

**THE EUROPEAN
EMPLOYMENT STRATEGY
The Third Pillar : Adaptability**

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(A critical evaluation of the situation in France and Belgium)

Or : Positive social dialogue versus negative social dialogue

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« There is nothing more difficult to devise, where success is less assured and implementation more difficult to achieve, than the creation of a new system. »
Machiavelli, *The Prince*, 1563.

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Introduction

When in 1997 the Maastricht Treaty was revised, to give way to the new Amsterdam Treaty, the social dimension of Europe seemed to be given special attention. The social protocol, previously annexed to the Treaty, was then fully integrated. More importantly, an unprecedented employment title was elaborated¹. The latter represented a considerable leap towards a more 'Social Europe'. By 1997 it appeared very difficult for the European Union to proceed with a purely economic and financial policy. Considering the relatively high, and extremely worrying, European unemployment rates of the last few years, Europe could not go on ignoring the 'social' problems that underpinned its foundation. The Member States had therefore decided to make it a matter of 'common concern' to lower the unemployment rate and, more importantly, to reach a viable European employment rate. They had finally agreed to co-operate in the domain of social policy.

Following this the Luxembourg Job Summit then gave rise to the European Employment Strategy (EES). The EES is composed of four pillars: employability, entrepreneurship, adaptability and gender equality. The adaptability pillar proposes to satisfy the need for the re-organisation of the concept of work. With the growing use of new technologies and the changing demand of the labour organisation, caused by the process of 'globalisation', the 'Fordist' structure of labour is not valid anymore. Work organisation is in serious need of modernisation. Enterprises are pressed to adapt to new and fast changing needs. The Labour force is also greatly concerned. Contracts must adapt and life-long training must be introduced. The third pillar enhances the challenging need for change. By doing so, however, this pillar embraces some extremely ambitious and diverse concepts. As it will be observed later in this report, this has sometimes caused a certain confusion for the social partners.

Throughout this study we will concentrate our attention on narrowing the intentions of the third pillar to the progress that might have been made, in the last few years, in two of the Member States: France and Belgium. It seems highly interesting, two years later, to be able to observe whether the EES was mainly created in order to quieten the many voices which started to express their worry about the state of European Employment, or whether this is a genuine policy which Member States are quite willing to follow, and apply to their National Action Plans (NAPs).

Chapter I : The Adaptability Pillar

Of all four pillars the third one, adaptability, although indirectly aiming at reducing the unemployment rate, concentrates on ameliorating the conditions of work and modernising the structure of labour. As noted above this pillar, being extremely ambitious, is however very vague.

It recognises the need for greater adaptability on the part of businesses but also on the part of the workforce. The third pillar therefore focuses on the adaptability of enterprises and workers to changing technology and markets, industrial restructuring, and the development of new products and services.

"It covers adaptability in terms of the organisation of work, working patterns and contracts, as well as adaptability in terms of regulatory and training systems. It recognises explicitly that a

¹ Title VIII *-Treaty of Maastricht- *New Title introduced by the Treaty of Amsterdam.

balance must be struck between the need of businesses for flexibility, and the needs of employees for security and employability, and that striking this balance will not always be an easy task.”²

Part I: The adaptability pillar is a vast (but also vague) project. It contains three main ideas:

□ **The need for the re-articulation of the concept of work**

Since the end of the last world war the concept of work has been based on the organisation of a hierarchical top-down organisation, with a high degree of specialisation and simple, often repetitive jobs. This ‘fordist’ concept of labour was highly beneficial for the countries of Europe. And along with mass production it also brought economic productivity and prosperity. In the last twenty years, however, new technologies have been fast developing and different ways of working have conquered the European continent. Today there is no more need for the traditional form of organisation of the labour market. The limitations of this way of organising work have become increasingly evident³. With the changing needs of the labour market, space must be made for elements such as customisation and ‘just-in-time’ ways of producing. And although the production system has changed, people’s lives have also been altered. The gender gap is closing up and the labour force is evolving. However, and as it is argued by the Commission, ‘The system does not give sufficient room for processes of upgrading and innovation’⁴. The labour market must therefore adapt to those new needs. The adaptability pillar of the EES proposes to raise awareness in this sector. As has been mentioned above, although it is a highly important concept, it remains very vague. How can the Member States re-articulate the concept of work without jeopardising productivity as well as the security of workers?

It is in this sense that the social partners have one of the leading role in this pillar. They have to negotiate at sectoral and enterprise level in order for the adaptability of work to take place. This, of course, necessitates a trust to be built between those partners: that is to say between trade unions and the employers. Something which has always been a delicate affair in the past.

However, and with this ‘new found’ trust, the social partners could negotiate agreements in order to modernise the organisation of work. This entails flexible working arrangements, such as the reorganisation of the working time as a weekly, monthly or even annual figure. It could also take the shape of reduced working hours, reduced overtime, the development of part-time work, lifelong training and career breaks, to mention but a few.

The modernisation of work is a vital element for the positive development of the concept of work within the European Community. However the problem truly lies in the combination of flexibility, of both workers and enterprises, and security.

Full-timers must be able to enjoy a more flexible way of working at the same time as retaining their social benefits. Contracts must be modernised but remain as secure as they were. This modernisation also entails making different ways of working even more secure such as part-time work or even temporary work. It would mean recognising all types of contracts and providing the same level of social benefits to all workers.

² Commission Green Paper. Partnership for a New Organisation of Work. COM(97) 128 Final

³ COM(97) 128 Final

⁴ COM(97) 128 Final

This brings us to the other major concept contained in this pillar: the need for the re-regulation of the labour market.

□ **The need for the re-regulation of the Labour Market.**

This idea, extremely complex, has been the challenge of the last few years for different national governments. The question of de-regulation, as can be observed mostly in the American system, is not the main concern here. The challenge is not so much to de-regulate or liberalise the labour market from dirigist states; but by taking a different approach, to re-regulate. The term alone poses a great deal of problems; what exactly is meant by re-regulating?

In the context of the European Employment Strategy (EES) this idea raises fundamental questions concerning the balance of regulatory powers ‘between public authorities (legislation) and the social partners (collective bargaining) and between the social partners and individual employees (individual employment contracts).’⁵ In particular, the possibility of derogating from legislation by collective agreements and the scope for individual contracts versus collective agreements are central issues on today’s European industrial relations agenda.

In this context, the likely development of Labour law and industrial relations from rigid and compulsory systems of statutory regulations to more open and flexible legal frameworks may pave the way for a new balance of regulatory powers, between the state and the social partners, in particular in the areas connected with the internal management of firms. In this sense the relationship between employers and trade unions becomes crucial. The employees must be given a more important role in decision-making process of the company. The involvement of all social partners at all levels could also increase the credibility of the firm, the involvement and the stronger interest of the employee, and a better and more qualitative productivity for the employers and their companies. It is in this sense that the role of the social partners will be crucial.

□ **The need for a wider social dialogue**

As observed in the above the role of the social partners in this third pillar is crucial. Their role will be decisive at sectoral, national and European level. It is essential to the development of a new organisation of work. They have to negotiate at all those levels and thereby influence the national governments, which will also have an important role to play in the equation. They will then be able to examine more closely the viability of new types of contracts and still decide on providing security. The social dialogue will ensure that the modernisation of work is beneficial to employees as well as employers. It will provide greater flexibility of workers as well as businesses. It will also elaborate a ‘terrain d’entente’ between the greater social security of employees and the needs of business. Some major steps have already been taken in that sense, the trade unions have pushed for conciliation with the employers on subject such as temporary and part-time work as well as on parental leave. The European Social partners have already managed to negotiated a framework for all three of them. However the progress cannot be stopped here. A long way remains for this collaboration between the Social Partners. This is where the social dialogue becomes essential. Of this role will depend the development of the project of adaptability.

⁵ COM (97) 128 Final

Part II: The guidelines for Adaptability.

Following the agreement at the Amsterdam Summit to make certain provisions of the new treaty regarding employment and the Luxembourg Jobs Summit in November 1997, the Council adopted the first employment policy guidelines for 1998 on 15 December 1997. The guidelines for Adaptability are as follows:

Encouraging Adaptability of businesses and their employees

Modernising work organisation

In order to promote the modernisation of work organisation and forms of work:

- The social partners are invited to negotiate, at the appropriate levels, in particular at sectoral and enterprise level, agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security. Such agreements may, for examples, cover the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, lifelong training and career breaks.
- For its part, each Member State will examine the possibility of incorporating into its law more adaptable types of contract, taking into account the fact that forms of employment are increasingly diverse. Those working under contracts of this kind should at the same time enjoy adequate security and higher occupational status, compatible with the needs of business.

Support adaptability in enterprises:

In order to renew skill levels within enterprises, Member States will :

- Re-examine the obstacles, in particular tax obstacles, to investment in human resources and possibly provide for tax or other incentives for the development of in-house training ; they will also examine any new regulations to make sure they will contribute to reducing barriers to employment and helping the labour market adapt to structural change in the economy.

Following the elaboration of the above guidelines a common structure, for the national action plans (NAPs), was agreed at the end of January. A series of working meetings between the Commission and the national authorities in each of the 15 Member States was held between January and March of 1998.

The aim of the Joint Report is to examine what the Member States have committed themselves to doing in their NAPs and whether these commitments are in line with the contents and objectives of the 1998 employment guidelines.

The fact that all 15 Member States, in spite of their very tight-frame of only four months, had prepared and delivered their NAPs by the end of April 1998 must be regarded as a major political achievement⁶.

The responses of Member States as set out in the NAPs demonstrate that there is now a shared commitment to making progress on employment. The new impulse to employment policies generated by the Luxembourg process has been welcomed in all Member States and the implementation of the process is under way, indicating a shared commitment to a more transparent and politically driven implementation of the commonly agreed employment policy objectives.

⁶ From Guidelines to Action : the National Action Plans for Employment. European Commission's Communiqué, Brussels.

Chapter II: Comparison of NAPs in Belgium and France

Part I : An overview of the employment situation in 1997.

Employment in 1995 was 148 million⁷, 1.1 million more than in 1994, but still 4 million fewer people employed than 4 years earlier. The employment rate at 60% was lower than it was 20 years before and significantly down from its recent peak of 63% in 1991.

By the end of 1997, unemployment remained stubbornly high, at 10.7% on the average in the mid-1996, only slightly below its peak of 11.3% reached in April 1994. Youth unemployment remained twice as high as that of adults, at over 20% on average. Long-term unemployment increased in 1995. Unemployment of women also remained unaffected by the recovery and remained higher than that of men, in both Belgium and France.

By the end of the 1990s the nature of work was beginning to change remarkably. The resurgence of part-time and temporary work, as well as the new types of work (i.e telework), made for a need to change the dynamism behind the organisation of work.

By 1997 it became obvious, with the economic union streaming ahead, that a new structure was needed in order to tackle this unemployment problem. Member States appeared to have only a narrow margin of manoeuvre in the struggle against unemployment. The convergence process to achieve EMU had diminished the scope for national budgeting policies. Indeed EMU was held responsible in many quarters for high unemployment. This was the context in which the new treaty was agreed and put into effect.

Part II : Modernising work organisation

A- The Reduction of working time

“The social partners are invited to negotiate, at the appropriate levels, in particular at sectoral and enterprise levels, agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security. Such agreements may, for example, cover the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, lifelong training and career breaks.”(Guideline 16)

In 1998 the first NAPs are elaborated under a certain time constraint. However the fact that all fifteen Member States managed to produce their own shows a certain willingness to co-operate with the European Employment Strategy (EES).

With regards to the third pillar of Adaptability, the main concern in France appears to be the reduction of working time. In order to modernise the organisation of work the third pillar proposes a certain reduction of working hours. It leaves to the imagination of each Member State to decide how this is to be done, advocating, however, a strong participation of the social partners in the process. (Guideline 16).

Approaches to reorganisation of working time reflect the different state traditions and role of the social partners. This will be shown here with the two different approaches adopted by France and Belgium.

⁷ Employment in Europe 1997. European Commission. Directorate General for Employment and Social Affairs.

In this area France is leading the way with a highly controversial process. As described by the 1998 and 1999 National Action Plans (NAPs), the French government has finally managed to install a new law in order to reduce the legal working week to 35 hours⁸. This law encourages bargaining, between the social partners, in order to implement the reduction of working time. It ushered in a period of negotiations lasting eighteen months, which was concluded at the end of 1999 with a vote on a new law, laying down new rules on working time, to apply to all companies with more than twenty employees as from 1 January 2000. Companies with fewer than twenty employees may wait until 2002.

The purpose of this bargaining phase, according to the government, was to enable management as well as labour to bargain on the actual conditions for putting it into force. As agreed in the third pillar, this permitted an extensive role of the social partners⁹.

The negotiations embrace work time, work organisation, job creation and wage evolution.

The motivation behind the French government's intentions to reduce working time is to create and preserve jobs. This seems to fit with the demands of the third pillar for the modernisation of work, although there is no specification of a 35-hour week in the EES¹⁰. However a few problems arise. The aim behind the third pillar, together with modernising the organisation of work and to adapt the workforce and businesses to new technologies, is most of all to enhance the role of the social partners in order to give a renewed balance to the bargaining process. However the situation in France shows a different picture. The role of the social partners has not been as enhanced, in a positive manner, as it is stated by the French government. The Mouvement des Entreprises Françaises (MEDEF) was bitterly opposed to these measures. They claimed that it would disable the country and prevent it from benefiting fully from the economic renewal witnessed in Europe at the moment. Right or wrong in their argument, their main concern was the lack of consultation of the social partners, by the government. The new law was passed without any sort of previous consultation between the social partners. The only consultation that took place was purely informative. The social partners were invited to meet with the government to discuss the modalities of implementation of the law. No consultation was made available in order to discuss the law itself. These measures could have provided for an excellent opportunity for positive social dialogue: the type of consultation, between the social partners, that permits the installation of a framework, at industry level, **before** any law is passed. Instead of this the French government has created the renewal of negative social dialogue: The type that takes place **after** the legal framework has been installed. In order to co-ordinate. By doing so the French government has taken away the initiating character of the social dialogue in order to give it a more passive role: the role of co-ordination. It is in this sense that this report argues that the French social dialogue has been worsened.

In this area the French government seems, therefore, to remain as dirigist and interventionist as it has traditionally always been. In this specific case it had even more power of intervention knowing that this decision was backed up by the French trade unions who had been promoting the idea of a reduced working week since the 1970s.

⁸ Loi Aubry, 13 June 1998.

⁹ Collective Bargaining in Europe 1998-1999, Giuseppe Fajertag. ETUI, 2000.

¹⁰ The third pillar promotes the reduction of working hours but does not include the idea of the 35 hour week. As it will be observed later, the Commission was opposed to the methods used by France to instore this measure.

Although this measure follows the main idea behind the third pillar, a few vital elements cannot be ignored:

- First of all the social dialogue was worsened by this measure. And even though the country is now witnessing a certain renewal of negative social dialogue through the ‘refondation sociale¹¹’, due to the fact that certain UNEDIC¹² conditions needed to be renewed, such as the contributions to unemployment, it cannot be denied that the social dialogue was threatened for a time. After the 1998 loi Aubry, the president of the MEDEF had to resign declaring that he would stop all negotiations, on the subject, with the trade unions. Although the MEDEF was the only organisation to react in such a radical manner, its reaction cannot be ignored. It is the main employers’ representation in France. Its refusal to co-operate could have jeopardised the balance behind the social dialogue.
- Secondly and knowing the weakness of the French trade unions (only 9% of the workforce are members, in 1999) this measure did not permit to expand the instigating influence of the positive social dialogue, as it is foreseen by the third pillar. Their limited role within those negotiations did not allow for more credibility and legitimacy. Although, and due to the radical opposition of the employers to this measure, the legal framework was needed in order to reach an agreement, a certain amount of positive social dialogue should have been allowed to take place before the law was passed. The legislation should have acted as a confirmation of the compulsory framework. Not as an obligation for the social dialogue to take place.

These facts are highly important in the frame of the Adaptability pillar. They seem to contradict the main idea behind it, that is to say the prominent role of the social partners.

The French government was highly criticised by the European Commission for taking such an interventionist stance. The Commission, together with condemning the lack of consultation of the social partners, criticised the fact that this new legal framework imposed new working rules to every single sector. The Commission advocated a less global action in order not to undermine the more sensitive sectors, such as the transports. Against the background of a certain liberalisation of work arrangements through a re-regulation at different levels one can argue even further. The fact that France has replaced one legal framework by another goes against the principle of adaptability. The aim behind the third pillar is to liberalise the legal system in order to allow for negotiations at enterprise level to take place. It aims at making the system more adaptable on an individual and sectoral basis. An ‘adaptable re-regulation’. It paves the way for the social partners to be able to negotiate in order to adapt the needs of businesses and workers. But it also reshapes the face of labour by changing the balance of power and delegating more decisional powers to collective bargaining. This intention seems to have been misinterpreted by France, whereby the latter is giving more implementing powers to the social partners, and not enough instigating powers.

On a different level, these radical measures might also prove to make certain sectors less adaptable. Although the government affirms that it has already permitted to create or preserve 70,000 jobs¹³, the proof of the efficiency of this global action remains to be made in the longer term. A more consensual approach might have been a better way to achieve this action. This can be observed in Belgium.

¹¹ Refondation Sociale consists in a series of agreements to be reached between the social partners. They include the unemployment agreements (UNEDIC), life-long training, gender mainstreaming, etc...

¹² UNEDIC- Union Nationale pour l’Emploi et son Développement dans l’Industrie et le Commerce.

¹³ French National Action Plan for Employment, 1999.

In Belgium the situation is slightly different on this basis. The legal working week remains at 39 hours. However a process has begun in order to shorten it, and adapt it, to the needs of workers and businesses. Rather than adopting a legal framework, which admittedly would have been near impossible considering the type of 'rainbow government'¹⁴ that Belgium has, the country chose to leave it to the social partners to discuss the arrangements.

The strong traditional presence of trade unions is a fact that cannot be denied and which evidently changes the format and the atmosphere in which consultation takes place.

As noted in the 1998 Belgian NAP,

'The regulatory framework has been adopted to allow employers and workers to conclude collective and individual agreements entailing flexible working hours, week-end work, night work, team work, career breaks arrangements, part-time working, reduction of working time or decrease in overtime.' (NAP for Belgium, 1998)

This is a framework which seems to be a lot more in agreement with the intentions promoted by the third pillar. And most of all it shows a will to liberalise work through re-regulation at different levels.

This employment agreements system was already introduced as early as 1995. It works within a system of incentives, as well as the French one. However the Belgian system is taking a much less interventionist approach than the French system, paving the way for the social partners to have the leading role in those negotiations, and allowing for positive social dialogue to take place.

Both those countries provide for certain financial incentives to be gained by businesses if jobs are created. However, and this is once again where one can denote the interventionist role of the French government, France also provides incentives for the **fast** implementation of the new law. France has earmarked FF. 3 Billion, in 1998. The more rapidly firms will reduce and organise work time, the more substantial this aid was to be. This was taking the shape of a flat-rate reduction in social contributions, hence making the most difference to lower-end wages, falling by steps over the next five years. Although this provides for more jobs to be created it is a very indirect measure. In Belgium the message to employers is clearer. If the application of such work redistribution measures leads to a **net increase** in the workers taken on, the employers can be granted a large reduction in social security contributions¹⁵. Two concepts that can be seen as similar, on the one hand, but which can hold a certain confusion for the French employers, on the other.

In Belgium therefore the notion of social dialogue has been taken a lot more seriously than in France.

'Permission¹⁶ is given, on a trial basis, for collective agreements to be introduced, in a limited number of enterprises, aimed at reducing the working week for the labour force, with compensatory recruitment being encouraged through a large reduction, temporary and degressive, in the social security charges for the group workers involved.' (NAP for Belgium, 1999)

¹⁴ The Belgium government is composed of the Socialist, Green and Liberal parties, since June 1999.

¹⁵ Belgian National Action Plan for Employment, 1998.

¹⁶ From the Belgian government. Vice Prime Minister and Minister for Employment : Laurette Onkelinx.

Through this system, Belgium takes into account the sensibility of certain sectors which could be made more negatively reactive to the reduction of working time. However, and since no system seems to have reached the perfect balance so far, the Belgian agreement poses another problem. Through its selective basis the system might prove to create some inequalities. Only a few sectors have been chosen to try on the new procedure, such as the financial sector¹⁷. Others might soon suffer for the lack of choice. It is essential therefore that the social partners should strengthen their efforts to widen the process. An agreement must be reached whereby the reduction of working time is applied to all sectors, still respecting the voluntary basis on which it is built. In Belgium therefore, we are witnessing a completely different phenomenon from the French one. The problem observed here is not the lack of social dialogue. Positive social dialogue is in place, and being respected. However it must be stressed that positive social dialogue is not sufficient by itself. For the EES to become functional, and in order to avoid any sort of inequalities or malfunctions, a law is also needed. A balance between positive social dialogue and legislation must be struck. Too much of one or the other could prove highly negative. Belgium must not, therefore, fall into the other extreme of providing for social dialogue only. The Belgian government must make it a priority to adapt its legislation to the EES, when and where necessary. **In the case of the reduction of working time the law should come as an equalising process for a measure that has already been discussed and decided on by positive social dialogue.**

The reasons behind those two very different ways of proceeding lie behind two main factors: Two different governments and trade unionist traditions.

The centralised French government has traditionally been highly interventionist. To add to this supremacy of the state, the French trade unions have always been a lot weaker than in Belgium. The Belgian government, traditionally called 'rainbow government' finds its weakness in its coalition between the ecologists, the socialists and the liberals. This mix of political colours creates an important problem as far as amending or passing new laws is concerned. Something, which can be seen as disabling but which, could also be considered as an advantage for the social partners. The federalist system permits to delegate decisions to all different levels. The separation of the State and the Church not having taken place, like it is the case in France, it allows for an explanation of a certain paternalism of exchange witnessed, in Belgium, through the importance of the trade unions (About 45% of workers are members of trade unions). Two very different traditions which can therefore explain the different manner of proceeding to the reduction of working time.

B- New types of contracts

'In order to modernise the work organisation and the forms of work each member state was invited to examine the possibility of incorporating into its law more adaptable types of contracts, taking into account the fact that forms of employment are increasingly diverse. Those working under contracts of this kind should at the same time enjoy adequate security and higher occupational status compatible with the needs of business' (Guideline 17)

In line with this perspective the Belgian government aims at cutting back the red tape related to part-time work in order to cut back on unemployment. It also aims at expanding the possibilities for annualising working hours and thought about a new legal framework for home working and teleworking.

¹⁷ Info CSC no 7. 24 March 2000

In Belgium discussions to reach an agreement on career breaks have also been launched. This would be accompanied with strong incentives for the employers. It is important to know that a general right to career break and the four-day working week already exists on a voluntary basis in the public sector¹⁸. (This is, however, accompanied with a reduction of wages as opposed to retaining the same wage in France).

Furthermore some regions provide extra allowances to workers taking a career break and to workers accepting a cut in working hours. The government has already planned to examine the issue of arrangements for ending working life in consultation with the social partners. This is part of the 1999-2000 inter-professional agreements in Belgium. These arrangements are to take the shape of entitlement on a half-time basis, the age of pre-retirement on a full-time basis, etc....

In line with the idea of flexible working time the Belgian government invites the social partners to couple the agreements already reached, on expressing working time as an annual figure, with an effective restriction on recourse to overtime by, for example, introducing compulsory leave in lieu of overtime pay.

According to the Belgian 1998 NAP the aim for the social partners was to attain, within five or six years, the average of the three neighbouring countries¹⁹ regarding efforts to redistribute work in all its forms. On this basis progress has been made, especially in the last three years. (Figures not available)

However and even if the EES has intensified the dialogue slightly on part-time work and temporary work, the efforts concentrated on this area predate the EES. This is why the social partners state that it is impossible to evaluate whether the EES has had any effect on the actual situation²⁰.

The Belgian government has been acting since 1994. Those efforts have taken the shape of an improvement of social security of part-time workers. Along the line of the employment guidelines, the Belgium government managed to provide those workers with a separate status, which they see as sound and attractive. Part-time workers have been granted with certain rights. In practice this means that for an unemployed person accepting a part-time job and workers switching from full-time to part-time, under the work redistribution agreements, the preservation of their social rights as full-time workers is guaranteed, in principle.

An agreement which can only prove positive compared to the old system which gave only very precarious rights to the workers concerned. However efforts must be intensified in order to expand these measures to all types of workers, especially the new types of work such as home working and teleworking. A provisional legal framework is being examined.

According to the 1999 NAP, and under a certain pressure of the social partners, the Belgian government agreed to carry on studying whether any improvement could be made to make part-time work more attractive for companies and workers, over and above the already noticeably improved social status of part-time workers.

¹⁸ Info CSC no7, 24 March 2000.

¹⁹ France, Germany and the Netherlands.

²⁰ Answers of the Belgian trade unions to a questionnaire elaborated by the ETUC, concerning the 2000 employment guidelines.

In that sense the trade unions still have an important lobbying role to play. Their influence at all level is crucial. It is in this intention that they have insisted for this matter to be included in the inter-professional agreements of 1998-1999, and to be renewed in the ones for 1999-2000. On those matters progress has been recognised on the part of the social partners. The EES having given a crucial status to employment, on the political agenda, it has somewhat permitted to insure a better coherence and co-ordination between the different levels of power in the federation of Belgium²¹. (Federal, regional and communal)

As a result of this co-ordination, and of the inter-professional agreements, the government started to contemplate reducing employer's contributions and making such reductions as proportionately large as possible for part-time work²². Furthermore access to educational leave was also made possible for part-timers under certain conditions.

The social partners must negotiate further still in order to facilitate access to part-time work for all categories of workers and to ensure that all part-timers enjoy equal opportunities in terms of career and promotion. They must also carry on negotiating so that this type of workers can also enjoy a certain amount of social security.

In this area an important freedom is given to the social partners to negotiate. In the last three years a certain amount of progress has been made. Knowing that the liberals have now been sharing the power, since June 1999, it could have represented a threat for the well-being of the social dialogue. The EES has permitted to avoid this threat from becoming reality²³. This, of course can only be seen as a positive factor. However, and if it has allowed for it to be maintained, it has not given the social dialogue a renewed impetus. In the area of the third pillar, a certain confusion as to what is to be negotiated and at which level, can be observed. Efforts must be made therefore to clarify and consolidate the role of the social partners.

The debate on how to consolidate this role is important at this crucial point of the EES. The idea of elaborating of a certain amount of quantitative criteria has been put forward. The latter could certainly help clarifying the role and the objectives of the social partners²⁴ although it remains a delicate issue. The social arena having found its European stage still remains a subject on which subsidiarity must be respected²⁵. The concept of unanimity within the European Council shows that Member States are not ready to give up their sovereignty in that department. However one could argue that as long as a proper level of competence and methods of quantitative evaluation is not found, a certain confusion might remain.

On the other hand this suggestion could also represent a risk at national level. The excess of EU competence and the establishment of a certain amount of social quantitative criteria, similar to those applied to the economic and monetary union, and put forward by Bernt Keller²⁶, could mean the loss of the social impetus observed at the moment. Time must, therefore, be given to the EES to mature before being able to apply such constraints, on what is still a very sensitive political area. Paradoxically one must also be careful not to lose this

²¹ Thierry Dock, European Expert for the Confédération Syndicale Chrétienne. (CSC) Expert interview, 29 May 2000.

²² See guideline 14, Belgian NAP 1999.

²³ Rafael Lamas, European Expert for the Fédération Générale des Travailleurs Belges. (FGTB) Expert interview, 08 June 2000.

²⁴ Henri Lourdelle, Consultant at the ETUC. Expert interview, 15 June 2000

²⁵ Treaty of Amsterdam, article 127 (ex-article 109p)

²⁶ Bernt Keller, *The New European Employment Policy. Or : Is the glass half-full or half-empty ?* 1999

impetus, in wanting to safeguard the national sovereignties, and to give rise to a complete euro-sclerosis. Here again the social partners have an essential role to play in order to keep the process going. Will they be able to resolve this confusion and set the targets for themselves? What is to be done?

The above gives a succinct picture of the confusion around what type of measures should be used to regulate the EES. This interim report is tempted to opt for the adoption of certain quantitative criteria, although not for all parts of the EES. Even within the adaptability pillar only certain aspects could be sustained by quantitative criteria, such as life-long training as will be explained later. At this stage of the EES one must be highly selective, as to which aspects can put under the strain of quantitative criteria, in order to avoid grave mistakes.

At the moment the EES seems to have reached a point where it is in great need of a re-evaluation. It must be careful not to reach a zero-sum. One of the theories shared by the European Trade Union Confederation (ETUC) is the fact that the European Commission must recover its engaging role. For the moment it is easily described as a 'report writing institution'. It seems imperative that it should regain the more propulsive role that it had with Jacques Delors, in order for the social arena to find its way forward²⁷. This is a view which is however not shared by all Member States. Smaller countries, such as Belgium, are more sensitive to the influence of the European Commission. However the latent situation of the EU is more compatible with the sovereign will of larger countries, such as France. Most especially in the area which interest us in this chapter: the new types of contracts.

On This matter the French government seems to have deployed less efforts than Belgium. New ways of organising work such as the sharing of employees among several companies as part of an employer or employee grouping scheme has given rise to different forms of job relationship between employer and employee. This development is not handled well by current regulations. The 1999 French NAP recognises the situation but rather than giving the responsibility to the social partners it promotes the need for it to be dealt with an

'appropriate legal framework that would ensure security and better professional status for the employees concerned together with a certain adaptability and flexibility of the companies involved'. (1999 NAP)

Although the EES has not changed the interventionist attitude of the French government, the Socialist government, together with the influence of the third pillar, has highlighted the need for a wider social dialogue. From 1998 onwards France proposes that the implementation of such measures should require prior co-ordination among the social partners throughout the year (positive social dialogue). Negotiations on part-time work and new types of contracts should therefore take place within the framework of the 'refondation sociale'. The latter creates a new impetus that could be beneficial to the French social dialogue which had, in the last few years, proven to be practically non-existent. Although this 'refondation sociale' could hardly be seen as 'voluntary',²⁸ it might prove to be the platform to a renewed social dialogue. However this 'refondation sociale' could also prove to be short and sweet if agreements cannot be reached on the evaluation of new unemployment rules²⁹. This is obviously not to be wished for since it would create a complete sclerosis of the French social dialogue, and would

²⁷ Henri Lourdelle. ETUC

²⁸ In 2000, there was a practical need to rethink the unemployment conditions. UNEDIC agreements.

²⁹ The MEDEF having threatened the trade unions that if no *reasonable* agreements could be reached this would be the end of all negotiations. Emmanuel Julien.

therefore considerably affect the future of the EES. France is, therefore, witnessing a crucial time during which it will be easier to evaluate the willingness of the social partners to cooperate and whether there is any confusion as to understanding their role within the framework of the EES.

Once again, and maybe even more than in Belgium, a certain confusion as to what their role is can be observed among the French social partners. Although very positive and enthusiastic about the EES, the trade unions do not seem to be given the space to act appropriately, at enterprise level. What is more the French trade unions, having been traditionally very weak, do not seem to know how to handle this new central role. It is therefore imperative for them to start adopting a more positive and forthcoming attitude³⁰. First of all in order to attract more members, which is usually the case at times of economic renewal, and secondly in order to influence employment policy in a positive way. The wait and see attitude that they seem to have adopted in the last few decades could prove to be damaging, an example of this would be in the creation of new types of contracts. In the last few months the employers³¹ have started talking about new types of fixed-term contracts. For part-time workers, as well as full-timers, they have introduced the idea of a five-year contract. France is a country which is already plagued by the flourishing business of 'contrats a duree determinee' (CDD). Until now they took the shape of a two to three year contract. This has proven to be beneficial in order to reduce unemployment, especially since it guarantees less labour costs for the employers. However this is a highly precarious method to provide work. It doesn't guarantee work for life and can also be quite demoralising for the worker himself. It could prove to be counter-efficient for the future of employment.

The employers, by proposing a five-year contract, are pretending to be more flexible and adaptable. They are really aiming at maximising the use of the worker by the company. To train a worker for six months and only be able to use his skills for another year and a half proved to not be productive enough, for an employer. A five-year contract would solve this problem and still not impose as much labour cost as offering a long-term contract. It is against these kind of new types of counter-productive and precarious contracts that the trade unions must act. Once again, it is only through positive social dialogue that these kind of counter-productive measures will be avoided. The trade unions must take part in the initial negotiations. They must not only be present at the deciding stage. This has too often proven to be too late in order to stop undesirable measures such as this one.

Positive social dialogue might be the only way to avoid the spread of the 'emploi poubelle'. The third pillar, if it promotes the adaptability of work via new types of contracts, also stipulates that the security of the workers must be maintained.

It is in this sense therefore that a certain re-evaluation of the guidelines must be thought about. As it stands the guidelines could provide the perfect excuse for employers to lobby and create more and more precarious jobs. More so since the employment summit of Lisbon, which promotes the idea of 'full employment'. There is a high risk in promoting such measures. The wide spread of part-time work and fixed-term contracts could provide a highly precarious situation for employment. In that sense the social partners have a truly imaginative role to play. They should ensure that part-time work remains a true choice of the individual entity and that fixed-term contracts do not become the norm, in the sole name of reducing unemployment.

³⁰ Jonathan Winterton, Professor at the Napier University (Edinburgh) and member of the ETUI network. Expert interview, 26 May 2000.

³¹ Especially the MEDEF

The new unemployment agreements on the 'Plans de retour au travail'³² (PARE) in France could be going in that sense, obliging the unemployed to accept these types of contracts on the basis of not seeing a diminution of their social benefits. This represents a great danger. It is only a temporary solution for unemployment and can prove fatal in the long term. What will become of the unemployment rate when the EU reaches a less favourable economic stage, and those contracts come to term? This is a purely provisional measure, which does not solve the problem in the longer term. The EES has been put in place in order to avoid the short-term responses and provide a viable, long-term, solution.

It is imperative, therefore, for the social partners to react and bargain at the appropriate level in order to create more qualitative jobs³³. The efforts in this area have to be intensified.

Once again this argument counter-acts the idea of quantitative criteria. Such measures could prove to be fatal. In order to comply with EU criteria, Member States would be tempted to create a lot more precarious jobs of the type observed above. This must be avoided at all costs. An answer to this problem might be found in making businesses more adaptable. An aspect which constitutes the third part of the adaptability pillar.

Part III: Support adaptability in enterprises.

A- Investment in human resources.

'In order to renew skill level within enterprises, Member States are asked to re-examine the obstacles, in particular tax obstacles, to investment in human resources and possibly provide for tax or other incentives for the development of in-house training. They also have to examine any regulations to make sure they will contribute to reducing barriers to employment and helping the labour market adapt to structural change in the economy.'
(Guideline 18)

It is unfortunate to observe that it is in this area that the least progress has been made, in the last three years. Although one might be optimistic in the knowledge that this arena forms an important part of both the inter-professional agreements for 2000 in Belgium, and the 'refondation sociale' in France.

As far back as 1971, France introduced a sweeping policy for continued worker training based on labour-management agreements and requirements forcing employers to provide training. France is therefore already quite advanced in the area of adaptability of businesses. However the practice shows that these agreements are not always respected, and what is worse, that the employees themselves are not often grabbing the opportunity of further training, given to them by this law. In the 1998 NAP, the French government recognises that these measures need to be improved in order to provide proper in-house training throughout a person's working life. Equal access must also be ensured.

The 1998 French NAP states that a reform of continued training is planned. This is undertaken in co-operation with the social partners through the 'refondation sociale' as mentioned above. However this procedure, as well as the negotiations between the social partners, also

³² Plan de Retour a l'Emploi. Those agreements are being negotiated at the moment and aim at reducing long-term unemployment. The plan, if it is accepted, promotes a new plan according to which the unemployed could enter, on a voluntary basis, a scheme which would guarantee the stability of their social benefits. Against this they would have to accept jobs proposed to them by the ANPE.

³³ Jean-Claude Meynet, Representation Internationale de la CFDT. Expert interview, 20 May 2000.

necessitates for the government to take part in a further reduction of the tax burden. The problem faced by France in 1998 was to make the right to in-house training, provided in the labour negotiations, more effective. This was more important for the less skilled employees, and those in SMEs. In this way the government was to meet the need for skills, for change in skills, for labour mobility and for businesses' needs.

The new technologies and new forms of work require for the enterprises to be adaptable. In order to reach a certain level of adaptability in enterprises the labour force must be made flexible as well as adaptable throughout the provision of equal in-house training. The French system of strong education in the beginning of life is already one of the best in Europe. Its system of continuing vocational training has already been improved greatly since the 1970s. On this basis companies must provide for paid leave in order for employees to attend training courses. It is known as the 'Conges Individuel de Formation' (CIF) What is more in companies of more than 50 workers a training plan must be elaborated each year in order to provide training to the workers. Companies are bound by law to allow for a certain percentage of their social contributions to be utilised for the purpose of in-house training. (2,1%)³⁴

France is therefore already advanced in this area. And throughout the NAPs one can sense a certain uncertainty as to what more might be done to improve this further.

It is in this sense that the elaboration of certain quantitative criteria might be useful at European level. It would permit to widen the action and it would also provide us with a certain monitoring process. This could be beneficial in order to avoid inequalities within companies, as well as between companies, but also to ensure that employers do respect these measures. The employee having been ill informed of this right up to now; these criteria could provide the workers with a greater freedom of choice and bound the employers to the obligation to put this right to practice.

The concept of in-house training, for the adaptability of workers and businesses, creates a win-win situation. It is therefore an area within which consultation between the social partners is relatively easy. An opportunity which should be grabbed by the trade unions.

Developing in-house training could combat the problem of precarious short-term contracts mentioned above. It is an area which must be exploited to the full.

In 1998 this matter had been left to the social partners to negotiate. They obtained only a limited success. As a result of this an implementation date was then set up for 1999, in the prospect of a law on reducing the tax burden. This has been successful and the French government did manage to reduce the taxes in order to promote in-house training. This is of course a positive measure. However it once again reduced the social partners to agreeing to this new law. This time the lack of positive social dialogue was created by the fact that the trade unions were confused as to what was to be done. It seems imperative, therefore, that the French trade unions should react and be more present in the process of negotiations.

This lack of intervention from the social partners is indirectly reflected in the NAPs. No mention is made of this guideline in 1998 or in 2000. The only brief mention that can be found is in the 1999 NAP where it is asked of the reader to refer to guidelines 3, 4, 5, 6, 8, 10, 11 and 14.

³⁴ Henri Lourdelle.

Throughout guidelines 3, 4 and 5 the investment in human resources of in-house training seems to be confused with the need for basic training of the unemployed in order to increase employability.

Guideline 6 is also aimed at making life-long training available. In conjunction with the social partners the French government examines the conditions required to introduce an individual right to training, which can be transferred from one business to another and from one sector of activity to another. It would also be guaranteed collectively for the benefit of all employees and job seekers. The introduction of this right must be based on a more developed scheme for recognising acquired work experience. It will also have to incorporate the question of equality between men and women.

The above mentioned, although it contributes to better training and adaptability of the workforce, is not directly aimed at making businesses more adaptable. The validation of work experience and the improvement of effectiveness and consistency of certifications are directly aimed at making the labour force more employable.

In guideline 8 the French government has taken the initiative to develop links between enterprises and the education system. And although the measures taken could help foster some adaptability in businesses and employees, it is more directly linked with helping young people who encounter difficulties in finding a job as a result of their low level or complete lack of work experience. This is a highly important measure within the EES. However it only has a very indirect link with adaptability.

In guidelines 10, 11 and 12 the aim is to alleviate the tax burden in order to promote the development of self-employment and small businesses, and to promote the emergence of small businesses. Once again this is linked to reducing barriers to employment and, only slightly, to helping the labour market to adapt to structural changes in the economy.

Although those three guidelines are directly linked with the second pillar of entrepreneurship, these measures can be beneficial, to a certain extent, to the adaptability of businesses. One of the main measures being the result of the Act of the 2nd July 1998 whereby the three declaratory obligations for recruitment have been removed, the dates of a number of different tax returns have been unified. The payment of VAT on the actual method has been made possible whatever the applicable tax regime and the interim regularisation VAT return has been removed in the event of a transfer to a different tax centre. Recruitment, and therefore investment in human resources, can be seen as being encouraged by these measures.

Finally guideline 14 focuses on reducing the overall tax burden on labour costs. This is again directly aimed at promoting entrepreneurship but is also indirectly beneficial to the adaptability of businesses, permitting for them to employ more qualified workers.

The reduction of contributions has therefore helped, in a limited manner, the improvement in job-creating growth in France during the last decade. This revival has contributed to the decline trend in the number of least-skilled employees within the private sector. It has favoured the integration of employees with few qualifications into the labour market. It has permitted a growth in employment and has also helped promoting the adaptability of businesses. However, and as can be observed from these very indirect measures taken to satisfy guideline 18, a lot remains to be done.

Due to the fact that France is already quite advanced in the area of in-house training, a certain confusion remains as to what more needs to be done. However, can it really be said that a country is advanced simply because it provides a law legalising the right to training? In the

case of France this is clearly not enough. Efforts must now be concentrated ensuring the wide spread and good utilisation of this law. Once again the social partners have a strong role to play. The lack of initiative in this area is a strong indicator of the weakness of the social dialogue in France.

In Belgium the situation is rather different. Belgium not having a legislative framework around in-house training the subject is left to collective bargaining to be organised. The reflection on the NAPs is therefore quite significant. All three NAPs state that the federal government as well as the three regions are trying to invest in human resources as well as provide in-house training.

In the Walloon region continued in-house training is encouraged by what they call 'centres for competence'. Those centres try to meet with the needs for the companies created by the technological changes. Each centre gives an annual average of 40.000 hours of in-house training. Belgium has now elaborated a system of 'training cheques' which permits to reinforce continued in-house training of small and medium companies as well as independent workers. Each month some 15.000 training cheques are given away, which is the equivalent of 150.000 hours of training per year. A pilot experience of 'job rotation' has also been successful and should soon be applied to the whole region.

In Flanders, some measures were taken in 1999, in order to stimulate in-house training, via the 'Vlamiform' and the 'credit-levier'. The 'Vlamiform' takes the shape of a reduction of the housing precompte linked to the work which must be reinvested in supplement to any training. By October 2000, 5.281 demands had been received and more than half of them had already been accepted. After an evaluation it has been possible to observe that about 10% of enterprises allocate 1,9% of their social contributions to in-house training. This is practically level with France. (2,1%)

Through the 'credit-levier' the Flemish authorities want to support the type of training that would modernise enterprises, such as new organisations of work, of products or processes of production. So far 63 demands have been approved for a total cost of 1,5 million of BF. A measure which is still not significant enough but which deserves to be encouraged.

The region of Flanders, being the richest and most productive region of Belgium, can afford to concentrate its efforts on modernising the organisation of work rather than on basic training, as it is the case in the Walloon region. It is already more advanced in this area.

In Belgium a policy of stimulation of investment in human resources and in-house training is pursued by the government and the social partners. The employers have engaged themselves in a way forward throughout the inter-professional agreements 2000.

The Flemish authorities, in consultation with the social partners have taken the initiative to create a forum on the problematic of permanent in-house training and life-long learning. The idea behind this measure is to stimulate enterprises and workers. This is combined with a policy of financial help. In the short-term it should mean that the 'credit-levier' is to be transformed to become a more general measure. It is also planned that by the autumn of 2000 a more long-term objective will be decided on, on the basis of a monitoring system. The 'edufora'³⁵ are now operational. In 2000 they will develop their activities at sub-regional level. The establishment of a 'training card' will also be put in place. Those actions should contribute to the concretisation of a right to training for all.

³⁵ Training centres.

The system of evaluation that is to be put in place by the Flemish authorities will permit a greater assessment of whether or not it takes into account the challenges of the knowledge economy.

Even though the results are fewer than in France, the progress made by Belgium, in this area of concern, is dynamic and forthcoming. It is an arena in which the social partners are fully integrated. The social dialogue is most present and positive. In-house training, as well as lifelong learning, are subjects of easy consultation. The fact that it is beneficial for both sides is a great advantage. However the social dialogue still needs to be intensified in order to ameliorate the situation of training, in regions that are less developed in that sense. That is to say the Walloon region as well as the region of Brussels.

This is the aim of the 2000-2001 inter-professional agreements.

Chapter III: The need for a wider social dialogue.

A- The problems encountered by the social partners.

In the third pillar of the EES: adaptability, the role of the social dialogue takes a crucial dimension. With the two case studies analysed in this report we are confronted with two very different traditions of trade unionism. One which has a strong tradition of trade unions: Belgium. And the second, France, where they have always been extremely weak, due to the lack of members and therefore legitimacy. Those two phenomena can be explained by many historical and structural reasons. A few must be highlighted here:

Belgium being a federation, it has always known a type of 'rainbow government' (coalition), in order to represent fully the three very different regions that constitute this small country. However, this variety at the heart of the governing body, often contradicting, poses a great problem as far as amending or making new laws, on employment, is concerned. This is also due to the great disparities in the employment rates, between the three regions. For those reasons the power is more regionalised or localised than in more centralised countries such as France. It is for the above mentioned reasons, as well as other historical elements, that the trade unions have always been able to gain an important credibility at the workers' level. This importance of the latter has meant that their voices could be heard at enterprise level, as well as national level. Something which is still lacking in the French system. The French trade unions still have to intensify their efforts in order to have more influence within enterprises. In Belgium, the representation of nearly 50% of the workforce by the trade unions means that it is in the best interest of government to negotiate with them. The vast majority of the members being from the two less developed regions, Brussels and Wallonia, as far as employment is concerned, their importance became crucial in the way of developing the country further.

France has traditionally had a centralised republic with a highly dirigist state. This interventionist attitude has always had a negative effect on the trade unions. Their influence having been traditionally weak they only attract few members. (Only 9% of the workforce)

This situation has had a strong impact on the EES, and mainly on the third pillar. Throughout this analysis one can observe that although the quantitative results are fewer in Belgium, the methods used to attain those results allow to hope for a prosperous future in the area of employment. If France managed to reduce working time, it did it using a legal framework. As we saw above the social dialogue was practically non-existent throughout this process. Although it would have been very difficult to reach this agreement through a wider social

dialogue, knowing the unwilling attitude of the MEDEF regarding these types of arrangements, it might prove to be the cause of some major structural problems in the future.

This new law on the reduction of working time has been imposed on all sectors of industry. Furthermore this measure seems to go against the principle of adaptability and flexibility. The third pillar promotes flexibility in the sense of de-regulation. Although this de-regulation calls for a certain re-regulation, at different levels, the main objective was for re-regulation to be made less global and more flexible. This is to say that businesses were to be adapted on an individual basis. The 'fordist' idea of supreme state regulation is outdated. Businesses need to be made more adaptable and flexible according to their individual needs. Some companies will indeed find it extremely difficult to function with this type of reduced hours (mainly in very sensitive sectors such as transports). The French government, therefore, seems to have replaced one rigid measure by another, only leaving the implementation to the social partners. This could prove to be counter-productive if the law is not accompanied by a deeper reform on the reduction of labour cost. In the worst scenario France might see itself unable to fully enjoy the economic renewal witnessed by the EU in the last three years. An economic renewal meaning an increase in the list of demands; if the employees are working less hours and the employers cannot employ more, due to high taxes on labour, then businesses will not be able to expand. Although this argument does not take into account the improvement of productivity, it is one that cannot be ignored. Progress must therefore be intensified in order to reduce labour costs within the next few years, without jeopardising the financing of social security. A tripartite negotiation must therefore be put in place in order to find new and dynamic answers to this crucial problem. On this matter it is essential for the social partners to be part of the whole process rather than only being consulted at the implementation stage. Once again negative social dialogue must give way to positive social dialogue.

The lack of positive social dialogue within the French system shows a great lack of adaptability within it. In the case of Belgium, although the situation remains far from perfect, the presence of a wider positive social dialogue has permitted for a greater flexibility in the reduction of working hours. The choice of a collective agreement seems to have called for a greater adaptability in the choice of the businesses concerned. The adaptability seems to be at its highest since the choice is voluntary. An important element of the third pillar. However this creates a slow pace for results. Furthermore, and as some sectors have still not been given the choice to reduce their working hours, it also creates great inequalities between sectors. A worrying fact which constitutes a terrain for further negotiations between the social partners.

In Belgium as well as in France the positive social dialogue is wider in areas which are not linked to taxes and social security.

Since the elaboration of the EES, in 1997, employment has become a matter of 'common concern'. Employment has become a priority in order to accelerate the process of the EMU. It must also be understood that the third pillar cannot progress without the social partners. The participation of the social partners, if equity is to be a priority, is crucial. However, and as it is observed by the Observatoire Social Européen³⁶(OSE), the central role attributed to the social partners by the EES, could have a more theoretical character rather than operational. The Treaty of Maastricht enlarged the mandate of the Commission still applying the rule of unanimity, within the European Council, to highly sensitive questions such as the collective representation of the workers and employers and the financial contributions to the measures of

³⁶ Observatoire Social Européen ; Analyse Synoptique des Traités avant et après Maastricht, Document de Travail n 3. (Bruxelles, April 1992)

employment promotion. However the Treaty also gives the social partners a statutory right to participate to the elaboration of social policies. It allows them to conclude, at European level, collective conventions after a decision of the European Council. This is an unprecedented measure. However, and as observed by the OSE, this measure remains purely theoretical due to this same process of unanimity voting in the European Council. Even though some lobby groups have already done considerable work in order to influence governments to consult with the social partners, efforts remain to be intensified. The general secretary of the ETUC, Emilio Gabaglio, stated that it is important that the social partners have decided to evaluate a common employment policy. However he announced that the ETUC would not agree to common political declaration unless the European employers took the engagement to apply this policy³⁷. The ETUC also deploys a lot of efforts in order for the NAPs to be elaborated after consultation of all interested parties, including the social partners.

At the moment, and even though the EU is witnessing a strong will to reduce unemployment, whatever the political colours of governments might be, the modalities used to do so and the principles concerning the social partners are very different. Aside from the general reluctance of the national governments to negotiate with the social partners, the social partners themselves are quite far from having reached a consensus on the concrete measures to be used. They also need to elaborate a more precise agenda for their actions to start taking shape. The general feeling surrounding the actions of the social partners within the EES is a sense of confusion as to what is to be done and how. It is now imperative for the social partners to grab this unprecedented opportunity given to them by the EES and to organise their actions. The process, only young, must be given time to mature. However time must not be wasted in inactivity in the social arena. A new system of consultation must be put in place before the social impetus is lost.

How can this be done?

B- A proposal for the implementation of a wider social dialogue

As we have agreed earlier the sound implementation of the third pillar cannot be done without the efficient participation of the social partners. The debate is running high, at the moment, on how to develop a stronger social dialogue between the social partners and governments. One of the many theories developed goes even further in its conception. This is one that we will choose to adhere to in this interim report. This theory is developed by the ex-director of the professional relations and work administration department of the International Labour Organisation (ILO), Hedva Sarfati. She argues that the efforts of adaptation asked from the social partners by the major changes affecting enterprises cannot be accomplished without the same social partners having access to the macro-economic chapter, and most specifically in the determination of the basic parameters of the economic monetary and fiscal policy³⁸. Those parameters condition the competitiveness of enterprises and have a direct effect on wages and employment. As far as the labour market is concerned the social partners should also be associated at national level to the elaboration and the application of the measures aiming at the following objectives:

- The adaptation of the legislation of social protection so that the levels of remuneration can be maintained. This would discourage the beneficiaries from depending on the ‘etat providence’ and allow them to accept a job without experiencing any financial loss.

³⁷ Hedva Sarfati, *Flexibilité et Création D’Emplois : Un défi pour le dialogue social*. (L’Harmattan Inc. 1999)

³⁸ Hedva Sarfati.

- The adaptation of the legislation ruling part-time work in a way that it diminishes discrimination in the right to training and social protection.
- The elaboration of new measures in the area of education and in-house training.

It is necessary therefore not only to consolidate the social dialogue but also to widen the role of the social partners in order to guarantee their influence at national level, and the equal representation of both workers and employers. Those conclusions are close to the ones adopted at the 83rd session of the International Labour Conference, in 1996, on employment policy in a global context. The latter was organised by the annual General Assembly of the ILO. The only tripartite organisation in the United Nations. It represents governments, employers' organisations and trade union organisations.

Following the above mentioned measures, it is also important to install a global environment which would facilitate solutions to the problems posed by the globalisation effect and the intensified competition. In the sense of adaptability a European model must be created in order to guarantee the creation of jobs which would combine security and flexibility³⁹. In order to allow for the greater flexibility of businesses and workers, universal access to basic education as well as life-long in-house training must be at the heart of this model. The stress must be put on the necessity to allow the workforce to adapt to structural evolution of businesses' productivity. A European model could avoid the spread of precarious jobs witnessed at the moment, in the EU. It would put aside the different national labour and government traditions to create a neutral norm. Job security must be promoted in association with a certain flexibility in the utilisation of the workforce. This can only be realised through collective bargaining on the questions of work re-organisation and investment in human resources. This renewed social dialogue, in the framework of a European model, could lead to a reform of the labour market.

This reform should, of course, be based on the closer co-operation between employers and employees. This would contribute to a better productivity of businesses and facilitate innovation. Further to this, the European model also necessitates a tripartite collaboration for a better application of the EES. Within this framework the guidelines found in the EES would also be in need of a reform. Something which is highly controversial at the moment and which remains beyond the scope of this analysis.

In order to create this social model there is also a need for the recognition of certain rights. Amongst the many necessary rights one of them is of crucial importance, in order to promote a greater social dialogue: the freedom of trade unions and the effective recognition of the right to collective bargaining. This is of primordial effect on the social dialogue and is being elaborated by the ETUC's campaign for Fundamental Social Rights, in collaboration with the platform for social NGOs. If this bill was to finally be adopted at EU level it could change the face of the Labour Market and therefore of the EES. A space which deserves to be watched.

The Lisbon Summit⁴⁰ revived the idea of a European Social Model. This is an important notion to be taken into consideration. However, and if the Member States truly want to maintain, or create, a European Social Model they need to act. The institutional means have been in place since the conclusion of the Treaties of Maastricht and Amsterdam. However the

³⁹ Johnathan Winterton.

⁴⁰ Lisbon Summit, March 2000.

co-ordination and the consultation of the social partners is still very weak. It needs to be remedied in order for Social Europe to come into existence.

As observed above certain crucial social matters are still being decided within the European Council, following the vote principle of unanimity. That is to say matters of social protection, collective representation of workers and employers, the financial contributions to unemployment, and many others. The balance therefore is still in favour of a strong sovereignty of the Member States. A certain change of attitudes must therefore take place in order to favour the economic mutation towards a greater communication and consultation of the social partners.

Chapter IV: An overall evaluation of the European Employment Strategy and future prospects.

A- Evaluation

The above analysis highlights the fact that the EES has only had a slight influence, if any, on the two countries of France and Belgium. This opinion seems to be shared by a large part of the academic world⁴¹. The national policies for employment seemed to have followed a highly sovereign pattern so far. However, and if the EES was not elaborated in order to revolutionise the latter, it certainly permitted to create a European dialogue on the subject of employment. And most of all it provides for a certain 'co-ordination', even if it remains limited at the moment. Certain progresses must be observed in both France and Belgium:

In the field of reduction of working time, and as has been observed above, permission has been given, on a trial basis, in Belgium, for collective labour agreements to be introduced in a limited number of enterprises aimed at reducing the working week for the labour force, with compensatory recruitment being encouraged through a large reduction, temporary and degressive, in the social security charges for the group of workers involved.

A variant of this approach is also being tried out to cover the restructuring period for firms undergoing reorganisation or in difficulty, the aim being to encourage them to keep lay-offs to a minimum during this period and to promote redistribution of the work still available among the workers kept on.

By way of experiment, reductions in employers' social security charges will be granted to businesses introducing a four-day week and taking on extra workers, as part as the inter-professional agreements 1999-2000.

The possibilities for career breaks have also been extended, mainly by increasing them through certain arrangements- The amount of workers benefiting from the possibility of a career break has evolved from 1%, in 1997 to 3% in 1999.

In the 2000 NAP the social partners are also invited to conclude agreements aimed at reducing recourse to overtime.

A number of different schemes aiming at allowing personnel to participate in company results will be devised during the year 2000.

The 2000 NAP also states that the status of part-time workers will be further enhanced, in particular through access to paid training leave scheme for certain part-time workers and

⁴¹ Philippe Pochet. Observatoire Social Europeen. Expert Interview, 12 May 2000.

through the invitation addressed to the social partners to conclude agreements facilitating access to part-time working and ensuring that workers enjoy equal opportunities regarding careers and promotion.

All those elements must not be ignored but, on the contrary, be highlighted and encouraged.

As stressed in the Council recommendations⁴² Belgium should intensify its efforts on adopting and implementing coherent strategies, encompassing regulatory, fiscal and labour market measures, to exploit more fully the job creation potential and the investment in human resources. The Council also encourages the reinforcement of the co-operation between the different authorities implementing the NAPs. Although the EES has permitted a 'raprochement' of these authorities and a better co-ordination, efforts remain to be made.

In France the overall situation is also positive. Further measures are however still needed in order to intensify the efforts to create a better terrain for employment.

The Act on guidelines and Incentives for Reducing Working Hours, by cutting the legal working week to 35 hours in the year 2000-or 2002 for businesses with staffs of under 20, will help to spur company-wide and industry-wide negotiations. The act invites management and labour to bargain on the actual conditions for putting it into effect. Negotiations will embrace work time, work organisation, job creation and wage evolution.

The Act instituted financial incentives, for which FF. 3 billion have been earmarked in 1998. The more rapidly firms reduce and reorganise work time, the more substantial this aid will be. It will take the shape of a flat-rate reduction in social contributions, hence making the most difference to lower-end wages, falling by steps over the next five years. It will be superseded by structural aid matching the gains to the community accruing from higher employment rates. In the long run, this aid should be cost-neutral for public finances as a whole.

In the field of training France was a precursor. As far back as 1971, France introduced a sweeping policy for continued worker training based on labour-management agreements and requirements obliging employers to provide training.

These measures now need to be improved in order to provide proper training throughout a person's working life and ensure more equal access to employment. A reform of continued training will therefore be undertaken in association with the social partners.

The faster pace of technological change and new forms of work organisation are demanding new abilities and skills which are not always supplied by initial and further training which, when acquired later in life, tend to go unrecognised. There is thus a need to develop accreditation of acquired know-how in three ways.

According to the 2000 NAP France will introduce a more open system which recognises occupational experience.

It will also rationalise existing systems: -the obtaining of credentials facilitated by recognition of experience; official sanction for job titles; certification granted by the social partners at industry and company level.

⁴² Guidelines for Member States' Employment Policies for the Year 2000 and Recommendations on the Implementation of Member States' Employment Policies. European Commission. Directorate General for Employment and Social Affairs.

France has also engaged itself in developing adequate approaches and instruments such as formal credentials split into capitalizable units; open university, networking of resources conducive to self-training.

As far as helping new types of employment to appear, France recognises that as new forms of work organisation take shape, one avenue that deserves further exploration is payroll sharing among several firms, the aim being to combine job security for employees and adaptability for employers.

The government will also study ways of removing barriers to such schemes, in such areas as paid holidays, overtime and industrial medicine. It will also investigate methods for developing employer groups which second employees to their members.

The French government also intends to obviate hindrances to working in multiple activities whether on a free-lance or mixed basis.

As observed in the case of Belgium, the Council recommendations for France are quite similar. The European Council encourages France to adopt and implement coherent strategies, encompassing regulatory, fiscal and other measures, designed to reduce the administrative burden on companies, in order to exploit the job creation and investment in human resources. And more significantly the Council also highlights the fact that France should strengthen social partnership with a view to developing a comprehensive approach to modernising work organisation.

B- Structural problems.

Agreed by the heads of the Members States, the guidelines represent the four main areas in which progress has to be made. For the ETUC, which was a prime proponent of the EES, it had become essential for the question of employment to find its place at European level. By 1997 the unemployment rates had reached an all-time high and had only been tackled on a sporadic basis by individual European states. The flourishing new terrain provided by the EMU and the economic renewal created a platform for an integrated European Employment Strategy. Lowering the unemployment rate had therefore become a matter of 'common interest'.

The co-ordination of national employment strategies is therefore a great step forward which now has to be improved and reinforced in order to provide for greater and more substantial results. It emerges, from a close examination of the NAPs, that the third pillar is interpreted in too restrictive a manner, underestimating the modernisation of work organisation aspect, and lacking an overall vision of the true potential of a strategy to modernise the organisation of work.⁴³ Investment in human resources is without doubt the aspect that comes up last in the NAPs, or can in any case be described as the dimension where innovative input is most lacking. In order to provide for a greater intensification of efforts a reform is needed. The debate on obtaining such results is beating strong at the moment. Several ideas have been put forward:

Which is to be adopted in order to regulate the EES? Strong laws or soft laws? Should the EES be left to carry on as it stands, taking the risk to lose the social impetus, or should it be reviewed? So far the EES, and due to the principle of subsidiarity, only provides for qualitative criteria: The guidelines. However and as we have observed above, this race to the creation of employment, in order to reduce the unemployment rate, could result in the wide

⁴³ Transfer, Vol 5. No 4. Daniele Meulders and Robert Plasman : The Third Pillar : Adaptability

spread of precarious jobs. In order to avoid this phenomena from taking place the ETUC is now advocating the installation of certain quantitative criteria. This would have the merit of providing a greater number of concrete results. However two main problems arise:

On the one hand, and due the highly sensitive character of social policies at European level, these measures could prove to be fatal for the EES. The Member States, seeing themselves as having to comply to certain criteria, could decide to opt out of the EES. A situation which should be avoided in order not to reach the same 'Euro-sclerosis' that the EU witnessed in the 70s and the early 80s.

On the other hand these quantitative criteria could prove to be counter-productive in the way of creating qualitative jobs. Pushed by those criteria, employers could find in them an opportunity to create more fixed-term contracts, for the sake of responding 'positively' to the EES' quantitative demands.

Such a idea must therefore be handle with care. However the above two scenarios need not take place. Certain, selected, quantitative criteria could be put in place. So far they should only take the shape of regulating the issue of training. For the pillar of adaptability this could be very beneficial. Along with those criteria the Commission could also advocate the creation of a system of evaluation, more reliable than the NAPs alone. This would ensure the adaptability of both workers and enterprises. In the long term it could also be a preventive measure in order to avoid further unemployment.

On a more practical basis this should also be a fairly easy set of criteria to install. This area of concern is beneficial for both sides of the labour market: employees as well as employers. In the case of France it would permit to further the implementation of training and ensure equality of opportunities. It would provide the country with a positive solution to the stagnant situation witnessed at the moment. A way forward.

In the case of Belgium, it could also allow for faster results.

So far the only incentive that can be found at European level is the use of 'Good Practices'. The latter are a good reflection of what other member states are doing. They provide for a better evaluation of the progress made in all fifteen countries of the EU. They act as an incentive in the sense that every country of the EU would like to see their efforts appear as a 'good practice', as an example worth being followed.

They, however, do not suffice in order to produce substantial results. Secondly they are not always a valid example. Knowing the very different traditions and structural differences in the many labour markets⁴⁴ of the EU, whilst one good practice might be valid in one country it could prove impractical in another. And although the system of 'good practice' is an important tool for evaluation it is highly limited as far as the implementation of the EES is concerned. Other types of measures must terefore be thought about.

'Good practices' also present another limitation : they are purely indicative documents. There is no obligatory framework for the different members to take them into consideration.

As far as evaluating the progress made in the context of the EES, the Commission is highly restricted. At the moment, the only available tool to the Commission are the NAPs. They also present a major subjectivity : They are elaborated by the national governments and, more often than not, in the absence of consultation with the Social Partners. Although progress is

⁴⁴ Esping-Andersen, C. Social Foundations of Postindustrial Economies.

under way⁴⁵, it seems essential that some valid evaluation dispositives are put in place. The use of the NAPs to this effect will only be truly valid once the Social Partners are entirely integrated to the process. An area in which progress has to be intensified. (See chapter III).

To reach even further in this debate on implementation, one could also wish for a the elaboration of certain criteria on the reduction of labour costs. However, and knowing the highly interventionist tradition of some Member States, such as France, one can also easily imagine what type of opposition such measures would encounter. Although this is an idea which should not be abandoned, it is to be left aside for a time when a more mature EES has been reached⁴⁶.

Conclusions

To conclude on the subject of adaptability is a highly uncertain task. It seems highly difficult to evaluate the progress that has been made, in the context of the European Employment Strategy, by relying purely on a close study of the NAPs. As observed, in Chapter IV, the methods of evaluation available to the European Commission are highly limited and remain somewhat subjective. Some progress can, however, be observed. As noted, in Chapter II, some considerable measures have been taken in the framework of the reduction of working hours, in both France and Belgium. However the social partners themselves state that it is difficult to evaluate whether or not this has been done following the framework of the EES. In France it is obvious to note that the process had begun much before the implementation of the EES. However one could argue that the process was sped up by the European arena. In the case of Belgium it has been a combination of factors. The EES has certainly had a role to play, although Belgium has always had the tendency to align its policies on the French example. The situation in France, seemed, therefore, to have triggered progress in this area. The challenge now facing the social partners and governments alike is to be able to define the new contours of future working time arrangements, ensuring that the need to protect employees and achieve equity on the labour market may be met as rigorously as flexibility requirements. The reduction of working time is often the only measure taken, in order to modernise the organisation of work, as observed by the Commission in the latest analysis of the NAPs. This is not enough. Efforts have to be intensified in order to achieve progress in other dimensions.

As far as the new types of contracts are concerned, once again, efforts seem to be made in the sole area of part-time work. This highlights the stubborn will of the national governments to remain within a traditional framework of work organisation. This an important arena in which the social partners have a more imaginative role to play. They must intensify their efforts of negotiation in order to modernise the organisation of work. They also have an important influencing role to play in order to change the mentalities on the organisation of work and introducing the idea of different types of contracts such as sharing employees between companies and home working. It is crucial for the future of labour market that those types of new contracts should be allowed to develop together with greater security and the recognition of status. Once again little progress can be observed in both France and Belgium.

Following this idea Member States seem to have, so far, misunderstood the purpose of the adaptability pillar. A purpose which is to encourage greater flexibility and security.

⁴⁵ The Commission Blanchard has been put in place by the French government, in association with the social partners, and in order to elaborate the future NAPs.

⁴⁶ Philippe Pochet.

Investment in human resources is without doubt the aspect which comes up least in the NAPs, or can in any case, be described as the dimension where innovative input is most lacking. France and Belgium have mainly adopted financial and fiscal incentives to promote this investment. This is not enough. The more specific aspect of adapting to new technologies is visibly underestimated in both countries.

As far as the role of the social partners is concerned it is difficult to judge the progress made within the Member States with respect to partnership at all levels, which is meant to be one of the essential factors contributing to a modernisation of work organisation and an improvement in firm's adaptability. Although social pacts have been concluded, in Belgium⁴⁷ and in France⁴⁸, their real scope cannot be evaluated by studying the NAPs. Moreover their possible effects can only be judged over time. As observed in chapter IV there seems to be a strong need for the relationship between the social partners to be re-evaluated and maybe even extended. The success of the implementation of the third pillar will greatly depend on the progress made in elaborating a satisfying relationship between the social partners, as well as between the social partners and the national governments.

Overall little efforts have been deployed in the area of adaptability. Efforts seemed to be concentrated on the first⁴⁹ and second⁵⁰ pillar. This in turn explains why the NAPs for employment have relatively little to say on adaptability. This interim report therefore highlights the fact that it is crucial for the future of the EES that something should be done in order to avoid the stagnant situation at the third pillar level. Although, and as we have observed before, the latter is not directly aimed at creating more jobs, it is an essential part of the EES. It provides for the modernisation of work and businesses. As foreseen by the European Union, this modernisation is the key to long-term solutions to the worrying unemployment rate in Europe. The failures to reduce the unemployment rate, of the last few years, are mainly due to the facts that those attempts were purely superficial. They did not tackle the underpinning problem. Our societies have evolved greatly in the last decades, adjustments must therefore be made in order to modernise the labour market and therefore tackle the unemployment problem in the long-term. These viable results will only be reached with the wider use of **positive social dialogue**.

As the French Prime Minister stated, in the 1998 NAP, victory over unemployment depends firstly on a return to vigorous and sustained growth in Europe. Its attainment naturally supposes domestic policy resolutely directed towards employment, but it will also require stronger co-ordination among all European Union economic policies. This is one of the central issues of the Europe-building process today. Once the Economic and Monetary Union is in place, the building of Europe will have to be thought of in the context of a changed equilibrium.' (Lionel Jospin, NAP 1998) This changed equilibrium must, therefore, be thought about in a more constructive manner. Positive social dialogue must be put in place. However complementary actions must also be taken. One of the solutions suggested in this report would be the elaboration of quantitative criteria. This idea, however attractive it might appear to the euro-enthusiast, must be handled with care in order not to create other structural problems. Its elaboration must be selective and qualitative, as well as quantitative. This is a concept, however, which goes beyond the scope of this analysis.

⁴⁷ Inter-professional agreements.

⁴⁸ Refondation Sociale.

⁴⁹ Employability .

⁵⁰ Entrepreneurship.

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