ L 225, 12.8.1998, p. 16.

(138) Consolidated by Council Directive 2001/23/EC of 12.3.2001, OJ L 82, 23.3.2001, p. 16.

(139) Council Directive 94/45/EC of 22.9.1994, OJ L 254, 30.9.1994, p. 64.

(140) OJ L 294, 10.11.2001, p. 22.

(141) Directive 2002/14/EC of the European Parliament and the Council of 11.3.2002, OJ L 80, 23.3.2002, p. 29.

(142) OJ L 207, 18.8.2003, p. 25.

### Box 5.1: The evolution of European works councils (EWCs)

The European Economic and Social Committee (EESC), at the request of the Commission, prepared an exploratory opinion on the evolution of European works councils <sup>(143)</sup>. In its opinion, which was adopted in September 2003, the EESC notes that various studies analysing the operation of European works councils point to a dynamic process of development, and a growing recognition of the positive role played by them in promoting social dialogue within companies, including in cases of restructuring. This dynamism can be seen both in the manner in which EWC agreements appear to be developing as well as in their functioning in practice.

As regards EWC agreements, one of the practical problems regarding the application of the directive, mentioned in the Commission's report of April 2000, was the fact that some of the negotiated agreements seemed to provide for only a very low level of transnational information and consultation. What appears to be happening, however, is that as agreements expire, their content is being fleshed out more fully when they are renegotiated. In some cases, this reflects the incorporation of experience and best practice from outside the EWC in question, but in other cases it is a result of the development of greater trust among the parties as a result of the experience which has been gained and which has enabled reservations which may have existed at the outset being overcome. Such renegotiated agreements often result in the strengthening of the EWCs with regard to the frequency of meetings and the prerogatives and facilities granted to employee representatives.

The developing scope of EWC agreements is also evident from the extension of the range of issues they deal with. In many agreements the issues on which employees are to be informed and consulted has been extended far beyond the core topics referred to in the annex to the directive. Issues with a strong European dimension such as health and safety, equal opportunities, training and mobility, and environmental policy are now also the subject of employee/management consultation. The range of issues finding their way on to EWC agendas is also being extended in many cases through actual practice rather than through formal extension of the agreement.

This process of dynamic development within EWCs has, perhaps, reached its fullest expression to date with the emergence, in recent years, of a negotiating role within some EWCs. This has led to the conclusion of agreements between management and employee representatives on joint texts that go far beyond the basic information and consultation requirements of the directive. In addition to agreements in the areas mentioned above, the issues addressed in such joint texts include the consequences of restructuring, trade union rights and fundamental social rights. With regard to the issue of restructuring, what has been extremely interesting to observe is how, in some instances, the EWC has been used as a forum in which management and employees have reached agreement on how the restructuring of their European operations should be implemented.

### Box 5.2: European works councils (EWCs) — some facts and figures <sup>(144)</sup>

- At the end of 2002, out of an estimated total of 1 865 companies or groups of companies employing 17 million people falling within the scope of the EWC directive, some 639, with 11 million employees, had an EWC.
- Some 1 200 companies and groups covered by the directive and employing roughly 6 million people, have yet to establish an EWC or a procedure for informing and consulting employees.
- More than half of the agreements were concluded in 1996 alone. Since then some 40 agreements have been concluded annually.
- 72 % (400) of these agreements were concluded under Article 13 prior to the entry into force of the directive, and 28 % under Article 6, after its entry into force.
- A quarter of the agreements fall under German law, 12–13 % fall under French, Belgian or UK law, 4 to 7 % under Dutch, Swedish, Italian, Irish or Finnish law.
- More than 10 000 employee representatives are now directly involved in the work of EWCs and in implementing intercultural exchanges and practices.
- In half of the agreements, restructuring issues are included in the remit of the EWC; 51 % of the agreements mention mergers; 47 % closures, and 53 % relocations.
- In 2002, 547 companies or groups having a subsidiary in one of the new Member States came under the scope of the directive. Of these, 323 had already set up an EWC, 30 % of which included members or observers from the new Member States.
- The incidence is highest in Poland (50), the Czech Republic (26), Hungary (23) and Slovakia (16) <sup>(145)</sup>. In March 2004, all acceding countries except Estonia and Lithuania had transposed Directive 94/45/EC into national legislation.

## 4.2. Non-legislative Commission initiatives

**Corporate social responsibility (CSR):** As a follow-up to the Green Paper on Corporate Social Responsibility <sup>(146)</sup>, and the Commission communication on 'Corporate social responsibility: A

business contribution to sustainable development' <sup>(147)</sup>, the Commission promotes a concept of CSR which implies a continuous commitment by business to behave fairly and responsibly and contribute to economic development while improving the quality of life of the workforce as well

as of society at large, including in times of restructuring and in the anticipation of change. In 2002 the Commission created the EU Multi-Stakeholder Forum on CSR, the aim of which is to promote innovation, transparency and convergence of CSR practices and instruments. The forum

<sup>(143)</sup> *Opinion of the European Economic and Social Committee on the 'Practical application of the European Works Councils Directive 94/45/EC and on any aspects of the directive that might need to be revised' (exploratory opinion) of 24 September 2003, EESC (EC) No 1164/2003.*

<sup>(144)</sup> *These figures are approximations.*

<sup>(145)</sup> *P. Kerkhoffs (2002), European works councils: facts and figures, Brussels, European Trade Union Institute.*

<sup>(146)</sup> *COM(2001) 366 final.*

<sup>(147)</sup> *COM(2002) 347 final.*

presented a report in summer 2004 and the Commission is now scheduled to adopt a communication assessing progress in the implementation of its CSR strategy and proposing the next steps to be taken <sup>(148)</sup>.

*Follow-up to the Commission's communication on the European social dialogue, a force for innovation and change* <sup>(149)</sup>: In the communication, the Commission underlines that attainment of the strategic goals set in Lisbon — growth, full employment and social cohesion — depends to a considerable extent on the action taken by the social partners at all levels. The European social dialogue is therefore seen as a key tool for ensuring the positive management of change, in order to reconcile the flexibility essential to businesses with the security needed by employees, particularly in the event of major restructuring. The Commission is therefore encouraging and supporting financially and logistically the initiatives of the social partners on restructuring in the framework of their joint work programme for 2003–05. This includes a study on restructuring in the new Member States.

*The European Monitoring Centre on Change (EMCC)* <sup>(150)</sup>: The EMCC was established in October 2001 with the purpose of providing accessible, reliable data and opportunities to exchange views, ideas and practice in order to bring about better understanding, anticipation and management of change. The EMCC's objective is to provide the tools for key actors in European social policy to make more informed decisions about managing the processes of change. It seeks, through data collection, analysis, investigation and networking, to identify business strategies and institutional policies that support the process of change in socially accept-

able ways, with the aim of providing users at different levels — regional, sector, national, company, EU and global levels — with a single access point to information on change. Some 1 500 case studies of restructuring have been recorded so far by the EMCC.

### 4.3. Other international initiatives

*International framework agreements*: Over the last decade, in response to pressure from the media, consumers,

trade unions and civil society organisations, enterprises have initiated social responsibility initiatives which aim at improving their social and environmental performance. In addition to CSR schemes autonomously promoted by individual companies, multi-stakeholder initiatives are being promoted by multinational companies and global trade union federations as well as by EU level social partners <sup>(151)</sup>.

Since 1995, the European sectoral social partners have concluded charters and codes of conduct dealing with CSR issues (see Chapter 3). These

**TABLE 5.8: INTERNATIONAL FRAMEWORK AGREEMENTS ON CORPORATE SOCIAL RESPONSIBILITY (CSR)**

Chemical, Mining (ICEM)	Statoil (Norway), 1998 IKEA (Sweden), 1998 Freudenberg (Germany), 2000 Endesa (Spain), 2002 Norske skog (Norway), 2002 AngloGold (South Africa), 2002 ENI (Italy), 2002
Building, Timber (IFBWW)	Faber-Castell (Germany), 2000 Hochtief (Germany), 2000 Skånska (Sweden), 2001 Ballast-Nedam (Netherlands), 2002
Metal industry (IMF)	Merloni Elettrodomestici (Italy), 2001 Volkswagen (Germany), 2002 DaimlerChrysler (Germany), 2002 Leoni (Germany), 2003 GEA (Germany), 2003 SKF (Sweden), 2003 Rheinmetall (Germany), 2003
Food and Agriculture, Hotels and Tobacco (IUF)	ACCOR (France), 1995 Danone (France), 1988 Chiquita (United States), 2001 Fonterra (New Zealand), 2002 Club Méditerranée (France), 2003
Networks (UNI)	Telefonica (Spain), 2000 Carrefour (France), 2001 OTE (Greece), 2001 H&M (Sweden), 2003
Transport (ITF)	IMEC (professional maritime organisation), 2000
Source: ICFTU website, <a href="http://www.icftu.org/displaydocument.asp?Index=991216332&amp;language=EN">http://www.icftu.org/displaydocument.asp?Index=991216332&amp;language=EN</a>	

(148) For a more extensive discussion of CSR and related European social partner initiatives, see Chapter 3.

(149) European Commission, *The European social dialogue, a force for innovation and change*, (COM(2002) 341 final).

(150) [www.eurofound.eu.int/emcc/emcc.htm](http://www.eurofound.eu.int/emcc/emcc.htm)

(151) ILO (2002), *Guide to the tripartite declaration of principles concerning multinational enterprises and social policy*, ILO multinational enterprises programme, Geneva.



texts represent a significant innovation insofar as they go beyond the traditional field of the European social dialogue, dealing in particular with the rights of persons living in third countries. Since 1988, several framework agreements have been signed between multinational enterprises (MNEs) and global trade union federations concerning the international activities of these companies. To date, framework agreements have been entered into between MNEs and global trade union federations in several major sectors of operation (see Table 5.8).

As part of these agreements, the company and global trade union recognise common minimum standards for the operations of the MNE around the world. Nearly all of these agreements incorporate the ILO fundamental principles and rights at work. Other issues such as vocational guidance and training, however, feature less often in the agreements. A further challenge for these agreements relates to handling employment issues, in the event of restructuring.

These agreements represent an innovative approach towards a new form of international social dialogue. They attempt to respond to one of the challenges of globalisation, namely the diversity of local situations and national legislative frameworks. They indirectly address the credibility challenge of CSR initiatives by involving stakeholders in partnerships with companies. As framework agreements involve globally active partners, the methods for implementation can be particularly effective, provided that such agreements have a system for dispute settlement and periodic review of the terms and implementation of the agreement based on criteria agreed by both sides.

## ■ 5. Anticipating and managing change at company level: the social partner case studies

Since 2002 the cross-industry European social partners have wanted to pursue a more 'autonomous' social dialogue (see Chapter 3). The European social partners have therefore recently begun to address the issue of restructuring, and the topic was included in their joint work programme for 2003–05. The social partners' deliberations on restructuring were originally triggered by a Commission consultation under Article 138 of the EC Treaty on 'Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring' launched in January 2002. This consultation paper explains that the Lisbon strategy is based on a positive approach to change. Change is viewed as contributing to innovation, increasing productivity by modernising the organisation of work, and improving profitability. It should therefore be embraced, anticipated and managed responsibly.

In response to the Commission consultation, during 2002–03 the cross-industry social partners held three seminars examining case studies of restructuring and on 29 October 2003, they presented a joint text to the Commission entitled 'Orientations for reference in managing change and its social consequences'. The orientations stress the importance of the following elements:

- the need to explain and give the reasons for change in good time to workers and/or their representatives and the need for good information and consultation of workers throughout the process of change;

- the need to develop the employability of employees by maintaining and developing their competences and qualifications;
- the territorial dimension, namely the importance of partnership between employers, trade unions and local/regional public authorities, when economic and social changes have serious repercussions for an entire region. Such cooperation can play a useful role in fostering new job-creating economic activities, managing reassignments and improving the operation of the local labour market;
- the specific situation of SMEs, namely their role regarding job creation, their potential dependence on one large customer, and the particular challenges facing SMEs when they themselves restructure;
- the local management of restructuring, including the possibility of 'social plans' and the exploration of all possible alternatives to dismissals.

Ten case studies of restructuring are annexed to these orientations. Seven relate to fairly large companies, two to SMEs, and one to the reconversion of Asturias, a Spanish region dominated by traditional, State-owned industries. These case studies are based on the reflections of both a manager and a worker representative from each firm. Each case study highlights the range of motives that firms have in undertaking restructuring.

One motive that drove restructuring in organisations such as Norsk Hydro, Danone and Metso was the need to reduce costs in a context of over-capacity. Another driver was the desire to significantly reduce production costs by relocating some operations to lower costs countries, as was the case in Marzotto and Abeil. In yet



TABLE 5.9: TEN CASE STUDIES OF RESTRUCTURING

Company/area	Country	Division / product affected	Reasons for restructuring
Norsk Hydro	Norway	Fertilisers	Overcapacity
Danone	France	Biscuit production	Overcapacity
Marzotto	Italy	Textiles	Relocation to lower costs countries
Deutsche Telekom	Germany	Telecoms	Privatisation and adaptation to technological change
Barclays	UK	Financial services	Refocus on core business
Siemens	Germany	Micro-electronics and lighting	Refocus on core business
Asturias	Spain	Mining	Privatisation
Auwers	Germany	Industrial cleaning	Financial crisis
Abeil	France	Textiles	Relocation to lower costs countries
Metso	Finland	Board machines for the paper industry	Overcapacity

other cases restructuring was motivated by new pressures associated with privatisation or changing technologies, for instance Deutsche Telekom. In some firms, restructuring is brought about by a desire to focus activities more narrowly on certain core businesses, as was the case at Siemens or at Barclays, and in others, it is driven by financial crisis, as in the case of Auwers (see Table 5.9).

In some of these case studies, there were adverse consequences for employees, for example in those instances of restructuring which resulted in redundancies, as at Norsk Hydro, Marzotto, Danone and Metso. However, the consequences for employees are not always negative. In some of the case studies, such as Barclays, there was no detectable adverse impact on employment levels; and the restructuring at Siemens was followed by a rise in employment at the Infineon subsidiary.

Even where the consequences for employees are negative, the case studies suggest that social dialogue can help in minimising the adverse consequences for employees. The case studies provided some evidence of worker involvement in restructuring in the new Member States, such as the case of Danone in Hungary. Even in the case of Marzotto, where plans to relocate work to new Member States (the Czech Republic and Lithuania) were largely accepted by the unions, amendments to these plans were secured

through negotiations leading to a minimisation of the amount of work to be relocated and agreement on assistance for job search for redundant workers.

Indeed, across the case studies, assistance to displaced workers in searching for new employment appeared to be a key mechanism for generating acceptance to change. One example of how social dialogue lessened the consequences for employees is through the provision of outplacement assistance, for example, at Norsk Hydro, Danone and Metso. Another illustration is Deutsche Telekom's use of an Internal Human Resources Services Agency to bring about internal redeployment.

A further dimension of the case studies was the institutionalisation of EWCs as part of regular processes of consultation. For example, the EWC was heavily involved in the 'turn-around project' at Norsk Hydro, complementing the negotiation of 'social plans' and involvement of outplacement services which were decided locally. Another illustration is in the case of Danone where the EWC build on a well-established tradition of management dealings with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF/UITA). Negotiations took place at the local level, but in the framework of a joint opinion agreed with the international trade union in the sector. Moreover,

the two instances of restructuring at Siemens were subject to local negotiations but within procedures agreed by the EWC.

Cooperation with local and regional authorities was also helpful in some cases. For example, there was a territorial pact for employment in the mining municipality of Asturias, a regional institutional pact for employment concluded between trade unions and the regional government, as well as a plan for the mining sector and the reconversion of mining districts negotiated by the government and sectoral trade unions at national level. Being an objective I region, financial support from the Structural Funds played an important role. In Finland, the case study of restructuring in board machines production at the Valmet Corporation in Tampere, which is part of the Metso Corporation, demonstrates the effective re-employment efforts undertaken by the personnel management and union representatives, Tampere City, local industry and employment authorities, the chamber of commerce, and the trade unions.

## ■ 6. The implications of EU policies on company-level industrial relations in the new Member States

EU membership will have numerous implications for company-level industrial relations in the new Member States. Firstly, the provisions of the EU labour law directives will have a direct impact at enterprise level, in particular though the procedures they provide for the involvement of employee representatives in restructuring.

In the first instance, the main concern with regard to the new Member States will be to ensure that these directives are correctly transposed into national law. This has obviously been a major preoccupation of the monitoring process to date and will be the subject of more rigorous and detailed verification and enforcement after accession.

However, an even greater challenge will be to ensure that the relevant implementing legislation in the new Member States is effectively applied in practice. In EU-15, failure to follow prescribed information and consultation procedures in some restructuring situations has been an issue. Indeed, it was such failures which provided at least part of the motivation for the adoption of the information and consultation directive and which also urged the trade unions to call for a revision of the directive on EWCs. The emphasis on the development of administrative and enforcement capacity which has been a key theme of the monitoring process will therefore have to be continued.

However, beyond the administrative capacity to enforce legislation, the ability of the actors themselves at enterprise level to discharge the role

envisaged for them in the relevant legislation will be an issue. In seeking to establish effective information and consultation mechanisms at the enterprise level, the new Member States face some considerable challenges, as there is little tradition at company level of either strong trade union representation or elected employee representatives (see Chapter 1).

The Commission has actively sought to encourage and support the development of the relevant social dialogue structures at enterprise, sectoral and cross-industry levels. The social dialogue budget headings have sought to focus support on relevant capacity-building among social partners in the candidate countries (see Chapter 3). At the enterprise level more specifically, Budget Heading 04-03-03-03 (ex-B3-4003), which deals with information, consultation and participation at the enterprise level, has sought to prepare representatives from the candidate countries for the roles they will assume under the relevant Community legislation on employee involvement. This emphasis on the needs of the new and future Member States will be continued in the medium term.

The absence of relevant traditions and structures in the new Member States for enterprise-level employee involvement in restructuring decisions lends increased importance to the extension to them of the EVC directive. Since 1 May 2004, undertakings and groups falling within the scope of the directive will be obliged to include representatives from their operations in the new Member States within their EVC. This should assist and accelerate the development of appropriate employee involvement mechanisms in the new Member States through these representatives being exposed to and learning from their colleagues in EU-15. Happily, this process of including representatives

from the acceding countries has already commenced in many EWCs in advance of the legal requirement. The importance of the issue is reflected by the fact that the European cross-industry social partners have included an examination of the implementation of the EVC directive after enlargement in their joint work programme for 2003–05.

While the effective implementation of the relevant employee involvement directives would represent a very significant positive factor in managing restructuring at the enterprise level, it is worth pointing out that the new Member States face additional challenges in terms of the wider industrial relations environment. In existing Member States, the employee involvement directives operate within national frameworks of industrial relations which often create a favourable environment for their effective implementation in terms of dealing with restructuring. In addition to employee involvement rules which often go further and take more diversified forms than those established at Community level, most Member States have developed their own responses to the economic and social challenges associated with restructuring. There are sets of rules, either statutory or agreement-based, with which businesses engaged in restructuring should comply as well as good practices that they can follow, addressing issues such as:

- anticipating and measuring the social consequences of restructuring, including taking into consideration the fact that delaying limited restructuring may lead to more drastic restructuring in the future;
- the principle whereby job losses and redundancies are only a last resort (*ultima ratio*), to be used in the absence of other, less drastic solutions;

- the effective search, by providing the necessary resources or by achieving certain expected results, for alternative solutions, such as redeployment, training or retraining of the workers concerned, the phasing of the planned measures over time, the reorganisation of work, including working time, as a precondition for the use of more radical measures, help with job-seeking, occupational guidance, supporting the development of self-employment or the creation of SMEs by the workers affected, support for workers taking over certain activities of the business, etc.;
- the search for someone to take over the interrupted activities;
- the rehabilitation and reallocation of abandoned industrial sites both as an environmental measure and to absorb a proportion of the jobs lost.

The new Member States will be confronted with difficult challenges in adopting and applying such rules and practices. In most cases, this will have to be done almost from scratch. A pro-active approach from the EU will therefore be helpful with a view to helping the new Member States to create the appropriate legal frameworks as well as developing the supporting industrial relations systems.



# Employment and working conditions in the new Member States <sup>(152)</sup>

## ■ 1. Introduction

Following the EU's enlargement with 10 new Member States joining on 1 May 2004, this chapter seeks to provide information on employment and working conditions in the new Member States, in particular at the enterprise level in relation to the four key elements defined by the EU's Lisbon strategy:

- Adaptability to change: to what extent are the new Member States demonstrating an ability to adapt to changing conditions?
- Social cohesion: how cohesive are the new Member States?
- Sustainability: how sustainable are the systems that have been put in place (during the transition as well as a result of EU accession) with regard to today's principal demographic, economic and social challenges?
- Partnership: to what extent are these societies based on broad participation, social dialogue and participatory mechanisms?

The chapter examines the full range of employment and working conditions at enterprise level, including employment contracts, working time, wages, occupational health and safety, stress at work, reconciliation of work and family life, social dialogue and industrial relations more generally.

The employment and working conditions indicated in this chapter, and the trends identified, are based on work

done by the International Labour Organisation (ILO) on the basis of the Eurostat Labour Force Survey, European Household Panel data, the 2001 survey of the European Foundation (Dublin) on EU-10 <sup>(153)</sup> (the latest available), as well as expert country case studies as part of an ILO project on developments at enterprise level.

## ■ 2. Adaptability to change

The assessment of employment and working conditions in the new Member States points to a first major conclusion: not only is their general responsiveness to change very strong but they have also shown initiative in the adaptation process by developing innovative policies and practices. This can be observed in all aspects of working conditions.

At the same time, reality at enterprise level points to a second major conclusion: this adaptation to difficult circumstances has often resulted in poor and probably unsustainable working conditions. This is observable in a number of areas of working conditions, for instance, in employment status and contracting, but also in working time, occupational health and safety, and remuneration practices.

### 2.1. Adapting to difficult circumstances

Work under the previous communist regime was characterised by very low wages but also the guarantee of life-

long employment. The shift to a free market economy has brought radical changes in patterns of employment, remuneration and working conditions. The transition years brought with them restructuring on an unprecedented scale, resulting in large-scale redundancies and soaring unemployment. As the new private sector emerged and developed, new enterprises started to leave former corporate models behind and to adopt new forms of employment and working-time arrangements in order to adapt to the new exposure to competition.

### 2.2. Temporary contracts

Although this form of employment did not exist in the previous communist regime and early years of transition, as most workers were employed on permanent contracts, fixed-term work has become a major form of employment and is being increasingly used (as in EU-15) as an important source of flexibility. Currently, the average share of fixed-term contracts in EU-10 is about 10 %, slightly below the EU average of 11 %. However, a few countries, such as Poland (14 %) and Slovenia (12 %), have seen employers making more systematic use of such employment contracts (see Chart 6.1). For employers, this has the advantage of reducing costs in the event of termination of employment. In Poland, the use of such contracts increased by nearly 25 % in 2003 alone. Polish legislation with regard to this type of contract is particularly permissive, providing a strong incentive for employers to make use of such flexible forms of employment contract.

<sup>(152)</sup> This chapter is based on a contribution by Dr Daniel Vaughan-Whitehead of the International Labour Organisation (ILO).

<sup>(153)</sup> European Foundation for the Improvement of Living and Working Conditions (2003), Working conditions in the acceding and candidate countries, Luxembourg, Office for Official Publications of the European Communities.



Chart 6.1: Temporary work (as a % of total employees), 1997-2003

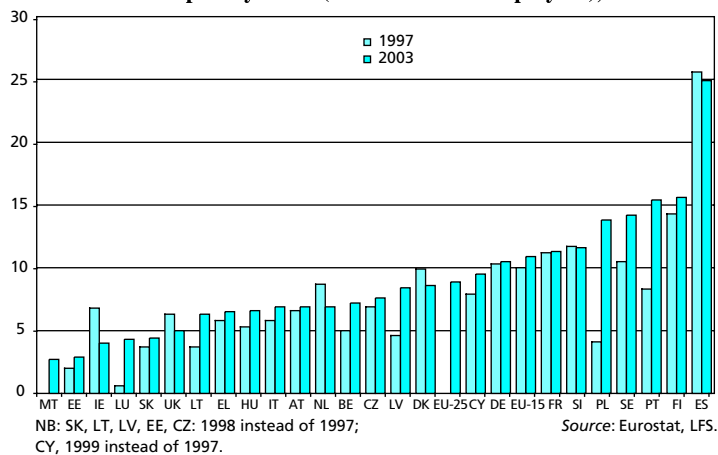
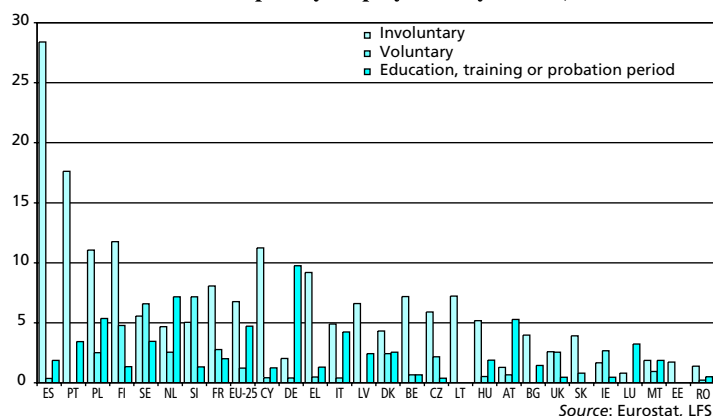


Chart 6.2: Temporary employment by reason, 2003



Temporary work can be an important stepping stone to more permanent employment. Nevertheless, there is a strong correlation between the development of temporary employment and the share of employees responding that this is not their first choice, but involuntary, suggesting that unemployment is the main factor making them accept the insecurity of temporary employment contracts. Besides the high incidence of involuntary temporary jobs in southern Member States such as Spain and Portugal (and to a lesser extent in Greece and Italy) not counting the 'underground economy', one can observe relatively high shares of involuntary temporary employment in Poland, Cyprus, Latvia, the Czech Republic and Lithuania (see Chart 6.2).

### 2.3. The development of interim agencies

Another new phenomenon is the use of interim employment agencies. Although this type of employment is only in its infancy — all new Member States being well below the EU average — a growing proportion of employment contracts are being concluded through the intervention of such agencies.

This phenomenon is most widespread in Latvia, Slovenia and Malta (around 10 % of the labour force). These contracts remain limited in the other new Member States. In Estonia, only 1.2 % of employees were employed through interim agency contracts, although this figure is rising. In Hungary, only 282 temporary agencies existed in

2002, employing 0.8 % of the total number of employees, including their own permanent staff, who represented half of this figure. The agencies had contracts with only 1 289 employers, something that remains insignificant compared to the total number of employers (close to 1 million with more than four employees). Moreover, this practice does not seem to be well regulated at present. Since several agencies were found to have leased workers to only one employer, there are reasons to believe that many of them have been created by the employers themselves as a way of reducing their labour costs and social security contributions.

### 2.4. Self-employment as a source of flexibility

The most commonly used form of flexibility which appears to be emerging in the new Member States is recourse to self-employment (see Chart 6.3).

In 2003, 24 % of employees were self-employed in Poland, 17 % in the Czech Republic and Lithuania, and 13 % in Hungary, compared to an EU average of 14 %. In EU-15, the highest incidence of self-employment is found in Greece (32 %), Portugal (26 %), Italy (23 %) and Spain (17 %). In each of the southern Member States self-employment is very much associated with small farmers and retailing, and is declining. In Ireland and the UK, two more Member States with a relatively high incidence of self-employment, there has been a fall in its share between 1997 and 2003. The opposite trend can be observed in many of the EU-10 countries, with significant rises in Slovakia, the Czech Republic, Lithuania and Estonia, but small reductions in Poland and Hungary (the data for Cyprus, Malta, Latvia and Slovenia does not allow comparison).

The figures indicate a large increase in the number of self-employed over the last few years. However, in making

comparisons between countries it is important to control the size of the agricultural sector, in particular where there are many small independent farmers. Moreover, some 'self-employed' are actually small employers who employ one or more people on a perhaps part-time or irregular basis. This latter category, also existing in EU-15 and making up some 5 % of total employment, consists mainly of managers (42 %) and professionals (19 %). The self-employed (without employees) are mainly found in three sectors: agriculture (49 %), wholesale and retail trade (21 %) and construction (23 %) <sup>(154)</sup>. In EU-15, the sectoral concentration of self-employment is rather similar, but with a stronger bias towards agriculture (74 %). The difference, then, between EU-15 and EU-10 is that in the new Member States self-employment is more frequent in other sectors, such as manufacturing, financial services and even some public services, and it is also rising.

In the same way as temporary contracts, self-employment is providing a new source of flexibility. This may be partly because it enables employers to reduce their social security contributions and employees to have higher rates of net pay, but with less insurance and higher risks. This development is significant in Poland, Hungary, Lithuania, Latvia and Estonia, but has also been reported in the UK, Ireland, Portugal, the Netherlands and in some of the other EU-15 countries. These new forms of self-employment often involve a form of subcontracting, avoiding social security contributions and coverage by labour laws. While there may be short-term flexibility gains for employers and monetary gains for employees, it erodes the collective basis for social security and may create a regulatory gap with regard to pensions and social security

Chart 6.3: Self-employment (as a % of total employment), 1997-2003

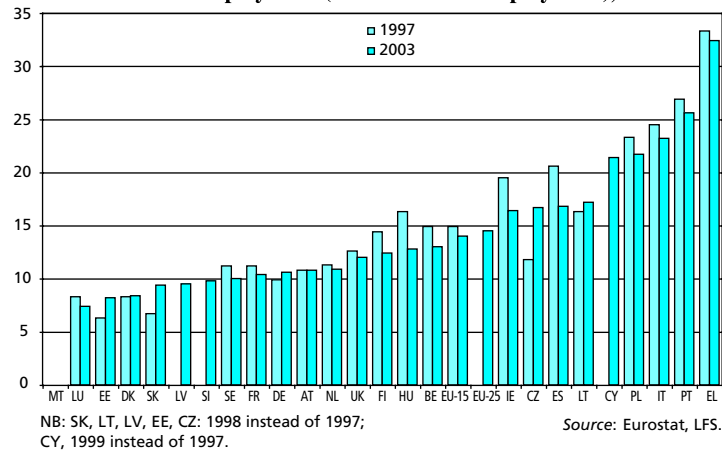
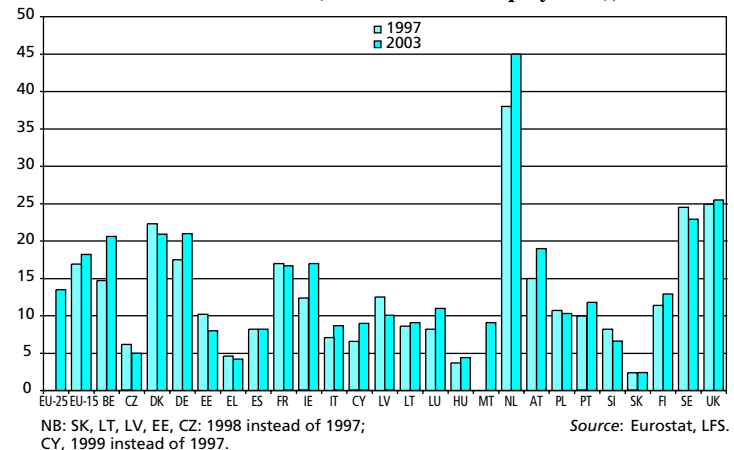


Chart 6.4: Part-time work (as a % of total employment), 1997-2003



coverage, with exclusionary consequences due to under-insurance in the future.

## 2.5. Part-time work for specific categories of workers

In contrast to other flexible forms of employment, part-time work is not very developed in the new Member States (see Chart 6.4). Moreover, it tends to be essentially involuntary. For instance, half of part-time work in Estonia (51 % in 2002 compared to 42 % in 1993) and in Poland (50 %) is of an involuntary nature. In addition,

when it is of a voluntary nature, it may correspond to a second job for those already working full-time in a main job (this is the case for 12 % of part-timers in Estonia). These mechanisms (lack of alternative full-time employment, a second job) are also found in EU-15, but in many Member States, for instance the Netherlands, Germany, and in Scandinavia, the development of part-time work has also been developed as a way of reconciling work and family life <sup>(155)</sup>.

In EU-10, part-time work is frequently used to employ retired people, the disabled, young first entrants and the

(154) These averages are calculated for EU-10 and the two accession countries Bulgaria and Romania.

(155) For case studies of Sweden, Germany, the Netherlands, France, Spain, Ireland and the UK, see J. O'Reilly (ed.) (2003), *Regulating working-time transitions in Europe*, Cheltenham, Elgar. On part-time work as a strategy for reconciling work and family life, see J. Visser (2002), 'The first part-time economy in the world. A model to be followed?', *Journal of European Social Policy*, Vol. 12.

unemployed. In Hungary, nearly 20 % of the 4.8 % of employees working part-time have disabilities. In Poland, 40 % of part-time workers are either pensioners or disabled.

In Hungary, part-time work is not very developed, despite the government's efforts to promote it as a way of raising the employment rate. The idea was to make this type of contract more attractive for both employers and employees, notably by reducing the amount of flat-rate healthcare contributions that are levied on employees on top of the insurance-type healthcare contribution. One possibility offered is to consider a part-time job (above a certain weekly limit) as a full-time job when the length of service is calculated for pension purposes.

Part-time work is nevertheless on the increase in EU-10 and may progressively evolve to serve the same function it normally does in EU-15. In Estonia the proportion of part-time workers rose from 5 % in 1993 to 9 % in 2002, mainly in the healthcare and social services sectors which are dominated by female employees. More favourable legislation for part-time work — especially with regard to employers' taxes and contributions — may encourage greater use of this form of flexible employment.

## 2.6. Long working hours

Working time is also an area in which there are differences between EU-15 and EU-10, with employees appearing to work longer hours on average in the latter. On average, some 38 % of all employed (employees and self-employed) in EU-10 and Bulgaria and Romania regularly work more than 45 hours per week, against 21 % in EU-15. In contrast, short working weeks of less than 30 hours are much less frequent in the new Member States.

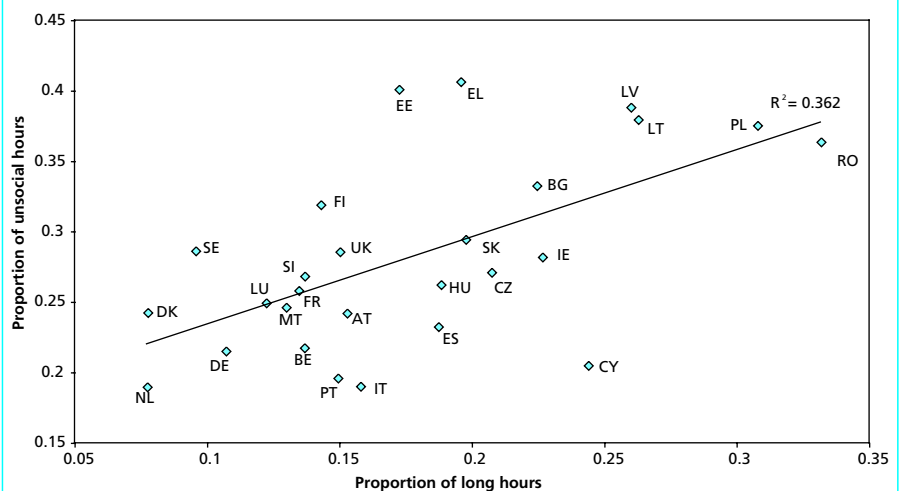
In 2003 all new Member States — with the exception of Lithuania and to a less-

er extent Slovakia — were working above the EU-15 average (41.4 hours a week), especially Latvia (43.8), Poland (43.4) and the Czech Republic (43.1). In EU-15, comparable long working hours were reported only in Greece, which registered the highest number of average working hours (44.4 hours a week) and in the UK (with 43.8). A breakdown by status, shows that the longest weekly and annual working hours are found among the self-employed (both in EU-10 and EU-15) and that sectors characterised by long working hours tend to be agriculture, hotels and restaurants, and the wholesale and retail trade.

Long working hours appear to have become a way of coping for both employers and employees. For employers, it helps to respond to

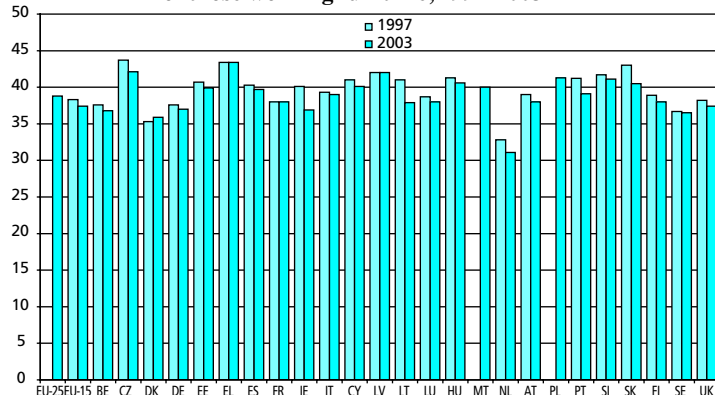
periods of peak activity with the same manpower. For employees, accumulating the number of hours worked during the week has become one of the main ways of increasing low basic wages and supplementing family income. Although it is probably mainly low hourly wage rates which impel workers to work long hours, often long hours are nevertheless the result of employer pressure rather than the employee's wishes. As an example, 30 % of extra working time in Poland is involuntary and does not therefore correspond to a free choice on the part of the employee. Long working hours probably represent an important form of adaptability in a difficult economic context at enterprise level and has been an important competitive element in manufacturing, but

Chart 6.5: Long hours and unsocial hours, 2001



Source: Dublin Foundation Survey 2000-01; derived from question 13 on unsocial working hours and question 14 on long weekly hours.

Chart 6.6: Weekly working time (in number of hours) of those working full-time, 1997-2003



NB: SK, LT, LV, EE, CZ: 1998 instead of 1997; CY, 1999 instead of 1997.

Source: Eurostat, LFS.

also in sectors such as mining, transport and electricity.

Weekend work or unsocial hours have also developed rapidly in some countries. Weekend work in the retail sector, for instance, is a major political issue in Slovenia, particularly the question of whether Sunday opening should be introduced.

Chart 6.5 tries to map the EU-25 in terms of both working time and unsocial hours. It shows that most new Member States are located in the upper right corner, representing a very extensive use of the labour force. These figures, well above the EU-15 average, obviously have direct implications for employees at work, especially since working time has strong correlations with other working conditions. Longer working weeks are associated with greater health and safety risks, and difficulties in reconciling work and family life.

Although the new Member States seem to have particularly long working weeks, there are two positive developments. Firstly, the number of hours worked has progressively decreased in all these countries over the last few years. When 2003 is compared to 1997, weekly working time has fallen in most countries, sometimes significantly, as in Slovakia, the Czech Republic (by nearly two hours), followed by Slovenia, Estonia and Cyprus (by one hour). These countries seem therefore to be already progressively converging towards the EU average. This has been achieved partly through changes in national legislation — reducing maximum weekly working time (for instance, in Poland this was reduced from 42 to 40 hours between 2001 and 2003) — mainly to fall in line with

the EU working-time directive. Also in contractual working hours there is a convergence towards the EU average. Within EU-15, the movement towards shorter contractual and actual working hours which had characterised the 1980s and 1990s, has come to a standstill after 2001, though some national and sectoral changes are observed <sup>(156)</sup>. Working-time reductions do remain on the agenda of many unions, especially in those countries with above-average weekly hours, for instance in Greece where the Greek General Confederation of Labour (GSEE) included a significant working-time reduction in its demands for a renewal of the national agreement for 2004. In EU-10, the role of collective bargaining in setting normal weekly hours is much less pronounced, given the overall weaker role of (sectoral) collective agreements (see Chapter 1). Thus, in countries such as Estonia, Latvia and Poland, collective agreements tend merely to reflect the statutory norms. In Hungary, negotiations on the reduction of working time were held in the tripartite National Interest Reconciliation Council during 2003, but appeared to reach a deadlock.

Secondly, over the last few years, there has been a progressive decrease in the number of workers with a second or even a third job, the typical way of coping during the first transition years for many workers. In Estonia, for instance, the percentage of workers with a second job decreased from 9 % in 1997 to 4.5 % in 2002. It seems that workers now concentrate on one activity but accumulate working hours to increase their wages or their probability of being retained by their employer. Second jobs now seem to be common mainly among more skilled and profes-

sional employees, who can often easily obtain an additional work contract with another company.

## 2.7. The use of 'civil' and 'multiple' contracts

In the last few years, a new phenomenon has been emerging at the enterprise level, with a growing number of employees shifting from regular to self-employed status. This not only means that the employees get a new 'self-employed' job status, but also that their normal employment contract is replaced with a civil contract. This has the consequence that they are no longer covered by the labour code, but by the civil code, and are no longer considered to be employees, but business units. This phenomenon is not unknown in EU-15 <sup>(157)</sup>, though its diffusion would seem to be limited to particular kinds of professionals and occupations (for instance, lorry drivers in the road haulage sector or hairdressers). The problematic consequences for social insurance have already been mentioned above.

This development seems to reverse a long historical development in industrial societies in which the 'employment relationship', regulated by labour law, took the place of the older 'contracts of work', regulated by commercial law <sup>(158)</sup>. In a contract of work, the employer pays a price for a particular piece of work — a 'job' — basically upon its completion. How the work is executed is left to the supplier, i.e. the worker who essentially remains an independent subcontractor. After the work is completed, the relationship between the two sides ceases to exist and there are no continuing mutual responsibilities. In contrast, in a contract of employment, it is not a particular work task that is contracted for,

(156) see *EIRO* (2004), Working-time developments — 2003 (<http://www.eiro.eurofound.eu.int/2004/03/update/tn0403104u.html>).

(157) See the study commissioned by the Employment and Social Affairs DG by A. Perulli (2004), Economically dependent/quasi-subordinate employment: legal, social and economic aspects, [http://europa.eu.int/comm/employment\\_social/labour\\_law/documentation\\_en.htm#6](http://europa.eu.int/comm/employment_social/labour_law/documentation_en.htm#6).

(158) See W. Streeck (2004), 'The sociology of trade unions and labour markets', in N. Smelser and R. Swedberg (eds.), *Handbook of economic sociology*, Newbury Park Ca, Sage.

but the availability of the worker to perform, within broad limits, any task assigned by the employer. Wages are paid, not prices. Instead of a temporary association for the duration of a specific project, the employment relationship constitutes an ongoing organisational relationship with mutual responsibilities defined by labour law and, for many workers, the collective or individual contract. In the case of employment contracts, trade unions have a role as agents negotiating the contractual obligations and protecting workers from excessive demands, and as guardians of trust in implicit and informal mutual commitments. There is no such role for trade unions in 'contracts of work' — in that case 'unions' would be more similar to small business associations that may protect the quality and price of 'jobs'.

In spite of the general prevalence of employment contracts and the status of wage and salary earners, there has always existed a minority of jobs executed on the basis of contracts of work, for instance in construction, or in services where freelancers or consultants tend to operate — for instance, interpreting, translation, business consultancy, hairdressing or beauty specialists. Usually, contracts of work were based on some special 'craft' or skill that did not require much teamwork or complex organisational arrangements. The new phenomenon, possibly now more widespread in EU-10 than in EU-15, is often the result of the restructuring of jobs based on employment contracts into jobs based on contracts of work in steady services which are usually organised in firms with regular employment, such as in the banking sector in Hungary.

There seem to be various motivations for this. With regard to employers, it helps to reduce their tax burden and social contributions and to minimise the likelihood of strikes or the need for prior authorisation for dismissals. The advantages for employees are

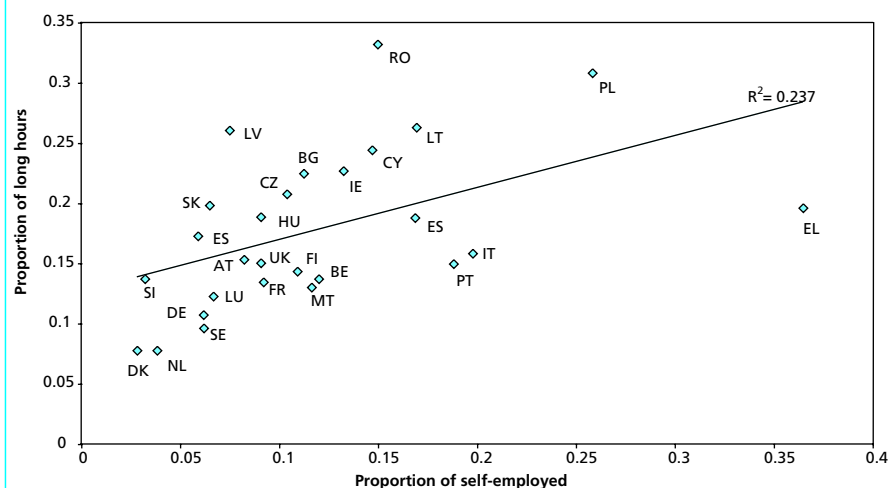
less clear, although being self-employed they would probably be able to claim certain expenses that may be deducted for the purpose of income tax. Such advantages would seem slight if set against the costs of insurance and protection (for instance, in the case of female employees the costs of absence and medical insurance in case of maternity). It is also possible that the lack of alternatives and weak bargaining power under conditions of widespread unemployment make this an involuntary choice on their part. Temporary agency work would probably be a functional equivalent, with better prospects for a gradual increase of security and the assumption of some 'employer' responsibility on the part of the employing agency, but it may be that the absence of a clear regulatory framework has made this an unattractive option.

Not only does this type of use of self-employment circumvent the payment of social security or pension contributions by the employer; it also affects working conditions. The self-employed tend to work longer hours due to tight deadlines fixed for their specific assignments, without proper remuneration, especially since their working hours are much more difficult to check and are much harder to count within official statistics on

working time. In Poland, the self-employed were found to reach peaks of 56 hours per week (see Chart 6.7). The self-employed can also suffer from non-payment or from long delays before being paid. In Estonia, for instance, 13 % of self-employed persons reported having had their wages delayed by more than a month.

A second type of self-employment is also occurring, whereby the employer supplements the employee's normal employment contract with an additional job or 'self-employment' contract. The difference in employment status may be matched by a different form of activity, with one activity covered by labour law and the additional one by commercial law. This practice seems to be developing rapidly in some of the EU-10 countries. For example, the use within the same enterprise and for the same employees, a regular labour contract supplemented, for extra working time or additional work assignments, by a commercial contract of work. This practice seems to be particularly widespread in Poland, Hungary and the three Baltic States. It would seem a functional equivalent to the flexibility based on variable overtime hours, but outside the framework of labour and working-time legislation.

Chart 6.7: Self-employment and long hours, 2001



Source: Dublin Foundation Survey 2000-01; derived from question 35 on self-employed and question 14 on long weekly hours.



In Estonia, a not insignificant proportion of workers — 5 % in 2002 against 11 % in 1998 — continue to work without any written contract at all. Their employment and working conditions are agreed verbally with the employer, a practice that seems to be more developed in new enterprises, especially in Tallinn and in some rural areas (7 % of enterprises in 2002). In the Baltic States, in addition to an individual labour contract, employees sometimes sign a supplementary 'extra agreement', which is, in fact, a notice of dismissal that can be used at any time at the discretion of the employer. While this practice is decreasing in Estonia (from 10 to 6 % between 1999 and 2002), it is becoming more frequent in Latvia and Lithuania, where it affects nearly 10 % of the labour force.

## 2.8. Health and safety risks

Health and safety is an issue to which enterprises still need to pay more attention. It has tended to be a rather neglected area so far because of the costs entailed without immediate returns. Although the general situation seems to be improving, the picture is still worrying in most of the new Member States. A health and safety index developed on the basis of the Dublin Foundation survey results of 2001, shows that the health and safety risks in most of the EU-10 countries are much higher than in EU-15 (see Chart 6.8).

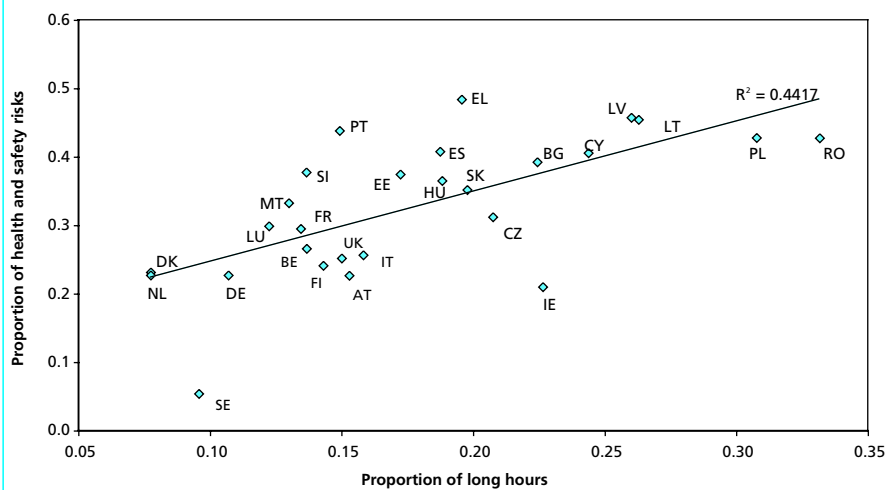
When legislation exists, many enterprises, especially new small and medium-sized enterprises in the private sector, fail to comply with it. In Estonia,

for instance, according to the labour inspectorate, only 15 % of enterprises were in compliance with legal obligations. The main violations involved the absence of a contract with an occupational health service specialist (70 % were found not to have one), no risk assessment or plan of activities (60 % of enterprises are not in compliance), no internal control (absent in 49 % of enterprises), no training (not even discussed in 44 % of cases), and no elected or appointed representatives with responsibility for health and safety (37 %).

Conversely, most of the inspected enterprises did not have problems with safety instructions, first aid equipment and personal protective equipment. However, the statistics on occupational accidents and diseases suggest that there are problems in this area, as their number increased by almost 50 % between 1999 and 2002 in Estonia. In other countries, such as Poland, while the number of accidents at work is decreasing, they remain at a high level. Moreover, most victims of such accidents are found to be on short-term or temporary contracts. There is also a direct correlation between long working hours and the risk of accidents.

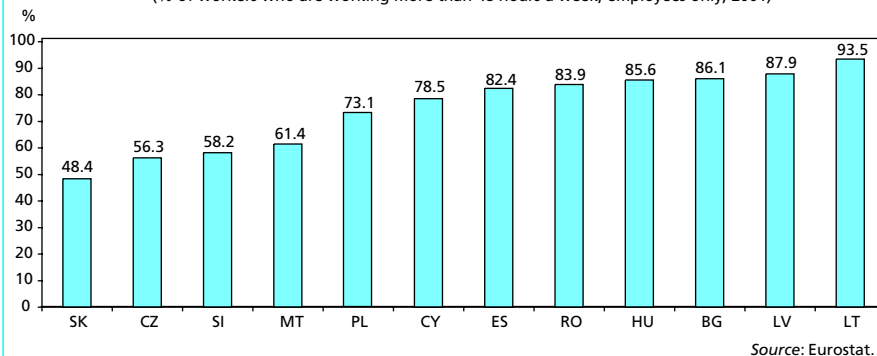
It is possible, however, that the recent increase in accidents in some of the new Member States may be due not only to a real increase in absolute numbers, but to better reporting. This would appear to indicate a move towards greater transparency and public concern in relation to occupational health and safety issues. EU membership and the need to implement the EU's legislative *acquis* can be expected to have a further positive impact.

Chart 6.8: Long hours and health and safety risks, 2001



Source: Dublin Foundation Survey 2000-01; derived from question 30 on overall health and safety risks and question 14 on long weekly hours.

Chart 6.9: Proportion of workers who do not receive extra payment for overtime  
(% of workers who are working more than 48 hours a week; employees only, 2001)



Source: Eurostat.

## 2.9. Unpaid overtime

While contractual and actual working time is already officially much longer than in all but a few of the EU-15 countries (Greece, UK), the true differences may be greater than suggested by offi-

cial statistics (and the provisions of the new labour codes), if overtime, second jobs, multiple contracts and, not least, the informal economy are taken into account. It should be pointed out, however, that these phenomena, in particular a widespread informal or 'underground' economy, in which many practices are by definition unreported and hard to gauge statistically, also exist in EU-15, for instance in Italy or Greece. Actual hours worked may therefore be underestimated for all the reasons mentioned. Finally, official statistics do not always capture the variation between periods of intensive activity with very long working weeks or days. Average working time remains low because the reference period taken for calculation of this average is mainly defined by employers, due to weak social dialogue or works councils, and the absence of collective agreements in which these matters are defined.

Problems have also been reported with regard to extra working time in the public sector in Hungary, Estonia and the Czech Republic. In Hungary, due to labour shortages, workers in the health sector (and particularly nurses) are legally permitted to work 62 hours per week. In the Estonian public sector, there is a practice of adding service contracts to regular employment contracts.

Beyond long working weeks, the case studies seem to confirm that a considerable amount of overtime is unpaid. For example, more than 70 % of workers in Poland do not receive any additional remuneration for overtime. The case of Lithuania is also striking, as only 6.5 % of workers who are working more than 48 hours per week receive extra payment. The best situation seems to be in Slovakia, where only 48.5 % of employees working overtime reported not being paid (see Chart 6.9). A similar situa-

tion exists for the payment of weekend work. In Cyprus and Lithuania, fewer than 10 % of workers are paid extra for working on Sundays.

While the phenomenon of unpaid overtime is not unknown in EU-15, it generally concerns managers and white-collar employees rather than manual workers, whereas in many of the new Member States it tends to concern all types of workers. Many reasons induce employees to accept such conditions. Unemployment is probably the principal factor. The second is the payment of part of the wages 'cash-in-hand', while only the minimum wage is officially declared.

### 2.10. Under-reporting of wage payments

Officially reporting the payment of the minimum wage and providing employees with extra payments 'cash-in-hand' is a way to save on the payment of (earnings-related) social contributions and taxes and, consequently, reduce labour costs <sup>(159)</sup>. A recent survey <sup>(160)</sup> suggests that nearly half of all Hungarian employers say that this is general practice in the Hungarian economy. It is the most quoted method (by 46 % of respondents) of saving on labour costs. Next in line among cost-saving methods is the use of commercial 'contracts of work' (27 %), while around 12 % of all employers mention temporary employment 'for a trial period', and 15 % refer to part-time employment. In Estonia, 10 % of employees received 'cash-in-hand' payments in 2002 (an improvement on 1999 when this practice was reported by 19 % of employees). In Poland this practice was strongly associated with employment in micro firms. In 2003, 'cash-in-hand' wages affected nearly 20 % of employees in enterprises with fewer than 5 employ-

ees, between 10 and 15 % of employees in SMEs with 6 to 150 employees, and fewer than 5 % of employees in large companies with over 150 employees.

The general practice of under-declaring wages obviously has implications for social security and tax revenues, as well as for the social rights and working conditions of employees. EU membership should help to improve the economic and social context.

## 3. Social cohesion

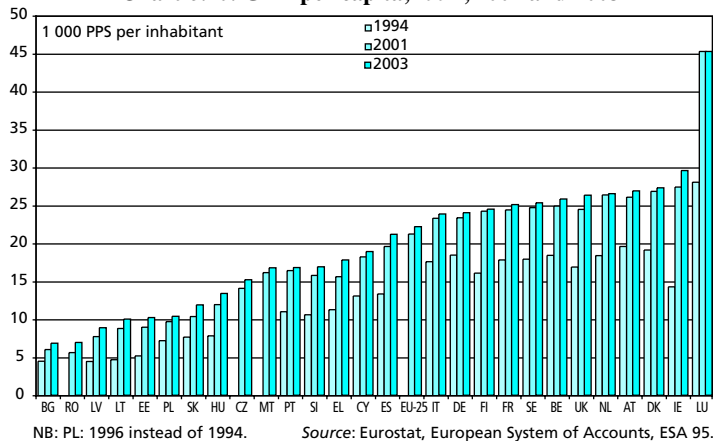
In this section, the position of particular groups and categories of employees will be reviewed. How have women, or those with responsibilities for children, fared? Are there particular groups with really poor working conditions and low wages? What categories of employees are excluded from the undeniable economic and social progress that has taken place?

These important questions are reviewed against the background of the huge differences in economic development which has characterised the latest enlargement process. Representing an increase in the EU's population of 28 %, EU-10 added just over 5 % to total GDP. Chart 6.10 shows the massive differences in GDP per capita, between EU-15 and EU-10, but also within EU-10 in particular. However, considerable economic progress can also be observed since 1994, continuing in recent years.

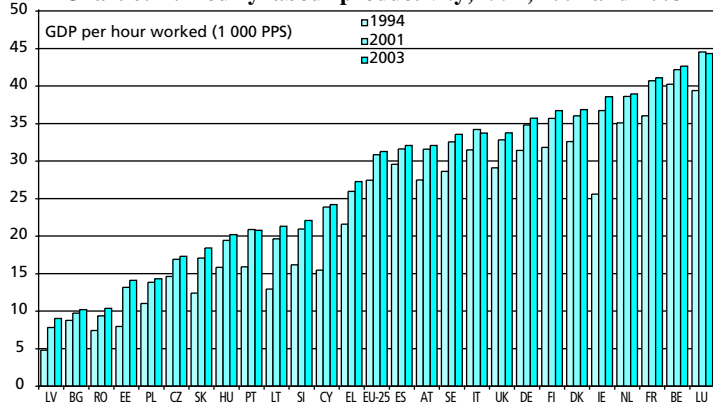
There are good reasons to believe that the new Member States will 'catch up', even though this will probably take some time. Productivity per hour worked is still much lower in EU-10, reflecting various factors,

(159) See the study commissioned by the Employment and Social Affairs DG by P. Renooy, S. Ivarsson, O. van der Wusten-Gritsai and R. Meijer (2004), *Undeclared work in an enlarged union: An analysis of undeclared work: An in-depth study of specific items*.  
[http://europa.eu.int/comm/employment\\_social/employment\\_analysis/work\\_enlarg\\_en.htm](http://europa.eu.int/comm/employment_social/employment_analysis/work_enlarg_en.htm)

(160) Economic Trends, 2003

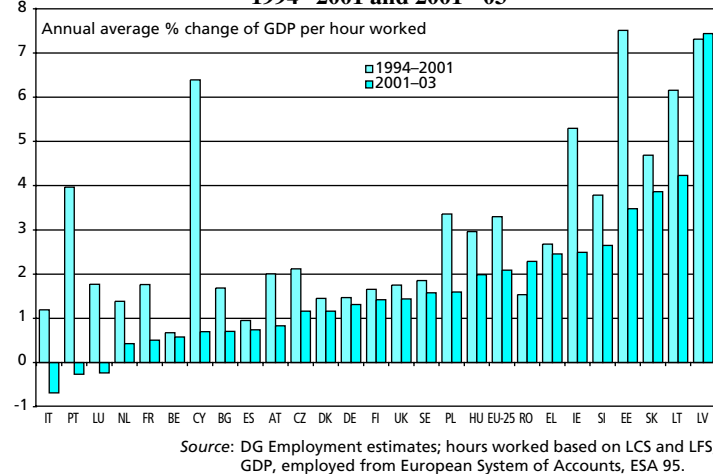
**Chart 6.10: GDP per capita, 1994, 2001 and 2003**

These positive trends have to be set against some problematic developments. Firstly, employment rates in the new Member States tend to be lower and in most countries remain far below the targets (70 % for all, 60 % for women) set for 2010 as part of the Lisbon agenda and the European employment strategy. More worrying even is that in some of the new Member States — Poland, Slovakia, Lithuania, Estonia, and the Czech Republic — employment rates have fallen in recent times (see Charts 6.14 and 6.15).

**Chart 6.11: Hourly labour productivity, 1994, 2001 and 2003**

At the same time the unemployment rates of men and women tend to be much higher in the new Member States, ranging from a high 18 % for men and 20 % for women in Poland to 5–7 % in Hungary, the Czech Republic and Slovenia. After initially soaring unemployment, the decline in many countries has been slow (see Charts 6.16 and 6.17).

Finally, Eurostat's survey of living and working conditions suggest larger income differences in many of the EU-10 countries, although in this case the indicator based on the Gini-coefficients calculated after tax household income, suggest that the spread is very large and that some of the new Member States — Slovenia, Hungary and the Czech Republic (data for Slovakia are missing) — are as equal as for instance Germany or the Netherlands, while others — Poland and the Baltic States, and also Malta and Cyprus — tend to be characterised by much higher levels of income inequality, similar to the UK and most of the southern Member States (see Chart 6.18).

**Chart 6.12: Growth of productivity per hour worked 1994–2001 and 2001–03**

including the structure of capital, investment, skills, management, working practices and infrastructure (see Chart 6.11).

However, in general, growth trends in hourly productivity and in GDP per hour worked have been much stronger in EU-10 than in EU-15 (see Charts 6.12 and 6.13).

These background statistics on GDP, productivity levels and growth, employment and unemployment, and inequality are useful contextual factors when discussing developments in working conditions and social cohesion in the new Member States, as both constraints and opportunities for development.

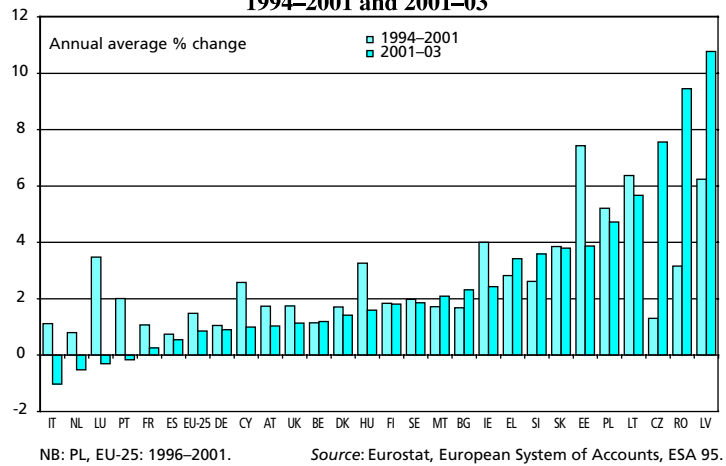
### 3.1. Unemployment and wages

Most recent case studies carried out in individual enterprises suggest that the main reason why employees accept poor employment and working conditions — without complaining or going to court — is fear of dismissal, against a backdrop of high unemployment. Another reason why employees tend to accept long hours, and at stressful working rhythms, is the urgent need to raise their living standards. Table 6.1 shows that minimum wages, as well as actual wages, are well below the average for EU-15 in terms of purchasing power.

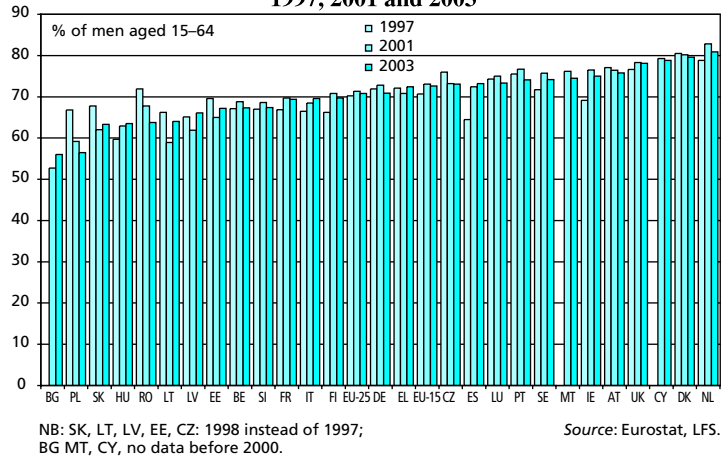
Chart 6.19 shows that compared to employees on permanent contracts, those employed on temporary or fixed-term contracts tend to work longer hours, have lower hourly wages, find it more difficult to combine working time and family obligations, find their working environment harder to cope with, consider themselves more exposed to health and safety risks and are more dissatisfied with their work. In contrast, the self-employed differ from workers on permanent contracts mainly in two respects: much longer working weeks and a lower probability of low hourly wages. This seems to suggest that the self-employed option is mainly open to skilled ('craft') workers or 'jobbers' for whom the opportunity costs of not working and short weekly hours are relatively high. It is also possible that the risks associated with self-employment are compensated by above-average hourly rates. As a result, many self-employed were found to belong to the higher income category.

Another practice observed at enterprise level illustrates the salience of the wage issue: the widespread practice of payment of bonuses or premia as compensation for poor working conditions — particularly occupational health and safety — a practice which both workers and trade unions accept.

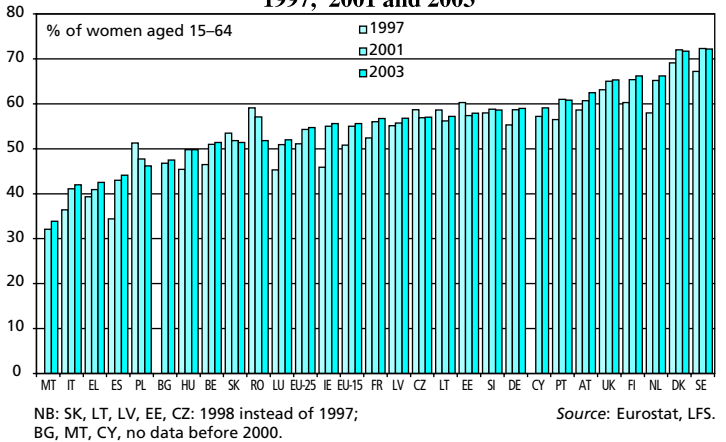
**Chart 6.13: Growth of GDP per person employed, 1994–2001 and 2001–03**



**Chart 6.14: Employment rates of men aged 15–64, 1997, 2001 and 2003**



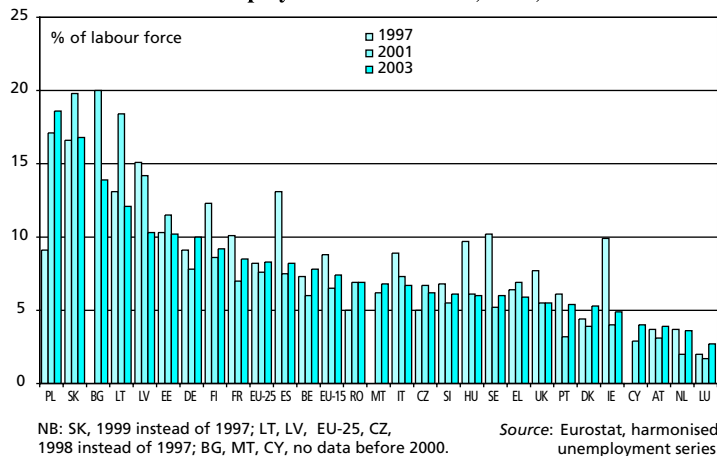
**Chart 6.15: Employment rates of women aged 15–64, 1997, 2001 and 2003**



The lack of development of part-time work can also be traced back to low wages and living standards. Apart from other disadvantages and the lack of a

regulatory framework granting part-time workers similar social security and employment rights as full-time workers, the low incidence of part-

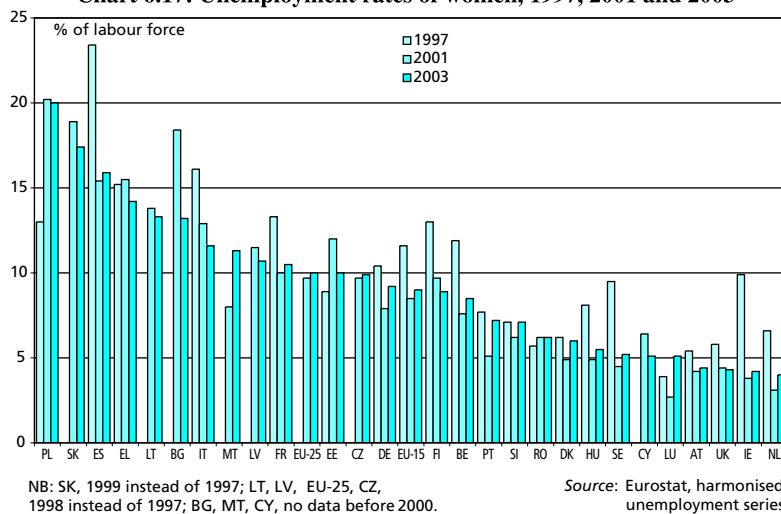
Chart 6.16: Unemployment rates of men, 1997, 2001 and 2003



that the informal economy may offer better opportunities nearer home). A considerable proportion of part-time employment in EU-10, but also in some of the EU-15 countries, such as Greece, Italy, France and even Finland, is involuntary. There are numerous examples of high fixed costs (public transport, childcare, health contributions) that cannot be met by part-time wages and therefore make part-time work an unattractive option.

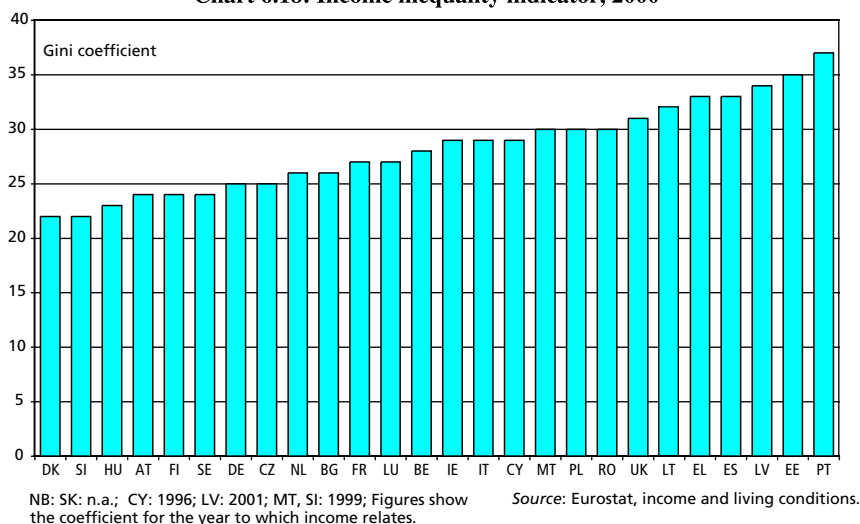
### 3.2. The female employment gap

Chart 6.17: Unemployment rates of women, 1997, 2001 and 2003



Under communism, the central and east European countries tended to give women a secure place in the world of work. This is no longer the case. As shown by Charts 6.14 and 6.15, there is now a widening gap between male and female employment rates and female employment rates in these countries falling behind those in EU-15. In fact, the highest female employment rate among the new Member States is found in Cyprus, much in contrast to the usually low employment rates of women found in the Mediterranean countries. Next best, in terms of employment for women, are the Baltic States, though they have fallen behind the high levels found among their Nordic neighbours.

Chart 6.18: Income inequality indicator, 2000



The transition to the market economy has increased the employment gap between men and women. Employment rates have fallen most dramatically in Poland, to 47 % in 2003, just ahead of the very low rates of female employment found in Italy, Greece, Spain and in Malta (see Chart 6.15).

During the transition process, many 'family-friendly' workplace arrangements have been abandoned, which explains to a certain extent the fall in female employment rates in these countries. Many women have left the labour market, either because of difficulties in reconciling work and mater-

time employment in the southern Member States (Italy, Greece, Portugal and Spain) has a similar background of low hourly wages (and social rights).

Typically, in such cases, part-time employment, where it exists, is involuntary, because of the difficulty of finding full-time work. (Another factor is

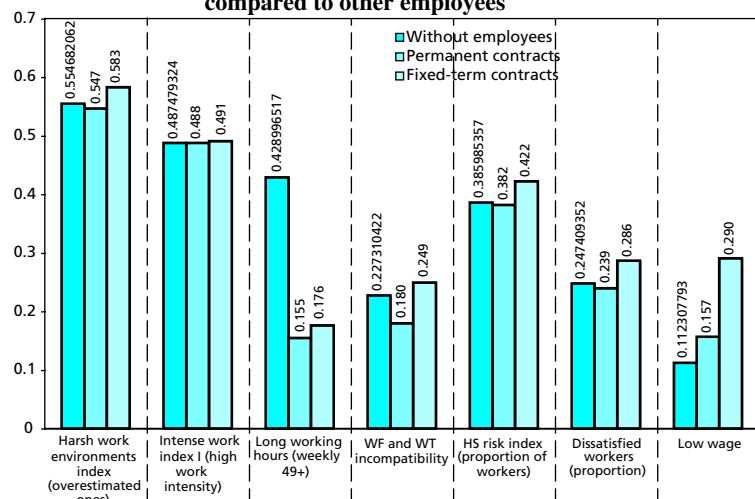


TABLE 6.1: MINIMUM WAGE LEVELS IN EU-25

	Minimum wage level (in euro) 2003	Minimum wage (in PPP) 2003
Austria	-	-
Belgium	1 163	1 162
Cyprus	-	-
Czech Republic	199	389
Denmark	-	-
Estonia	138	264
Finland	-	-
France	1 154	1 150
Germany	-	-
Greece	605	725
Hungary	212	384
Ireland	1 073	910
Italy	-	-
Latvia	116	239
Lithuania	125	252
Luxembourg	1 369	1 338
Malta	535	752
Netherlands	1 249	1 225
Poland	201	351
Portugal	416	543
Slovakia	118	265
Slovenia	451	668
Spain	526	617
Sweden	-	-
UK	1 105	983
EU-15	-	-
EU-25	-	-

Source: Eurostat; *EC Employment in Europe 2003*, p. 80, on 01/01/2003.

Chart 6.19: Working conditions of the self-employed (without employees) compared to other employees



Source: Dublin Foundation Survey 2000-01; derived from question 35 on self-employed and questions 8 and 9 (for harsh work index); question 18 (for intensity at work index); question 14 (for long weekly hours index); question 17 (for work and family incompatibility index); question 30 (for health and safety index); question 34 (for the dissatisfaction at work index); and question EF21 (for the low wage index).

nity, or because of being more vulnerable in the restructuring process, which tends to affect the low-paid and lower-skilled jobs held by women. Women have lower prospects of finding work, since they tend to experience longer spells of unemployment. Some 67 % of all unemployed women in Slovakia and 58 % in Poland, compared to an also high percentage of 48 % in EU-15, stay unemployed during one year or longer. This can have negative consequences for experience, skills and motivation to seek new employment. The prevention of long-term unemployment has been one of the central issues in the European employment strategy since 1997. In EU-15, the long-term unemployment rate, though still high, has decreased in the past six years. A very high incidence of long-term unemployment is found for men and women in Slovakia, Poland and Lithuania, for men in Latvia and Estonia, and for women in Greece, Italy and Spain, and to a lesser extent in the Czech Republic <sup>(161)</sup>.

### 3.3. Other disadvantaged groups

Efforts have been made in the new Member States towards the better social inclusion of pensioners, students and the unemployed. The long-standing political priority of reforming pension systems since the transition of these economies, and the more recent initiatives to extend working life and postpone retirement (similar to efforts being made in the Member States of EU-15), are both attempts to combat the problem of old-age poverty, as well as to create more financially viable systems for the long run. Measures have also been taken to facilitate the integration of new entrants into the labour market, for instance, through a lower minimum wage for young people in Estonia. With regard to older employees between the ages of 55 and 65, among

(161) Report by the Employment Taskforce chaired by Wim Kok (2003), *Jobs, jobs, jobs — Creating more employment in Europe*, Chart 11: Long-term unemployment rates, 2002 (based on Eurostat, QLFD), p. 83.

the new Member States only Estonia meets the Lisbon criterion of a 50 % employment rate. The other Member States are far behind, with employment rates (in 2002) of 30 % or lower in Hungary, Poland, Slovenia and Slovakia, and not many signs of improvement in recent times. Again, in this respect there is considerable similarity with the southern Member States and with France, Belgium and Luxembourg, also characterised by low employment rates among older workers and only modest improvements in recent years <sup>(162)</sup>.

The situation of people with disabilities deteriorated significantly during the transition years. Studies point to the difficult labour market position of the Roma population. Roma are often excluded from education and employment opportunities. A number of programmes to give them better access to education and training have been implemented, leading to some progress. Nevertheless, their situation would seem to need a comprehensive policy, aimed at improving social protection and social assistance coverage as well as facilitating their social integration (schooling, housing, etc.).

### 3.4. Poverty

Poverty remains a major concern in most of the new Member States. Certain groups are more affected than others, such as the unemployed, especially the long-term unemployed, the disabled and those depending on social assistance. Among the families most at risk are those with three or more children as well as single-parent households, generally single mothers with dependent children. These poverty risks, which have a similar profile in EU-15, have of course direct implications for family structure, the main issue addressed in the following section.

## 4. Social sustainability?

Having examined some of the trends occurring in employment and working policies and practices at societal and enterprise level in the new Member States, what are the implications for the sustainability of these societies in demographic, economic and social terms?

### 4.1. Demographic sustainability

Most of the trends in employment, wages and security found in enterprises have an influence on life outside the workplace. Where this affects parents and young people involved in planning their lives and families, this can have deep implications for demographic trends. This has also been shown for many of the EU-15 countries <sup>(163)</sup>.

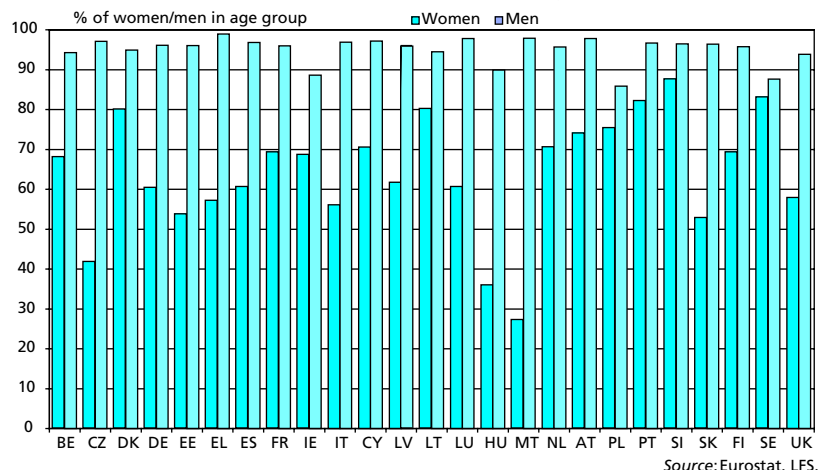
#### 4.1.1. Reconciling work and family life

The employment and working conditions described above do not seem conducive for either women or men to reconcile work and family life. Part-time work is not very developed and both women and men tend to work long hours, not least because of low

wages. In contrast with the EU-15, where women work fewer hours than men — 33 as opposed to 41 hours a week on average in 2000 — there are hardly any differences between the length of the working week between men and women in EU-10. This has obvious consequences for combining employment with caring responsibilities, especially for very young children. Chart 6.20 shows that in some of the new Member States the female participation rate of women with children under school age (taken to be the age of six) is very low indeed, for example, in Hungary, Estonia, the Czech Republic, and Slovakia. These rates are even lower than those found in countries such as Greece, Italy, Spain and the UK. However, Slovenia and Lithuania have high rates, similar to those found in Denmark and Sweden. Low participation rates would appear to reflect difficulty in combining employment with family duties, the lack of availability or low attractiveness of part-time work (due to low wages and other disadvantages), and a shortage of affordable public facilities or services.

As in EU-15, where part-time employment is taken up in EU-10, it is a mainly female phenomenon, although in Slovenia, the Baltic States, Poland and Hungary the female share in part-time

Chart 6.20: Activity rate of persons (aged 20–50) with one or more children under 6 years of age, 2003



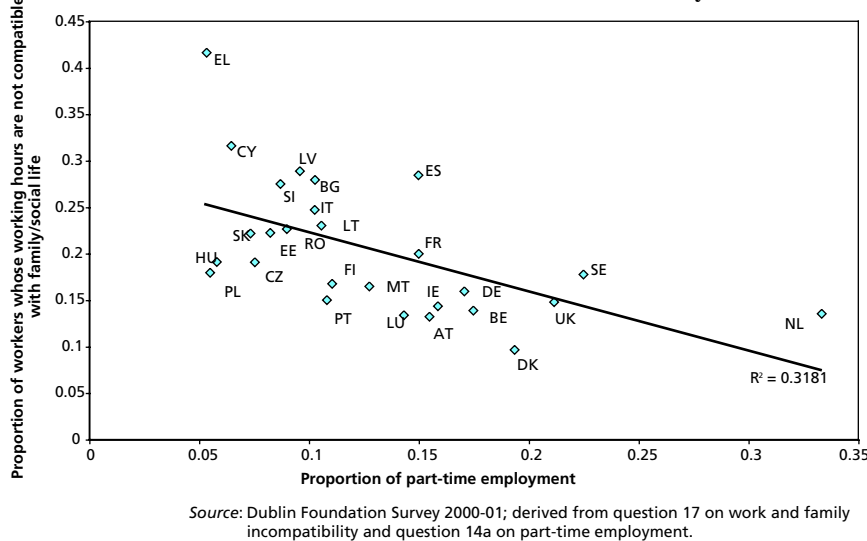
(162) Report by the Employment Taskforce (2003), Charts 9 and 10: Employment rates of older workers (55–64) (QLFD, comparable annual estimates based on LFS and ESA 95, Eurostat), p. 82.

(163) For an incisive analysis, see G. Esping-Andersen (1999), *Social foundations of post-industrial economies*, Oxford, OUP.

**Chart 6.21: Persons working less than 30 hours per week as % of total employment, 2003**



**Chart 6.22: Part-time and reconciliation of work and family**



employment — usually three quarters or more — is not as pronounced (see Chart 6.21).

In these countries, part-time employment is also taken up by pensioners, the disabled, young first entrants and the unemployed and is less associated with an attempt by women to cope with work and family responsibilities. This is confirmed by the pattern shown in Chart 6.22. Those Member States in which part-time employment rates are low tend to be those in which people think that part-time work does not help to achieve a better balance between work and family life. Thus, many of the new Member States are situated in one corner, together with the southern Member States, i.e. those with low (volun-

tary) shares of part-time work, whereas most northern Member States occupy the opposite corner with high shares of part-time work and a more positive evaluation.

Other measures for reconciling work and family life being discussed by economic and social actors in the new Member States, include childcare centres, services provided by employers, opening hours of schools and shops, housing costs in cities (that involve longer distances between home, school and workplace), services for older children, and also telework and home-working. It is probable that self-employment contracts are also being used as a way of reconciling work and family life, since they would seem to leave more freedom to employees to

organise their working hours. In Estonia, for instance, part-time work is more widespread among the self-employed, which may represent a way of reconciling work and family life.

#### 4.1.2. Impact on maternity

These developments, namely the difficulty of reconciling work and family life, the absence of decent part-time employment, employers' search for flexibility and unstable employment prospects are also having an impact on maternity. In some new Member States tougher labour markets are found to be a direct cause of lower female employment rates, particularly in a context of high unemployment.

Women are finding it more difficult than before to reintegrate into the labour market after maternity leave. Some Polish labour market specialists summarise the situation as follows: give up work if you want to have children or postpone the first child, sometimes by 10 years. In fact, while 75 % of women between 25 and 39 years of age are active, this rate falls to 60 % if they have one child, to 47 % with two children, and 51 % for those with three children. Poland is among those Member States with the highest participation rate for women with children under the age of six, as illustrated by Chart 6.20.

Where the gap in the unemployment rates of men and women has narrowed, as is the case in some of the new Member States, this is also because women tend to leave the labour market. Whatever the cause, fertility rates have fallen dramatically, emulating the pattern found in many of the EU-15 countries, but with even greater speed. Fertility rates are now among the lowest in the EU (see Table 6.2).

Part of the decline — both in EU-15 and EU-10 — can be attributed to the decline in families with more than three children. This is clearly the case in Hungary, the Czech Republic, Slovenia and Slovakia, where people appear to be increasingly hesitant to

TABLE 6.2: FERTILITY RATES IN EU-25, 1980–2000

	1980	2000
<b>EU-15</b>	1.82	1.53
<b>Austria</b>	1.65	1.32
<b>Belgium</b>	1.68	1.65
<b>Cyprus</b>	2.46	1.83
<b>Czech Republic</b>	2.10	1.14
<b>Denmark</b>	1.55	1.76
<b>Estonia</b>	2.02	1.39
<b>Finland</b>	1.63	1.73
<b>France</b>	1.95	1.89
<b>Germany</b>	1.56	1.34
<b>Greece</b>	2.21	1.30
<b>Hungary</b>	1.91	1.33
<b>Ireland</b>	3.23	1.89
<b>Italy</b>	1.64	1.25
<b>Latvia</b>	1.90	1.24
<b>Lithuania</b>	2.00	1.33
<b>Luxembourg</b>	1.49	1.78
<b>Malta <sup>(1)</sup></b>	1.99	2.05
<b>Netherlands</b>	1.60	1.72
<b>Poland</b>	2.28	1.34
<b>Portugal</b>	2.18	1.54
<b>Slovakia</b>	2.32	1.20
<b>Slovenia</b>	2.11	1.25
<b>Spain</b>	2.20	1.22
<b>Sweden</b>	1.68	1.54
<b>UK</b>	1.90	1.64

(1) Figure for 1999.

Source: *The social situation in the European Union 2003*.

TABLE 6.3: MEAN AGE OF WOMEN AT CHILDBEARING, EU-25, 1989–99

	1989	1999
<b>EU-15 <sup>(1)</sup></b>	28.07	28.98
<b>Austria</b>	27.09	28.12
<b>Belgium <sup>(2)</sup></b>	27.80	28.47
<b>Cyprus</b>	27.10	28.60
<b>Czech Republic</b>	24.75	26.87
<b>Denmark</b>	28.35	29.62
<b>Estonia</b>	25.88	26.57
<b>Finland</b>	28.78	29.58
<b>France</b>	28.19	29.35
<b>Germany</b>	27.57	28.66
<b>Greece</b>	26.98	28.88
<b>Hungary</b>	25.51	27.07
<b>Ireland</b>	29.95	30.48
<b>Italy <sup>(1)</sup></b>	28.71	30.00
<b>Latvia</b>	25.60	26.78
<b>Lithuania</b>	25.94	26.50
<b>Luxembourg</b>	28.26	29.36
<b>Malta</b>	28.87	29.00
<b>Netherlands</b>	29.16	30.27
<b>Poland</b>	26.24	27.31
<b>Portugal</b>	27.22	26.60
<b>Slovakia</b>	25.08	26.39
<b>Slovenia</b>	25.75	27.97
<b>Spain</b>	28.72	30.66
<b>Sweden</b>	28.57	29.81
<b>UK</b>	27.57	28.38

(1) Figure for 1996. (2) Figure for 1995. Source: *Eurostat yearbook 2003*.

have more children. This may be related to financial difficulties, housing constraints, the lack of facilities, etc.

Labour market conditions might lie behind the tendency to postpone having the first child, a tendency which characterises both EU-15 and EU-10, but is more recent in the new Member States. Nevertheless, women in EU-10 on average have their first child at a younger age than those in EU-15, but the speed of change between 1989 and 1999 suggests that convergence towards a common age of 29 or 30 is just a matter of time (Table 6.3).

## 4.2. Economic sustainability

The viability of economic systems is, among other factors, also dependent upon the working conditions and social policies in enterprises. As shown by Charts 6.12 and 6.13, the new Member States experienced above-average output and productivity growth in recent years, which should be boosted further by accession. However, developments at the micro-economic level of enterprises may become a cause for concern if they are wasteful with regard to human resources and undermine productivity and competitiveness in the long run, making it more difficult to achieve the Lisbon targets of growth, more and better jobs, and social cohesion.

### 4.2.1. Wasted economic resources

One major feature of most new Member States is undoubtedly the existence of a large informal sector, accounting for approximately 30 % of GDP in Poland and 25 % in Hungary. Many employment practices and working conditions described above, such as undeclared wages, the underpayment of wages, the extensive recourse to self-employment, unpaid overtime, reduce the tax base for social security and other revenues needed for public investment, which may undermine the long-term economic capacity of these countries.

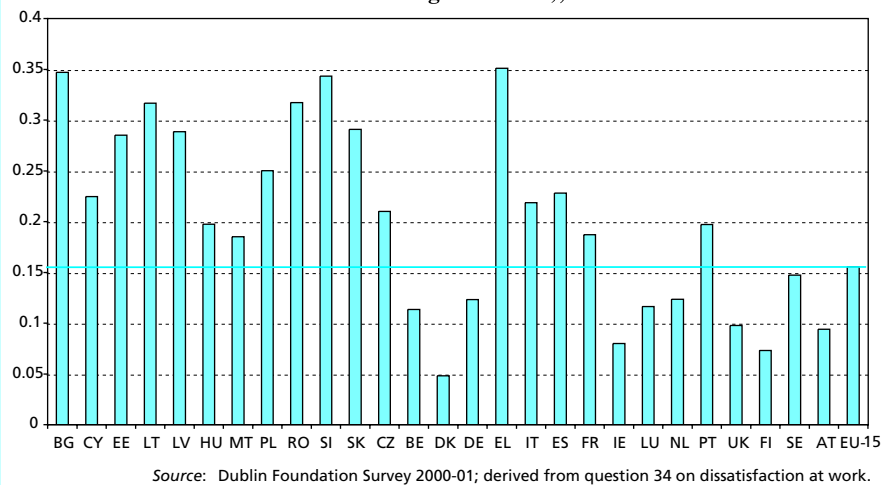
#### 4.2.2. The need for more long-term-oriented activities

A large part of the economic dynamism in the new Member States seems to be coming from the myriad of new private SMEs that emerged during the transition process. However, the life expectancy of these firms is generally less than two years. This may have direct effects on employment and working conditions, which tend to differ sharply according to the size and form of ownership of the enterprise. Generally speaking, the larger the enterprise, the better the employment and working conditions. Large corporations tend to regroup public enterprises or multinational companies, both of which tend to provide better working conditions.

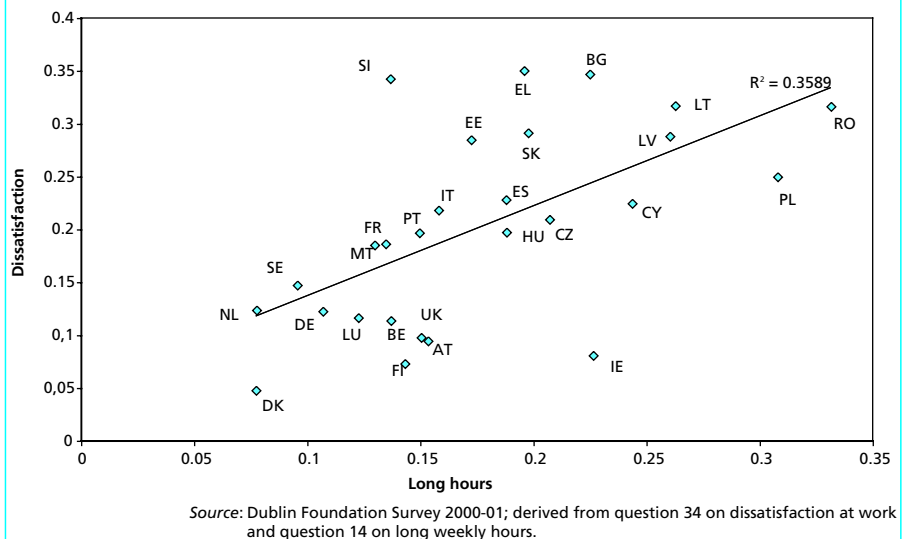
#### 4.2.3. Quality of work and productivity

Although a number of economic studies and Charts 6.12 and 6.13 show significant increases in productivity in EU-10, this is in part the result of downsizing and rationalisation policies, leading to a more intensive use of human resources. Careful studies of developments in employment and productivity at the enterprise level, through specific enterprise surveys and case studies, are urgently needed before general conclusions can be reached. However, surveys of working conditions and worker satisfaction, such as the one conducted by the European Foundation for the Improvement of Living and Working Conditions, suggest that the quality of employment is still low and that employees may face so many difficulties in terms of income, long hours, health and safety, the balance between work and family, and insecurity, that it may undermine their positive contribution to growth and productivity (see Chart 6.23). The survey, conducted in 2000–01, clearly brings out that worker dissatisfaction, while varying from country to country, is much higher in the new Member States.

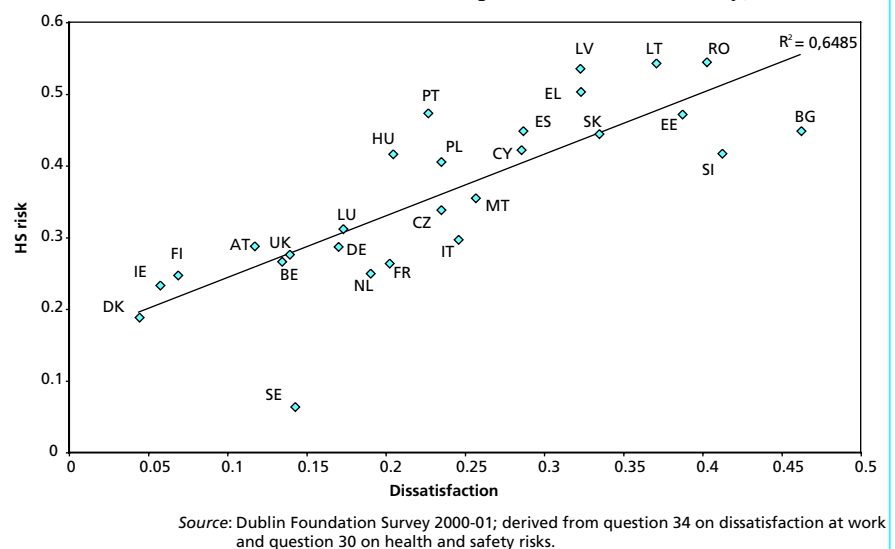
**Chart 6.23: Dissatisfaction at work in selected Member States and candidate countries (proportion of workers who are not satisfied with their working conditions), 2000–01**



**Chart 6.24: Dissatisfaction at work and long working hours, 2001**



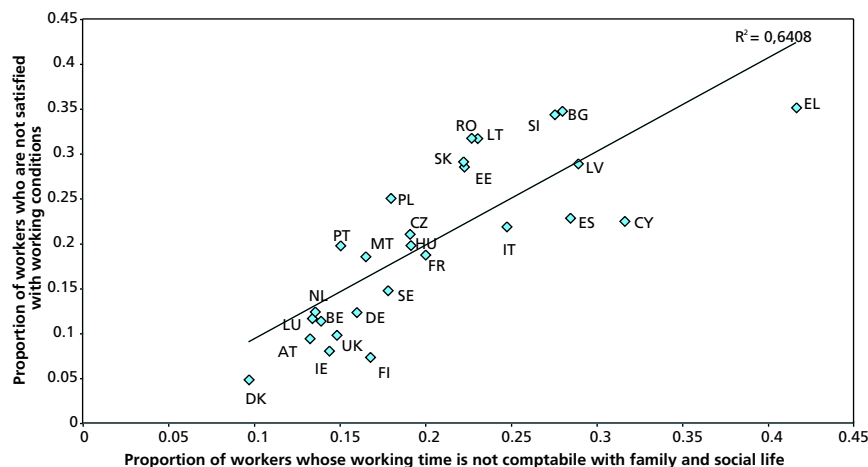
**Chart 6.25: Dissatisfaction at work and occupational health and safety, 2001**



The survey also helps to identify some of the major sources of dissatisfaction. There appears to be a significant relationship between dissatisfaction at work and long working hours (see Chart 6.24). Even stronger corre-



Chart 6.26: Dissatisfaction at work and work and family reconciliation



lations exist between dissatisfaction at work and occupational health and safety (see Chart 6.25) and between dissatisfaction at work and the proportion of workers who say that their working hours are incompatible with family and social life (see Chart 6.26).

### 4.3. Social sustainability

Poor working conditions at enterprise level not only influence long-term enterprise performance but also have damaging effects on workers' health and safety, result in stress and interfere with family life. These human and social consequences may sometimes only become apparent in the long run. Too great an imbalance between flexibility and security may be detrimental to investment, commitment and productivity, and be damaging for society as a whole.

#### 4.3.1. Health indicators

Although the situation appears to be improving, life expectancy in the new Member States is below EU standards. In Hungary, life expectancy at birth is 7.8 years less than the EU-15 average for men and 5.6 years less for women. Early death is twice the EU average. Stress at work and stress in general between the conflicting claims of work and family are clearly contributing to such worrying mortality

indicators. The death rate of men between 40 and 60 is significant. In 2000, in Hungary, 40 % of the men who died were below the age of 65, the main fatal diseases being of circulatory, bone, muscular or digestive origin. Poverty and social exclusion — made more acute by alcoholism — are also an important factor. In Hungary, a survey has established a direct relationship between individual health conditions, life expectancy, and socioeconomic status and income. As an example, there is a 10-year difference between the life expectancy of those in the most advantaged group and the Roma population, which belong to the most disadvantaged group. Mortality rates also closely follow regional socioeconomic inequalities and different access to healthcare.

With regard to occupational health and safety, in most countries labour inspectorates are clearly under-resourced. In Hungary, for instance, a total of 452 000 hours were spent in 2001 on occupational health inspections, corresponding to the full working time of 53 physicians and 173 public health inspectors. However, according to the national Public Health and Medical Office (ANTSZ), the optimal coverage would require 123 physicians and 303 public health inspectors, working a total of 852 000 hours per year. This means that the available staff

corresponds to only 53 % of the optimal level. According to the National Labour Inspectorate (OMMF), in 2001, there were only 0.4 labour safety inspectors per 1 000 employees. The situation is similar in Poland, with only one inspector for 2 416 enterprises.

#### 4.3.2. Stress

Work-related stress is often due to the difficulties of reconciling work and family life, of running from one job to another, or of having to cope with employers' demands of constant availability. This is no different in EU-10 compared to studies conducted in EU-15. However, the problem is exacerbated when working conditions are poor, dissatisfaction levels high, and it is difficult to make a living from one job. In addition, the lack of awareness of employers and absence of dialogue can contribute to increasing stress. With the move to a monetary economy and the intensification of work, work tends to dominate family life in the new Member States and there are many indicators showing that work and family life are not easily reconciled. For example, employers often demand total availability of their employees, as indicated by the formulations of many job announcements seeking workers who are 'fully available' and 'resistant to stress'.

## 5. Social partnership as a governance tool

In the EU, social dialogue is recognised as an important tool for anticipating and managing change and improving the governance of labour markets (see Chapter 3). In view of the potential role which social dialogue can play in delivering reforms, this section examines how social dialogue might interact with working conditions.

TABLE 6.4: MINIMUM WAGES IN EU-10

Country	Statutory minimum wages	Level	Fixing machinery
<b>Cyprus</b>	Yes	Sectoral	Government — following recommendation of the Tripartite Labour Advisory Board
<b>Czech Republic</b>	Yes	National	Government — following consultation with the social partners
<b>Estonia</b>	Yes	National	Bipartite agreement between the social partners — followed by government decree
<b>Hungary</b>	Yes	National	Agreement between the social partners at the National Labour Council — followed by government decree
<b>Latvia</b>	Yes	National	Government — following consultation with the National Tripartite Cooperation Council
<b>Lithuania</b>	Yes	National	Government — following recommendation of the Permanent Labour Remuneration Committee
<b>Malta</b>	Yes	National	Government — following recommendation of the Employment Relations Board and automatic indexation
<b>Poland</b>	Yes	National	Tripartite agreement
<b>Slovak Republic</b>	Yes	National	Government — following recommendation of the social partners
<b>Slovenia</b>	Yes	National	Tripartite agreement of the social partners — followed by government decree

Source: ILO, 2004.

TABLE 6.5: MINIMUM WAGES IN EU-15

Country	Statutory minimum wages	Level	Fixing machinery
<b>Austria</b>	<b>No</b>	-	No statutory minimum — industry level collective agreements
<b>Belgium</b>	Yes	National	Agreement between the social partners at the National Labour Council and automatic indexation
<b>Denmark</b>	<b>No</b>	-	No statutory minimum — industry level collective agreements
<b>Finland</b>	<b>No</b>	-	No statutory minimum — sectoral collective agreements
<b>France</b>	Yes	National	Government — following either report of the National Committee on Collective Agreements or automatic indexation
<b>Germany</b>	<b>No</b>	-	No statutory minimum — sectoral collective agreements
<b>Greece</b>	Yes	National	Tripartite agreement between the social partners
<b>Ireland</b>	Yes	National	Government — following either a national tripartite agreement or the recommendation of the Labour Court
<b>Italy</b>	<b>No</b>	-	No statutory minimum — industry level collective agreements
<b>Luxembourg</b>	Yes	National	Government — following government review and automatic indexation
<b>Netherlands</b>	Yes	National	Government
<b>Portugal</b>	Yes	National	Government
<b>Spain</b>	Yes	National	Government
<b>Sweden</b>	<b>No</b>	-	No statutory minimum — industry level collective agreements
<b>UK</b>	Yes	National	Government — following recommendation of the Low Pay Commission

Source: ILO, 2004.

### 5.1. Tripartism

As explained in Chapter 1, social dialogue in the new Member States is characterised by the predominance of tripartism. All central and east European countries, but also Cyprus and Malta, have promoted forms of tripartism. They have created tripartite national councils — as early as 1960 in Cyprus, 1988 in Malta and Hungary — to which the government regularly invites employer and trade union representatives to deliberate on a number of economic and social issues. These structures were instrumental in the transition years since they helped to overcome a difficult period of economic and social crisis, avoiding major social upheavals and serving as an important governance tool in difficult times.

The report, *Industrial relations in Europe 2002*, explained that in many cases such tripartite bodies have remained too formal and do not always produce concrete results. In Chapter 1, the disconnection between the national and sectoral levels, and between tripartite consultation and bipartite dialogue has been highlighted as one area where institutional change and innovation might be welcome. In recent years, in some new Member States such as Hungary, Slovakia, Slovenia or Estonia, tripartite bodies seem to have extended the range of areas which they cover to include wages, social protection and employment, but also such diverse topics as immigration, EU accession and ILO matters. Moreover, in certain areas, such tripartite bodies have acquired more authority. This is the case in relation to the minimum wage, an area where all of EU-10 have implemented a statutory minimum wage. In comparison, in EU-15, nine Member States have adopted legislation, whereas six set minimum wages by (sectoral or national) agreement (see Chapter 1). Looking at the procedure and mechanisms followed, it is usual in both EU-15 and EU-10 for the gov-

ernment to adjust the statutory minimum wage after consultation with the social partners (see Tables 6.4 and 6.5). In this area, there seems to be a considerable degree of convergence. As explained in Chapter 1, such consultations may be conducted in the framework of social pacts or national agreements, covering other issues as well (wage-setting procedures, taxation, employment policy, unemployment benefits, etc.). Recent examples of this approach in the new Member States are found in Hungary, Slovenia and Estonia.

### 5.2. Autonomous bipartite social dialogue

In contrast to the tripartite structures, the independent channels of social dialogue and bilateral negotiations continue to be poorly developed in most of the EU-10 countries (see Chapter 1). Employers' organisations do not seem to have much influence on the myriad of small entrepreneurs who have emerged in the new private sector. Trade unions, for their part, have yet to find the right strategy to achieve representation in small, private sector companies. Moreover, they continue to suffer from declining membership and a low mobilisation capacity.

In Chapter 1, it was shown that bargaining coverage is much lower in the new Member States, and declining, compared with relatively high and stable coverage rates in all but one or two of EU-15. As a proximate cause of this difference, the absence of sectoral (and regional) bargaining structures, backed by employers' associations representing companies, was identified. With the exception of Slovenia, wages and other working conditions are mostly negotiated at the company level, if at all. In most small and many large companies there is no collective bargaining or representation, and this situation affects the large majority of employees (see Chart 1.5 with coverage rates).

Not only is the number of collective agreements low and their coverage limited, most agreements are also thin on content. Many simply recite what is already in the law — a practice which is not entirely unknown in some of the EU-15 countries either, for instance in France. In some cases, as shown by a recent study of collective agreements in Estonia, the content of agreements is even more modest than what is already provided for by law, demonstrating the social partners' lack of knowledge of the existing legislative provisions on working conditions. In general, collective agreements in the new Member States cover a very narrow range of issues, mainly wages and earnings bonuses, and sometimes, but much less frequently, working time. The other essential working conditions described in this chapter, such as health and safety, working patterns, working-time flexibility, payment of overtime, work and family life, employment contracts, and so on, are usually not covered by social dialogue. This void helps to explain some of the practices occurring in employment contracting and working conditions described in the previous sections of this chapter.

There are, however, positive examples of social dialogue playing a supportive role in improving employment and working conditions. One case in point is the renewed regional social dialogue in Poland, which in recent years has helped some regions to carry out restructuring on the basis of partnership, rather than through conflict (see Box 6.1). Collective bargaining also seems to be playing an increasingly active role in regulating working-time arrangements in Hungary, as shown by the example in Box 6.2.

Finally, Slovenia offers an example of best practice in terms of the interplay between different levels of social dialogue, with national tripartite agreements on a number of issues being complemented by collective agree-

### Box 6.1: Regional social dialogue emerging in Poland

Regional social policy is on the Polish agenda again, after the boost given to regional social dialogue in 2001. The Tripartite Commission for Social and Economic Issues and the voivodship (regional) commissions for social dialogue of July 2001 — that entered into force in October 2001 — provides for legally based regional tripartite social dialogue.

Voivodship commissions of tripartite social dialogue (WKDS) started to operate in March 2002. The law enables these commissions to be set up at the request of at least one of the representatives of either a trade union or employers' organisation, and is composed of: the voivod representing local authorities; the representatives of trade unions; the representatives of employers' organisations; and the marshal of the voivodship as a representative of the regional government.

The assessment of these regional commissions is so far mixed. On the one hand, the social partners have complained about their purely consultative nature. As they do not have any statutory mission, this prevents them from moving beyond 'theoretical' discussions. Research conducted in 2003 underlined that such consultative status may hinder rather than strengthen the development of regional social dialogue (1). According to the authors, at the beginning organ-

isations tended to send their senior representatives to the regional commissions, but this is no longer the case, demonstrating disillusionment with regard to this form of dialogue. The commissions also seem to be suffering from their excessively narrow scope.

On the other hand, concrete steps could be achieved in the framework of these regional commissions. Cooperation between social partners could be initiated to implement national and international programmes aimed at improving employment at the regional level. This has been the case, for instance, with the commission of the voivodship of Swietokryskie where social partners worked together on the restructuring plan of the coal industry (Huta Ostrowiec). The social commission played a key role in avoiding social conflicts and finding concrete solutions. Discussions were also conducted with a potential Spanish investor who decided to buy the firm in September 2003 and who signed an agreement with trade unions on social conditions. The commission also started cooperating with the Friedrich Ebert Foundation in order to define and carry out a regional restructuring programme that could benefit from European funds. To sum up, while the functioning of regional social dialogue still needs to be improved, it nevertheless represents one of the specific features of Polish industrial relations today.

(1) *Sroka Jacek et al. (2003), Rozwoj dialogu społecznego na poziomie regionalnym — Raport z badan — Memo, Uniwersytet Wrocławski.*

### Box 6.2: Social dialogue on working-time arrangements in Hungary

Following the transposition of EC Directive 93/104/EC, the Hungarian labour code (Act XXII of 1992 modified in 2001) leaves considerable room for social dialogue over working-time issues. It allows certain flexibility to be negotiated between social partners, in particular to increase the maximum annual overtime ceiling (from the 200 hours legally allowed, to 300 hours) and the daily hours limit (from 8 to 12 hours). The reference period can also be negotiated and lengthened from two to four months, if there is an enterprise collective agreement, and even up to six months if there is an agreement involving several employers — a 'multi-employer' agreement. Finally, collective agreements may also stipulate a reference period of up to one year for four specified job categories: employees working in stand-by-shops, employees working in continuous shifts, those on alternating shifts, and seasonal employees.

Social dialogue on working time thus makes it possible to define a framework for working time within individual companies, and to take better account of the specific needs of the various sectors, professions and types of work organisation. Employers responded positively to such a call for social dialogue, with two major trends: an increased interest at enterprise level to negotiate on the reference period; and the lengthening of the reference period up to the maximum one-year where conditions allow for this.

As a result, the number of collective agreements with a reference period of a year increased significantly. In 2002, there were 13 such agreements out of the 67 registered multi-employer agreements, and 160 out of the registered 1 278 company agreements. In 2003, they had increased to 20 agreements out of the 73 registered multi-employer agreements, and to 225 out of the registered 1 275 company agreements.

The collective agreement in the hotel and catering sector — which has been extended to the entire sector — includes this kind of provision. Other sectors where such a one-year reference period is

widely used include agriculture and construction — both dominated by seasonal work — and the chemical industry — where continuous shifts prevail.

Social dialogue has thus led to the regulation of extra working hours and also contributed to fair remuneration of working time, notably by reducing unpaid overtime — more prevalent where there are no trade unions. According to the labour inspectorate, those companies that have no collective agreement — and thus have not lengthened the reference period beyond two months — are far more likely to breach the working-time provisions of the labour code (and thus to face penalties) than companies with collective agreements. Employees covered by a longer reference period are also better protected — in line with the joint requirements for flexibility and security — since they are automatically entitled to more and longer rest periods, unless otherwise agreed in the collective agreement, and the maximum work day can under no circumstances exceed 12 hours.

However, this correlation between social dialogue and working time has also led to some drawbacks. Firstly, because it means that those employers who do not have the opportunity to sign such collective agreements — for instance, either because they employ too few employees, or the relevant trade union is unwilling to address the question of reference periods in a collective agreement — end up being at a competitive disadvantage, as they have to operate with a 2, rather than a 12-month reference period. Such a difference may be critical in the case of seasonal activities, or those working alternating shifts. Secondly, the number of employees covered by the extension of the reference period is in reality low — fewer than half of all employees — because of the large number of employers with only a very small number of employees.

This suggests there is a need for more, rather than less social dialogue — especially better coverage of collective bargaining — and for stronger, not weaker social partners.

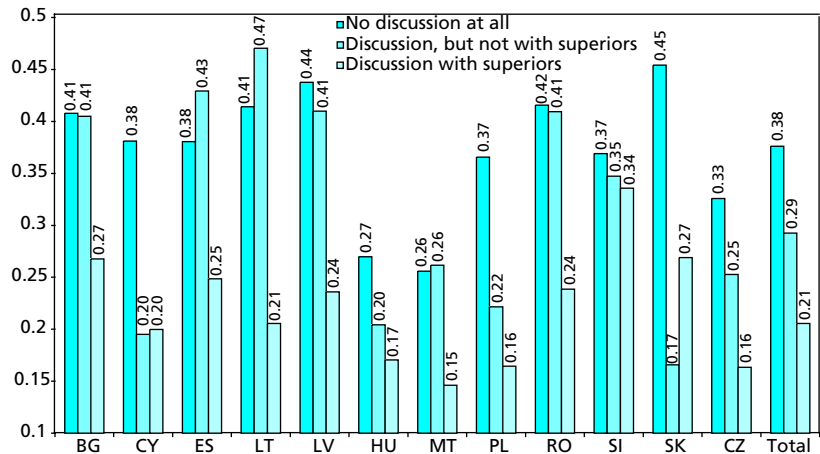
ments at sectoral and enterprise level, and by a strong tradition of workers' participation in decision-making — through works councils and participation on the board — at enterprise level. These examples suggest that social dialogue can indeed help to improve working conditions at enterprise level, especially in areas, such as reconciling work and family life, which have so far been neglected too often by the social partners in the new Member States.

### 5.3. Employee participation

Direct forms of workers' participation — such as participation in boards of directors or works councils, including EWCs — also have a direct impact on working conditions, especially where a role is foreseen for workers' representatives, such as for the implementation of all EC directives on health and safety, which require health and safety committees. However, as shown in Chapter 1, among EU-10 only Slovenia and Hungary, and more recently Slovakia, have introduced works councils with facilities and powers comparable to some of those found in EU-15. In the other new Member States, workers' participation still encounters certain obstacles. In Poland, the Czech Republic, and the Baltic States, works councils and other forms of workers' involvement in decision-making, considered to be 'vestiges' of socialism, were dismantled after 1989, together with other self-management forms, such as cooperatives, often with the cooperation of trade unions.

Both in EU-15 and EU-10, worker participation and forms of information and consultation and trade union representation and bargaining coverage, are more likely in larger companies. Small private enterprises generally do not have trade unions or works councils and other participatory mechanisms that could serve as a basis for social dialogue and partnership. In the new Member States, the problem is

**Chart 6.27: The effects of workers' participation channels on satisfaction at work in the new Member States and candidate countries**



Source: Dublin Foundation Survey 2000-01; derived from question 27 on participation and exchange of views and their direct effects.

compounded by the large share of the small firms sector, the general weakness of trade unions and employers' organisations, the low coverage of bargaining, and the informal economy. The result is that social dialogue does not extend to a relatively large part of the economy and the workforce. This situation may change, at least for larger companies, with the implementation of EU Directive 2002/14/EC establishing a general framework for informing and consulting employees in enterprises. Employees working in enterprises that belong to multinational groups have benefited from the presence of EWCs that have helped in some cases to address transnational issues. Chapter 5 explained that of the 547 companies or groups having a subsidiary in one of the new Member States falling within the scope of the directive, 323 had already set up an EWC, 30 % of which included members or observers from the new Member States. All acceding countries have transposed Directive 94/45/EC into national legislation (see Chapter 4).

The Dublin Foundation survey used throughout this chapter, indicates a direct relationship between employees' opportunities to discuss their working conditions with management and job satisfaction (see Chart 6.27). However, in spite of this positive effect on employee satisfaction, such

channels of communication remain rare. Moreover, even when legal requirements exist, these are not always implemented. In Estonia, for instance, 23 % of enterprises were found not to apply the obligatory appointment of a working environment council. Considering the excessive flexibility of employment contracting emerging in some of the new Member States, the involvement of workers' representatives in employment decisions — for instance, in collective layoffs and restructuring — may turn out to be rather marginal.

The development of employees' financial participation, especially through employee ownership, is a particular feature of EU-10, where such participatory forms have been promoted more actively than in EU-15. Financial participation was developed on a massive scale during the first stage of privatisation in Slovenia and was also much used in Hungary, Lithuania and Latvia. Although this represents a possible avenue for economic democracy at work, with potentially positive effects not only for workers' motivation but also for economic performance and employment, financial participation has declined as economic hardship has often resulted in workers and their families deciding to sell their shares.



## ■ 6. Conclusion

This chapter has sought to assess trends in employment and working conditions in the new Member States. The analysis has shown a mixed picture, with both achievements and remaining problems. On the positive side, employers and employees in the new Member States have shown a very strong capacity for adaptation, with above-average growth and many institutional innovations and legal changes. Cyprus and Malta have made enormous progress to be ready for accession and the eight new members from central and eastern Europe have successfully transformed their collectively planned systems into market based democracies. They have removed the central role of the State to allow individual private operators to emerge and develop, have redirected their trade flows from the former Comecon system towards the EU and other industrialised countries, have restructured their economies by reducing the prevalent manufacturing activities and the agricultural sector in favour of service activities, and, finally, they have introduced new legal and institutional frameworks making it possible to operate in a free market economy and fulfil the social and economic requirements of EU membership.

However, in this adaptation process, some problematic developments have been identified, notably the increase of unemployment. Problems also remain with regard to working conditions, for example, health and safety, working hours, unpaid overtime on a large scale, the under-reporting of wages, stress at work and difficulties in reconciling work and family life.

An important challenge for the new Member States will be the need – in line with the Lisbon objectives – to promote more sustainable and socially cohesive societies at the same time as continuing their adaptation process. Important progress has

been made and the new Member States have been involved for some time now in the open method of coordination on employment and social inclusion. Nevertheless, despite the progress observed, growing earnings and income differentials, poverty and the social and economic exclusion of some groups, continue to be a problem. No doubt these features will continue to be the most important challenges for their industrial relations systems in the coming years.

EU membership and implementation of the EU's legislative *acquis* in the social field should help to bring about improvements in working conditions. In addition, it will be important to continue promoting the role of social dialogue and partnership in these countries as a way of achieving a more balanced approach between the need of employers for flexibility and the desire of employees for security (see also Chapter 3). Social dialogue can also help to include those with disadvantages in the labour market, and thereby contribute to social cohesion.

A cohesive society is better able to address new challenges. The capacity of the new Member States for change and innovation, combined with the enthusiasm shown in the accession process and the strong desire to converge with EU standards, give reason for optimism with regard to the future.

## Country abbreviations

Country	Abbreviation
Belgium	BE
Czech Republic	CZ
Denmark	DK
Germany	DE
Estonia	EE
Greece	EL
Spain	ES
France	FR
Ireland	IE
Italy	IT
Cyprus	CY
Latvia	LV
Lithuania	LT
Luxembourg	LU
Hungary	HU
Malta	MT
Netherlands	NL
Austria	AT
Poland	PL
Portugal	PT
Slovenia	SI
Slovakia	SK
Finland	FI
Sweden	SE
United Kingdom	UK
Bulgaria	BG
Romania	RO
Turkey	TR

## Useful websites and documents

Employment and Social Affairs DG social dialogue website:

[http://europa.eu.int/comm/employment\\_social/soc-dial/social/index\\_en.htm](http://europa.eu.int/comm/employment_social/soc-dial/social/index_en.htm)

Employment and Social Affairs DG social dialogue grant website:

[http://europa.eu.int/comm/employment\\_social/calls/proposal\\_2004\\_en.cfm](http://europa.eu.int/comm/employment_social/calls/proposal_2004_en.cfm)

UNICE — <http://www.unice.org>

CEEP — <http://www.ceep.org>

UEAPME — <http://www.ueapme.com>

ETUC — <http://www.etuc.org>

European Trade Union Institute (ETUI) — <http://www.etui.org>

Postal Services Sectoral Social Dialogue Committee website: <http://www.PostSocialDialog.org>

Sugar Sectoral Social Dialogue Committee website: <http://www.eurosugar.org>

European Foundation for the Improvement of Living and Working Conditions — <http://www.eurofound.eu.int>

European Industrial Relations Observatory — <http://www.eiro.eurofound.eu.int>

European Monitoring Centre on Change — <http://www.eurofound.eu.int/emcc/emcc.htm>

## Useful documents

'Recent developments in the European inter-professional social dialogue 2002–03'

[http://esnet.cec/comm/employment\\_social/social\\_dialogue/docs/recent\\_en.pdf](http://esnet.cec/comm/employment_social/social_dialogue/docs/recent_en.pdf)

'The sectoral social dialogue in Europe'

[http://esnet.cec/comm/employment\\_social/social\\_dialogue/sectoral\\_en.htm](http://esnet.cec/comm/employment_social/social_dialogue/sectoral_en.htm)

'Report of the High Level Group on Industrial Relations and Change in the European Union'

[www.europa.eu.int/comm/employment\\_social/soc-dial/social/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-dial/social/index_en.htm)

'Industrial relations in Europe 2002 report'

[www.europa.eu.int/comm/employment\\_social/soc-dial/social/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-dial/social/index_en.htm)

Commission communication, 'Social policy agenda', COM(2000) 379 final, 28 June 2000

[http://europa.eu.int/comm/employment\\_social/general/com00-379/com379\\_en.pdf](http://europa.eu.int/comm/employment_social/general/com00-379/com379_en.pdf)

Commission communication, 'Mid-term review of the social policy agenda', COM(2003) 312 final, 2 June 2003

[http://europa.eu.int/comm/employment\\_social/news/2003/jun/com2003312\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2003/jun/com2003312_en.pdf)

'Employment in Europe 2004'

[http://europa.eu.int/comm/employment\\_social/employment\\_analysis/employ\\_2004\\_en.htm](http://europa.eu.int/comm/employment_social/employment_analysis/employ_2004_en.htm)

'Joint employment report 2003-04'

[http://europa.eu.int/comm/employment\\_social/employment\\_strategy/employ\\_en.htm](http://europa.eu.int/comm/employment_social/employment_strategy/employ_en.htm)

'Jobs, jobs, jobs — Creating more employment in Europe', report of the Employment Taskforce chaired by Wim Kok, November 2003

[http://europa.eu.int/comm/employment\\_social/employment\\_strategy/task\\_en.htm](http://europa.eu.int/comm/employment_social/employment_strategy/task_en.htm)

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