

YEARBOOK 2002

EUROPEAN TRADE UNION YEARBOOK

Edited by Emilio Gabaglio and Reiner Hoffmann



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European Trade Union Yearbook 2002

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edited by

Emilio Gabaglio and Reiner Hoffmann

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Foreword

The *European Trade Union Yearbook* has developed, over the last few years, into a source of information and work of reference in the fields of European industrial relations and employment, labour market and social protection. The contributions stem, for the most part, from the European Trade Union Institute's own work but we have once again been fortunate, for this edition, to receive articles from external authors, including members of the European Commission. I should like here to thank them all for their contributions.

The proceedings of the Convention for a future European Constitutional Treaty have been, and continue to be, of particular interest. A significant reinforcement of the social dimension of Europe in the context of the Constitutional Treaty is of great importance for European workers, both men and women. This entails the formal and binding incorporation into the Treaty of the Charter of Fundamental Rights, as well as of a clear statement of belief in a social market economy, with full employment as a fundamental economic goal and the recognition of social dialogue as an important means of shaping economic and social change. The future European constitution will also, in the final analysis, contribute to determining how Europe asserts itself in the future in the process of globalisation and to what extent its appeal as a reference model continues to develop. The political unity of Europe, brought closer by the success of enlargement, requires the EU to face – even more seriously than in the past – up to its global responsibility and demands that it be in a position to speak with a single voice on the international stage.

The europeanisation of industrial relations is a central concern of the European trade unions, and contributions on the most recent developments in this field are a permanent feature of our *Yearbook*. With the social partners' agreement on teleworking and the framework agreement on lifelong learning, further concrete results of the social dialogue at European level have been achieved. It has at the same time become clear that the social dialogue must in future also assert itself in relation to other issues and policy fields, including industrial policy, the potential of which for the creation of new jobs is far from having been exhausted. Collective bargaining and European works councils are generally recognised as pillars of European industrial relations and this edition once again includes two articles giving an overview of developments in these areas.

The economic recession in Europe has caused significant deterioration on the labour markets and it is highly questionable whether, under these changed circumstances, the political goal of creating more and better jobs without any fundamental policy change will succeed. An increase in the effectiveness of the European employment strategy, which must be closely linked up with a coordinated European economic policy, is urgently needed, as is the efficient use and implementation of the open method of coordination in the social policy field. The huge employment deficits will not be able to be remedied by means of neoliberal strategies of labour market deregulation. Active strategies, for example in the field of older workers, and appropriate involvement of the trade unions, provide more convincing evidence of the determination to achieve a social Europe than steps to curb union influence and further dismantle social benefits. These and other topics are covered in the section on “employment, labour market and social protection”.

That there is a need for the trade unions to look beyond EU Europe – and that they have already begun to do so – is a point reiterated in earlier editions of the *Yearbook*. In this issue, the contributions on trade unions in the Balkans and the problems and prospects facing Turkey show that, even after the accession of ten new countries, European unity is still far from complete. The incorporation of new countries into the EU also represents a challenge for the trade unions which must, at the same time, step up their cooperation in the regions beyond the European Union’s external borders. In the Mediterranean area viable forms of cooperation have been developed in recent years and, in relation to the regions beyond the EU’s new eastern borders, this is a topic that we hope to take up in future editions of the *Yearbook*.

This new edition of the *Yearbook* ends, as in previous years, with a series of articles on the work of various European institutions, followed by a chronology of events and overview of the relevant literature of the last year. Our hope is that, once again, this edition will fulfil its purpose as a source of interesting information and helpful work of reference.

Emilio Gabaglio

Reiner Hoffmann

Brussels, April 2003

The future of Europe

Emilio Gabaglio

Social Europe at the Convention

The first nine months of the European Convention's proceedings, until the end of 2002, were characterised, initially, by a period of general discussion and then by the creation of eleven working groups and the presentation of their reports to a plenary session.

The observers from the social partner organisations had the opportunity to express their viewpoints both in the general discussion and at the session on civil society. The ETUC then forwarded to the Convention a document of its own, that had been adopted by its Executive Committee in October 2002, and which reiterates, elaborates upon and explains in greater depth, under the title *A Constitutional Treaty for a Social and Citizens' Europe*, the expectations and demands already expressed on the eve of the Laeken European Council (December 2001) that had ordered the holding of the Convention. It is interesting to note that both the civil society organisations and the Youth Convention put forward views pretty much in line with the trade union movement's arguments.

In an initial stage, however, these positions – broadly convergent, in spite of their diversity – failed to elicit much response in the Convention, so little so that its President Valéry Giscard d'Estaing was able to state in an article in *Le Monde* that he was aware of no particular demands on social questions having been raised in the course of the debate.

At this juncture, in the early autumn, a new development took place. A group of members of the Convention, most of them from the socialist and 'Green' families, presented, with the support of the ETUC, a motion for a debate in the plenary session and for the subsequent creation of a working group on social Europe for which there had been no initial provision and for which indeed no wish had even been voiced.

This was a new development, as we have said, but also a political milestone, since it represents, still today, the only autonomous act of the assembly in relation to the order of proceedings laid down by the Convention Praesidium.

It is a development which eminently testifies to the legitimacy of social Europe's entrance to the Convention.

In relation to the trade unions' demands, the results of three working groups are of most immediate interest. These are the working group on economic governance, the one on incorporation of the Charter of Fundamental Rights and, naturally, the Social Europe working group.

The most disappointing result relates to 'economic governance'. Here it proved impossible to find sufficient consensus to put forward innovative proposals in relation either to economic policy coordination or to a broadening of the mandate of the European Central Bank to include, alongside the task of price stability, an explicit reference to its responsibility for fostering economic growth and employment.

Nor did the proposals for tax harmonisation fare much better. These are still open questions to be decided in the plenary assembly but, given the balance of opinion in the Convention, it appears unlikely that any significant headway will be made.

The working group on the Nice Charter did achieve a better result, which nonetheless remains to be confirmed. The Charter is to be incorporated into the Treaty, the price to be paid for this step forward being that there will be no further discussion of the content, for the time being at least, while a few amendments are to be introduced into the interpretative clauses. Even so, there remain strong reservations concerning both recognition of the Charter's binding legal force and also its incorporation into the initial part of the Constitutional Treaty as a founding premise.

Compared with the working groups already mentioned, the results of the working group on Social Europe certainly cut no mean figure.

Above all, there emerged a broad consensus in favour of including, among the European Union's basic values, social justice, equality between men and women, and solidarity, as well as of referring, among the European Union's general objectives, to full employment and to sustainable development, in all of its three aspects, namely, economic, social policy and environmental.

The proposal to define the nature of the EU's economic organisation in terms of a 'social market economy' also deserves emphasis. Indeed, if this formulation is accepted in the final draft, to replace the text of the current Treaty which refers to an 'open market economy with free competition', it will introduce – by according full recognition to regulation of the market for social purposes – a radical change into the fundamental principles underlying the European Union. Another positive aspect of the work performed by this working group is its support, in this case virtually unanimous, for the role of the social partners, both in relation to the social dialogue and also in terms of recognition of the need to increase their participation in the processes of economic and social governance of the Union.

On other questions, however, the group had no choice but to acknowledge its deep divisions: no agreement was possible on extending the majority vote to include social issues, or on the recognition of the role of Services of General Interest or, again, in relation to the transnational exercise of trade union rights.

These are demands of great importance to the ETUC and for which the fight must go on.

A first provisional assessment of the Convention proceedings allows the claim that the trade union proposals intended to ensure that the future Constitutional Treaty reflects the characteristic features of the 'European social model' can boast some significant results.

The final outcome remains open and a great deal will depend on the extent to which the national trade unions and the ETUC succeed in exerting an effective influence on the direction taken by the Convention in the coming weeks with regard both to the first part of the Treaty and also to its second part which will contain definitions of the actual policies of the EU.

For the Convention, meanwhile, the moment of choice is fast approaching, and not only in relation to a social Europe. Every day sees the emergence of new political line-ups which, to some extent, cut across the different political families. On the one side are those who believe that the process of European integration has reached its upper limit and who argue, often on the pretext of respect for the subsidiarity principle, that it may even now be a question of 'renationalising' certain competences and policies. For this camp the social and employment policies are precisely the first to come under fire.

On the other hand, there are those, like the ETUC, who maintain that the drafting of the new Constitutional Treaty of the enlarged European Union is the opportunity to redefine the contents and institutions in a manner which safeguards diversity while not reversing the direction of progress towards the greater unity that is required for the social and political completion of the European venture and that is indispensable if Europe is to play a genuine role in world politics.

This is the real knot which the Convention has to untie.

Translation from Italian by Kathleen Llanwarne

Romano Prodi

A new and effective social dialogue

The ninth Social Dialogue Summit, held in Genval in November 2002, took place at a crucial juncture in Europe's history. I was pleased that the social partners recognised what exceptional times these are and took the initiative to organise the meeting. Most of all, I was delighted to meet the representatives of no fewer than 30 countries. Let me echo the opening words at the summit of our Commissioner, Anna Diamantopoulou, and extend a special welcome and greetings to representatives of the candidate countries, who attended for the first time.

There is no need to reiterate why these are historic times for Europe. I merely want to underline again that the European integration project is at a turning point. It needs the social partners on board, not as bystanders but as protagonists of change.

The multiannual work programme presented by the European social partners at Genval signalled their commitment. The Commission is fully behind this initiative because it offers new horizons for social dialogue.

The programme's three main headings cover a number of issues that I myself feel strongly about. Firstly, ways of fighting against all forms of discrimination, whether it be lack of equal opportunities for women and men, harassment at the workplace, disability or racism. Secondly, the initiative to encourage young people to acquire the technical and scientific skills and know-how needed on the labour market, plus a lifelong learning measure that will run over three years and specifically embrace the candidate countries.

On several occasions I have voiced my concern about the state of research in Europe and of scientific knowledge among our youth. These structural shortcomings may lead to Europe's decline if we do not remedy them fast. So I welcome this programme as a proactive, independent response from the social partners to the great challenges facing the EU. I am convinced it will provide a decisive contribution to the growth and employment strategy outlined at Lisbon, which hinges, as we know, on lifelong learning, in particular in the field of technology and science.

As I said at the outset, we are at a turning point in the history of European integration. But enlargement and the overhaul of our institutions are not the only great changes under way. I want to draw your attention to two major issues that link up the changes under way in the economy and our political and social vision. Let me start with an example.

Recently the Commission presented a proposal for a Directive on temporary-agency work that was debated by the European Parliament last week. The proposal aroused a lot of controversy, particularly in countries where temporary work is most widespread. Our proposal was judged dangerous because it would reduce flexibility in the economy. I certainly agree that a more flexible labour market encourages economic growth and job creation. I am not a new convert to that view.

But nor does anyone want limitless mobility regardless of the individual and social cost. Mobility must be organised in the interests of the firm, of the worker and of society as a whole. Our proposal to apply conditions comparable to those of permanent employees to temporary-agency workers after a period of six weeks is an attempt to reconcile these two demands.

We are aware of developments in the economy: competition is growing across the board, reaction time to market conditions has become terribly short and it is harder and harder for businesses to plan their work ahead. These developments mean that labour must be more flexible. But flexibility must not become an excuse for pay or working conditions that mean such workers receive unjustifiably worse treatment than workers in comparable situations.

This example of temporary workers illustrates clearly how flexibility and job security may appear to be mutually exclusive. Given that this issue is a very useful illustration, I propose to spend a moment analysing it further on the basis of the Joint Employment Report adopted by the Commission on 13 November.

- According to the report, flexibility can take two forms:
- *external flexibility*: refers to firms' capacity to hire and fire in order to adjust to changes in market conditions and their own fortunes.
- *internal flexibility*: refers to the way firms can manage change by reorganising the existing workforce in terms of hours, mobility and working methods.

Security can also be looked at in two ways:

- *static security*: is created by a stable employment relationship and the safety-net offered by various institutions that alleviate the hardships caused by job losses and help people bear the consequences.
- *dynamic security*: is not just about the passive protection of the individual worker. It is also derived from a web of strategies and institutions which

are chiefly designed to match jobs and jobseekers. But they also provide the support necessary to ensure that mobility is not achieved at the expense of the needs and rights of the worker. It is worth noting here that uncertainty as well as rigidity can do incalculable harm to the economy.

I obviously prefer the less traditional usage of these terms but only on one essential condition: any reform of the labour market must go hand in hand with continuous vocational training. Without this, both flexibility and dynamic security could be harmful to society, and ultimately to business as well. When I say training I mean the greatest possible enhancement of the human resources of this continent. I want to underline that this is the only effective arm available to us to develop industry and provide for the security of our workers.

Our efforts are not yet adequate to the scale of the global challenges we are facing, on one side from the US, and on the other from an Asia that absorbs and reinvents new technologies.

Job security is not protected by institutions alone. It is also protected by dynamism and a capacity to move forwards, qualities that are less developed than they should be in Europe.

Even the Lisbon process, which is taking us in the right direction, is not yet fast enough, not extensive enough and not intensive enough to make our society really the most competitive society in the world. If we do not build up the best system of training in the world we shall certainly not succeed in protecting the jobs and salary levels that we have achieved already.

Expressed in these more exact and less ideological terms, flexibility and security are clearly not mutually exclusive. In fact, they are mutually reinforcing. A sound balance between security and flexibility encourages innovation and increases the efficiency of the labour market.

Let us move on to the second point I mentioned. The changes in the European integration project coincide with a new era of both upheaval and hope.

Over the last fifteen years the world has uncritically accepted the market logic and business values as the one and only model, even for public life and social and political relations. This has been the reigning orthodoxy in recent times but I have the impression that this reign is coming to an end and that analysis of the present and future development of our economies is becoming more thoughtful and measured.

We have put behind us the 1990s with their unshakeable belief in unshackled, unlimited growth driven by market forces. A belief that failed to take account of the impact all this would have on social justice and income distribution. These certainties are crumbling. The Enron, WorldCom and Vivendi affairs are much more than business scandals. They are evidence of the hidden flaw in this conception of the economy, a flaw that was not seen or analysed as long as shares were rising and sustained growth looked likely to become limitless growth.

The scandals I mentioned also brought to light other less attractive features of corporate behaviour, I am thinking of the staggering pay rises awarded to some business executives that were unprecedented in capitalist history and completely unrelated to profits or performance. The illusion of limitless prosperity blinded many to the economic consequences and social injustice of this behaviour.

The period from which we are emerging has left us with greater social and economic inequalities, not only within developed countries but, worst of all, between North and South. But if we look around, we see that the problem of equality is more keenly felt than a year or two before.

Attitudes are changing and people are more aware of this issue. A debate has started about the changes needed in the nature and working of our economic institutions, and, though the definitions used are not yet clear, the motivations are. This is an opportunity to be seized by us Europeans.

- We must make an active intellectual contribution to the worldwide debate.
- We have to find a way of dealing with poverty.

We must get everyone in public life - intellectuals, politicians, trade unionists and so on - involved in debating these issues.

Are we ready to rise to the challenge? Whenever I ask this question I get an enthusiastic response. But this enthusiasm is not always supported by ideas for moving forward or new and convincing proposals.

Let's take two examples

1. Our ageing population and stalled population growth mean that we have to review not only the welfare state but also the way we organise work for people at different stages of their life. How can we satisfy the

justifiable expectations of our citizens if the active population is steadily diminishing?

2. We have to rethink our approach to immigration. Up to now immigrants have done the dirty work. Giving them more skilled jobs and integrating them into society has been a secondary consideration. The implications of immigration for the long-term future of our societies have barely been touched on in policymaking.

Yet now we are at a decisive turning point for the future of Europe. If Europe is to launch a recovery before her international competitors, she has to be better integrated and more united. Our social capital can and must become our economic capital. But this will only happen if we treat it as the most precious good we possess.

However, we cannot just kick-start the economy using traditional public investment tactics. We have to rethink the structure of consumption, the relationship between public and private and the *quality* of development.

This is why the Commission, without impinging in any way on your independence of action, is a staunch supporter of dialogue between the social partners and is constantly calling on you for ideas and proposals. I hope that the social partners reach the objectives they have set themselves for the coming three years.

António Vitorino

A European Union respecting trade union and citizens' rights

1. Introduction
 2. The Protection of Fundamental Rights
- Conclusion

1. Introduction

We all know that there are several reasons why we should have a discussion about the future of fundamental rights in the Union: the world is changing – and Europe is no exception.

We must learn to deal with cross-border phenomena such as terrorism, organised crime and illegal immigration. These are delicate problems: it is very difficult for European States to tackle them alone, but it is very easy to allow them to become populist arguments, fuelling resentment and xenophobia.

We must also grasp the consequences of globalisation, and determine clearly the role we want the Union to have in the world. We need a competitive Europe that fosters prosperity, keeping solidarity and social cohesion as basic features of European societies. We live in a world of opportunities, but also of opportunism.

How do we bring citizens closer to the European Union? How to create an adequate system for the protection of fundamental rights at the EU level? How to adapt institutions to an enlarged Union? These are all questions that we are trying to answer.

Change is inevitable, and reforms are unavoidable. I think we can all agree on that.

The question is ‘how do we want Europe to change?’ In what direction do we want to lead European integration?

2. The Protection of Fundamental Rights

2.1. Why protect fundamental rights in the EU?

We must begin by asking ourselves: why should fundamental rights be protected at EU level?

Fundamental rights are essential for a controlled change in the EU.

First of all, the Union is committed to the respect of fundamental rights: it is one of the basic values in our societies, and an essential requisite for joining the EU in the first place (as stated in the 1993 Copenhagen European Council criteria for accession). The EU is not merely an internal market, it is also a political project with fundamental rights at the heart of it; thus the need to respect and protect fundamental rights. Moreover, the respect of

fundamental rights is not merely a passive exercise: it must confer citizens the means and instruments needed to react in order to protect their rights.

The development and maintenance of the Union as an area of freedom, security and justice, based on the principles of democracy, respect for fundamental rights and freedoms, and the rule of law, is undoubtedly one of the essential missions of the present and of course the future European Union.

I would also like to remind you that the EU increasingly legislates in areas that are particularly sensitive to fundamental rights, such as crime, terrorism and immigration. These issues have to be tackled carefully so that there is an adequate system that ensures the protection of our citizens.

Finally, it is of the utmost importance to place our citizens at the heart of the European project: and there is no other way to do it than by guaranteeing that fundamental rights are the cornerstone of European integration, and are judicially enforceable.

The Convention was therefore asked two questions in this area by the Laeken Declaration on the Future of Europe: (1) should the Charter of Fundamental Rights be incorporated into the basic treaty? And (2) should the European Union accede to the European Convention on Human Rights (ECHR)?

In the framework of the Convention on the future of Europe, a Working Group (which I had the honour to chair) was created in order to examine these issues. At the end of October the Group concluded its work¹ and submitted its findings to the plenary, who largely endorsed the conclusions.

2.2. Incorporation of the Charter in the Treaties

The Charter crystallises the European *acquis* in the field of fundamental rights, and gives visibility to already existing rights. But it is also a very forward-looking document: the articles on bio-ethics or the protection of personal data are contemporary, without being exactly innovative.

¹ CONV 354/02 of 22 October 2002.

Although the Charter was drafted on the basis of established law, it has a distinct added value:

- It is written in a clear and concise language, essential for the visibility of fundamental rights.
- It specifically acknowledges the equality between men and women, and is drafted in a gender-neutral language – the first international document to do so.
- It is also an example of the principle of unity of rights, not distinguishing between civil and political rights and social and economic rights, but rather formulating general categories: dignity, freedoms, equality, solidarity, citizenship and justice.
- The democratic legitimacy of the Charter should also be stressed, as it is the first document in the history of the Union to be drawn up by a Convention with representatives from the Member States, national Parliaments, the European Parliament, the Commission, and observers such as the Court of Justice, the European Court of Human Rights and the European Ombudsman. In fact, the success of that method led to the setting-up of the present Convention, which has a far more ambitious, and difficult, role.

In its short lifetime, barely two years since its proclamation at the Nice European Council in December 2000, the Charter has reached maturity in a number of ways.

Lawyers are increasingly referring to it in the Union's courts of law and the Advocates-General at the Court of Justice of the European Communities regularly quote it in their conclusions, although they usually emphasise that it is not a legally binding document.

The Charter has also been specifically referred to by the Court of First Instance, as well as by the Constitutional Courts of a few Member States².

On the other hand, the Commission has made compliance with the rights contained in the Charter its guiding policy, examining proposals at the drafting stage as to their compatibility with the Charter.

² Portugal, Spain, Italy and Austria.

The Charter was written by the previous Convention 'as if' it were legally binding – in practice it operates 'as if' it had force of law.

That is why the time has come to afford the Charter the legal force it needs in order to be fully effective within the legal system of the Union.

But let me be completely clear about a number of issues concerning the future incorporation of the Charter in the basic Treaty.

A legally binding Charter

I believe that the Charter should have a legally binding character and that its incorporation in the Treaties will confer upon it a constitutional status. This incorporation could take place either inserting the Charter articles in the Treaties or by attaching the Charter to the Treaties and making an appropriate reference.

I understand that the European Trade Union Confederation fully supports this view.

Non-modifiability of the Charter

The content of the Charter should not be modified, because it represented a consensus reached by the previous Convention, endorsed by the Nice European Council. Certain technical drafting adjustments in the Charter's general provisions may of course be needed.

Indeed there are many good reasons not to reopen discussion on the definition of rights, in particular the social fundamental rights.

We all remember the difficulties we had in reaching a compromise two years ago. I clearly recall solutions we reached concerning the freedom of association, in particular in trade union matters (article 12), the workers' rights to information and consultation within the undertaking (article 27) and the right of collective bargaining and action, in particular the right to strike (article 28). We all recognised then that those rights have to be used at all appropriate levels: not only at a national level but also at a transnational level, in a way that fully respects national systems of bargaining and action. The Charter will not be modified on that important element.

With that in mind I can fully understand the European Trade Union Confederation's proposal to introduce into the constitutional treaty an explicit inclusion of the respect for transnational trade union rights and autonomy of the social partners at European and cross-border level. A new

working group on social affairs has recently been set up, and I believe that it will be the right place to discuss these issues.

Allow me also to point out an important aspect of the draft constitutional treaty presented by the Praesidium of the Convention³: Title VI on the democratic life of the Union. Article 34 establishes not only a legal basis for social dialogue, but also the principle of participatory democracy; not only representation, but also participation.

Distribution of competencies

The distribution of competencies between the Union and Member States will not be modified either. The fact that certain Charter rights concern areas in which the Union has little or no competence to act is not a contradiction. Indeed, although the Union's competencies are limited, it must respect all fundamental rights whichever way it acts, and therefore avoid indirect interference with fundamental rights in areas in which it does not have the competence to legislate.

This is quite clear in Article 51 of the Charter, and the working group was in complete agreement in this regard, even to the extent of proposing an amendment to the general provisions in order to clarify this point.

Harmony between the Charter and the common constitutional traditions of Member States

The Charter, or at least part of it, has firm roots in Member States' common constitutional traditions, which were brought together in the previous Convention.

The extensive case law on fundamental rights derives from the common constitutional traditions established by the Court of Justice and confirmed by Article 6 paragraph 2 of the Treaty on European Union.

In order to emphasise the importance of these roots, and also to ensure a smooth incorporation of the Charter in the Treaties as a legally binding document, the Working Group proposed a rule of interpretation in the general provisions⁴. Thus Charter rights should be interpreted as offering

³ CONV 396/02 of 28 October 2002.

⁴ New paragraph (4) of Article 52: 'Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the member States, those rights shall be interpreted in harmony with those traditions'.

high standards of protection, adequate to EU law and in harmony with the common constitutional traditions of Member States, avoiding the rigid approach of 'a lowest common denominator'. This is also the interpretation followed by the Court of Justice.

Relations with the European Convention on Human Rights

The rights in the Charter that correspond to ECHR rights have the same scope and meaning as laid down in the ECHR. This includes notably the detailed provisions in the ECHR which permit limitations of these rights.

But the Charter⁵ specifies that Union legislation and the Charter itself may provide a more extensive protection of rights that, although based on the ECHR, go beyond the European Convention because Union law *acquis* has already reached a higher level of protection.⁶

The distinction between 'rights' and 'principles' in the Charter

It is important to stress the distinction between 'rights' and 'principles', which was a significant element – already expressed in the Preamble and in Article 51 § 1 of the Charter – of the consensus reached by the previous Convention.

In order to confirm that distinction, while increasing legal certainty in the perspective of a legally binding Charter with constitutional status, the large majority of the Working Group proposed an additional general provision.

The new paragraph 5 of Article 52⁷ aims at explaining the legal effects of principles which, in my opinion, were already agreed in the previous Convention under the French denomination of 'justiciabilité objective'.

In other words, the principles shall be observed and may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or

⁵ Article 52 § 3

⁶ e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence.

⁷ 'The provisions of the Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality'.

reviewed. This is consistent both with case law of the Court of Justice and with the approach of Member States' constitutional systems to 'principles', particularly in the field of social law.

The reference to national laws and practices

As we all know, some articles of Charter make explicit reference to national laws and practices. This is particularly true for most of the social rights listed under Chapter IV 'solidarity'. The Charter lays down the right but refers to national legislation or practices - and to Community legislation - as far as the precise conditions of the exercise of the right are concerned.

Here again the working group has innovated as far as the form of the Charter is concerned by introducing a new provision (new article 52 § 6) underlying that 'full account shall be taken of national laws and practices as specified in this Charter'. But this did not modify the already existing content of the Charter.

2.3. Accession of the EU to the European Convention of Human Rights

I notice that there is another convergence between the conclusions reached by the working group and the European Trade Union Confederation's proposal to the Convention: both recommend that the EU accede to the European Human Rights Convention. The Union has not yet attempted to give an answer to the challenge set by the Court of Justice in 1996 of amending the Treaty so as to allow it to accede to the European Human Rights Convention.

In my view the discussion in the working group was very useful in dissipating a number of fears and misunderstandings in this area. We have now a clear picture of the arguments and of what needs to be done. There are several reasons why the EU should accede to the ECHR:

- On the one hand, the EU should respect the commitments it asked the candidate Countries to make. The most important of these commitments is respect of democracy, rule of law and Human Rights. What else could efficiently guarantee those principles than the mechanisms of the European Convention on Human Rights?
- Also, as the Union reaffirms its own values through the Charter, accession to the ECHR would give a strong political signal for the coherence between the Union and the 'greater Europe', comprised in the Council of Europe and its pan-European human rights system.

- Accession to the ECHR would provide citizens an analogous protection towards acts of the Union as they presently enjoy towards acts of Member States. This appears to be a question of credibility, given that Member States have transferred substantial competencies to the Union.
- Accession would be the ideal tool to ensure a harmonious development of the case law of the two European Courts in human rights matters. In this connection, mention should also be made of the problems resulting from the present non-participation of the Union in the Strasbourg judicial system in cases where the Strasbourg Court is led to rule indirectly on Union law without the Union being able to defend itself before that Court or to have a judge in the Court who would ensure the necessary expertise on Union law.

It is also important to define the preliminary framework for accession which, in my opinion and as underlined by the report of the working group of the Convention, could be built around the following ideas:

- First of all, for the time being the sole measure to be taken is to introduce into the Treaty a constitutional authorisation enabling the Union to accede to the ECHR. Later, the modalities of negotiations with the Council of Europe will have to be considered by the EU institutions following the appropriate procedures.
- The principle of the autonomy of the Union legal order should be respected. In fact this principle does not place any legal obstacle to accession by the Union to the ECHR. After accession, the Court of Justice would remain the sole supreme arbiter of questions of Union law and of the validity of Union acts; the European Court on Human Rights could not be regarded as a superior Court but rather as a specialised court exercising external control over the international law obligations of the Union resulting from accession to the ECHR. The position of the Court of Justice would be analogous to that of national constitutional or supreme courts in relation to the Strasbourg Court at present.
- Accession to the ECHR will not modify the division of competencies between the Union and the Member States. The legal 'scope' of the Union's accession to the ECHR would be limited to issues in respect of which the Union has competence; it would thus not lead to any extension of the Union's competencies. Accordingly, 'positive' obligations of the Union to take action to comply with the ECHR, in accordance with

Article 1 of the ECHR, would arise only to the extent to which competencies of the Union permitting such action exist under the Treaty.

- The Member States' individual positions with respect to the ECHR will be unaffected by the Union's accession. These positions are reflected in particular in their individual decisions on the ratification of certain additional protocols, in the reservations they have entered upon ratification of the ECHR or its additional protocols, and in their right to take derogatory measures.

Conclusion

The present system of fundamental rights in the EU is the result of a long historical process. It includes a particularly rich *acquis* in this area.

The proclamation of the Charter, which brought the rights contained in the EU *acquis* to the fore, has survived the first stage of its life. It is now necessary to complete the work, by successfully incorporating the Charter into the constitutional Treaty and finally do away with the disparate and uncoordinated approach to the fundamental rights upon which the European Union is based.

It is a question of legal certainty, as much as citizenship.

The emergence of numerous EU legal provisions which might potentially impinge on citizens' fundamental rights is all the more reason to take the protection of fundamental rights seriously. The sole beneficiary of the advantages of an external control of EU law by the European Court of Human Rights is the citizen – which is to say each and every one of us.

A positive answer to the two questions posed to the Convention on the future of Europe by the Laeken European Council can only help to make a substantial improvement to the present system and to place fundamental rights at the heart of European integration: 'yes' to the incorporation of the Charter of Fundamental Rights into the Treaties, and 'yes' to the Union's accession to the European Convention on Human Rights.

It is up to us to build a European Union based on respect for all rights – political, economic, social and cultural – and with the contribution of the ETUC I hope we will achieve it.

Europeanisation of industrial relations

Stefan Clauwaert and Olaf Deinert

A new milestone in the EU social dialogue: the telework agreement – its interpretation and implementation

Introduction

1. A short history of the way to negotiations
2. The Agreement in detail
3. And what about this implementation?

Conclusion

Introduction

As the study conducted by the European Foundation for the Improvement of Living and Working Conditions¹ correctly indicates, only a few countries can provide reliable data on the scope of teleworking since all depends on the definition of telework used to gather the information. Nevertheless, EU reports tend to estimate the total number of teleworkers at between 4 and 4.5 million, which means that they represent only a marginal percentage of the total workforce in each country.

While the ILO has taken an interest in the subject for several years, it was not identified at EU level until 1994 when it was mentioned in the 1994 White Paper on social policy. It was subsequently taken up seriously in the 1997 Green Paper on Partnership for a new organisation of work, after which it took another three years for the Commission to start consulting the EU social partners on the issue.

In 2002, the EU social partners succeeded in concluding an EU social dialogue framework agreement on this topic. After a glance at the history of these negotiations, the first main section of this article consists of a detailed presentation of the agreement, while the second main section examines the crucial aspect of its implementation.

1. A short history of the way to negotiations

After almost eight months of hard but very constructive and open negotiations, on 23 May 2002 the EU social partners – the ETUC, UNICE/UEAPME and CEEP – concluded a fourth framework agreement under the provisions of Articles 138-139 of the EC Treaty. The agreement was formally signed on 16 July 2002 by the same organisations as well as by EUROCADRES and CEC. In terms of outcome, it can be considered the first ‘voluntary’ framework agreement by the parties, as opposed to the previous social partner agreements which were given force of EU law via directives. It may be doubted whether it should be considered voluntary from a procedural point of view, however, since it stemmed from two formal consultation rounds (26 June 2000 and 19 March 2001) by the European Commission, as in the previous cases. Indeed, despite the fact that the ETUC, as far back as 1999, proposed in its own first multi-issue social

¹ EIROOnline, ‘Teleworking and industrial relations in Europe’,
(<http://www.eiro.eurofound.ie/1998/11/study/TN9811201S.html>)

dialogue programme to negotiate on the issue with UNICE and CEEP, it took a considerable time to convince the employer side to do so. Less opposition came from CEEP than from UNICE; in fact CEEP was not especially opposed to the idea of a binding agreement on telework. Finally, it was UNICE that offered, in March 2001, to negotiate 'a non-legally binding' instrument (as opposed to the ETUC's demand for a directive or agreement incorporated into a directive), mainly because it considered telework 'not as a legal status but as a way of working'.

This offer from UNICE predated the second consultation phase, the Commission document having been adopted a few days earlier but not yet formally sent to the EU social partners. This second consultation document covered teleworkers 'with an employee status' working remotely, i.e. away from their company's premises or the place where the work is expected, and with the help of information technologies and data transmission, in particular via the internet. The document also provided some general principles to be taken into account for the practical implementation of what the Commission called 'guidelines'. These included: 1) teleworking on a voluntary basis and the right to return to office-based work; 2) guaranteed retention of the employment status of teleworkers; 3) equal treatment with office-based colleagues; 3) issues surrounding the information to be given to teleworkers; 4) guarantees that the employer should bear all the costs involved in teleworking; 5) guarantees for training; 6) the health and safety of teleworkers; 7) working time; 8) the protection of the privacy and personal data of teleworkers; 9) maintenance of contact with the company; 10) the collective rights of teleworkers; and 11) access to teleworking.

While questioning the timing of UNICE, the ETUC welcomed the invitation to negotiate, but wanted to ensure a joint understanding in particular on the nature of the eventual agreement and its subsequent implementation by the member organisations. The ETUC suggested therefore that the secretariats of ETUC and UNICE should meet to clarify the position, noting that a preliminary agreement would need to be agreed between UNICE, ETUC and the CEEP in order to 'define this voluntary negotiation, the nature of the European framework agreement which could result from it, and the responsibilities concerning the obligations for the application by the member organisations of our organisations'.

On the other hand, as already mentioned the agreement may undoubtedly be considered voluntary in relation to its forthcoming implementation. The EU social partners have chosen the second route of implementation offered by

Article 139 of the Treaty, i.e. in accordance with the procedures and practices specific to management and labour and the member states. This will at the same time constitute a challenge for the EU social partner organisations to ensure that their affiliates at national and sectoral level implement the agreement in time and, of course, in an effective manner. So although not legally binding in the strict sense, the agreement is contractually binding on the signatory parties and their affiliates. However, the choice of this second route may create some obstacles to be overcome at national level, and these are examined in the second part of this article.

2. The Agreement in detail

The agreement consists of 12 parts, which are – contrary to previous agreements – not called clauses, but numbered in a consecutive way.

• General Considerations

Part one on the General considerations also differs from previous agreements since it forms an integral part of the text and should thus not be considered as purely ‘interpretative’. This is, in particular, important for paragraphs 5-7 of this part which deal with implementation and have to be read in conjunction with part 12 of the agreement. To start off the agreement states that the signatory parties view teleworking as a way in which both public and private employers can modernise work organisation, and as a practice whereby workers can improve their work-life balance and achieve a greater autonomy in the workplace. It could also be used as a way to enhance the labour market opportunities of disabled people. However, to achieve a through information society, a goal included in the aims of the March 2000 Lisbon Council², Europe should encourage this new form of work organisation. These general considerations refer, furthermore, to the fact that telework covers a wide and fast-evolving spectrum of circumstances and practices, which led the parties to agree on a definition that can cover various forms of regular telework. The fact that the agreement links telework to the modernisation of work organisation also implies an

² The European Council, March 2000 in Lisbon, declared its intention to shift the European economy to a knowledge-based economy. The European Union shall become the most dynamic knowledge-based economy of the world, capable of sustained economic growth, creating more and better jobs. The shift to the knowledge-base economy is linked to these objectives: creating sustainable growth, creating employment, and improving the quality of jobs.

understanding of telework that goes far beyond a mere cost-cutting strategy. In principle, this agreement has a twofold objective, the two aspects of which are equally important and have to be seen together, namely 'making undertakings productive and competitive' and 'achieving the necessary balance between flexibility and security'. Security has to be understood in a broad manner, meaning security of employment and working conditions, security of planning for workers and their families and security in having basic rights.

• **Definition and scope**

For purposes of definition, telework is described as a form of organising and/or performing work, using information technology, in the context of a contractual employment relationship, where work, which could also be performed on the employers' premises, is carried out away from those premises on a regular basis. As already mentioned, the signatory parties have chosen a definition that is broad enough to cover different forms of telework. It could thus be stated that the agreement at least applies to alternating telework (where a part of the working time is spent at home and another part at the employer's premises), telework at home, telecentres and telecottages (shared office facilities, often for employers of several companies), remote office telework (a location physically distant from the main office, where one or more workers work) and nomadic, peripatetic or mobile telework (if the mobile work meets the definitions). One kind of work not covered by the agreement – as became clear in the negotiations – is thus, for example, maintenance of copying machines. This kind of work is done on a regular basis, using information technology (portable computers, mobile phones) but is not performed on the employers' premises, as the copy-machine is on the client's premises. Other types of maintenance work may, however, be covered by the agreement, for example, maintenance of networks, since this type of work could be performed from the employer's premises.

The employers' side wanted to have a quantification of telework in order to create a threshold for access to equal treatment, but the ETUC refused. The EU social partners instead introduced the notion of 'regular' telework. If work is performed on a regular basis, away from the employer's premises using information technology (one day a week as well as five days a week) it is considered to be telework.

Finally, a teleworker is defined as someone who is carrying out telework in accordance with the above-mentioned definition. It is clear from this that the agreement therefore does not cover self-employed teleworkers.

• **Voluntary character of telework and reversibility**

Part three, on the voluntary character, stipulates that telework is voluntary for the worker and the employer concerned, and that it may be required as part of a worker's initial job description, or it may be engaged in as a voluntary arrangement subsequently. Both parties can thus refuse a request for telework, unless it is part of the initial job description. There is no right as such to telework and there is no obligation to perform telework, which can, accordingly, be only introduced by mutual agreement. A fundamental principle is, however, that the transition to telework as such does not affect the teleworker's employment status. A worker's refusal to opt for telework or a decision by the worker to end telework is not, as such, a reason for terminating the employment relationship or changing the terms and conditions of employment of that worker. 'Terms and conditions' should be interpreted broadly, certainly including pay and working time but also for example the quality of the work tasks, extra benefits, etc.

This part also deals with the reversibility of the decision to move to telework, which was a major sticking point in the negotiations. If telework is not part of the initial job description, the decision to opt for telework is reversible by individual and/or collective agreement, at either the employers's or the worker's request. The details of this reversibility will be settled by the individual or collective agreement. For a worker who changes to telework that change is reversible, independently of the kind of telework. Therefore somebody who is carrying out telework from home can return to the employer's premises. This rule does not, however, affect workers who started as teleworkers. However, the reversibility has to be agreed upon either at an individual or at a collective level. If the employer wants the teleworker to return to work at his premises, the worker can refuse. The opposite is of course also true. An agreement between the parties is necessary to change the work organisation. If there is such an agreement the details of the change also have to be agreed either at an individual or a collective level.

• **Employer's information obligation**

The employer must also provide the teleworker with written information in accordance with the Directive on an employer's obligation to inform

employees of the conditions applicable to the contract or employment relationship (Directive 91/533/EEC). The agreement states further that the nature of telework might require employers to provide additional information in writing on issues such as the department to which the teleworker is attached, their immediate superior to whom questions of a professional or personal nature can be addressed, and other reporting arrangements.

• **Employment conditions**

Regarding employment conditions, teleworkers benefit from the same rights, guaranteed by applicable legislation and collective agreements, as comparable workers at the employer's premises, although specific complementary collective and/or individual agreements may be necessary. During the negotiations there was considerable discussion on this article, less as regards the principle but more in relation to its practical implications. Whereas the ETUC was very firmly of the opinion that teleworkers should have the same rights, the same salaries and the same working conditions as the rest of the workers on the employer's premises, the employers' delegation did not deny the principle, but said that due to the specific telework situation, from time to time teleworkers will be treated differently. The solution finally agreed upon was the non-discrimination/equal treatment clause from previous agreements drafted in another and perhaps more stringent form. It is clearly stated that the teleworker has the *same* rights concerning employment conditions as a comparable worker at the employer's premises. No discrimination of the teleworker is therefore permissible. If, for example, the employees working at the employer's premises have a share-option plan, the teleworker occupied 500 kilometres away from the premises is entitled to have the same. If the employees working at the employer's premises are entitled to have lunch vouchers, the teleworkers are as well. The last sentence of this part gives the right to take into account the specificities of telework through individual or collective agreements. This fact does not weaken the right of non-discrimination, as such agreements can only be complementary. For instance, teleworkers who are working all the time at home do not need a place on the company's car park, but transport compensation could be appropriate.

• **Data protection and protection of privacy**

A crucial aspect in telework is of course data protection and protection of privacy. Part 5 and 6 prescribe, firstly, that the employer is responsible for taking the appropriate measures, notably with regard to software, to ensure

the protection of data used and processed by the teleworker for professional purposes. The employer also informs the teleworker of all relevant legislation and company rules concerning data protection, in particular on any restrictions on the use of IT equipment or tools such as the internet, and sanctions in the case of non-compliance. As soon as he/she is informed, it is the worker's obligation to comply with these rules. As a general principle, the employer respects the privacy of the teleworker and if any kind of monitoring system is put in place, it needs to be proportionate to the objective and introduced in accordance with Directive 90/270 on visual display units (VDU), which prescribes an information and consultation procedure with worker representatives. Accordingly, part 5 deals above all with the protection of data used during work and not with the privacy of the teleworker which is dealt with in part 6.

The negotiating parties agreed that it is the employer who has the responsibility for protection of data used and processed by the teleworker. This is in the employer's own interest. The measures appropriate to ensure the protection of data used and processed depend on the telework situation. For a teleworker working at home or from home, this certainly means having an efficient anti-virus programme and having an efficient firewall. It may mean having an ADSL-line³ to connect to the company's network. The same applies for teleworkers in telecottages. Particular measures need to be taken by the employer concerning regular mobile teleworkers who are transmitting data via a mobile phone to the company.

As mentioned, it is the employer who needs to inform the teleworker of all respective legislation and in-house rules and it is the teleworker's responsibility to comply with these rules (as is the case for any other person working on the employer's premises). Some companies for example have strict in-house rules concerning passwords, which have to be changed at certain intervals. It is the teleworker's responsibility to respect these rules.

As a general rule, the employer provides the teleworker with the necessary equipment (hardware, internet-access, e-mail address). Whether the equipment can be used for private purposes or not was not a part of the negotiations. The negotiating parties agreed, however, that the employer has

³ ADSL (Asymmetric Digital Subscriber Line) is a technology for transmitting digital information at a high bandwidth on existing phone lines to homes and businesses. Unlike regular dialup phone service, ADSL provides continuously-available, 'always on' connection.

to make things clear from the outset and has to inform the teleworker on whether the computer provided by him can be used for private purposes or not (there has to be a company policy on this subject) and which sanctions exist in case of violation of the company policy.

There are situations where the privacy of the teleworker may be at risk. If telework is performed at home, the necessary equipment has to be installed in the teleworker's home and representatives of the employer have to enter the private premises of the teleworker. System Management Software makes it possible to have direct access to any workstation without the knowledge of the respective (tele) worker. In order to cover such situations, the signatory parties have provided for a clear and unequivocal general statement in their framework agreement: the employer respects the privacy of the teleworker. Indeed, information and communication technologies offer wide-ranging possibilities of control. Any measure of control that is introduced has to be proportionate to the objective and it has to be introduced in accordance with Directive 90/270 which, as mentioned, says that worker representatives have to be informed and consulted before any control system is introduced.

• **Equipment and costs**

Within the negotiations, there was a long and tough debate focussed on the aspect of equipment and its costs. The basic principle reached was that all questions concerning work equipment, liability and costs are clearly defined before starting telework. As a general rule, the employer is responsible for providing, installing and maintaining the equipment necessary for regular telework, unless the teleworker uses his/her own equipment. Under some conditions extra compensations are possible for costs directly caused by the work. The employer should also cover the costs directly related to regular telework, in particular the costs relating to telecommunications. In addition, the employer must provide the teleworker with an appropriate technical support facility, and the employer bears the liability, in accordance with national legislation and collective agreements, regarding costs for loss and damage to the equipment and data used by the teleworker. The teleworker on the other hand shall not collect or distribute via this equipment illegal material via the Internet.

Before telework is started, no matter whether it is telework at home, from home, in a telecottage, mobile telework or another telework situation, all questions concerning equipment, liability and costs must be defined and

settled. The teleworker shall know precisely what his/her situation is and the employer what kind of duties and rights he/she has.

But what is understood by equipment? During the negotiations hardware was discussed, as were software, telephone lines, a modem, special lines like ADSL, portable computers, mobile phones, scanners and so on. Finally, it was agreed that 'equipment' means all that the teleworker needs in order to carry out his/her tasks.

It was pointed out during the negotiations that the equipment has to correspond to company standards and, as already mentioned, that the employer is responsible for safety of data processed using the equipment. It seems more than logical that the equipment provided remains the property of the employer. Similar paragraphs are to be found in many telework agreements. During the negotiations, it was also discussed whether an article should be included stating that teleworkers are entitled to have modern upgraded hardware and software. Finally it was decided not to have such an article, as the agreement already says that teleworkers shall be treated like any other comparable worker at the employer's premises.

There is only one exception to this general rule and that is where teleworkers use their own equipment. From the discussion during the negotiations one can say that this case is indeed an exception. The telework place should be considered as any other workplace, and thus it is the employer who has the responsibility to provide the teleworker with the necessary equipment. Besides, is this not the best way to ensure that the equipment corresponds to the standards the company wants and to guarantee that IT standards of the company are followed? It may, however, be that the equipment the teleworker already possesses corresponds to company standards. In that case it would make no sense to oblige the employer to provide other equipment, but the employer still has the obligation to take the appropriate measures so that data protection is guaranteed. If the teleworker uses his own equipment for professional purposes he is of course free to use the equipment for private purposes as well. As a result of the enhanced responsibility of the employer in such cases, special safety measures have to be taken.

If telework is performed on a regular basis, the employer covers all costs directly caused by the work, in particular costs for communication. Communication costs are mentioned as an example, but the employer shall cover 'all costs directly caused by the work'. If the employer wants the

teleworker to work partially from home and if for that purpose the teleworker has to convert one of the rooms of his home into an office workplace, the costs therefore are directly caused by work and thus covered by the employer. If the teleworker uses his own equipment, he is entitled to compensation. Compensation can include costs for the computer, the costs for connections to the Internet and other telephone costs. Compensation certainly includes costs for maintenance and service of the equipment.

Independently of whether the teleworker is using the employer's or his own equipment, the employer provides appropriate technical support facility. What is appropriate varies according to the telework situation. During the negotiations the following possibilities were discussed: if the company has an IT department, the teleworker has full access to the IT department. If there is no IT department, the employers provides for a helpdesk or for professional service available for the teleworker. The employer covers the costs for this support facility, as these costs are directly caused by telework.

Liability was discussed at length during the negotiations. The background for this discussion is the following. The teleworker works away from the employer's premises, but still in a workplace. His/her workplace may be in his/her home, or in a telecottage or elsewhere, but he/she is still active in a workplace which is governed by the same or similar rules as any other workplace at the employer's premises. The employer has the liability for workplaces in his premises and he/she has the same liability for the telework place. The employer's liability covers everything which happens at the workplace, any damage for example caused to work equipment, unless the worker has committed a negligent act. Since the main rule according to the framework agreement is that the employer has the liability regarding costs for loss and damage to the equipment and the data in accordance with national rules, this implies that different specific rules for liability may be applicable across Europe. In this regard, the onus does not fall entirely on the employer since, according to the agreement, the teleworker has to take good care of the equipment provided to him, which can be considered as a normal obligation for any worker irrespective of place of work.

• **Health and safety protection**

In relation to health and safety, the employer ensures in the first instance the necessary protection in line with EU and national law, collective agreements and company policy. The teleworker has the obligation to apply these safety policies correctly. To control all this, the employer, workers' representatives and/or relevant authorities have access to the place in which telework is

performed, within the limits of national legislation and collective agreements. If the teleworker is working at home, such access is subject to prior notification and his/her agreement. The teleworker is entitled to request inspection visits.

There is no difference between telework and other forms of work organisation when it comes to the employer's responsibility for occupational health and safety. The employer has the responsibility for the protection of the teleworker and in the framework of this responsibility has to make a risk assessment. An outcome of this risk assessment may well be that there are particular risks caused by telework that have to be covered, such as the risk of isolation from the rest of the working community, which is mentioned later on in the framework agreement.

The employer makes the teleworker aware of the company's health and safety policy. As teleworkers have a VDU-workplace, the employer is particularly responsible for informing the teleworker on the company policy concerning VDU-work. As teleworkers are more often working in isolation, the employer has an enhanced responsibility to inform them of applicable legislation and company policy.

Even if the teleworker works at home, his/her workplace must correspond to the usual standards as laid down by national legislation and collective agreements. The employer has the responsibility for the teleworker's health and safety, and health and safety inspectors are responsible for existing provisions to be respected. At the same time, the teleworker's workplace is situated in his/her home and the privacy of the home has a constitutional value in all member states of the European Union (see also Article 7 of the EU Charter of Fundamental Rights). There was much discussion on how to solve this dilemma during the negotiations. The solution finally found was that the employer, workers' representatives and relevant authorities have the possibility to inspect the workplace, in order to verify that the applicable health and safety provisions are correctly applied.

• **Organisation of work**

Regarding the organisation of work, and within the framework of applicable legislation, collective agreements and company rules, the teleworker can manage the organisation of his/her working time, but telework cannot lead to an increase of workload due to the flexibility offered. The employer ensures prevention from isolation from the enterprise by, for example,

giving the teleworker the opportunity to meet with colleagues on a regular basis and providing access to company information.

This could be seen as an implementation of the statement in the general considerations whereby the EU social partners have declared that they see telework as a way of giving workers greater autonomy in the accomplishment of their tasks. Within the limits as mentioned and which should be the same for teleworkers as for other workers at the employer's premises, teleworkers can decide themselves when to start work, when to take a break and when to end their work. However, working time is one of the fields where specific complementary agreements may be necessary. During the negotiations, the following situation was for example discussed: according to collective agreements and company rules, the general working time ends at 18h00 and nobody is allowed to stay in the office after 18h00. The teleworker who is at home needs no permission to stay longer in front of his/her computer, if he/she wishes, and if he/she does so, this is not necessarily overtime. Besides the teleworker may have started work only around lunchtime.

There is however a further limit to the teleworker's possibility of freely organising working time, and that is the organisation of work. Many teleworkers work in a team, in which case they have to respect a certain limited availability.

No teleworker can be asked to perform better or more than the comparable worker on the premises of the employer. The performance standards should be the same as for comparable workers.

Many telework situations, such as telework at home or mobile telework, involve the risk of isolation from both colleagues and management. E-mails cannot replace direct contact with colleagues, nor can telephone-calls. Direct contacts are essential for creative solutions to any question. The employer must take measures to prevent such isolation. One of the possibilities is to give the teleworker the possibility to meet with colleagues on a regular basis. This may not always be possible, for example if the teleworker is located hundreds of kilometres away from the company's premises. In such cases it is up to the employer to find other ways of preventing isolation. Access to company information may offer one means through, among other things, information about career opportunities, vacancies in the company and of course communication with workers' representatives (see below).

• **Training opportunities and career development**

Teleworkers should have the same access to training and career development opportunities and they should receive appropriate training on the technical equipment at their disposal and the characteristics of this form of work organisation. This may be necessary also for the teleworker's supervisor and his/her direct colleagues.

A first conclusion is that teleworkers, as mentioned above, have to receive information both about training and about career opportunities. If they apply for training courses, they have to be given the same chance of participating as comparable workers at the employer's premises. Teleworkers cannot for example be denied participation in a training course only because they have to travel a greater distance. The signatory parties agreed that teleworkers basically need two types of training. Initial training should be more technical, targeted at the equipment placed at their disposal. Given their frequently isolated situation, effective training targeted at the use of technical equipment is indispensable. Secondly, it has to be remembered that telework is a particular form of work organisation. The teleworker needs the skills to manage his/her own tasks, his/her time and he/she needs communicative skills. It is certainly necessary to give him/her training targeted on the specificities of this kind of work. In addition, and since telework changes the work organisation of a company or at least of certain departments of a company, not only the teleworker, but also the colleagues with whom he/she is working from a distance, may need training. There is no absolute right as such for the teleworker's colleagues and supervisors to receive appropriate training, but considering the specificities of telework it may be well advisable.

• **Collective rights**

Teleworkers must also have the same collective rights as workers on the employer's premises. This means that there can be no hindrance to their communicating with workers' representatives. Teleworkers should also be able to participate in and stand for election to worker representation bodies (work councils and/or health and safety bodies) on the same basis as their office-based colleagues. The same applies for elections to 'bodies providing worker representation' for example a supervisory council or an administrative board with worker members.

Worker representatives should be informed and consulted on the introduction of telework. Teleworkers shall also be included in calculating

thresholds for worker representation bodies in accordance with European and national law, collective agreements and practices. So this provision applies to all workers' representation bodies whether European, national or other bodies. In relation to European Works Councils and for purposes of calculating these thresholds, the establishment to which the teleworker will be attached has to be specified from the outset.

Teleworkers have the same right of access to the worker representation as other workers. The right to communicate with worker representatives is an element of collective rights. The teleworker is, however, in a specific situation. He/she cannot just go to the office of the worker representation, close the door and have a private conversation. In order to solve this problem, the signatory parties agreed that 'no obstacles can be put on communication with workers representatives'. This means that the teleworker is allowed to use the means at his/her disposal (telephone, e-mail, etc.) to communicate with the worker representation or the trade union.

It is equally important that worker representatives have to be informed and consulted on the introduction of telework in accordance with European and national legislation, collective agreements and practices. It should be remembered that European legislation, for example in the EWC Directive and in the Directive on worker involvement in the SE, provides for consultation at an early phase of decision-making, when still different options are possible and the opinion of worker representatives can still be integrated into management's decision.

• **Implementation and follow-up**

A rather innovative aspect of the agreement is the part on implementation and follow-up, which clarifies, in the first instance, the binding nature of the agreement by referring to Article 139 of the Treaty. The implementation, via the national procedures and practices specific to management and labour, must be realised within three years (July 2005). The member organisations will report on the implementation to an *ad hoc* group set up by the signatory parties, under the responsibility of the Social Dialogue Committee, which will prepare a joint report on the actions taken by 16 July 2006. The signatory parties will review the agreement after five years if so requested by one of the signatory parties. Any questions of interpretation will be referred to the signatory parties by their member organisations, either jointly or separately. In addition, it might be mentioned that, already in the general considerations, it is highlighted that this agreement does not constitute a valid ground to reduce the general level of protection already offered. The agreement also does not

prejudice social partners at the appropriate level, including the European one, to adapt or complement the agreement in order to take into account the specific needs of these social partners concerned. Given the choice of words in the latter, any such agreement can thus not lead to less protection for workers as the one offered by the EU cross-industry agreement. In any case, unnecessary burdens on small and medium-sized enterprises should be avoided when implementing the agreement. Another innovative feature is that the agreement also invites the social partners in the EU candidate countries to implement it and states that they should not wait for the accession of their country in order to do so. This could in a sense be regarded as a follow up of the joint Warsaw and Bratislava conferences on social dialogue, which were implemented, at least on ETUC side, by integrating representatives of these countries in their negotiation committee for the first time.⁴

3. And what about this implementation?

It now remains to be seen how the EU social partners will be able to ensure this implementation and how viable this route of the EU social dialogue will prove to be. The implementation process will be interesting in particular given the diverse industrial relations and employment regulation structures and practices in the different countries.

Several scholars take a very pessimistic view. For instance Lo Faro (2000), who distinguishes between two types of European collective bargaining, while drawing a similar conclusion concerning both. On the one hand, there is 'inconsequential collective bargaining' (or 'weak' agreements, where reference is made to European collective agreements implemented in accordance with the procedures and practices specific to management and labour and the member states) and, on the other, 'tied collective bargaining' (or 'strong' agreements, where European collective agreements are implemented through Council decisions). Lo Faro's conclusion is that only the latter have played a significant role within the Community legal order, and so the only way out of the impasse between the two forms would be through a radical institutional reform that would bring the Community legal order into line with its stated intentions. Hall (1994) also predicted uncertainty, particularly when using the voluntary route of implementation via national collective bargaining, which would lead to an 'indirect and

⁴ See for further information: European Commission (1999) and European Commission (2001).

almost inevitably patchy impact'. Keller and Sörries (1999: 119) also identify problems in this regard, since in principle EU instruments should provide 100% coverage of the workforce. According to their argument 'an implicit prerequisite would either be a very highly centralised national bargaining system including the participating associations/confederations on both sides or, alternatively, close, strict co-ordination of sectoral bargaining'. This must be seen in connection with the absence of an *erga omnes* procedure⁵ in several states. These conclusions are inherently prejudiced, since the 'voluntary' route has not been used before. Jacobs and Ojeda Avilés (1999) have been more positive on this since – based on a literature review – they considered that, although the text of Article 139 suggests that binding force will vary depending on each member state's provisions, the underlying aim is to ensure that European agreements receive treatment equal to those concluded at national level. They note that it is customary in Europe to consider a collective agreement as more than merely a recommendation to the affiliate membership, and rather as a binding legal agreement; this prompts national actors to directly incorporate European agreements into the everyday activities and practice of industrial relations actors, with regard to collective bargaining. Also Franssen (2002) takes this view based on ILO documents⁶, the language of Article 139(2) EC Treaty⁷ and the doctrine of 'the mandate'⁸ and concludes that the national affiliates of both sides are under an obligation to implement and take the European agreement as a minimum for their talks at national level. She does, however, recognise the problem that some ETUC affiliates have no bargaining competence, such as the German DGB and the British TUC.

However, the regulation of working conditions via collective agreement is common to all labour law systems of the member states. Nevertheless, the legal status of collective agreements differs from country to country.

⁵ A legal declaration that makes collective agreements binding in general and extends the content of the agreement beyond the membership of the signatory parties.

⁶ In particular Article 3 of ILO Recommendation n° 91 which states that collective agreements should bind the signatory parties and those on whose behalf the agreement is concluded. In conjunction with ILO Convention n° 87 which concerns amongst others the right to affiliate with international organisations, she assumes that legal effects should also apply to national affiliates of European organisations.

⁷ Which uses the word 'shall be implemented' instead of 'can'.

⁸ I.e. if you give a mandate to negotiate you give the impression to assume your responsibilities to implement any outcome.

corporatist systems, such as the Belgian or the Dutch systems, differ from systems with little or no state involvement for instance as in the UK or Germany. Even so, in every member state, the collective agreement is an important and effective instrument in the regulation of labour conditions.

This leads at least to the question whether different rules should exist for European collective agreements in comparison to collective agreements under national law. When we consider different concepts for giving effect to collective agreements – beginning with the British solution whereby incorporation of the agreement into the individual labour contract is required, and ending with compulsory and direct effects *erga omnes* in Spanish law – it seems unlikely that a European collective agreement would give rise to strictly the same effects all over Europe. It would be much more logical if it had, in each member state, the same effect as a collective agreement according to national law. Following this theory, a European collective agreement could have different effects in Denmark compared to the UK and in Germany compared to Italy. This could be described as ‘the parallel statutes of effect’. The number of scholars who subscribe to this theory has been on the increase over several years (see Jacobs/Ojeda Avilés 1999: 65-68, 279-293 and 527-531; Deinert 1999: 440-443; Wank in Hanau/Steinmeyer/Wank 2002: § 19 para 17). This opinion means, in any case, that the consequences of implementation are covered by the national systems, which can be considered in line with the European view, at least that of the European Court of Justice which stated in the Francovich case that national law covers the question of compensation in case of liability for not or not sufficiently implementing an EU instrument.⁹ Franssen (2002: 138) seems to agree with this argument¹⁰ although she seems to follow a famous opinion (see Guéry, 1992: 588; Lyon-Caen, 1993: 152; Sciarra 1996: 202), according to which a European collective agreement needs, in

⁹ Decision of 19 November 1991, Cases C-6/90 and C-9/90, (1991) ECR I-5357 – *Francovich* pp.

¹⁰ She does however recognise the problem of the possibility to terminate of collective agreements on national level. What happens if national social partners terminate a national agreement implementing a European one. She proposes to lay down the principle that as long as the European agreement is in force, national collective agreements may not be contrary to them. So even if a national agreement would be terminated, a new agreement would still need to respect the terms of the European ones. This to her implies also that a European agreement should be reviewed regularly, for example every two years.

any case, further implementing steps at national level. The difference with the above-mentioned opinion is that the theory of parallel statutes of effects can lead to direct effects of European collective agreements. In this case European collective agreements have self-executing character. However, this is only a possibility which the EU Social Partners are free to choose. If they do not wish to conclude agreements with a self-executing character, they are not obliged to do so. They can exclude those effects by giving only recommendations for example, by setting stipulations which are too vague to regulate individual labour relations or even by expressly only binding their affiliates (Deinert 2003: para 53). The latter way was chosen in the telework agreement with which we are dealing.

When national implementation agreements are needed, as in the telework agreement, the main difference is that it is not the European collective agreement that becomes effective for the contracted parties but the respective national agreement. Differences in national transposition agreements lead to differences in the treatment of the individual contract parties depending on the member state in which the work is carried out.

In the following we would like to give an overview to show whose labour contracts will be covered by the transmission agreements and how these agreements become effective.

According to the German Collective Agreements Act¹¹, collective agreements are valid for the members of the contracting organisations as if the agreement were a law; therefore the contracted parties cannot opt out. What is necessary is that both parties are bound via the membership of their respective organisations. In Portugal¹² and Italy¹³ collective agreements do not have effects on non-affiliated organisations. Only if both sides of labour relations are bound via membership will the stipulations of the agreement be valid. Only the technique of implementation is different: the stipulations become part of the labour contract. In consequence, in these countries the workers only enjoy the advantages of an agreement if they are union members *and* their employer is also member of an employers' organisation.

¹¹ §§ 3 Section 1, 4 Section 1 *Tarifvertragsgesetz*.

¹² Article 7 *Decreto-Lei 519-C1/79*, Articles 12-14 *Decreto-Lei 49 408*.

¹³ See Treu 1998: para. 429.

In the Netherlands¹⁴ and in Finland¹⁵ an employer is, furthermore, obliged to offer the working conditions promised in the collective agreement to non-unionised employees. The prerequisite is that the employer be bound to the collective agreement via membership in the contracting party. Non-union members are covered by the agreement, provided their employer is bound to it, while union members and non-unionised do not benefit from the rights set out in the agreement if their employer is not affiliated to the signatory organisation. However in Finland this latter restriction disappears if the agreement signifies usual custom, in which case the workers join in the rights (not the obligations!¹⁶) laid down in the agreement even if their employer is not a member of the employers' organisation.

Under Spanish law a collective agreement has *erga omnes* effect if it is an agreement covered by the *Ley sobre el Estatuto de los Trabajadores*. This is the normal case of collective agreements in Spain. The so-called 'extra-statutory' collective agreements, which do not have such *erga omnes* effect,¹⁷ are extremely rare exceptions concluded only if the parties to the agreement do not meet the criteria of representativeness set out in the *Estatuto de los Trabajadores*. Importantly, the EU Social Partners' national members do fulfil these criteria and therefore may conclude agreements with *erga omnes* effect.

In Greece the solution depends on the mode of implementation: according to law n° 1876/1990 general national collective agreements as well as plant agreements have *erga omnes* effect, while sectoral agreements as well as professional agreements have only direct and compulsory effects in the case of membership of a signatory organisation.

The same situation is found under Belgian law¹⁸. If the agreement is concluded in a proportional body it will have *erga omnes* effect – with one small restriction: if the employer is not organised, the individual parties

¹⁴ Articles 12-14 *Wet op de collectieve arbeidsovereenkomst*.

¹⁵ §§ 4, 6 Finish Labour Contract Act, English translation in: ILO (ed.), Legislative Series (International Labour Office, Geneva) 1970-Fin 2.

¹⁶ Suviranta 1996: para. 81.

¹⁷ They have effects only in the case of incorporation into the individual labour contract, see Tribunal Central de Trabajo, Aranzadi Repertorio de Sentencias del TCT 1984 n° 4915.

¹⁸ Article 26 *Loi sur les conventions collectives de travail et les commissions paritaires*.

have the power to opt out.¹⁹ However, if an agreement is concluded outside a proportional body, the agreements become part of the labour contract if it is concluded with an employer who is bound to it via membership.

This last solution also applies in Luxembourg²⁰. In Austria²¹ and France²² a similar arrangement applies, the only difference being that the agreement has direct and compulsory effects.

In Denmark – and the Swedish rules²³ are similar –²⁴ the members of the affiliated organisations are bound to the collective agreement.²⁵ Furthermore, the employer is obliged to apply the agreement also to non-unionised workers, but the latter have no corresponding rights.²⁶

Finally, in common law – as in the UK and Irish law²⁷ – the stipulations of a collective agreement are binding on the individual contracting parties only if they have decided to incorporate them into the individual contract.²⁸

Alternatives to this implementation concept for future agreements?

Although, for the telework agreement, the EU Social Partners have chosen an implementation concept via transposition agreements, we should not forget the possibility of self-executing agreements according to the theory of parallel statutes of effect.

Overall the coverage of individual labour contracts would not differ from the coverage in the case of framework agreements with a need for transposition agreements (compare insofar: Deinert 2003: paras. 34-42). This could be contested only in Spain and Belgium where *erga omnes*

¹⁹ See for this Blanpain 1999: paras. 607-608.

²⁰ Article 8 *Loi concernant les conventions collectives de travail*.

²¹ §§ 8, 12 *Arbeitsverfassungsgesetz*.

²² Articles 135-1, 135-2 *Code du Travail*.

²³ See §§ 26, 27 *Lag om medbestemmende i arbetslivet*.

²⁴ See Adlercreutz 1997: paras. 550-555.

²⁵ See Jacobsen/Hasselbalch 1998: para. 639.

²⁶ Jacobsen/Hasselbalch 1998: para. 642.

²⁷ See Supreme Court (*Kenny J.*), (1977) *The Irish Reports* 237 – *Goulding Chemicals Ltd / Bolger*.

²⁸ *Judicial Committee of the Privy Council (1931) Law Reports, Appeal Cases* 83 – *Young / Canadian Northern Railway Company*.

applicable agreements are not the only known types of collective agreement in national labour law and which leads to questions about how self-executing European collective agreements must be treated. Treating them as national agreements, as is indicated by the theory of parallel statute of effects, means disregarding the formal criteria set out in the national rules on collective agreements. The central point is that the national rules lay down certain requirements which must be fulfilled to give a collective agreement *erga omnes* effect. What we have to ask is whether those requirements were fulfilled in the case of the European collective agreement, and if it was concluded under the specific – i.e. Spanish / Belgian – national legal order. This leads to the concept of representativeness. If Spanish or Belgian organisations meet the criteria of representativeness in the national field, they are entitled to conclude collective agreements with *erga omnes* effect.²⁹ This can be understood in terms of a ‘generally binding declaration by law’. Extrapolating from this, on the Community level, treating European collective agreements as national agreements means that they will have *erga omnes* applicability if the EU Social Partners fulfil the requirements of representativeness in Spanish/Belgian territory (Deinert 2003: para 38; against Ojeda Avilés 1999: 533 concerning Spanish law).

This would have several advantages compared with the transposition solution. It might be suggested that the effects were just the same, but this would be incorrect. Transposition agreements must be concluded by many organisations at national level. And to put pressure on national organisations, which fail to implement the agreement or do so only inadequately, is not so easy. Furthermore, disputes over which transposition solution is sufficient are not easily resolved. Future experiences with the implementation of the telework agreement will provide more experience.

On the question of flexible responses to specific national situations, an agreement could leave special questions open to the national social partners. We can see a first step to this idea in the telework agreement where some parts set out relatively compulsory rules while others ask only for national negotiations on special questions.

²⁹ Articles 87, 88 Estatuto de los Trabajadores with Articles 6 and 7 Ley Orgánica de Libertad Sindical; Article 3 *Loi sur les conventions collectives de travail et les commissions paritaires*.

Finally, transposition agreements need time, but three years for transposition may well mean three years without legal rules! Self-executing European collective agreement could be implemented much faster.

An integral part of Community law?

With the choice of the first implementation alternative offered by Article 139 Section 2 EC, the question arises of whether the agreement is an integral part of Community law. There is no doubt that the agreement has its origin in the Treaty. However does this necessarily mean that it is Community law? The question is complex and has to be answered in a variety of ways.

The question concerns the scope of the *acquis communautaire*, which must be adopted by EU candidate countries. In our view, the agreement is no more part of the *acquis* than common labour standards set out in national agreements. The accession countries cannot themselves ensure labour protection as set out in a European collective agreement without entering into conflict with national organisations and their rights of collective autonomy. To adopt the telework agreement is therefore a task for the organisations in the candidate countries as well.

A step of primary importance would be to ask the European Court of Justice about the possibility of issuing preliminary rulings under Article 234 EC. In the past legal scholars have been denied this possibility (Sciarra 1996: 200; Höland 1995: 435). It depends on the interpretation of Article 234 lit. b EC. Does the interpretation of the agreement concern an act of the 'institutions of the Community'? Doubts arise insofar as Article 7, which deals with the institutions of the Community, does not refer to the EU Social Partners and nor are collective agreements mentioned in Article 249 of the Treaty dealing with the sources of Community law. On the other hand, the Court has not declined ruling on acts of institutions other than those mentioned in Article 7 EC, nor has it declined ruling on non-binding legal acts (ECJ, decision of 21. 1. 1993, case C-188/91, ECR 1993 I-363, para 18 – Deutsche Shell AG). The legal discussion on this question will be of deep interest in the near future.

Thus, if the agreement can be qualified as part of Community law, it should be stressed that the national courts, as well as the European Court of Justice, have to bear in mind human rights in Community law in proceedings connected with the agreement (see insofar Article 51 of the EU Charter of

Fundamental Rights³⁰). This could be of interest e.g. with respect to Article 7 or Article 31 of the Charter.

Conclusion

As already indicated, this agreement – which is the third EU wide agreement on the issue following the EU sectoral agreements in the telecommunications (signed 7 February 2001) and commerce sectors (signed 26 April 2001) – constitutes a landmark, if only on account of the route of implementation chosen.

Whether the implementation proves successful or not, it will without doubt, at least academically, lead to the discussion of the need for a legal framework for the EU social dialogue in general and European collective agreements in particular.

With the model of ‘parallel statutes of effect’, the advantage would be that European collective agreements are able to have direct effects. The nature of the outcome will vary from country to country, like scholarly opinion, but the ETUC guidelines to the agreement, recognise that there are different solutions available. For the ETUC, however, it is clear that Guidelines and codes of conducts are not, given their non-binding character, the appropriate way to implement the framework agreement. Another unsolved question is *erga omnes* coverage, which will also depend on the respective national systems.³¹ Scholars will certainly use this to argue that the implementation might turn out to be patchy since, in principle, only national affiliates of the signatory parties are addressed by the agreement. What will this lead to in countries with low trade union density and workplace representation or unions faced with employers not linked to a national affiliate of UNICE or CEEP?

The answer unfortunately is elusive. But it is likely that it will become more tangible in the future. In that sense it might lead to beefing up the so-called ‘unwritten law of EU Social Dialogue’ (Deinert 1999), meaning the process of learning through experience and the simple method of trial and error.

³⁰ For the impact of the Charter on the jurisdiction in human rights cases see e.g. Hepple 2001: 231 and the contribution of Clauwaert and Schömann in this yearbook.

³¹ But the lack of *erga omnes* applicability does not need to be qualified as a disadvantage in any case, see Deinert 2003: para 51 with further references.

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Isabelle Schömann and Stefan Clauwaert

The EU Charter of Fundamental Rights in the case law of the Courts of the European Union : towards recognition of the constitutional value of the EU Charter

Introduction

1. The EU Charter as a Bill of Rights
2. The EU Charter as source of judicial review: defined positions inside the European judicial actors
3. Possible arguments for the ECJ prudence
4. The EU Charter and the ECJ: past and future constructive interactions

Concluding remarks:

Introduction

In a former Yearbook article entitled *'The EU Charter of Fundamental Rights: its treatment of social and trade union rights. A chronological overview'*,¹ expectations were expressed concerning recognition of the European Charter of Fundamental Rights [EU Charter] as a source of fundamental rights to be referred to by the European institutions and particularly by the European Court of Justice [ECJ]. These expectations were based on the recent opinion of Advocate General Tizzano in the BECTU case (C-173/99). For the first time since the adoption of the EU Charter in 2000, an Advocate General referred to it as a substantial source of fundamental rights in the European Union. The hope was expressed that the EU Charter 'will be used in the same way as was the Community Charter of Fundamental Social Rights of Workers of 1989 and the collective complaints procedures of the Council of Europe Social Charter. Via the interpretation of, respectively, the ECJ and the European Committee of Social Rights, these instruments came to gain indirect legal effect.' The reference to the EU Charter in the scope of the European judicial proceedings remained historic and strengthened the argument towards the legally binding effect of the EU Charter.

It therefore seemed worthwhile to analyse – almost two years after its adoption – how the ECJ and the Court of First Instance (CFI) or even other actors of the European judicial proceedings make use of the EU Charter as reference point. Furthermore our intention is to investigate the potential impact of the European Court of Justice case law on the recognition of the EU Charter as a source of judicial review to protect fundamental rights. For this purpose we contrast the most recent case law of the ECJ with the main developments of the doctrine since the proclamation of the EU Charter, bearing in mind the work of the Convention with a view to the Intergovernmental Summit in 2004.

1. The EU Charter as a Bill of Rights

The EU Charter of Fundamental Rights signed during the Intergovernmental Conference in Nice, in December 2000, was originally intended to be a legally binding instrument, although it was admitted that this might not be

¹ Clauwaert (2000).

an immediate achievement². The heads of state and government of the member states, often on the basis of an express and specific mandate from the national parliaments³, approved the EU Charter as a bill of rights, as a body of rules to measure the respect a community accords to values and rights such as dignity, freedom, equality, solidarity, citizens' rights and justice. Interestingly, this comprehensive catalogue of classic civil and political rights, social and economic rights and citizens' rights does not yet have any legally binding effect, either for the European institutions or for the member states. Furthermore the mandate given by the European Council to the preparatory body (the Convention) specified that the EU Charter should not be part of either the EC or the EU Treaty, and nor should it be subject to an independent international body for its application⁴.

However, even if the EU Charter is little more than an expression of goodwill⁵, the inter-institutional agreement⁶ between the Council, the Commission and the European Parliament was intended to be a source of inspiration for the European Court of Justice to regard the Charter of Fundamental Rights⁷ as part of the general principles of the Community law, of which the ECJ is the guardian. This expectation finds its roots in the longstanding work of the European Court of Justice which has aimed to include the protection of fundamental rights within the scope of general principles of Community law⁸ in the absence of any Treaty provisions⁹.

² (...) at the instigation of the President of the Convention, Mr Herzog, it was clear that from the very outset the Convention's proceedings were directed towards producing a text '*as if*' it were to be incorporated in the Treaties, thus leaving the final choice to the European Council. (COM) 2000 644 final of 11th October 2000 point 7. For further analysis see Engel (2001) page 151 and Mendenez (2001) page 7; for a more cautious position see Betten (2002) page 152.

³ See the opinions delivered by Advocate General Tizzano in the BECTU case C-173/99 on the right to paid annual leave in point 28, mentioned by Jacobs 340.

⁴ Engel (2001) page 152.

⁵ Engel (2001) page 152.

⁶ De Schutter (2002) page 119. According to Garcia (2002), the EU Charter is an inter-institutional agreement with binding effect for the Authorities that accepted it.

⁷ Point 67 of the opinion delivered by Advocate General Léger in the case Council v. Hautala C-353/00.

⁸ Simitis (1999) p. 20, Clauwaert (1997).

⁹ Lyon-Caen (1993) page 114, Barnard (2000) page 36.

Meanwhile a substantial body of case law has been developed and it is currently accepted that the European institutions' and member states' policies must be subject to scrutiny on the basis of fundamental rights to assess whether they derogate from the Treaty or restrict the exercise of a common market freedom. By quoting the European Convention of Human rights, the European Social Charter and the Charter on Fundamental Workers' Rights, as essential sources of inspiration in shaping and protecting the Community fundamental rights, the European Court of Justice has shown real judicial activism. The question remains, will the ECJ make use of such judicial activism again and will it quote the EU Charter as an additional source of fundamental rights? In the case of the affirmative, the EU Charter will become mandatory through the European Court's interpretation of it as a source of the general principles of Community law, and it will thereby gain legally binding effect¹⁰.

2. The EU Charter as source of judicial review: defined positions inside the European judicial actors.

Analysis of European case law since the adoption of the EU Charter, as well as references to the *doctrinal* debate on the potential opportunities opened for the European Court of Justice, indicate that there is a division between the enthusiasm of Advocates General and the Court of First Instance, and the prudence of the European Court of Justice towards the use of the EU Charter. *From a broader perspective, it will give indications on the role the Convention will have to play, to ensure the Charter a broader recognition.*

2.1. General aspects

The active role of the European Court of Justice in relation to the recognition of fundamental rights as a source of Community scrutiny does not need to be demonstrated¹¹. Yet this judicial construction occurred without any particular predispositions or Community mandate¹². Looking

¹⁰ Alber (2001) page 349.

¹¹ 'The ECJ deserves immense credit for pioneering the protection of fundamental human rights within the legal order of the Community (..)' Jacobs (2001) page 340. For a different position see Menendez (2001) page 6.

¹² Lyon-Caen and Simitis 114. For a slightly different view, see Menendez 5. The author explains that the 'Luxembourg judges responded to clear signals coming from the political process.'

back some 30 years, the European Court of Justice has developed a praetorian construction of fundamental rights by borrowing from international instruments of human rights protection. The ECJ was the first European institution to integrate the European Convention of Human Rights into Community law¹³. Its case law has to date been clearly and openly based on the European Convention of Human Rights, whilst being further refined and adapted by reference to other international instruments such as the European Social Charter and the Community Charter on workers' rights, alongside comparative analysis of common constitutional traditions¹⁴. By affirming that Community law respects fundamental human rights, the ECJ has recognized a range of rights, liberties and principles as fundamental rights, which are thus general principles of law.

This development of case law, towards the judicial recognition and the protection of fundamental rights, authorised the European Court of Justice to clarify the social dimension of the EU by developing the social dimension of Community general principles. Some of its case law was integrated into the EU Treaty as early as in 1992 (new Article 6 (2) EC Treaty). Moreover since 1997, the Amsterdam Treaty has conferred on the ECJ jurisdiction the responsibility to ensure that the European institutions respect fundamental rights¹⁵. In this respect, the European Court of Justice has acted as a motor for integration. For some authors this activism is a second dimension of the judicial body of the EU, which is 'less as a body of the judiciary but rather as a political body', and has seen its main task in breaking institutional blockages and fostering increased integration between the member states to form a uniform Europe¹⁶. These authors tend to predict that in the future the European Court of Justice will exercise a decisive influence in the interpretation and application of fundamental rights¹⁷.

Until recently the European Court of Justice gave substance to civil and political rights via the general principles of Community law. The question is if and how the ECJ will proceed to extend its case law on (social)

¹³ Stauder Case 12 Nov. 1969 C-20/69.

¹⁴ Lyon-Caen and Simitis (1993) page 114, Menendez (2001) page 6.

¹⁵ Barnard (2000) page 37.

¹⁶ Engel (2001) page 156.

¹⁷ 'The living of law (fundamental rights) will ultimately be determined by the decision of the ECJ.' Simitis (1999) page 13.

fundamental rights via the EU Charter? And if it does, to what extent will fundamental (social) rights be recognized?

In the case law gathered since the declaration of the EU Charter, two kinds of issue have tended to arise. On the one hand, there are cases in which the Community is alleged to have infringed fundamental rights. These are mostly in relation to Community staff regulations (C-270/99 *Z v. Parliament*, C-122/99 and C-125/99 *D. and Swedish government v. Council*) and cases arising under the competition or trade rules in relation to companies, where the Community exercises power directly (T 198/01 *Technische Glaswerke Ilmenau GmbH v. Commission*, T-54/99 *Max.mobil Telekommunikation Service v. Commission*). On the other hand, cases arise in which member states have allegedly infringed fundamental rights, as they implement Community law. These latter cases are more important in practice because member states implement Community law far more than the European institutions. Some cases acknowledge the emergence of other rights as fundamental rights such as the right of access to Community documents and the principle of transparency (Case-353/99 *Council v. Hautala*), or the right of human dignity in biotechnology (Case-377/98 *Netherlands v. European Parliament and Council*). Furthermore distinctions should be made between references to the EU Charter in judgments of the Court of First Instance and opinions of Advocates General, and potentially judgments of the ECJ.

2.2. The clear position of the European Court of First Instance

The Court of First Instance has referred to the EU Charter in six judgments (to date). In case T-77/01, *Diputación Foral de Alava et autres v. Commission*, concerning Spanish legislation on corporate tax, the applicant referred to the right to an effective remedy and to a fair trial as found in Article 47 of the EU Charter. The Court of First Instance in § 35 recalled this reference, as a general Community principle also referred in the European Convention of Human Rights. In case T-54/99, *Max.mobil Telekommunikation Service v Commission*, the Court of First Instance made reference both to the right to good administration and to the right to an effective remedy and to a fair trial as respectively quoted in Article 41(1) and Article 47 of the EU Charter to recognise the Commission's general duty of supervision and the obligation to undertake a diligent and impartial examination of complaints submitted to it, and to make the Commission susceptible of judicial review in this area.

In case T-112/98 (*Mannesmannroehren –Werke v. Commission*) the applicant asked the Court of First Instance to consider the Charter ‘*as new point of law*’. The Court ignored this argument but, on closer inspection of the wording, this refusal could be explained only by the fact that ‘the contested measure was adopted before the Charter and thus the Charter does not apply’. In the *Technische Glaswerke Ilmenau GmbH v. Commission* case (T-198/01) on state aid, the Court of First Instance quoted (points 85) Article 41 of the EU Charter. In the process of summarising the case, the CFI granted the applicant provisional orders under certain conditions, after referring to Articles 6 and 13 of the European Convention on Human Rights and on the grounds of Article 47 of the EU Charter on effective judicial protection. Finally, in case T-177/01, *Jégo-Quéré v. Commission* on Fisheries policy, the Court referred to the right to an effective remedy and to a fair trial as stated in Article 47 of the EU Charter and referred to the EU Charter as an additional source alongside the European Convention of Human Rights.

2.3. The determinate enthusiasm of all Advocates General

Undoubtedly one of the main sources of reference to the EU Charter are opinions¹⁸ delivered by the Advocates General. Of the eight Advocates General of the ECJ, all have at least once referred to the EU Charter¹⁹. According to Advocate General Alber, the EU Charter should influence the European Court of Justice case law. If direct or exclusive reference to the EU Charter is not possible, the use of the Charter as an additional source to protect fundamental rights would be meaningful and would give the EU Charter more extensive acceptance than a simple political declaration²⁰. To support his argument, Advocate General Alber refers to several recent opinions delivered by himself and other Advocates General, which go beyond mere suggestion and present the EU Charter as the new instrument to be referred to in the protection of fundamental rights. For example, in the case *TNT Traco* (C-340/99), Advocate General Alber mentioned, for the first time in opinions

¹⁸ Although ‘advisory opinions delivered by Advocates General are not binding on the Court, they are persuasive precedents with which the Courts tends to agree in 85% of cases’. Bercusson (2000).

¹⁹ The first being Advocate General Alber in the *TNT Traco* case, followed a week after by Advocate General Tizzano in the *BECTU* case; Advocates General Jacobs and Stik-Hackl have each referred six times to the EU Charter, testifying to genuine enthusiasm and to be interpreted as a clear signal to the ECJ.

²⁰ Alber (2001) page 351.

since the adoption of the EU Charter, in point 94 of his opinion that ‘the newly promulgated Article 16 EC and Article 36 of the Charter of Fundamental Rights of the European Union underline the importance of the access to services of general economic interest and therefore the interdiction for member states to impose internal taxation on products (for protectionist purposes) *as an expression of a fundamental value judgment of Community law*’. In case *Evans* (C-63/01), Advocate General Alber refers to Article 47 of the EU Charter ‘which, admittedly, does not yet have any binding legal effect. It can, however, be used as a standard of comparison, at least in so far as it addresses generally recognised principles of law’ (point 80). Furthermore, the EU Charter is referred to as covering ‘in large measure the same substantive ground [as the ECHR]’ and ‘may serve as a guideline’ (point 84).

Moreover, the opinions of Advocate General Tizzano in the *BECTU* case (C-173/99) refer directly to the EU Charter (after having referred to several international instruments) as *even more significant* legal evidence to tackle the issue concerned (point 26). Furthermore, he pointed out that ‘the fact remains that it (the EU Charter) includes statements which appear in large measure to reaffirm rights which are enshrined in other instruments, (...) we cannot ignore its clear purpose of serving, where its provisions so allow, as a substantive point of reference for all those involved’. By describing the EU Charter as ‘a substantive reference, a most reliable and definitive confirmation of automatic and unconditional fundamental (source of) rights’ (point 28), this reference was further strengthened. Point 40 of the opinions of Advocate General Jacobs in case *Z. v. European Parliament* (C-270/99) states ‘the EU Charter while itself not legally binding, proclaims a generally recognized principle in stating in Article 41 that ‘Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union’. The argument uses Article 41 of the EU Charter to find ‘an obligation of means’, for the institutions of the EU to conduct disciplinary procedures within a reasonable time and to focus on the possible remedies when administration fails to fulfil its duty.

The opinion delivered by Advocate General Léger in the case *Council v. Hautala and others* (C-353/99) is of particular relevance. The Advocate General emphasised the role of ‘the EU Charter as a principal source of fundamental rights’ and the quality to be given to the common values the EU Charter encloses on several occasions. He referred to the EU Charter as ‘the European instrument that demonstrates the political and moral will of the member states to share their common constitutional traditions’ (point 80-

82), particularly as regard to the right of access to information held by institutions. 'Its classification as a fundamental right in the Charter constitutes the strength of a principle and a further stage in the process of ranking it within the Community legal order' (point 79). The EU Charter, as a source of fundamental rights, makes principles *more visible* in order to increase their protection by placing them on the 'highest level of values common to the member states'. Although not enshrining positive rights itself, the EU Charter 'confers on rights a quality which should provide guidance for its interpretation' (points 83 and 86). In footnote 29 of her opinion in case *Carpenter* (C-60/00), Advocate General Stik-Hackl mentioned that 'the respect of the fundamental right of family life and in particular the protection of marriages, as mentioned in Article 7 of the Charter of fundamental rights, should result in the positive obligation to member states to afford certain members of the family access to their territory'. In the most recent case law of the ECJ, Advocates General refer to the EU Charter in conjunction with the ECHR, setting these two sources of fundamental rights on the same footing²¹.

However, regardless of whether the ECJ agreed with the outcomes of these opinions, it has shown a high degree of prudence and has not referred, to date, to the EU Charter in its final judgment.

Despite this, the European Court of Justice has to deliver judgments in a number of pending cases and a change in its reserved attitude remains possible. In the *Überseering BV* case (C-208/00), Advocate General Damaso Ruiz-Jarabo Colomer stressed (point 59) the fundamental role of the EU Charter as 'invaluable common denominator of the essential judicial values in European member states'. While in the *Booker Aquaculture* cases (C-20/00 and C-64/00), Advocate General Mischo referred to the EU Charter (point 126) as the 'expression, at the highest level, of a democratically established political consensus (...) as the catalogue of fundamental rights guaranteed by the Community legal order'. He particularly stressed as regards the right of property (Article 17 EU Charter), that while there is a reference to the right to 'fair compensation being paid in good time', this does not refer to controls on the use of goods (for instance in the specific case, obligation to destroy fish infected by disease) but rather refers to the deprivation of property rights. In this context, Advocate General

²¹ See *Österreichischer Rundfunk and others* C-465/00, footnote 3, *Evans* C-63/01 point 97, *Volkswagen v. Commission* C-338/00 point 94 and *Gözütök* C-187/01, footnote 22.

Mischo invited the ECJ to reject an interpretation of Council Directive 93/53, which obliged a member state to adopt measures providing for the payment of compensation. Finally, Advocate General Colomer in the Kaba Case (C-466/00) in which the EU Charter was deemed to contain ‘a more extensive and up-to-date list of rights and freedoms than the Convention’ made an interesting reference to the EU Charter. Some Advocates General, within the European Court of Justice, whilst recognising the non-binding effect of the EU Charter, have nevertheless emphasised its clear purpose of serving ‘as a substantive point of reference for all those involved in the Community context’ (point 74).

These references all stress the increasing importance of the EU Charter as a new source of fundamental rights to be referenced alongside the European Convention of Human Rights, although the latter source figured as the main source of Community value. The EU Charter is often cited in conjunction with constitutional traditions and the ECHR, recalling the wording of Article 6 of the EC Treaty, in which the EU Charter does not (yet) figure as reference point and therefore does not have legally binding effect. However, attempts are often made by Advocates General to pronounce on the nature of the EU Charter; for example, in the case D’Hoop in which the EU Charter was linked to the Treaty and Community legislation both of which are legally binding texts, or when an applicant requests that the EU Charter be considered as a new point of law (Mannesmannroehren).

Active promotion of the EU Charter as an additional source of reference for the protection of fundamental rights has come from all eight Advocates General, regardless of the policy field or a particular right in question. Their arguments centre on the essential role the EU Charter should play among the other international instruments already used as reference by the European Court of Justice. As the Preamble clearly states, ‘the Charter reaffirms (...) the rights’ to be found in many sources and systems of protection of fundamental rights and does not aim to replace them²². The specific formulations used in referencing the EU Charter indicate that the Advocates General have not based the existence of a right on the EU Charter but rather confirm its status on the basis of the EU Charter (LB 158), with reference to its substance and not its formal status. This is a clear message to the European Court of Justice to engage in a process of judicial recognition of the EU Charter, already initiated by the Court of First Instance as well as the

²² Menendez (2001) pages 8-9.

European Ombudsman and national constitutional courts of Spain and Italy²³. However, certain authors follow this argument to stress the lack of response or non-activism of the European Court of Justice, rather than the preliminary message sent to the Court, as a sign of prudence and reserve.

3. Possible arguments to account for the ECJ's prudence

After consideration of the rather limited case law which has built up since proclamation of the EU Charter (37 listed cases), and in few cases, the minor references to the EU Charter made by some Advocates General, sometimes as little as a footnote (see opinions delivered by Advocate General Stik-Hackl in the case C-49/00, *Commission v. Italy* in footnote 11, in the case *Carpenter* C-60/00, footnote 29 and in case *Gözütok* footnote 22 and 47), or even the preference given to the ECHR and general principle of Community law by Advocate General Geelhoed in case *British American Tobacco Investments and Imperial Tobacco* C-491/01 in point 259), it might be argued that the ECJ intends to remain prudent and to postpone the integration – through case law – of the EU Charter in the existing range of international instruments. Legal advice and guidance given in the opinions of the eight Advocates General have until recently been ignored by the European Court of justice. Instead it was the Court of First Instance which made the first judicial reference to the EU.

3.1. General arguments

Some authors argue that, besides the fact that the uncertain nature of a Charter as (legal) instrument makes it difficult to use²⁴, the non-integration of the EU Charter in the EC Treaty is a reason behind the European Court of Justice's preference to appeal to other international instruments and make use of general principles of human rights²⁵. The experience gained with the 1989 Workers' Charter could be useful in terms of the EU Charter. Only once²⁶ did the ECJ refer to the Community Charter as supportive evidence, ignoring or rejecting in other cases invitations of appellants to use it as

²³ Alber (2001) page 353.

²⁴ Lyon-Caen and Simitis (1993) page 117.

²⁵ Betten (2001) pages 157, 158.

²⁶ Case C-84/94, *United Kingdom of Great Britain and Northern Ireland v Council of the European Union* challenging certain aspects of the organization of working time according to the Working Time Directive 93/104/EC. 12 November 1996. Point 76.

reference point. This experience might explain the *de facto* silence of the ECJ towards the EU Charter, and therefore, it might be assumed that the ECJ will remain reserved in the future.

One argument, still controversial, is that if the objective of the EU Charter is to provide a codified catalogue of rights which can serve for judicial review, provisions of the EU Charter cannot be used on their own²⁷ as far as litigation on the basis of the EU Charter is concerned. For example, most social rights are not justiciable, for they require positive actions²⁸ from national authorities. If the EU Charter is intended to define social rights as justiciable rights, which would be a major step forward, this would result in an increase of powers and competence in social fields, firmly rejected by Members States as witnessed by Article 51 (2) of the EU Charter: 'This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties'. Therefore fundamental social rights as referred in the EU Charter cannot be justiciable in the same way as civil or political rights. Moreover, fundamental rights refer in most cases to principles that impose aims upon their addressees and therefore need an application procedure, otherwise they are useless from a legal point of view²⁹.

3.2. The EU Charter is a political instrument rather than a legal tool

However, if the EU Charter remains non-binding, its symbolic political value can serve to prepare the next political step. According to the authors in favour of a minimalist approach on the nature of the EU Charter, the significance of this declaration of intent is to be found in its political role. As a simple list of rights, its destiny could be to encourage member states, under the limits of respective competences, to recognise certain social rights and therefore to act as a counterbalance to the risks of competitive deregulation³⁰ and against the decreasing levels of existing protection of

²⁷ Betten (2001) page 158, De Schutter (2002) page 117.

²⁸ However, for the first time in international instruments, social rights are mentioned as the same level as other rights and as requiring the same juridical protection. But in the case of social rights, we have to refer to a 'normative justiciability', so that they require positive actions or government obligations of national Member States, if the charter becomes mandatory. Braibant (2001) page 74.

²⁹ Engel (2001) pages 152-153.

³⁰ De Schutter (2000) page 47.

fundamental social rights. Furthermore, the EU Charter has already served as an incentive for the Commission to act in social fields in the framework of Community competences and it is foreseeable that the EU Charter may serve as a source of inspiration for further EU action³¹. In this respect, however, the ECJ cannot give the EU Charter the necessary force to counter the deregulation of the labour market in the EU, because of the autonomy of the member state in social policy.

Indeed these arguments, based on the minimalist approach, divide observers and practitioners. They reveal the dichotomy between, on the one hand, the difficult consensus reached in December 2000 in Nice to proclaim *in extremis* the EU Charter as a new international instrument for the protection of fundamental rights and, on the other hand, the desire to safeguard the autonomy of member states in the respect of the subsidiarity principle³². However it would be wrong and unwise not to recognise any significance to the EU Charter³³, as clearly demonstrated by the several references to the EU Charter already made by different institutional bodies such as the Advocates General, who give the EU Charter the initial influence foreseen by the Convention, ‘as if’ the EU Charter were to be incorporated into the Treaties.

4. The EU Charter and the ECJ: constructive interaction

Analysis of the existing references to the EU Charter in European Court of Justice case law, especially in opinions of Advocates General and by the Court of First Instance, serves as an essential reference point to strengthen the respect of fundamental rights in the European Union. These references demonstrate that some reasonable predictions could be drawn (although not exclusively) from the dynamism the ECJ has shown over the past thirty years towards the recognition of fundamental rights as part of the general principles of the Community law. Moreover, a similar development could potentially occur in relation to the EU Charter of fundamental rights.

As Advocate General Jacobs has stated³⁴, if ‘references to human rights in the Court of Justice’s case law are so far less abundant, (they) seem to be rapidly increasing’ and they acknowledge the recent emergence of certain

³¹ Betten (2001) page 151.

³² Menendez (2001) page 10.

³³ Alber (2001) page 349.

³⁴ Jacobs (2001) pages 331-332.

fundamental rights and principles. This is a sign that the European Union has covered some distance from the idea of ‘an economic organisation without impact on human rights’ and that ‘fundamental rights should be put on the same footing as the four economic freedoms to reflect the changing nature of Europe from an economic Community to the Union’³⁵. An additional argument is to be found in the mutual support of both the EU Charter and the ECJ’s case law towards the same goal, that is the recognition of the human and social dimension of the EU, which the EU Treaty does not currently envisage. Fundamental rights, as a milestone for present and future development of the EU, require more visibility and transparency and could possibly gain a legally binding nature in a near future (recommendation of the Simitis experts group³⁶).

Two main developments could be expected from current case law, bearing in mind the existing role of the ECJ in the recognition of fundamental rights in the EU. The first one is the reception of the ECJ’s case law in the EU law as each modification of the primary Community law has shown. The second development concerns the recognition of the EU Charter as a legally binding document as a result of the ECJ’s activism and/or to its integration into the list of mandatory international sources referred to in Article 6 II of the Treaty.

4.1. Complementary relations between the ECJ and the EU Charter

The Convention was given a mandate to consolidate the existing EU law on fundamental rights referring essentially to ECJ case law. In this sense, the EU Charter crystallises³⁷ the sources of inspiration handled by the ECJ to make it more accessible and visible. In particular, for the category of social rights regarded as ‘government obligations’, the Convention in its explanatory memorandum applied ECJ case law³⁸, whereas for the others civil and

³⁵ Barnard (2000) page 39, Lyon-Caen and Simitis (1993) page 110.

³⁶ Barnard (2000) page 40.

³⁷ See Garcia (2002) page 1, footnote 1.

³⁸ *Article 11- Freedom of expression and informations* (ECJ C-288/99), *Article 15 - Freedom to choose an occupation and right to engage in work* (ECJ C-4/73, Nold, ECR (1974) 491, no. 12-14, 44/79, Hauer, ECR (1979) 3727, 234/85, Keller, ECR (1986) 2897), *Article 16 - Freedom to conduct a business*, (ECJ C-4/73, Nold, ECR (1974) 49, no. 14, 230/78, SPA Eridania e.a., ECR (1979) 2749, no. 20 and 31, 151/78, Sukkerfabriken Nykøbing, ECR (1979) 1, no. 19; C-240/97, Spain v Commission (not yet published) paragraph 99), *Article 17 - Right to property*, (ECJ C-44/79, Hauer, ECR (1979) 3727), *Article 20 - Equality before the law* (ECJ C-283/83, Racke, ECR

political fundamental rights were taken directly from the ECHR. As the ECJ has drawn fundamental rights from the unwritten primary law of the Community by reference to international instruments, it could easily consider the EU Charter, like other international instruments, as a source of fundamental rights that codifies unwritten fundamental rights of Community law³⁹. However, one could argue that the EU Charter is more than a simple source of fundamental rights. The reason why the EU Charter must be referred to by the ECJ is that ‘by bringing together in a single instrument the rights (...) scattered over a range of national and international instruments, the EU Charter enshrines the very essence of the European *acquis communautaire* regarding fundamental rights’⁴⁰. Therefore, ‘it is highly likely that the Court of Justice will seek inspiration in it, as it already does in other fundamental rights instruments. It can reasonably be expected that the EU Charter will become mandatory through the Court’s interpretation of it as belonging to the general principles of Community law’⁴¹. Furthermore, some authors argue that the legal value of the EU Charter depends less on its formal status and more on its role as a means of consolidation, meaning the use of the EU Charter as a concise statement or summary of fundamental rights⁴².

4.2. Promising examples of ECJ judicial activism

The innovative potential of the EU Charter depends on the will of Community judges to endow the EU Charter with binding effect. The creative legal power of the European Court of Justice has already found

(1984) 3791, C-15/95, EARL, ECR 1997, I-1961, C-292/97, Karlsson), *Article 41 - Right to good administration* (ECJ C-255/90, Burban, ECR (1992), I-2253, T-167/94, Nölle, ECR (1995), II-2589; T-231/97, New Europe Consulting e.a., Rec (1999) II-2403, 222/86, Heylens, ECR (1987), 4097, no. 15, 374/87, Orkem, ECR (1989), 3283, C-269/90, TU München, ECR 1991, I-5469, T-450/93, Lisrestal, ECR (1994), II-1177), *Article 47 - Right to an effective remedy and to a fair trial*, ECJ C-222/84, ECR (1986), 1651; 222/86, Heylens, ECR (1987) 4097, C-97/91, Borelli, ECR (1992) I-6313, ECJ case law: 194/83, Les Verts, ECR (1986), 1339), *Article 49 - Principles of legality and Proportionality of criminal offences and penalties*, *Article 51 – Scope*, ECJ C-5/88 Wachauf, ECR (1989) 2609; ERT, ECR (1991), I-2925). See *Charte* 4473/00, Convent 49, Brussels, 11 October 2000.

³⁹ Engel (2001) page 153.

⁴⁰ COM(2000) 644, first paragraph.

⁴¹ COM(2000) 644, paragraph 10.

⁴² Mendenez (2001) page 8 quoting for example the opinions delivered by Advocates General Tizzano in the BECTU Case and Jacobs in the case *Z v. European Parliament*.

several applications regarding the protection of fundamental rights. Besides references to luminary dispositions and Preamble of Treaties, the ECJ already confers a binding effect on declarations, such as the opinions and recommendations of the Council or the Commission, by using an interpretation method. This particular issue finds an illustration in the case law of the ECJ related to access to vocational training. In the Gravier case (C-293/83), confirmed by the Blaizot case (C-24/1986), the ECJ refers to 'the general guidelines laid down by the Council in 1971' for drawing up a Community programme on vocational training and two Council resolutions of 1976 concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life and of 1983 concerning vocational training policies in the EU in the 1980s, to assert that conditions of access to vocational training is a Community issue falling within the scope of the EC Treaty⁴³.

According to this method of using any provisions to clarify objectives and ensure a progressive interpretation of the Treaty, the EU Charter could be used to integrate new references to fundamental rights, just as the ECJ already uses the European Social Charter as the expression of common political will entailing the recognition of common values which are capable of bearing on the interpretation of directly applicable law⁴⁴. Furthermore, Article 136 of the EU Treaty refers directly to the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers as the sources of the fundamental rights to which the European Union and the member states have to refer when promoting employment and improving living and working conditions.

Additionally, as already mentioned, the development of a body of Community general principles is the work of the European Court's case law on the respect of fundamental rights. Sources of these principles are the common constitutional traditions of the member states and international ratified instruments such as the European Convention of Human Rights that inspired the ECJ, and are now used as direct references to argue for a limit on Community actions. This judicial construction could reasonably be

⁴³ Robin Olivier (1999) page 611.

⁴⁴ Point 28 of the opinion delivered by Advocate General Lenz delivered on 15 June 1988, in the case *Anna Bergemann v. Bundesanstalt für Arbeit*, C-236/87, ECR 1988, 05125.

extended to the recognition of the category of fundamental social rights⁴⁵, thereby acting as a natural evolution of the scope of Community general principles aiming to affirm the social dimension of the European Union. This extension should not create any new competence, but will assure the respect of fundamental rights by the Community's legislators when acting in the scope of their competences and by national legislative powers when acting in the field of Community law⁴⁶.

All these references to the EU Charter as the 'principal source of fundamental rights' which stem from opinions delivered by Advocates General and stated in the judgments of the Court of First Instance, supported by the European Ombudsman and by the national courts of Spain and Italy, are clear signals to the ECJ to show activism *vis-à-vis* the recognition of the EU Charter as an additional international source of fundamental rights, alongside the European Convention of Human Rights and the Social Charters. Although considering that the EU Charter is the first instrument to place civil, political, social and economic rights on the same level, the ECJ could, by requiring measures that permit the actual exercise of social rights, serve as a substantial lever for Community social law, perhaps more efficiently than the EU Treaty itself⁴⁷. However, as the ECJ has not to date shown any enthusiasm to endorse these references, its prudence could be explained in two ways. On the one hand, through the limits and obstacles facing the ECJ in terms of enforcement of the European Charter on fundamental rights. On the other hand, these developments occur in a high political context that does not encourage judicial activism. Should the ECJ be seen as a political player as in the past, when its main task was to break institutional deadlocks and support integration⁴⁸?

⁴⁵ This notion is still absent from the European Court of Justice's case law (Robin-Olivier (1999) page 613).

⁴⁶ As a transposition of Robin-Olivier's development on the integration of the social Charters in the Amsterdam Treaty (Robin-Olivier (1999) page 615).

⁴⁷ Robin-Olivier (1999) page 613.

⁴⁸ Lyon-Caen and Simitis (1993), Engels (2001).

Concluding remarks: Reluctance and limits of ECJ judicial activism encourage the constitutional recognition of the EU Charter

The purpose of the analysis of recent European Court of Justice's case law including references to the EU Charter, in the framework of the judicial procedure, is to characterise possible judicial developments towards the recognition of a new source of fundamental rights in the EU Charter. The main outcomes of this analysis are twofold. Firstly, the limits of the European Court of Justice in the affirmation of fundamental rights of the European Union as stated in the EU Charter are noteworthy. Indeed the prudence shown by the ECJ towards the recognition of the EU Charter as a source of fundamental rights is in striking contrast to the general enthusiasm and repeated incentives from the Court of First Instance, the Advocates General, the European Ombudsman and two national constitutional courts. This first outcome leads to the second result of the analysis: there is a necessity to assert, in a constitutional act, the recognition of the fundamental rights in order to ensure that the European Union shares common references on fundamental rights with the member states.

Reluctance and limits of ECJ judicial activism....

Regarding the limits to the ECJ in the enforcement of the European Charter on fundamental rights, some concluding points can be drawn. For the time being the ECJ is still the European institution that expresses and develops the fundamental rights of the EU. Judicial recognition presents several advantages such as the progressive and mature recognition of the fundamental rights and their international sources. Furthermore, no engagement of the Member states is required in this process⁴⁹.

However, criticisms of the judicial recognition of fundamental rights as the only binding source could be presented. Some criticisms are related to the statute of the ECJ⁵⁰ and particularly to the lack of control of its activity⁵¹. Others are linked to the strictly European dimension of the fundamental rights elaborated by the European Court of Justice which does not confer on them a general constitutional value. Finally ECJ case law is spread over a

⁴⁹ Lyon-Caen and Simitis (1993) page 121, Robin-Olivier (1999) page 613.

⁵⁰ Kyriakou (2001) page 8 with reference to Eeckhout

⁵¹ Also Carrasco (2000) page 11 who sees a limit in the tight link between the Charter and the ECHR

long period of time and depends on the claims brought to it. To this uncertainty it is important to add that the ECJ has little hold on social policy fields; this does not warrant separate criticism but places an important limit on the recognition of fundamental social rights. The judicial recognition of fundamental rights is restricted to the issue of the current distribution of competences between the Community and the member states (no additional competences), to the limited scope of the protection (when implementing EU law)⁵², and does not ensure the content of the fundamental rights⁵³.

In parallel to the German experience of constitutional recognition of fundamental rights, it could be asserted that the ECJ has not yet made substantial use of the fundamental rights because it may be overwhelmed by constitutional claims. It could result in an endless series of claims for damages by individual parties⁵⁴. To avoid an overload of claims, a new procedure of admissibility of claims for individuals should therefore be installed. However, such a procedure would generate a loss of legitimacy of the ECJ, which is unacceptable. From this perspective, one could assert that the difficulties faced by the ECJ, which would explain its prudence towards the use of the EU Charter in its case law, should be resolved at the political level and, to some extent, possibly by the ECJ, as in the past.

...Promote constitutional recognition of the EU Charter

This first concluding element generates the argument that the European Union needs to assert in a constitutional act the constitutional value of the EU Charter of fundamental rights. While some authors foresee the enforcement of European social policy through the recognition and protection of fundamental (social) rights in the hands of the ECJ⁵⁵, most see the ‘necessity to assert in a constitutional act the recognition of the fundamental rights’, to pursue European integration by giving the social Europe common legal references⁵⁶.

The European Union is pursuing the social dimension but is faced with great difficulties because of the initial distribution of competences between the

⁵² Article 51 of the EU Charter

⁵³ Generality of terms Robin-Olivier (1999) pages 617-618.

⁵⁴ Betten (2001) page 160.

⁵⁵ Robin-Olivier (1999) page 614.

⁵⁶ Lyon-Caen and Simitis (1993) pages 119-120.

European institutions and the member states and the exclusive and shared competences of member states in social policy fields. Furthermore, the nature of the European Union is changing from a strictly economic community to a political and social Union. A new balance has to be found between the European institutions and the member states and this change calls for a better definition of the common values of the EU in order to guide its action, give it the means to justify this action and to set the necessary and acceptable limits upon it. While, common values are to be found in the Preamble and in the common provisions of the EU Treaty, there is no common constitutional expression of the European Union. The EU Charter should therefore be seen as a symbolic means of signaling the legitimacy of the European Union, which is unconditionally based on the aspiration to effectively protect and promote individual rights⁵⁷. It must also be understood as part of a European constitution accessible to all European citizens⁵⁸.

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⁵⁷ Menendez (2001) page 15.

⁵⁸ Giscard d'Estaing, V. (2003)

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Emmanuel Mermet

Latest developments in collective bargaining and the challenge of the euro

Introduction

1. Collective bargaining trends
2. The importance of European coordination of collective bargaining
3. Pay developments
4. Working time developments

Conclusion

Introduction

2002 saw the arrival of the euro, the single European currency, not all of whose consequences for collective bargaining have yet been fully identified. In parallel, the economic recession seems to have made a comeback, contrasting with the years of strong economic growth between 1997 and 2001. These two developments affect collective bargaining in the countries of Europe and the way in which trade unions and employers conduct negotiations, in terms not only of the bargaining structures but also their outcome.

Beyond this macro-economic context hardly favourable for collective bargaining, it should be noted also that, within the process of European integration, wage developments have gradually come to be incorporated into the policy mix. Thus, alongside the monetary policy pillar and the budgetary and taxation policy pillar, the discussions at European level, particularly in the macro-economic dialogue (forum for discussion among the European social partners, the European Central Bank, the Commission and the Council), now also include the wage pillar. Moreover, the Broad Economic Policy Guidelines (BEPGs) also contain recommendations on wage guidelines. In relation to these strategies designed to exercise some control over the direction taken by collective bargaining, different trends can be observed, some geared to the decentralisation of bargaining levels, others intended also to promote a certain coordination of national or sub-national bargaining.

In this context, we believe it is of interest to present the current state of collective bargaining. We will begin by examining developments relating to trends in collective bargaining levels and go on to present the European Trade Union Confederation's strategy on the coordination of collective bargaining. Finally, the article will contain a brief presentation of the most recent developments in terms of wages and working time.

1. Collective bargaining trends

The first important information for analysing a system of industrial relations, and particularly the way wage bargaining is developing, is to review the levels of agreements. This section is based on the information gathered in the second part of this book presenting each country with specific analysis of the structure of bargaining. As said earlier, the aim is to gain a clear picture of the way bargaining is developing throughout Europe,

and particularly of the impact of EMU on the structures of collective bargaining.

The results of this analysis are firstly shown in a general table, which differentiates between three categories of agreement:

- The first column identifies the central level of agreements, with interprofessional or cross-sectoral agreements, signed either at bipartite or tripartite level. It also shows the influence of recommendation systems on wage bargaining (shown in *italic*). It is particularly at this level that the advent of EMU led to changes or innovations in some countries.
- The second column shows the sectoral or industry-wide agreements on wages. It will be seen that this is the main level at which bargaining is conducted in Europe, despite the increasing importance of the national level.
- The third column shows the importance of the most decentralised level of bargaining, the enterprise level of agreements.

The situation in the European countries is quite different according to the country studied. However, some common trends can already be identified. In almost all countries, i.e. 12 out of 16, the leading role is at sectoral level. This means that, although there is a tendency to develop the national cross-sectoral frameworks or the decentralised systems, the main level of discussion on wages (and other working conditions) remains the sectoral level.

Few countries have a fully centralised system. However, Ireland, Finland and Belgium have central systems which are giving a framework for lower levels of agreement. Other countries, including Germany, Greece, Italy, the Netherlands, Portugal and Sweden, have, to a lesser extent, central structures which give a framework for negotiations, but with less compulsory impact on lower levels. In most cases, bargainers are free to go beyond this level, particularly at company level where awards based on productivity and other efficiency indicators are discussed. Other countries such as Austria, Denmark, France, Luxembourg, Spain, and the United Kingdom have no national framework. Bargaining is therefore at lower levels, and is subject to no recommendations or incentives.

Table 1: Levels of wage negotiations in Europe in 2000

Country	National / cross-sectoral agreements or recommendations	Industry / branch / sectoral level	Enterprise level
Austria	No	Minimum wages and increases (sectoral)	Few wage negotiations
Belgium	Bipartite bargained wage margin, which can be exceeded at sectoral and local levels under conditions. Government can impose a margin if no agreement	Minimum monthly wage, inside the wage margin (excepted if employment creation: the margin can be exceeded)	Pay scales
Denmark	No	Minimum wages, industry-wide agreement as the leading sector	Actual pay rates
Finland	Bipartite incomes policy agreements define pay rates	Minimum pay rises	Other rises in wages, above both the national and sectoral levels
France	No	National sectoral collective agreements (minimum pay rates and wage scales)	Increasingly the level at which wages are defined
Germany	No <i>Recommendation from the Alliance for jobs (productivity to use for job creation)</i>	Regional sectoral agreements for pay and minimum rates	Mainly for enterprises not belonging to a sectoral association and not covered by the sectoral agreement
Greece	Bipartite National Collective Labour Agreements define minimum pay rises for 20% of employees <i>Confidence Pacts</i>	In case of industry agreements, the national agreement is not put in practice	Enterprise-level agreements
Ireland	Tripartite three-year Partnerships define pay rises	Agreements can be made in the framework of the Partnership	Local bargaining clause offers further wage rises (2%)

Italy	Tripartite negotiations define the targeted inflation rate, yardstick of negotiations at lower levels	Industry agreements define pay rises linked to inflation (minimum pay scale)	Local agreements define rises above the inflation target related to efficiency and productivity
Luxembourg	No	In some sectors	In the majority of cases
Netherlands	No <i>Joint Recommendations (Bipartite Labour Foundation)</i>	Sectoral agreements on wages	Enterprise agreements exclude implementation of sectoral agreements
Norway	No	Industry-wide agreements or sectoral agreements	Local negotiations define pay rises above what agreed at higher levels
Portugal	<i>Tripartite Strategic Concertation Agreement provides for a compensation of inflation and partial productivity</i>	Majority of sectoral / branch agreements	6% of workers concerned
Spain	No	53% of workers covered by Provinces sectoral agreements, 28% by national sectoral	12% of workers
Sweden	No <i>Industrial agreement, Reference formula on wage formation</i>	Branches at national level	Minimum and actual wages mostly agreed in workplaces
United Kingdom	No <i>Independent pay review body for public sector</i>	14% of workplaces covered by sectoral agreements (mainly in the public sector)	22% of workplaces have enterprise bargaining

As such, two trends can be observed in collective bargaining developments throughout Europe:

- Firstly, a *decentralisation of bargaining* is being developed towards enterprise level as well as a 'dilution' of the wage theme. Wage bargaining is increasingly being enlarged to other new forms of employee earnings such as profit sharing and other forms of bonus. At the same time, there is a spreading of trade-offs between wage bargaining and other aspects of work organisation (e.g. reduction of working time in exchange for wage moderation in France for the 35-hour week).
- Secondly, *wage bargaining* is becoming increasingly *institutionalised* with the setting-up of specific bodies (tripartite, or based in academia), which draft reports and comments on wage evolution. This trend is also linked to the development of the participation of State and the government to the wage negotiations in some countries.

The major rounds of collective bargaining and signature of collective agreements take place in spring in seven, and in autumn in three countries; these are usually centralised negotiations. Elsewhere, negotiations are dispersed and reviewed at the enterprise level, which creates the impression of a continuous round of negotiations from an overall point of view.

In spite of the trends observed towards decentralisation of collective bargaining to company level, there appears, overall, to be considerable stability and regularity as regards the dates of the major collective bargaining rounds in the various European countries. This confirms the other trend towards centralisation. The above table shows, indeed, that the schedules for conclusion of nation-wide or major sectoral agreements are respected in most countries.

However, alongside this regularity, the trend towards decentralisation can be observed in the increase in the number of firms with their own bargaining, as well as the number of firms choosing to drop out of the sectoral agreement (this applies particularly in Germany). To cope with these developments and also with the consequences of the euro on collective bargaining, the European Trade Union Confederation and the European industry federations are in favour of the development of instruments for coordinating collective bargaining and the development of tools for comparison and information concerning national bargaining outcomes. This coordination is the subject of the following section.

Table 2: Dates and duration of collective agreements

Country	2000-2001 Data	2001-2002 Data
Austria	One-year agreements	April 2000 – December 2002
Belgium	1999-2000 Agreement (signed December 1998) 2001-2002 Agreement (signed December 2000)	2001-2002 (private sector) New negotiations in autumn 2002 for 2003-2004 (private sector)
Germany	Mainly the first half of 2000 (21.8 months) and 2001 (mostly 12 months)	12 to 24 months
Denmark	February 1999 - March 2002 (public sector)	Private sector: March 2000 (last agreement) Next negotiation in March 2003.
Greece	2-year agreements Signed 23 May 2000, effective from 1 January 2000	New 2-year agreement on 15 April 2002
Spain	Agreements for 3 years on average 5000 negotiations annually	2-3 year sectoral agreements Cross-sectoral agreement on the December 2001 collective bargaining covers 2002 (wage guidelines with minimum inflation guarantee).
Finland	Incomes Policy Agreement 2001-2002 Signed in December 2000	Incomes Policy Agreement 2001-2002
France	One-year agreements	--
Ireland	Partnership April 2000 - 2003	9 months of 2002 in the Tripartite Partnership
Italy	Aspects linked to inflation fixed for two years Aspects linked to productivity set at enterprise level.	Inter-confederal agreement until November 2004 (wage guidelines) Sector and enterprise agreements of variable length.
Luxembourg	No fixed dates	--
Netherlands	Different dates and durations.	18 months (average length)
Portugal	One year, renewable on 1 January	One year, usually renewed on 1 January
Sweden	April 2001-April 2004	End of Agreement on 31 March 2004
United Kingdom	Different dates and durations.	Only national agreement: Local Authority National Agreement, April 2001-March 2002 (renegotiated as a 2-year pay deal)
Norway	May 2000	April 2002-2004 private sector May 2002-2004 public sector

2. The importance of European coordination of collective bargaining

While the ETUC (European Trade Union Confederation) has from the outset defended the creation of EMU (Economic and Monetary Union) as a medium- and long-term strategic objective, it is today faced with its consequences in the social field, and particularly in relation to pay. For many years now the share of wages has been falling in all member states. In order to reverse this trend, various forms of coordination of collective bargaining have been put in place. The pioneering organisation in this respect was the European Metalworkers' Federation (EMF) (Schulten and Bispinck 2001), in the wake of whose trade union initiatives numerous others are now underway, albeit at different stages of development.

In December 2000 the ETUC adopted the first resolution on the coordination of collective bargaining. The fruit of many years of work within the Collective Bargaining Coordination Committee and at the European Trade Union Institute (ETUI), this step was intended to launch a process of information exchange and coordination at the level of the ETUC on the basis of coordination initiatives taken at the level of the European industry federations and other trade union groups (Doorn Group, Interregional trade union committees, etc.). It was not intended to replace these initiatives but to supply an overview of the strategies and a common framework to strengthen coordination in the future.

Thanks to this initiative, the debate on wages, which takes place in other forums (macro-economic dialogue, Broad Economic Policy Guidelines, dialogue with the European Central Bank, etc.), gained a new form of underpinning. Seeking, in particular, to reverse the notion of wage restraint, understood as a pay increase well below, in real terms, the gains in productivity, the Resolution seeks to increase the share of labour productivity gains allocated to wage increases. In order to put in place this ambitious strategy at European level, but also to counter any form of wage dumping in the context of the single currency, the ETUC has developed a system of exchange of information, which is the first stage in a strategy of collective bargaining coordination. The arrival of the euro, so recent that its impact cannot yet be measured, could alter some of the pressures affecting collective bargaining, and coordination seems to be one possible way of avoiding these adverse repercussions.

The main reason for the introduction of this wage coordination lies in the need to ‘forestall the risks of social dumping’, i.e. to reject the concept of wages being an adjustment variable within EMU. It is a question, accordingly, of avoiding pay differentials within the euro zone insofar as such gaps could lead to deterioration of the social climate and curb social convergence between the member states. The second risk - more macro-economic in nature – identified by the ETUC is that of a total demand that falls short of potential demand, with the resulting adverse effects for growth and employment. To remedy this, the idea is to reverse the falling wage share trend of recent years in order to contribute to a growth and employment policy.

In order to stabilise the wage share in GDP, the guideline adopted with the Resolution in 2000 states that wages must, first of all, increase faster than inflation and, secondly, be in line with productivity gains. However, some degree of flexibility is also present since productivity may be used to improve qualitative aspects of labour insofar as the increase in real pay does not exhaust the productivity gains.

This guideline is defined as a long-term target designed to achieve a balanced distribution between workers and firms of the wealth created. However, it does not constitute a ceiling because there may be annual fluctuations around the guideline. In the long term, to regularly exceed the guideline increases real unit wage costs and the share of wages in GDP: it would be interesting to ask whether this strategy can be achieved without calling into question economic growth and creating inflationary tensions while preserving an improvement in the qualitative aspects of labour.

In relation to inflation, the ETUC uses in its analyses, for the purpose of establishing the position of the guideline, the national inflation rates based on the consumer prices observed in recent years. It is currently impossible to use a European average on account of the differences in inflation from one country to another. However, it is obviously the case that during bargaining the trade unions generally refer to the inflation forecasts at national level. In some countries the trade unions thus accept forecasts that are far lower than the reality, subject to adjustment clauses which may not in all cases be applicable to all workers.

On the productivity front, the chosen reference is the average overall productivity of the national economy. This contributes to preserving bargaining solidarity between sectors (generally identical to the strategy conducted at national level) and to avoiding differences between sectors

(which would trigger a race to catch up with the sector with the highest productivity, leading to the possibility of an inflationary spiral). It is worth noting that the European Metalworkers' Federation chose average productivity, even though its own sector is characterised by major productivity increases.

As for the other determinants, it is obvious that the role of employment and unemployment cannot be neglected when assessing wage trends.

Thanks to this tool for coordination and comparison, we are now in a position to examine how pay has developed in recent years and, in particular, to study the underlying pay bargaining trends and also their effects on working time

3. Pay developments

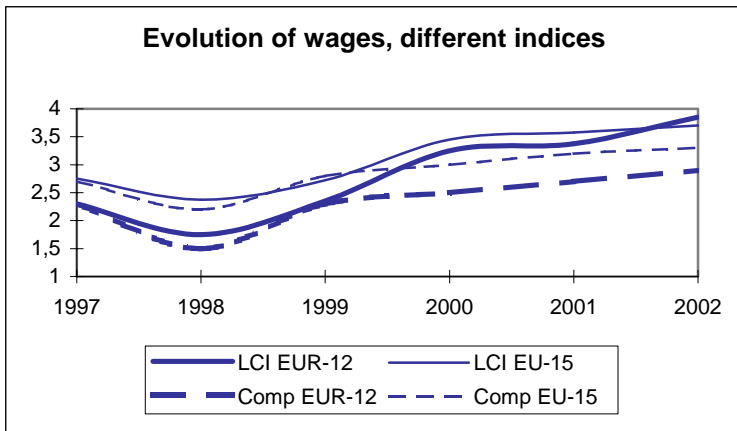
The various indices available at European level show separate developments. For 2002 a difference of more than one percentage point between the maximum and the minimum is to be observed. It should be pointed out that the labour costs indices are measured in hours, whereas pay is per worker. However, unlike the quarterly developments, the annual averages indicate an underlying trend: an accelerating rise in pay since the sluggish developments characteristic of the late nineties. The increase in pay seems now to be moving back up to 3-4%, after the 2-3% characteristic of the 1990s.

The fact that we have data covering three years of collective bargaining coordination at the ETUC already enables a comparison of pay trends (total nominal pay increase) and of collectively agreed rates with inflation and the basic guideline of inflation plus productivity. However, the years observed include 2000, a year of strong economic growth, with a strong increase in per capita productivity (on account of higher growth in GDP than in employment) but also 2001 when, on the contrary, there was an economic slowdown (growth in GDP less than in employment) and hence a significant contraction in productivity gains. This then gives rise to a more conservative guideline than that adopted with the Resolution of 2000 and defined as the sum inflation plus productivity.

In parallel, the floor for the guideline is represented by inflation, since the 2000 Resolution states that wages should increase faster than inflation. This floor (inflation) increased in 2001 as a result of petroleum products and the depreciation of the euro. There was thus a tightening of the floor curves (inflation) and of the guideline (inflation plus productivity) in most countries.

The European case clearly shows this trend. For the year 2002, finally, it is expected that per capita productivity will begin to rise once again, on account of renewed growth of GDP and a contraction of employment. It is observed, by contrast, that inflation is falling back down to the 2% target set by the European Central Bank. This then broadens the band between the floor curve (inflation) and the guideline (inflation plus productivity) and gives more room for manoeuvre in pay bargaining. However, the situation on the employment front is likely to affect pay bargaining.

Figure 1



LCI: labour costs index (rise in total wage costs per hour), Eurostat.

Comp: Remuneration (rise in total wage costs per worker), European Commission.

In the euro zone, the European Commission's figures indicate that the increase in pay (the thick curve) has been and will continue to be below the inflation plus productivity guideline. Wages will therefore have no inflationary effect and will remain eminently moderate (productivity not fully exhausted, especially in 2002 and 2003) Taking the EU as a whole, pay is above the guideline in 2001 only, on account of a drop in productivity. It is interesting to

¹ The data used to calculate this non-weighted average are provided by national affiliates, and are not all truly comparable. However, the average indicates a long-term tendency which is worth noting. For comparable figures, affiliates should refer to the Commission's data.

point out that the medium-term trend seems to indicate a stable increase in pay of between 2 and 3% in the euro zone and in the EU. This contrasts with the variations of the other indicators, both inflation and productivity.

Figure 2

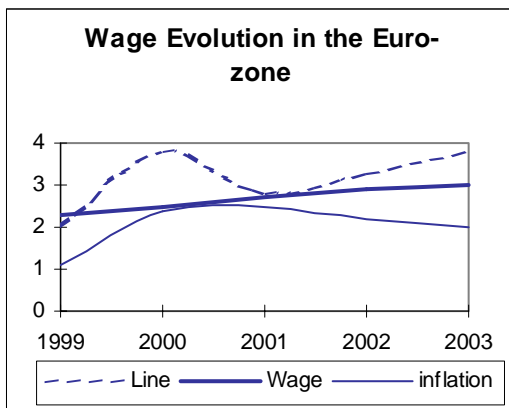
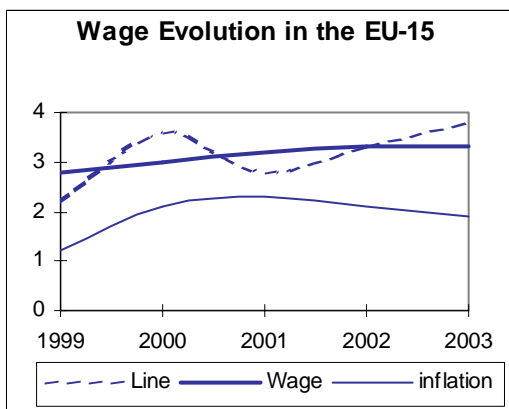
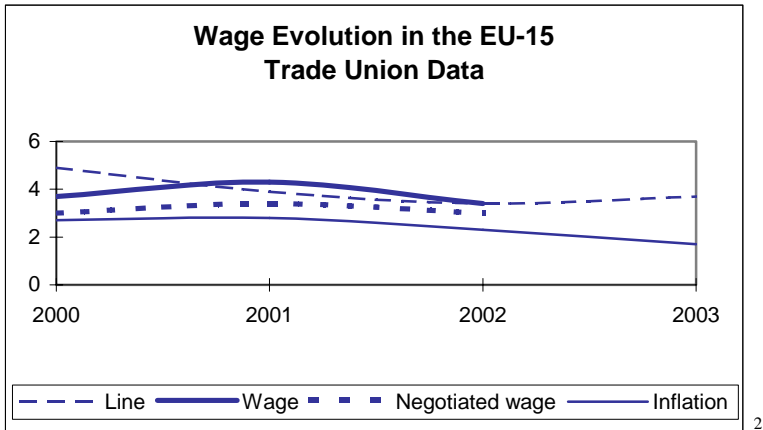


Figure 3



Source: European Commission, own calculations
 Data: Inflation: Harmonised Index Of Consumer Prices (HICP)
 Productivity: GDP per worker
 Wages: remuneration (total wage costs per worker)

Figure 4



The trade union figures confirm the Commission's observations (see above figures). The year 2001 was characterised by pay developments above the guideline (inflation plus productivity), representing a catching up on the year 2000, while pay seems to return once again to the guideline in 2002. The observations concerning the guideline are of a tightening for 2001 under the combined effect of an increase in inflation and a drop in productivity gains. The trend for 2002 and 2003 represents a renewed broadening of the guideline. It is interesting to note that collectively agreed pay is developing steadily one percentage point below observed pay.

The aggregated analysis at European level confirms the general situation observed at country level, with wages close to the guideline (euro zone) or above it (EU as a whole) in 2001. However, in 2002 and 2003 pay may be expected to fall once more below the guideline. We observe, however, a higher increase in wages than before, between 3 and 4%, as against 2 to 3% at the end of the 1990s. While remaining within a perfectly sustainable framework, this higher increase in wages is taking place in the context of stronger economic growth (2000 and 2001). It should also be added that the

² The data used to calculate this non-weighted average are those supplied by the national trade unions and, as such, are not always comparable. Even so, this average does indicate a long-term trend. For figures that are comparable, reference should be made to the Commission figures.

introduction of the guideline has certainly had an effect on collective bargaining and particularly on the use of margins for manoeuvre in terms of inflation and productivity.

As regards qualitative aspects, only the Nordic countries give a quantified estimate of their cost, namely between 0.3 and 0.8% in 2001. In the annual report prepared on the basis of replies from its affiliates, the ETUC records that training seems to be an important theme. Gender pay equality and low pay prompt inadequate interest, to judge from the replies, no country having adopted programmes with quantified targets in this area. The low number of low-paid workers may also explain the low number of replies in certain national cases. In the reduction of working time field, developments seem to be limited, after major changes in the 1990s in Europe and in 2000 in France. We will also study the situation in relation to working time initiatives.

4. Working time developments

Working time, and particularly the reduction of working hours, was probably a less important bargaining issue in most European countries over the last couple of years than had been the case in recent years.

In Belgium, as of 1 October 2001, three possibilities for reducing employer contributions are now applied in the case of employers who reduce working time by at least one further hour below the 38-hour week and/or employers who introduce the 4-day week. As of 1 January 2003, the statutory working week will in all events be 38 hours. In any case, the introduction of the 38-hour week is possible before that date if a collective agreement is concluded.

In France, a report³ published in mid-2001 found that the 35-hour law had a genuine impact on actual working time for 62% of full-time employees in companies with more than 20 employees now working a 35-hour week. It is estimated that the agreements on the reduction of working time signed up to December 2000 generated a net total of 265,000 new jobs. The total expected effect, including firms with fewer than 20 employees, would be the creation of around 500,000 jobs. The combination of productivity gains, agreements on pay restraint and state funding has enabled the reduction of working time to be brought about without lowering monthly pay or negative impacts on companies' competitiveness.

³ <http://www.eiro.eurofound.ie/2001/07/Feature/FR0107170F.html>

However, a second study by the Labour Ministry research unit (DARES 2002) shows that the impact of the statutory 35-hour week has been less than expected within larger companies. The reduction in working time in companies, which moved to comply with the law in 2000, averages around 8%, some way short of the 11.4% difference between the previous statutory 39-hour week and the new 35-hour week. This is explained to some degree by the fact that certain companies already operated on the basis of fewer than 39 hours weekly prior to the introduction of the new regulations. A further explanation is that the second stage of legislation allowed for rest breaks to be excluded from the calculation of working time, an option taken up in one fifth of all companies, most of them larger employers.

The report indicates that only 40% of companies in France have substantially modified their working time arrangements. The majority of companies opted simply to grant more paid leave. Where working time practices have changed, more than one third of companies have introduced variable, annualised hours, with an average ceiling on weekly working time of 42 hours. The average agreed advance notice required for changes to working schedules is 11 calendar days – significantly higher than the 7 days provided for under statute.

The study confirms that 98% of staff moving to a 35-hour week in 2000 maintained their previous rate of pay, compared to 92% prior to 2000. One third of workers encountered a pay freeze – compared to one half in preceding years – whereas 14% of staff agreed to pay moderation as part of their company (or sectoral) agreement on reduced working time.

In Belgium, since 1 January 1999, the statutory working week has been 39 hours. The Law of 10 August 2001 modified this, and from 1 January 2003 the statutory working week will be 38 hours, without loss of pay.

In Denmark, although reducing weekly hours has never been a point on the bargaining agenda, there was a good deal of pressure before the 2000 bargaining round for improvements in annual leave, resulting in the negotiation of an extra five days, which will be phased in over the four-year lifetime of various agreements. In return for this employers have gained concessions in many cases on the scheduling of working time, for example by widening the definition of the ‘normal’ working day. Another area where increased flexibility has been gained is in reference periods for calculating weekly working time; according to private-sector employers’ federation DA,

some 67% of agreements in their bargaining area now allow working time to be averaged over a period of 12 months or longer.

In Germany, working time has not been a major bargaining issue over the past couple of years, since attention has been focused on early retirement and pensions. However, increasing numbers of employees are now covered by flexible working time arrangements built around 'individual working time accounts' (*Arbeitszeitkonten*) of shorter or longer duration.

A new collective agreement for a 'plant within a plant' at Volkswagen will introduce several major innovations on pay, hours and work organisation. From October 2002, under project '5000 x 5000', VW will hire 3,500 unemployed people, initially on six-month fixed-term training contracts, to produce a new minivan at the company's main site in Wolfsburg with a possible further operation employing 1,500 people in Hanover. The 5,000 employees will initially receive an average monthly salary of DEM 5,000.

The agreement provides for a basic average working week of 35 'value-adding' hours. Hours will be highly flexible, with an individual working time account subject to a maximum of 42 hours in any one week and work on up to ten Saturdays a year. Failure to meet volume or quality targets will oblige employees to make up shortcomings by extra work without pay. If the problems are attributable to the company, rectification work will count as a working time credit. There will be a grievance procedure to resolve disputes.

In the Netherlands, labour market shortages already put an end to the reduction of working time some years ago. In fact the possibility of working longer hours is even being reintroduced in some sectors. A shortage of police personnel, for example, has meanwhile led to the possibility of working 38 hours a week instead of 36. Many collective agreements contain options such that workers can choose to work longer or shorter hours or can make other personal choices in working conditions in exchange for a higher or lower wage. This is also referred to as the cafeteria system.

In recent years there has been wide political discussion in Sweden about the prospect of legislative action to reduce the statutory working week. An official commission reported on the subject in early 2000 after a two-year examination of the issues. Although there was some expectation that legislation would be forthcoming, the Government decided to shelve the issue until after the next general election, due in 2002, after it failed to gain support for its proposals from its political allies, notably the Green Party, which held out for much larger working time cuts than the proposed five

days a year. In the meantime, yet another committee has been established to examine the matter; it is due to report its findings by June 2002. At present, many collective agreements in Sweden have some provisions on possible cuts in working time, with employees usually having to agree in return to greater employer freedom in scheduling their working hours. Some go further, setting aside a pool of money that may, according to individual employee preference, be used to finance either extra time off, pension contributions, a shortened working week, training or cash payments.

Conclusion

As stated in the introduction, the euro could have major consequences on collective bargaining at both national and sub-national levels. Although the collective bargaining levels at present seem to be little affected by the euro, preparations for the single currency in the various countries have frequently endeavoured to develop not only a framework at inter-sectoral level (pay norms, social pacts) but also a tendency to decentralise bargaining to company level. The outcome of this is that the weight of sectoral bargaining, which has been the predominant level in Europe, could under the new circumstances see its importance diminish in the future, the more so in that the applicant countries do not yet have a sufficiently developed sectoral system.

In this context, the ETUC has adopted a strategy aimed at coordination of collective bargaining in order to avoid risks of social and pay dumping, as well as strengthening pay bargaining and seeking to move beyond wage restraint. The guideline is based on the sum of inflation plus productivity at macro-economic level and was adopted by most of the European sectoral federations in different forms adapted to the specific features of the various sectors.

The guideline and the pay developments observed are evidence of a highly responsible attitude on the part of the European social partners. The pay developments of the years 2000 to 2002 thus remain within the framework of stability and growth but also significantly increase the purchasing power of wage-earners. Evaluation of the qualitative aspects, meanwhile, does not enable us to ascertain whether or not the improvements are significant. The reduction of working time seems to have declined in importance as a topic, while the problem of training and retirement would now seem to be a more important component of collective bargaining in European countries than was the case in the past.

For the time being, coordination is taking place more at the level of the exchange of information among affiliates, and also via the ex post annual monitoring of collective bargaining outcomes by the ETUC and the industry federations. However, it is already contributing to developing a joint analytical framework of the collective bargaining results, one that is not imposed by outside agents on the social partners (i.e. BEPGs, macroeconomic dialogue, ECB, etc.)

The guidelines and other pay norms adopted indeed define the substance of, or at least a theoretical reference to, collective bargaining. However could these norms become an ex ante instrument for claims? For this to be the case, several conditions would have to be met such as the emergence of actors and structures (at the various supra-national levels) capable, in terms of political balance of power, of putting in place an active strategy for coordination, as well as the strengthening of national affiliates on the ground. Ideally, the latter should enable a continuous flow of information upwards to the European level.

This new challenge for European trade unionism may appear difficult to achieve. However, it seems that the europeanisation of economic governance (in the monetary and, gradually, the budgetary sphere) makes it increasingly necessary to put in place trade union coordination. New actors in the economic sphere – namely, the Commission, the Central Bank, the European employers' representative bodies, etc. – are seeking to impose their views on wages and collective bargaining at European level. In this context, it is only by adapting structures to the challenge of coordination that the trade unions will, in future, be able to relay the message of the need for a new 'wage ratio' more favourable to labour.

It is obvious finally that, in the Economic and Monetary Union, all economic policies are increasingly interlinked. The analyses linked to the guidelines show that the trade unions have adopted a highly responsible attitude as regards the stability of pay developments. Although the ETUC guideline is essentially a tool for assessment of past developments, it has also had an impact on the construction of pay developments. As such, all the actors in the policy mix should take account of this factor of stability on the labour side when taking decisions or undertaking analysis of the current economic situation. Such then are the stakes of the current debates on European economic governance.

EWC developments in 2002

Introduction

1. 40 new EWCs created in 2002
2. Renewing and upgrading agreements of existing EWCs
3. European Industry Federations' involvement in EWC negotiations
4. European Industry Federation coordination structures organise EWC support
5. Future challenges for EWCs

Conclusion

Introduction

In 2002 more progress was made in both the creation of new and the development of existing European Works Councils. Twenty-nine agreements signed in 2002 set up new European works councils, while 12 existing EWCs finalised the renegotiation of their agreement. Such renegotiated agreements either formalise practical improvements or adapt the EWC to changes in the company structure or scope. European Industry Federations play an important role in coordinating trade union actions in all these developments. The importance of trade union coordination is bound to increase as company mergers and the inclusion of workers' representatives from the applicant countries bring additional challenges to EWCs.

1. 40 new EWCs created in 2002

In the search for agreements signed in 2002 and the setting up of new European Works Councils, the 29 listed in Table 1 were identified, in close cooperation with the European Industry Federations. In the process of conducting this research, a few additional agreements signed in 2001 also emerged. Accordingly, this list might exclude a few new EWC agreements that will become apparent in the course of 2003.

A first reason for this absence of comprehensive data is that European Industry Federations are not involved in, or directly informed of, the conclusion of EWC agreements in their sector of activity in all cases. Secondly, some finalised agreements are signed months later on the occasion of the first EWC meeting. For the graphical sector, for example, a new EWC agreement was negotiated in 2002 for Quebecor World, the world's largest printing company based in Canada. The agreement consists of a first text from April 2001 with additional amendments negotiated throughout 2002. All this, however, still needs to be signed when the EWC holds its first meeting on 5 March 2003 at the company's European Headquarters in Paris. Another example from the same sector is the EWC agreement for the American coated paper company Lecta. This agreement was finalised in October 2001 and signed on 4 December 2001. The first meeting of the EWC was held in April 2002.

The start and end of negotiations are themselves in most cases already spread over more than a year. The implementation is also time-consuming as an agreement essentially gives rise to a first EWC meeting including in its agenda the appointment of the EWC members. In some cases missing

signatories are added on the occasion of the first EWC meeting. This explains the delays with which European Industry Federations receive copies of EWC agreements signed by all signatory parties.

Table 1: List of the new EWCs created in 2002

Companies that set up EWCs created in 2001	Date of signature	Coordinating EIF	Country of ownership
Altadis	11-02	EFFAT	ES
Arcelor	27-05-02	EMF	LUX
Autogrill	15-11-02	EFFAT	IT
Avesta Polarit	24-04-02	EMF	FIN
Barco	2002	EMF	BE
Benteler	07-05-02	EMF	DE
BSN	2002	EMCEF	F
Carestel	10-12-02	EFFAT	BE
Cegelec	05-06-02	EFBWW & EMF	F
Cereol	30-04-02	EMCEF	F
Coca Cola Hellenic	20-11-02	EFFAT	GR
Daikin	05/12-02	EMF	BE
Dexion	2002	EMF	N
Epcos	26-04-02	EMF	DE
Fazer (Cloetta)	03-02	EFFAT	FIN
IMI	2002	EMF	UK
Inergy Automation	08-07-02	EMCEF	F
LG. Philips Displays	2002	EMF	NL
Nybron	2002	EFBWW	SE
Quebecor World	2003	UNI	CAN
Recticel	03-02	EFBWW & EMCEF	BE
RWE Thames Water	2002	EPSU	D-UK
Seco Tools	2002	EMF	SE
Svenska Enskilda Bank (SEB)	2002	UNI	SE
Tafisa	07-02-02	EFBWW & EMCEF	ES
Tenneco	22-05-02	EMF	BE
Unicredito	2002	UNI	IT
Vaillant	26-06-02	EMF	DE
Vinci	21-03-02	EFBWW	F

The negotiations to reach an agreement on the establishment of an EWC within the French company BSN had been going on for more than three years without any success. Accordingly, the company fulfilled its legal obligations by the creation of an EWC on the basis of the fall-back provisions contained in the annex of the EWC directive. The Barco EWC was established in a similar way, also after three years of fruitless negotiations. Experience here taught that not everything is determined by the subsidiary provisions in the annex of the Directive. The duration, the languages into which the EWC meeting is translated, and the installation of a select committee were, for example, left to be agreed in some kind of protocol. A constructive atmosphere was reported from the first Barco EWC meeting in June 2002, even after three years of unsuccessful negotiations.

Many other negotiations prove successful rather easily and relatively fast. A good example would be the French company, Cereol, a former part of Eridania Beghin Say. The agreement for Cereol was able to be negotiated in two negotiating sessions, including EWC rights above the average. The Cereol EWC agreement provides for monthly meetings of a steering committee, EWC training, expert assistance and a budget of 40,000 Euro. One reason for the speed with which these negotiations were concluded was the foreseen takeover by the American seedoil company Bunge.

Another progressive agreement is that concluded for Arcelor. This company results from a merger of three large steel companies: Usinor (F), Arbed (L) and Arcelaria (E). For both Usinor and Arbed, EWCs were already in existence. The post-merger agreement of Arcelor provides, however, for improved EWC arrangements. A first example is found in the list of EWC competences among which are included also health and safety, vocational training and professional equality. Secondly, there is only one meeting foreseen although a majority of EWC members can demand a second meeting. For 2002 this second meeting is already foreseen. EWC members find in this a very good compromise, since on their side there will always be a majority for such a second meeting. For the 16 members of the select committee a quarterly meeting is foreseen. For each mandate period of four years, all 47 EWC members, as well as the 47 substitutes, will receive 12 days of training. To represent the interests of more than 100,000 workers in this company in the throes of restructuring, the agreement provides for working groups. Last but not least, the agreement gives a strong definition of information and consultation.

Extract from the Arcelor agreement determining how this EWC will be informed and consulted

Information and consultation shall take place in good time, on the one hand to allow adequate time for the collective expression of the transnational interests of workers in the decision-making process on the basis of available and sufficiently detailed information, and, on the other hand, to ensure the effective operation of the group.

The content of the information supplied to workers' representatives on the EWC shall be such as to enable them to carry out an in-depth evaluation of the possible effects of the measure envisaged and, if appropriate, to prepare for consultation.

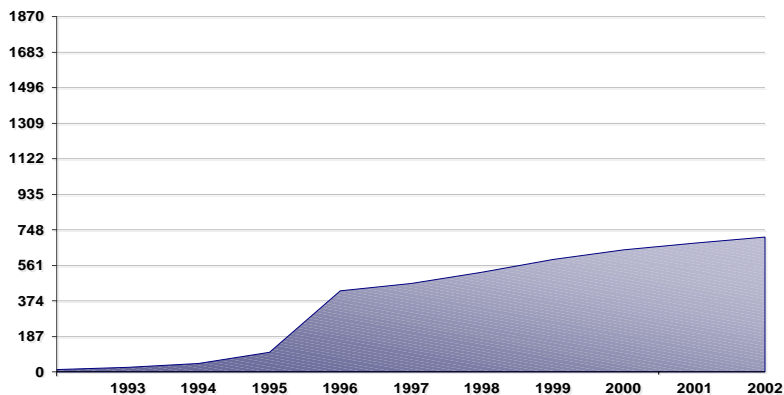
Consultation shall take place by means of an exchange of views, on the basis of information supplied, between the workers' representatives on the EWC and top management. It shall put in place a dialogue that will enable answers to be given to questions asked. All conditions will thus be met to enable the workers' representatives on the EWC to express their opinion after this consultation and before any final decision is taken.

After conclusion of the information and consultation process and in the event of the opinion expressed by the workers' representatives on the EWC not being followed, the select committee shall meet, at its own request, with representatives of top management in order to examine details of how the decisions taken are to be implemented, subject to observance of the competences of the national representative bodies.

If all the EWCs created over the years are taken together, it is obvious that new stimuli for progress are required. All European Industry Federations are aware of this and, at the end of 2002, a specific action was launched by ETUF-TCL aiming to maximise the number of EWCs in the textile sector.

Figure 1

1 870 companies eligible for EWC creation of which 709 established 772 EWCs



European Trade Union Institute (ETUI)

European Works Councils Multinationals database, Oct. 2002

2. Renewing and upgrading Agreements of existing EWCs

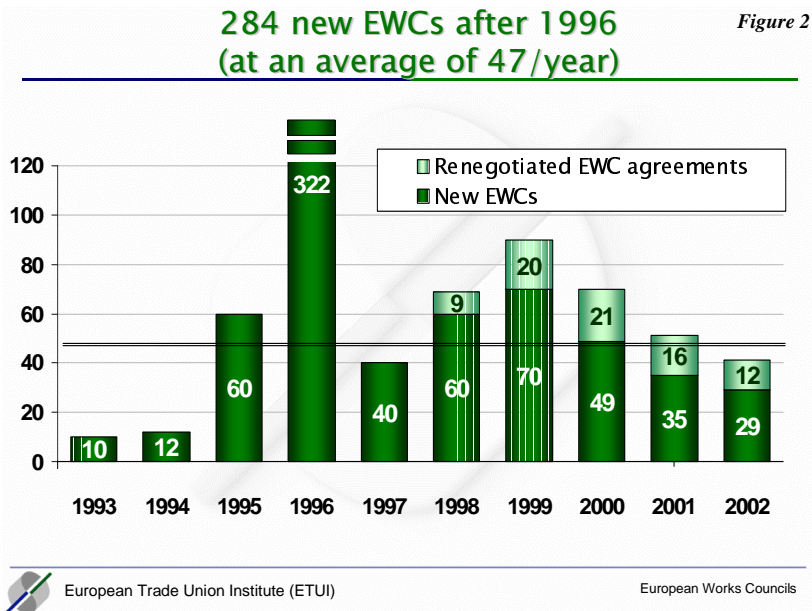
Of course the number of newly created EWCs is not to be regarded in isolation from improvements in the quality of functioning of the existing ones. This is partly reflected in the number of renegotiated agreements. After changes in the company structure, or after the expiry date of existing EWC agreements, the opportunity arises to adapt the text to practical developments or to provide for additional rights, structures or resources for the EWC's work. Like the creation of new EWCs, this is a process often spread over several years. The European Industry Federations report 12 such renegotiated agreements signed in 2002. Insofar as some EWCs tend to develop in isolation, it may be assumed that the number of renegotiated agreements signed in 2002 was higher, but that all have not (yet) been reported (in)directly to the European Industry Federations.

Table 2: List of the renegotiated EWC agreements signed in 2002

Alstohm	26-06-02	30-05-96	EMF	F
Akerland & Rausing Cartons	2002		UNI-E	
Bosch	18-07-02	12-05-98	EMF	D
BPB (Rigips)	07-01-2002	20-09-1996	EFBWW	UK
Compaq	27-05-02	05-96 & 11-99	EMF	USA
Delphi	10-04-02	10-04-96	EMF	B
Diageo	2002		EFFAT	UK
EDS	09-02		UNI-E & EPSU	UK
Etex	01-10-2002	06-10-1998	EFBWW	B
GKN	15-03-02	1995	EMF	UK
HP	27-05-02	30-05-96	EMF	CH
IBM	29-10-02	28-06-99	EMF	US / F
ITT flygt	03-05-02	05-09-96	EMF	S
Kappa Packaging (merger Assi Domän Alpha & Kappa)	05-02		UNI-E	S
Kverneland	10-04-02	20-09-96	EMF	N
Metso	17-05-02	Metso 9-12-99 Rauma 21-09-96 Valmet 27-06-96	EMF	SF
Michelin	19-09-02	15-10-99	EMCEF	F
Nokia	13-06-02	24-05-96	EMF	S
Paccar	2002	2001	EMF	NL
Phillip Morris (Altria)	16-01-02	27-02-96	EFFAT	USA
Winterthur-Crédit Suisse	01-04-02	12-09-96	UNI-E	CH
Smurfit	19-06-02	04-09-96	UNI-E	IRL
Strukton	01-2002	13-11-1998	EFBWW	NL
Thales (Thomson CSF)	29-01-02	16-11-93	EMF	F
United Technologies Pratt & Witney	08-04-02	13-06-96	EMF	IRL
Voith	23-09-02	25-07-96	EMF	D

Diageo was formed in 1998 through the merger of Ireland's Guinness and Britain's Grand Metropolitan. Its corporate headquarters are in London but the EWC agreement is administered through its Irish offshoot and constructed under Irish law. The new 2002 EWC agreement, replacing the initial 1998 agreement, incorporated guidelines on the implementation of redundancies. It pledges that the EWC will be informed and consulted on matters within its remit as early as possible and before final decisions are reached, so that its views can be taken into account (IRE 2002).

Adding these 29 new EWC agreements and the 12 renegotiated to those signed in previous years results in a total of 852 agreements establishing 768 EWCs in 668 multinational companies. This figure too will need to be corrected in the coming years. As a result of mergers and acquisitions some companies and their EWCs have been integrated within others. Nevertheless the trend is clear enough to enable a decrease to be perceived in the number of newly created EWCs.



The first time an EWC was created on the basis of an agreement was in 1985. In the ten years from then until the adoption of the EWC Directive in September 1994, 30 companies established EWCs by written agreements signed by central management and workers representatives. About 15 other companies had also established EWCs, but in more informal ways (Kerckhofs 2002). Later on, these EWCs were also formalised by written agreements.

After the adoption of the Directive in 1994, its Article 13 prompted another 382 companies to install European Works councils before national transpositions of the Directive entered into force. After that, another 284 companies established EWCs on the basis of agreements negotiated by special negotiation bodies, according to the provisions of Article 6 of the Directive.

The yearly average of new EWCs created on the basis of Article 6 agreements, was about 60 in the year 2000 (Kerckhofs 2001). Based upon the figures available at the end of 2002, this has fallen to 47. Considering another 1197 that have still not set up EWCs, at the current pace it would take another 25 years to use up the full scope of the Directive.

3. European Industry Federations' involvement in EWC negotiations

Most of the multinationals covered by the EWC Directive are coordinated by the services (UNI-Europa), metal (EMF) and chemicals (EMCEF) European Industry Federations. A breakdown of companies by sector of activity results in the proportions of EWC eligible companies given in Table 3.

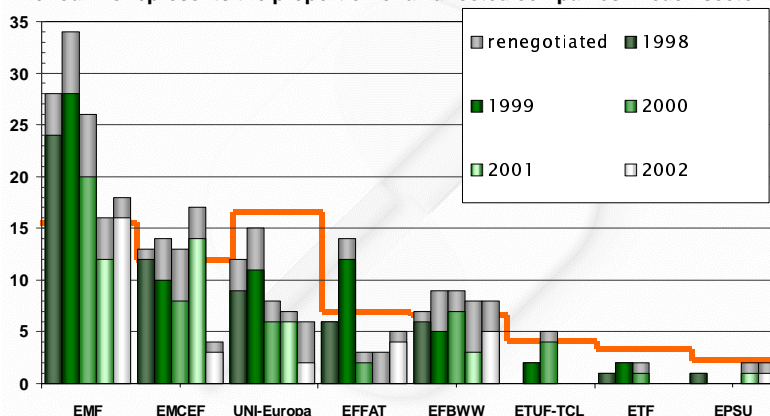
Due to the fact that some companies are active in more than one sector, but also because sectoral trade union organisations are sometimes members of more than one European Industry Federation, EWCs may be coordinated by several. To put the number of new EWCs each year back to 60, each EWC should be able to report a similar proportion of those 60 new EWCs, as indicated in the table and in the red line on the graph below.

Table 3: EIFs and proportions of companies affected by the EWC Directive by economic sector

European Industry Federations involved in EWC coordination	Proportion of affected companies in its economic sector	Number of new EWCs to be created to get a total of 60	Number of reported new EWCs created in 2002
EMF	27	16	16
EMCEF	19	12	3
UNI-Europa	28	17	2
EFFAT	10	6	4
EFBWW	8	5	5
ETUF-TCL	4	2	
ETF	3	2	
EPSU and Other	1		1

New and renegotiated EWC agreements of last 5 years (by European Industry Federation) *Figure 3*

The red line represents the proportion of all affected companies in each sector



European Trade Union Institute (ETUI)

European Works Councils

There are different degrees of involvement of Industry Federations in the negotiation of EWC agreements. An EIF staff member can lead, coordinate or simply attend some or all Special Negotiation Body meetings. A local or national trade union officer can also take up this role. Some European Industry Federations have created a network of trade union officers performing this coordination according to EIF guidelines and/or on their behalf. However, these EWC networks do more than coordinate the negotiation of new EWCs. To illustrate the way EIFs coordinate trade union actions towards EWCs, examples will be given for the metal, graphical and food sectors.

4. European Industry federation coordination structures organise EWC support

All European Industry Federations have established structures to coordinate EWC actions with their affiliated trade unions and their members. For several years now (Kerckhofs 2001) these coordination structures have served to disseminate results from EWC learning processes and to mobilise resources.

4.1. EWC coordination structures

Since it coordinated the conclusion of the first EWC agreement, almost 20 years ago now, the European Metalworkers Federation has been organising structures for EWC activities in a ground-breaking way. The EMF established a task force and a network of EMF coordinators in each of the 260 EWCs in the sector. The EMF coordinator of an EWC is usually a local or national officer from the largest union in the home country or the European headquarters of the respective multinational, while all appointed EMF coordinators are followed up by a member in the EMF task force. As such, task force members coordinate in their country across the different EMF affiliated unions.

In other European Industry Federations coordination is also developed on several levels. UNI-Europa Graphical, for example, has an EWC network and a multinational committee. The UNI-EG EWC network coordinates and leads EWC negotiations, monitors and analyses the day-to-day functioning of EWCs, while the UNI-EG multinational committee needs to have a broader remit to debate other issues such as the Directive on worker participation in the European Company (SE).

The UNI-EG EWC Network aims to entail one coordinator for each European Economic Area countries. The commitment here is to send monthly ‘check in’ e-mails so that everyone keeps track of developments, avoiding crises or information being kept in an exclusive circle. In January 1998, UNI-EG¹ created its ‘multinational committee’ to improve coordination of EWCs in the graphical sector. This platform serves for exchanging information, achieving greater trade union cooperation and addressing the needs of EWCs. With a central – but not a centralist – direction, it aims to negotiate and sign new EWC agreements, improve existing ones and consolidate its member unions’ position in EWC-eligible multinationals. A conference for EWC members in the packaging sector was held in Cologne in April 1999, resulting in a Packaging network being set up at a Brussels seminar in May 2000. The activities in the packaging sector are developed thanks to cooperation with EMCEF.

4.2. Processes, priorities and policies

Each sector has its own specificities² and its own approach to coordinating EWC support. Within the EMF and EMCEF a large number of companies (400 or more) and EWCs are taken care of, while within UNI-Europa, this work takes place at sub-sector level. The example of UNI-EG illustrates this. This approach, covering less than 100 EWCs and about another 100 companies that still need to set up an EWC, entails different challenges and advantages. Within the European Federation of Building and Woodworkers (EFBWW), for example, it has been possible to gather together employee-side chairmen and secretaries of EWCs (in November 2000, October 2001, and in February 2003), thanks to resources under EU Budget-line B3-4003. At such meetings experiences are discussed between representatives from 40 EWCs, accounting for about 60% of the EWCs in the building and woodworking sector.

EFFAT has a network of 50 coordinators. Each member takes on coordination for two or three EWCs. EFFAT’s role is to give guidelines and monitor developments. At each meeting EFFAT receives reports from all

¹ Before 2000, UNI-EG was still called European Graphical Federation (EGF).

² A factor specific to the graphical sector, for example, is that there are far more paper and packaging companies than printing companies, more smaller multinational companies, and the country of ownership, particularly in the paper-based sector, is predominantly Northern European.

the EWCs. If for a year or two nothing is heard, or if there are complaints, then the coordinator is invited, together with some EWC members, to the EFFAT office for a meeting. At Interbrew, for example, in September 2002 there were dismissals in the UK and the Netherlands. An EFFAT meeting resulted in a strike in the UK because of the management's refusal to negotiate closure with unions, all with Belgian support, and, in the end, social matters were successfully negotiated. In the Netherlands the same thing happened.

In March 2002 EFFAT issued a second best practices brochure. This is a tool to share EWC practices and foster EFFAT's strategy towards multinational companies. Also UNI-EG published two reports with the aim of evaluating EWC practices and devising strategies for future work. The first reports on a number of EWC cases, evaluating good and bad practice in packaging sector companies. The second gives an overview of the graphical sector multinationals with operations in applicant countries that have already included, or can be expected in the future to include, representatives from those countries in the EWC. This prompted the UNI-EG multinational committee to clarify and amend its own structure and to set priority areas for the period 2003-2006.

In this, UNI-EG reaffirmed its 1999 priority of setting up new EWCs in companies that had not yet done so, alongside the improvement and renegotiation of existing ones. To this was added the inclusion of applicant country representatives in the graphical sector EWCs, on the occasion of a conference on this matter held in Warsaw in June 2001. Only three (or 10%) of 29 agreements signed (in the Article 13 period) before the end of 1996 included workers' representatives from central and eastern European countries. For the 14 EWCs created afterwards this was the case in six instances. The nine EWCs in the graphical sector involving applicant country representatives are as follows: Pearson, De la Rue, Kimberly Clark, Buzl Fine Paper, Reno di Medici, Duni, Esselte, Metsa Serla and Polestar. The agreements of four other EWCs – BPB, MoDo, Stora and SCA – had a built-in possibility to extend the coverage to these countries. At SCA current attempts are being made to achieve this in practice. For many other EWCs it is perceived to be difficult to get the agreements amended for applicant country representatives included before the countries concerned join the EU. Other UNI-EG priorities are the monitoring of mergers and acquisitions, the development of a handbook for SNB and EWC members and keeping up political pressure for a revision of the EWC Directive.

Finally, there is a need for a debate on the purpose of EWCs. The question being asked is what EWCs should be seeking to achieve: solidarity during restructuring measures, company-level European agreements, coordination of collective bargaining or codetermination rights. This debate within UNI-EG is fuelled by answers to questionnaires sent out in July 2002.

Coordinating more than 200 EWCs, the EMF adopted in November 1996, 'binding' guidelines for the content of agreements and the procedure for information exchange on negotiations to set up EWCs. In principle no agreement can be signed unless it contains provision for minimum effective working procedures. For each EWC an EMF expert does the utmost to get the EMF guidelines, as well as his or her coordination role, recognised. Especially in companies with no or only a weak trade union presence, this has not always been possible. In some other cases, negotiations were confined to workers' representatives from the company's European headquarters. This limitation of negotiations is found to run parallel with the autonomy in signing agreements enjoyed by workers' representatives in such countries. Such cases are given special attention at EMF task force meetings. Furthermore, priority lists are drawn up of companies for which negotiations or renegotiations need to be launched. Before and during each bi-monthly meeting these lists are updated.

The dynamic developed within the EMF task force is similar to what should happen within EWCs. Colleagues have learned to cooperate and build friendships across ideological and cultural differences. Especially the communications and information exchange in between meetings is proof that the EMF task force has been successful in this. Several training seminars have been held, including discussions on a collective bargaining role of EWCs, the revision of the EWC Directive, mergers, acquisitions and European Statutes for companies and the development of an own database to serve EMF coordination activities towards EWCs. Such developments are however only possible to the extent that resources are available.

4.3. Resources

Beyond financial resources, technical and human resources are also important for the development of efficient EWC coordination. Within the EMF task force, the high frequency of two-day meetings, every second month, and continuity in its composition is possible only thanks to considerable investment on the part of their organisations. Furthermore, the task force is financially autonomous in its operation, since the travel

expenses of the members are borne by their organisation. The EMF task force developments take place in one working language. And, since 1998, its chair is no longer an EMF staff member, but an elected member of the task force itself.

The EFBWW network of coordinators also meets, twice a year, at the expense of their organisations. It is chaired not by one person but by a steering committee of six. Also this has proven to be important. Often EWC coordination in European Industry Federations depended upon huge commitment on the part of one person. When this person leaves the position, contacts and experience might be lost. This has happened within the European Transport Federation (ETF), EFFAT and EMCEF in recent years. It is also reflected in the quantity of EWC agreements negotiated as can be seen in Figure 3.

In general terms however, European Industry Federations are far too often compelled to admit that they have only very limited resources to develop EWC coordinating structures and support. At UNI-EG, for example, the currently available human resources consist of one policy officer for only 50% of her working hours. Consequently, increasing investment of time and resources from the national EWC coordinators and the EIF affiliates are required to turn words and priorities into actions and achievements. Commission funding contributed to the development of the activities of the UNI Graphical multinational committee in 1999 and 2000. Any decrease in funding thus affects the frequency of meetings. Furthermore, attempts to reduce working languages have given rise to difficulties.

Finding resources for meetings and limitation to one working language proved less difficult for the EMF task force. Their approach is a kind of decentralised implementation of the coordination work geared towards a central policy framework in the form of binding guidelines. Insofar as they accepted this, affiliated organisations transferred competences to the European level. Without some such relinquishment of autonomy and resources, for the benefit of all, a European coordination of European works councils cannot be very effective.

Along similar lines to the first EWC agreement in the mid-1980s, the EMF task force promoted its coordination activities in 2001 and 2002 when, at a number of ETUCO training seminars for EWC coordinators (from EFBWW, EMCEF, ETF and ETUF-TCL), the chair of the EMF task force was given the opportunity to present this approach to coordinating EWCs.

These exchanges of experience in EWC co-ordination have enabled various lessons to be learned. First of all, those European Industry Federations that have less EWCs to coordinate do not need structures like the EMF task force, because they can meet and coordinate directly with the secretary or employee-side chair of the EWCs. However, across the European Industry Federations, the success of EWC coordination depends very much on the continuity of coordinators, the possibility to agree on one working language, and the commitment that affiliated unions want to make. It is not the practice of EWC coordination in the metal sector that needs to be copied; it is the practice that trade union organisations set aside appropriate resources for this area of work. Progress on this level depends upon trade union policies and leadership. In itself it is a matter of democratisation and bridge building between European trade union developments on the shop floor and trade union policies. For example the EMF network of EWC coordinators served as a platform for the development of sub-sector trade union policies in the steel, ICT and automobile sectors. In this context, in November 2002 a specific seminar was held for the EWC coordinators in ICT companies.

It will come as no surprise that inputs are a factor of success. The throughput of information proves to be much better and easier in sectors served by well-structured and well-resourced coordination. An example of this is found in the speed at which signed EWC agreements are available at European Industry Federations. Some agreements appear many years after they were signed. Within the limits of existing coordination structures and lists of EWC contact persons, it thus cannot be fully guaranteed that the numbers of appearing agreements represented in the tables in the first part of this article are complete.

5. Future challenges for EWCs

Over the years, trade unions have adopted a twofold strategy towards the weaknesses in the EWC Directive. This consists in striving for improvements in a revised Directive while getting a maximum out of the existing EWC Directive as it is. This was reaffirmed at the end of November 2002, at a major conference attended by over 400 EWC practitioners and organised by the ETUC in cooperation with the Danish trade union organisations LO Denmark, FTF and AC. On this occasion, a Commission representative presented the possibility for the social partners to renegotiate the existing EWC Directive in the autumn of 2003. The aim should be to respect social partner autonomy in the context of existing agreements, while

also stepping up, where necessary, the terms of the Directive, with reference to Directives 2002/14/EC and 2001/86/EC. This possibility, presented as an enormous task and opportunity for 2003, was well received, albeit not without criticism. First of all, the scheduling of the revision of the EWC Directive for autumn 2003 is four years later than was foreseen in its Article 15. Furthermore, this revision, once adopted, requires two years for transposition, so that it would not come into effect before the end of 2005. And, even if progress is made at the end of 2003 in this process, it remains to be seen whether the high hopes associated with the revision of the Directive and expressed by the EWC practitioners at the conference will be realised via this course of action. Waiting for this is therefore not an option. Actions to make the most of the EWC Directive are taken both in terms of the quantity of EWCs created, as well as in the quality of their operation. More efforts might be necessary to deal successfully with these, as well as with additional challenges with which EWCs are faced. Company mergers and the inclusion of representatives from applicant countries in EWCs entail additional EWC challenges.

5.1. Establishing EWCs in another 1200 multinational companies

Including the 41 agreements signed in 2002, there are now 852 procedural agreements establishing 768 EWCs in 667 different multinational companies. A regularly updated list of the companies that have created EWCs is available on the ETUI website, under the subheading 'databases'. These figures make EWCs a huge success in the Europeanisation of industrial relations. There remains, however, plenty of space for further progress, in terms both of the operation of existing EWCs (Carley 2002, Lecher 2002, Waddington 2002) and in the 1197 companies falling within the scope of the Directive that have not yet created EWCs. If these firms too were to comply with the provisions of the EWC Directive, a further six million workers would be able to exert cross-border influence on the decisions taken by multinationals (Kerckhofs 2002).

A recent study (Blokland 2002) looked at the reasons why a selection of nine Dutch companies had not set up an EWC, even though they fell within the scope of the EWC Directive. On the management side the added value of an EWC was recognised as an instrument to inform workers' representatives in all countries uniformly and simultaneously. Management feared EWCs on account of the risk that they might be dominated by more conflictual industrial relation cultures. With regard to the creation of an EWC, the management representatives interviewed took up a strategic

waiting position. Only if the EWC creation turned out to be inevitable would initiative be taken to maintain control over the situation. Otherwise, no action would be taken. From the side of the employers' representatives, Blokland found that members of the Dutch central works council (*Centrale Ondernemingsraad – COR*) perceived the EWC more as a threat to the importance of the COR. Especially in companies with limited foreign activities, the COR members were happy enough with the information on foreign operations received from central management. Along with an increase in internationalisation of companies, COR members would gain interest in an EWC, as an instrument to repair good contacts with central management. A remarkable fact to emerge from the nine cases investigated by Blokland is that neither national management nor workers' representatives from foreign subsidiaries had taken up an initiative towards EWC creation. As such, Blokland's findings stress the important role of European trade union coordination in organising EWC negotiations across borders. Another recent study of Dutch worker representation structures (Allertz 2002) indicate that Dutch central works councils cannot be successful without an EWC as network to exchange information. All too often, attention is given only to the level of company decision-making in which workers can participate, isolating it from the transnational level where decisions are prepared and strategies deployed (Ammelrooy 2002; Berentsen 2002; Janse & Stoop 2002; Heijink 2002).

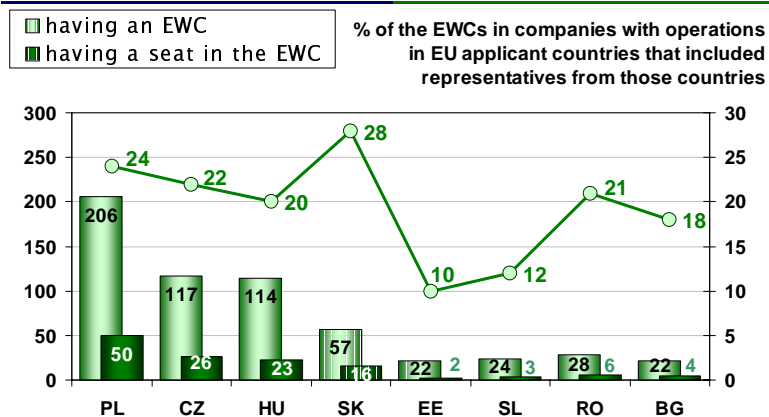
5.2. Include applicant country workers' representatives in EWCs

Among the 1865 companies falling within the scope of the EWC Directive, 547 have a subsidiary in one or more candidate countries. Of these 547 companies with subsidiaries in central and eastern Europe, 323 have already established an EWC, and 143 of these 323 EWCs (44%) were confronted with a transnational merger or acquisition between 1999 and 2001. These transnational mergers and take-overs can entail reorganisation implying some kind of shifting of services or production, thereby affecting employment. Therefore, it is an important benchmark that all European workers should be represented in the European Works Councils. The European Trade Union Confederation and the European Industry Federations have adopted guidelines stating that workers' representatives from applicant countries should be included in EWCs. The graph below shows the quantitative importance of this. The white column in the graph stands for the companies falling under the scope of the EWC Directive that have subsidiaries in the respective applicant countries, while the blue

column gives the proportion of these companies having an EWC. It is a benchmark to arrive at a situation in which all EWCs in companies with a subsidiary in an applicant country have an EWC member or observer to represent the workers in that country.

Figure 4

Involvement of EU applicant country representatives in EWCs



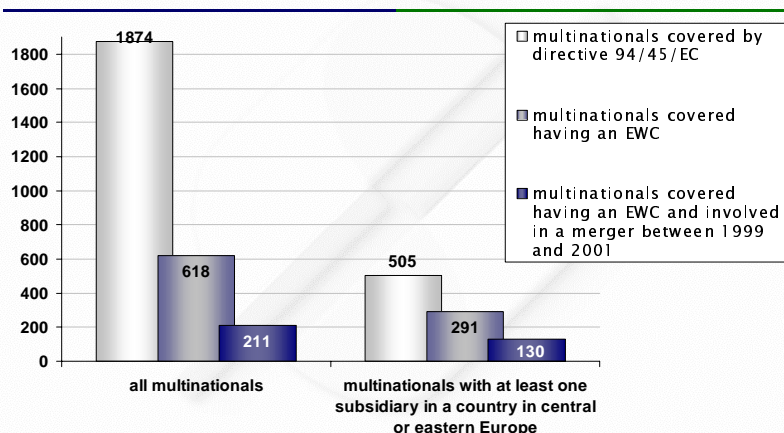
It can be seen that the operations in applicant countries of companies with EWCs have, in 10 to 30% of cases, incorporated representatives of these applicant countries' workforces into the EWC. This takes place on a voluntary basis for, as long as these applicant countries are not full EU members, incorporation of their workers' representatives in the EWC is not compulsory. This explains why the integration of the applicant country representatives is far from complete. Nevertheless, a proportion of EWCs in companies with operations in EU applicant countries that have incorporated representatives of those countries nowhere higher than 30% still leaves plenty of room for improvement.

5.3. Mergers and takeovers

Another huge challenge for EWCs lies in their involvement or lack of involvement in company mergers and the effects they have on employment. Proportionally these problems occur twice as much among companies with operations in applicant countries. It can be expected that, among these companies also, there is a higher risk that the restructuring plans following a merger may include some kind of transnational shift of production. Efficient European Works Council work is the best remedy to anticipate future consequences of company changes. Good information, consultation and cooperation in EWCs can prevent a situation where surprises fall from a clear blue sky at a moment when it is too late to look for alternative solutions.

Figure 5

Multinationals and EWCs confronted with transnational mergers between 1999 and 2001



Source: European Trade Union Institute, *Multinationals database 2002*

Between 1999 and 2001, one third of companies with an EWC underwent a transnational merger or acquisition. The EWCs involved clearly expected to play a role in the merger process. In general, mergers and acquisitions have repercussions for the workplaces concerned and their working conditions. Timely involvement of EWCs in mergers and takeovers is a benchmark for

the quality of industrial relations. Whenever a merger or takeover is to take place, an extraordinary meeting to inform the EWC should be held in good time. On the basis of the information received about company changes, the EWC needs to establish the nature of its coordinating role in the developments to follow. Recently the European Works Councils of Danone and General Motors have played a remarkable role in such circumstances.

Conclusion

Looking at EWC developments from 2002, there is no lack of progress. Each step forward represents progress, but it is true that the progress is less than before. Beyond the creation of new EWCs and the upgrading efforts made within existing ones, huge strides have also been made in very practical transnational trade union cooperation. The structure and teamwork deployed in the field of trade union coordination towards EWCs is to the benefit of europeanisation of industrial relations at large.

The EWC coordination structures of European Industry Federations are building bridges between workplace representatives of more than 10 million employees of multinational companies and the development of European trade union policies. Making European works councils successful is far from easy, given the high expectations of some EWC members on the one hand, contrasting with lack of interest and support from worker representatives of companies still needing to establish EWCs. In addition, company mergers often followed by transnational restructuring programmes confront EWC members with huge challenges. Furthermore, EU enlargement makes it possible to extend the composition of EWCs to workers' representatives from applicant country subsidiaries.

The support and coordination of good EWC cooperation will only rise, considering transnational restructuring plans including risks of production parts being shifted towards investments in those new EU member states. Awareness of these challenges and personal commitment among European industry federation staff members is very high. For success, however, they are dependent on the resources their affiliates wish to invest in their coordination structures and strategies. Refuge from this conclusion will not much longer be found in budget-line B3-4003, nor in the long awaited revision of the EWC Directive, now promised to be launched in the second half of 2003.

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Peter Kerckhofs and Maria Helena André

European social dialogue on lifelong learning

Introduction

1. Making Europe a knowledge-based society
2. Developing a coordinated European lifelong-learning policy framework
3. Social dialogue on lifelong learning
4. European interprofessional social dialogue
5. Sectoral social dialogue
6. European works councils

Conclusion

Introduction

Until recently, a good basic education ensured easy access to the labour market and, for most workers, a job for life or, at least, the qualifications and competences for a whole career. Today, in an increasing number of occupations and professions, a year or two without updating qualifications and competences can jeopardise workers' capacity to remain on the labour market, their employability and the competitiveness of the firms in which they work. Consequently, lifelong learning efforts are required from employees, employers, education and training providers and public authorities, for the benefit of all. To put in place the European knowledge-based society, an appropriate and coherent European policy framework is needed, in which social dialogue on lifelong learning at all relevant levels is essential.

This article will first of all summarise some recent lifelong learning challenges and policy developments. Subsequently, different levels of European social dialogue on lifelong learning issues will be examined. A major development from 2002 is the *Framework of actions for the development of lifelong competences and qualifications* agreed by the interprofessional European social partners on 28 February. Other kinds of activities are reported from the sector level European social dialogue and from European Works Councils.

1. Making Europe a knowledge-based society

The Lisbon EU Council objective to make Europe a knowledge-based society within the next ten years sets the direction for active labour market policies in a context where technological progress leads to the introduction of changes in production, services and in work organisation. Both cyclical and structural unemployment can be reduced by lifelong-learning activities geared to future qualifications and competences requirements identified in advance. Cyclical unemployment is the joblessness arising from changes in production cycles, while structural unemployment stands for the joblessness arising from mismatches between workers' competences and employers' locations and needs. Securing people's employability, adaptability, recognition and the transferability of their competences and qualifications will also reduce the joblessness experienced by people between jobs or just entering or re-entering the labour market (frictional unemployment).

In this context, the European Council of Feira held in June 2000 invited the member states, the Council and the Commission ‘to define consistent strategies and practical measures to make lifelong learning accessible to all’. From November 2000, on the basis of its communication¹ entitled ‘Making a European area of lifelong learning a reality’ a consultation round was launched by the Commission. The following debate highlighted opportunities as well as challenges in lifelong learning.

Lifelong learning for all is not so simple to achieve. Some target groups – workers with lower levels of qualification, older workers, women, the inactive and job seekers, those with disabilities and ethnic minorities – are not adequately reached by lifelong-learning activities. The right to continuing vocational training, including time and other resources, is not always guaranteed. Access to lifelong learning for all depends upon the implementation of collective guarantees to an individual training right. This right needs to be capitalised into an adequate training offer, (compensatory) time off, guidance and measures that motivate actors to pursue and invest in lifelong learning. Motivation depends very often on past learning experiences. The purpose of high quality and broad based basic education is to acquire a core of key-competences, including social and learning skills, on which it is subsequently possible to build. At the present time, not all school systems succeed in this respect. Basic education should not, moreover, result in distaste for learning, but rather promote zest for learning, thereby increasing not only students’ ability to learn but also their ability to continue enjoying learning throughout their lives. Finally, access to lifelong learning for all entails a reappraisal of informal learning, recognition of qualifications and competences acquired without specific training through day-to-day work or life experience.

As such, lifelong learning does not serve individuals in terms only of their labour market integration and capacity to adapt to changes at work. It is, equally, an instrument for individual development and fulfilment, for the promotion of equal opportunities, active citizenship, social cohesion and integration in societies that are becoming increasingly multi-cultural. This places the development of lifelong learning at the intersection of different political, economic and socio-cultural interests and structures. The

¹ The text of this memorandum on lifelong learning, as well as the feedback on it from the social partners, are available at the following internet address; <http://www.europa.eu.int/comm/education/life/index.html>

challenges can, accordingly, be dealt with only by bridge-building and coordinating all efforts at different levels of policy-making, social dialogue and education and training providers. Two Council resolutions² adopted in 2002 seek to promote the convergence of all European policy developments into a comprehensive and coherent strategy. This is perceived as a challenge on its own.

2. Developing a coordinated European lifelong-learning policy framework

Answering concrete needs in labour markets with different socially and culturally established procedures makes diversity a tremendous asset in vocational education and training systems. It underscores, however, the necessity to develop a European framework leading to mutual recognition of qualifications among member states. This already exists for certain regulated professions within two EU Directives – adopted in 1989 and 1992 – on the general system for the recognition of professional qualifications. Directive 98/48/EC deals with qualifications obtained through programmes of higher education and Directive 92/51/EC with those obtained through secondary vocational education and short programmes of higher education³. Both Directives were amended in May 2001 by Directive 2001/19/EC⁴. Several other Directives⁵ concerning specific professions had already been consolidated in the ‘third general system’ Directive 1999/42/EC. Further consolidation was called for in 2002 in the Commission action plan⁶ for skills and mobility. Aiming to provide a quicker, clearer and more user-friendly system for recognition in regulated professions, a draft Directive⁷ on the recognition of professional qualifications was proposed on 7 March

² The Council resolution of 27 June 2002 can be found in OJ C 163 of 9.7.2002, while the Council resolution of 19 December 2002 is published in OJ C 13 of 18.1.2003.

³ More information on the Directives regarding professional recognition in the EU can be found on the internet, under; <http://europa.eu.int/comm/education/socrates/naric/prof2.htm>

⁴ Directive 2001/19/EC from 14 May 2001 in OJ L 206 of 31.7.2001

⁵ For example, Directives 77/452/EC, 77/453/EC, 78/686/EC, 78/687/EC, 78/1026/EC, 78/1027/EC, 80/154/EC, 80/155/EC, 85/384/EC, 85/432/EC, 85/433/EC, 93/16/EC and 98/5/EC.

⁶ http://europa.eu.int/comm/employment_social/news/2002/feb/ap_en.html

⁷ The draft Directive can be found in the OJ C 181 E of 30/07/2002.

2002. The aim to unify in the same regulatory text all directives existing on this matter is certainly positive. It will certainly contribute to the promotion of mobility at the European level. There is, nevertheless, a certain degree of concern regarding some of the main elements of the draft proposal. For instance, there is no clear consistent link between the limited area of regulated profession, which account for less than 20% of the whole range of European professions, and the Lisbon Strategy or the Bruges-Copenhagen process on vocational education and training; neither with the Bologna process on higher education, although this is more an intergovernmental process. Moreover and according to the proposal under discussion, the management of the recognition systems should be ensured by a single committee, exclusively composed by representatives from public authorities, excluding the social partners and the professional associations. Both ETUC and Eurocadres have been active in the consultation process, fighting for the recognition of the role of the social partners and for the need to base the new directive on the broader European agenda, also aiming at the promotion of vocational education and training.

Efforts in the field of vocational education and training are also made through the Bruges process that aims at an increased co-operation in European vocational education and training (VET). This started out on the basis of a proposal of the 2001 Bruges meeting of the Directors-General for vocational training (DGVT) to initiate a political process aimed at developing transparency and mutual trust, followed by the priorities for enhanced cooperation set in a Commission communication⁸ of November 2001. This communication was followed up by a Council resolution on lifelong learning of June 2002. Driven forward by the Spanish and Danish Presidencies, the Bruges follow-up structure emphasised, at its 5 September 2002 meeting, to set up, in parallel to this political process, technical working groups covering the issues of transparency, credit transfer, quality in VET and vocational guidance. The European social partners, ETUC, CEEP and UNICE/UEAPME, take part in these working groups. These developments were formalised on 30 November 2002 in the Copenhagen declaration. This is giving a political mandate for the development and follow-up of the priorities defined under the Bruges initiative, in association

⁸ Information on the EU Commission communication on Making a European area of lifelong learning a reality can be found on: <http://www.europa.eu.int/comm/education/life/index.html>

with the candidate countries, EEA countries and social partners. The Copenhagen declaration will be followed up in 2004 by a second ministerial meeting under the Dutch Presidency, where progress against all the priorities of the Declaration will be assessed, and new priorities will be established if necessary.

Table 1: The future objectives work programme

<p>Strategic objective 1 is the improvement in the quality and effectiveness of education and training systems</p>	<ol style="list-style-type: none">1. improving education and training for teachers and trainers2. developing skills for the knowledge society3. ensuring access to ICT for everyone4. increasing recruitment to scientific and technical studies5. making the best use of resources
<p>Strategic objective 2 is the facilitating of access for all to education and training systems</p>	<ol style="list-style-type: none">6. open learning environment7. making learning more attractive8. supporting active citizenship, equal opportunities and social cohesion
<p>Strategic objective 3 is the opening up of education and training systems to the wider world.</p>	<ol style="list-style-type: none">9. strengthening the links with working life and research and society at large10. developing the spirit of enterprise11. improving foreign-language learning12. increasing mobility and exchange13. strengthening European co-operation

Some actors remain puzzled, however, about how the Bruges-Copenhagen process developments integrate in the future objectives work programme and the activities of the Advisory Committee for Vocational Training (ACVT). The ACVT consists of about one hundred representatives of governments and social partners in all member states. ACVT meetings take place twice a year in Brussels and are chaired by representatives of the

Commission. The purpose of the ACVT meetings is to give opinions on concrete objectives on vocational training and Commission Communications, to provide comments on Guidelines and give their opinion on draft Resolutions.

The future objectives work programme results from a Council report entitled 'Concrete future objectives of education and training systems', aiming to set out a coherent overall approach to national education policies. In its endorsement of this report, the Stockholm European Council in March 2001 asked that a detailed work programme be drawn up. Exactly a year later the Council and the Commission did this in a joint report to the Barcelona European Council on 15 and 16 March 2002. In this document, 13 goals are classified under three strategic objectives. This future objectives work programme⁹ includes follow-up work on quantitative indicators for each of the 13 goals.

3. Social dialogue on lifelong learning

From this overview¹⁰ it must have become clear how important it is to coordinate activities at different levels to benefit from synergies and complementarities. This counts just as much for the different levels of social dialogue. The development of a coherent European policy framework to stimulate investment in lifelong learning by workers and companies for the benefit of all can be successful only on a basis of social dialogue.

Social partners at all levels jointly hold a share of the responsibility for mobilising the motivation and resources to develop the human capital of companies. The development of the qualifications and competences of the workforce is economically as important as technical innovation and financial investment but it needs to build upon a win-win partnership approach. Companies are supposed to win in terms of competitiveness. Well-trained workers will raise innovative ideas and become more highly motivated, committed and productive. While trade unions can win in

⁹ The detailed work programme on the follow-up of the objectives of training and education systems in Europe can be found on: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_142/c_14220020614en00010022.pdf

¹⁰ More information on policies and structures shaping European cooperation in vocational education and training can be found on the internet: http://www.europa.eu.int/comm/education/introduction_en.html

striving for equal access to lifelong learning for all workers, countering the skills gap, or the ‘Matthews effect’ according to which more highly educated (managers) get more training, even though it is the lower skilled who most need it! Giving social partners voice will result in training offers that are adapted to labour market and individual needs. Social partners should also take up a role in establishing the recognition of informal learning.

Kelleher and Cressey (2000) have argued that the more developed a human resource development strategy is, the more it dovetails with industrial relations. Encouraging workers to develop their skills and valuing and recognising acquired competences brings in questions of remuneration. An issue here is, for example, whether reward is based more upon competences and performance or upon presence and seniority. Furthermore, there is an assumption that workers’ and companies’ investment in training will increasingly be included in collective agreements. Access to training and lifelong learning has also become a qualitative aspect in transnational coordination of collective bargaining. This is formalised in the December 2001 resolution of the ETUC executive committee on the coordination of collective bargaining. Furthermore, in the so called ‘Doorn process’, in which Belgian, German, Dutch and Luxemburg unions set targets for more coordinated collective bargaining, it was agreed in September 2001 to make lifelong learning the common non-wage issue on which reports would be given to a follow-up meeting in autumn 2002.

Social partners can build bridges among the huge variety of actions in the field of life long learning. The social partner involvement in the Leonardo da Vinci programme illustrates this. In Article 9 §3 of the Council Decision¹¹ establishing this programme for the period 2000 to 2006, the Commission is given the task to develop, in partnership with Community social partners, coordination between the Leonardo programme and the European social dialogue, including at the sectoral level. Social partners are also involved in the promotion of many Leonardo projects.

¹¹ Council decision 1999/328/EC of 26 April 1999 is to be found in the OJ L 146/33 of 11.6.1999.

4. European interprofessional social dialogue

Experiences developed in social dialogue at national and European levels show a broad consensus on the outstanding challenges and problems. Nevertheless, consensus is more difficult when it comes to identifying joint actions or defining new rights and responsibilities in implementing lifelong learning. Since 1991, the ETUC has proposed to the EU employers' organisations to negotiate a voluntary agreement on access to lifelong learning. In an Executive Committee resolution of June 2001, the ETUC reiterates its commitment to the work carried out in the ad hoc Education-Training group of the social dialogue. With this resolution the ETUC was mandated to reach a framework agreement on the modalities for facilitating access of workers to lifelong learning (ETUC 2001).

The starting point for negotiations was the joint statement to a forum organised by the Portuguese presidency in June 2000. In this text, European social partners recognised their essential role in the development of lifelong learning, and created a working group in order to identify 'ways to promoting access to lifelong learning and developing the skills of all men and women'. With the March 2001 social dialogue education and training interim report, European social partners committed themselves to work towards a European framework of actions. Negotiations on this were successfully concluded on 28 February 2002.

The framework identifies four joint social partner priorities for the development of lifelong learning

- Identification and anticipation of competence and qualification needs at the company level but also at national and sectoral level. This is to be done via a strong social dialogue at company level and in cooperation with education and training providers at all levels. Each worker in the company should have an individual development plan.
- Recognition and validation of competencies and qualifications. Transparency and transferability of competences and qualifications will facilitate geographical and occupational mobility and increase efficiency of labour markets. While it helps companies to identify and manage the competences of their workforce, it makes workers aware of their competences, and motivates them to develop them.
- Facilities for information, support and guidance of both workers and companies in their lifelong-learning choices

- Mobilising resources, beyond purely financial resources, and commitment on the part of social partners, public authorities, enterprises and employees.

The actions and follow-up agreed upon consist of, first of all, the promotion of this framework in the member states, at all appropriate levels – enterprise, sectoral or national. Furthermore, in March 2003, 2004 and 2005, an annual report of national actions on each of the four priorities is to be drawn up. A final evaluation of the impact on companies and workers is to be made in March 2006, and this may lead to an update of the priorities in the current framework, or perhaps even to a legally binding social dialogue agreement.

This text is not legally binding. European employers' organisations proved extremely reluctant to make this social partner framework legally binding as made possible by Article 137 of the Treaty. Only after the first annual report, scheduled for March 2003, will it become clearer what is entailed by the concrete commitments and actions comprised within this framework, and what added value has been realised in this respect by European social dialogue. The Commission sees in it an example of a new European social dialogue approach.

In a Commission Communication¹² of June 2002 the European social dialogue is considered to be a force for innovation and change. Besides proposing a Council Decision establishing a Tripartite Social Summit for Growth and Employment, the Commission Communication calls upon the social partners to clarify the terms used to describe their contributions and reserves the term 'agreement' for texts implemented in accordance with the procedures laid down in Article 139 of the Treaty. The Commission proposes that the social partners apply some of their (not regulatory) agreements by establishing goals or guidelines at European level, through regular national implementation reports and regular systematic assessment of progress achieved. The recent framework of actions for the development of lifelong competences and qualifications is, according to the Commission, based on that approach. An unanswered question remains what happens to the commitment in frameworks or agreements if some parties refuse to be legally bound by them.

¹² The 2002 Commission Communication on the European social dialogue, Com (2002) 341 final of 26-6-02, is available on the internet: http://europa.eu.int/eur-lex/en/com/pdf/2002/com2002_0341en01.pdf

5. Sectoral social dialogue

An earlier Commission Communication, issued in 1998, gave a new shape to European sectoral social dialogue. Beyond the structural framework, the output also seems to have changed as a result of this Communication. From joint opinions, mostly responding to a consultation by the Commission, a shift to more action-oriented commitment has been made.

Until 1998, European sectoral social dialogue¹³ took place in 9 joint committees set up by Commission decisions, and in 11 informal working parties created by the social partners themselves (Sörries 1999). After having issued a consultation Communication in September 1996, a Commission Decision established criteria for the recognition of sectoral social dialogue committees on the basis of the degree to which they were representative of the sector, the political opportunities and willingness of the social partners to discuss and agree joint opinions and binding framework agreements. This recognition implies financial, secretarial and technical support for one high-level meeting each year. There are currently 27 such committees. In most sectors, smaller meetings in various settings complement the annual high-level plenary meetings. These may include 10 to 20 persons, be much smaller expert meetings or meetings of the secretariats.

Through the years, these structures produced over 200 joint texts, most of which are available on the ESDO website¹⁴. Of the 213 analysed, 102 or 48% include provisions on vocational education and training matters. A historical breakdown indicates the effect of the 1998 restructuring of the European sectoral social dialogue. The quantity of the joint texts decreases again, in favour of a higher degree of commitment from social partners in framework agreements. This trend is welcomed and reinforced by the Commission in its Communication of June 2002.

¹³ An overview of analyses and publications on sectoral social dialogue can be found on the internet: <http://www.uni-konstanz.de/FuF/Verwiss/Keller/plit.htm>

¹⁴ The ESDO website address is: http://forum.europa.eu.int/Public/irc/empl/esdo_accords_europeens/library

Figure 1

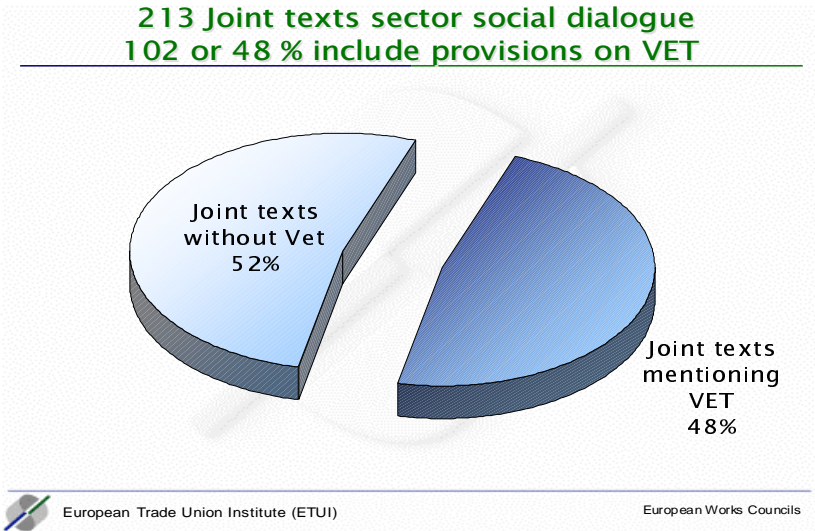
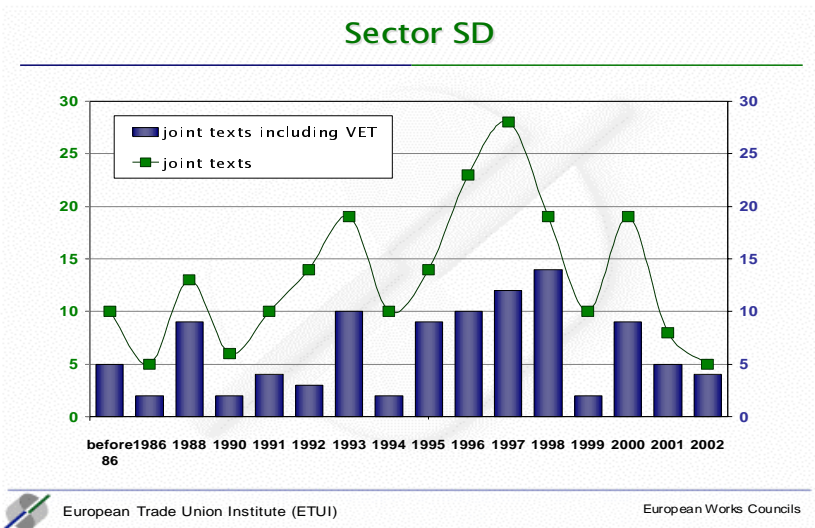
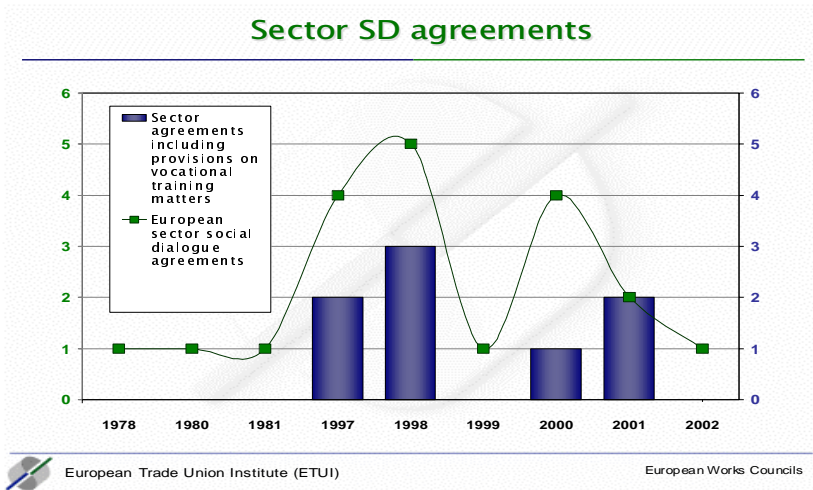


Figure 2



In the above figure, the line represents the number of joint texts agreed upon, while the columns stand for those joint texts that include provisions on vocational training matters. On the below figure only those joint texts are presented that contain in their title the word ‘agreement’. In the table below are presented the social partners in each of the recognised sectoral social dialogue committees and the number of joint texts agreed within these committees from 1979 to 2002.

Figure 3



This historical quantitative overview does not permit any evaluation of the degree of commitment or effects from these social partner joint opinions or agreements. Nevertheless, recent activities reported in the area of vocational training in the sectoral committees indicate that the focal point is less on the conclusion of joint opinions or agreements, but much more on direct actions or frameworks for action.

Table 2: European sectoral social dialogue on vocational education and training

European Sector Social Dialogue committees	European Industry Federations	Employer organisations	Joint texts	Joint texts including provisions on training
Agriculture	EFFAT	GEOPA–COPA	27	18
Air transport	ECE; ETF	ACI Europe; AEA; ERA; IACA	14	3
Banking	UNI–Europa	EACB; ESBG; FBE	2	1
Cleaning	UNI–Europa	EFCI	9	8
Commerce	UNI–Europa	EUROCOMMERCE	17	12
Construction	EFBWW	FIEC	4	0
Culture	EEA	PEARLE*		
Electricity	EMCEF; EPSU	EURELECTRIC	2	2
Footwear	ETUF–TCL	CEC	4	2
Furniture	EFBWW	UEA		
Hotels & catering/tourism	EFFAT	HOTREC	7	5
Inland waterways	ETF	ESO/OEB; UINF	6	3
Insurance	UNI–Europa	ACME; BIPAR; CEA	2	1
Mining	EMCEF	APEP; CECISO		
Personal services	UNI–Europa	CIC Europe		
Postal services	UNI–Europa	POSTEUROP	12	2
Private security	UNI–Europa	CoESS	8	5
Railways	ETF	CER	18	7
Road transport	ETF	IRU	5	0
Sea fishing	ETF	EUROPECHE/COGECA	14	8
Sea transport	ETF	ECSA	8	3
Sugar	EFFAT	CEFS	5	2
Tanning	ETUF–TCL	COTANCE	3	
Telecommunications	UNI–Europa	ETNO	32	13
Temporary work	UNI–Europa	CIETT Europe	2	1
Textiles/clothing	ETUF–TCL	EURATEX	3	1
Wood	EFBWW	CEI–Bois	3	

There is a trend towards the development of European sectoral social dialogue strategies on lifelong learning issues, in which skill requirement studies, recognition efforts and the development of training manuals go hand in hand with the conclusion of joint opinions and agreements. In recent years most of the European sectoral social dialogue committees have discussed lifelong learning issues. Some of them have developed concrete activities, which may be classified in four types;

1. studies on future skill needs in textile, footwear, electricity, construction and graphical sectors,
2. efforts towards recognition of skills by acknowledging them in a skills booklet or for example a European train-drivers licence that is under discussion in the railway sector.
3. developing European training manuals in the private security sector, cleaning and e-commerce sectors, or a training seminar for theatre technicians developed by the culture sector,
4. preparing European framework agreements on lifelong learning, as in the agriculture and catering sectors.

Performance of sectoral social dialogue committees seems to depend upon the structure and shape of employers' organisations, in combination with the degree of awareness of some kind of common interests. European liberalisation pressures in the electricity and railway sectors seem to raise such areas of common interest. EFFAT provides an example of how European Industry Federations are involved in different activities in various sectoral committees, while an example of developing training materials is given within the private security sector.

The railway sectoral social dialogue committee, in particular, has performed several activities in the area of lifelong learning in recent years. In 1999, a sub-group visited different countries to look at the use of new technology in training. The aim was to develop new training products using new technology, after having defined the tools of which best use could be made in training activities, namely, role simulators, CD-Rom, video conferencing and long-distance learning. In 2001 another working group comprising three trade unionists and three employers' representatives examined the concept of employability in railway human resources policies in four countries. The resulting study was published in November 2001. Another study on safety aspects in training systems in 20 countries was ordered in 2002 by DG Transport and Energy (DG TREN) of the Commission. This study is being

finalised and will be published in the course of 2003. During 2002 discussions were also held on negotiations designed to lead to a European train driver's license and these are planned to start in February 2003.

An agreement on vocational training was reached in 1999 between EFFAT and FERCO in the catering sectoral social dialogue committee. This 1999 agreement has already been implemented (word for word) in Belgium, and is soon to be implemented in France also. At the presentation of survey results on employment, recruitment and continued training, reports were made on implementation of the principles set in the 1999 agreement. EFFAT is also active on lifelong-learning issues in the agricultural and the sugar sectors. On 5 December 2002, an agreement was reached in the agricultural social dialogue committee, in which provisions for a qualification passport are included. It was reported that the sugar sectoral committee had been conducting a health and safety project looking at new technology training tools like CD-Rom, a project that has now been implemented in all member states.

In property services, training manuals have been developed in both the industrial cleaning and private security service sectors. In the private security sector, the European sectoral social partners CoESS and UNI-Europa produced a manual setting out basic principles for the training of private security guards launched in June 2001. This was the result of a process that started almost 10 years ago with the launch of the security services social dialogue. A study under the programme identified 19 occupational profiles. This was followed by Leonardo da Vinci project to develop a training programme for security guards, common to all the 19 profiles. Also the social partners in the industrial cleaning sector, wishing to improve the image of the occupation, agreed to develop a European training manual. Two successive Leonardo da Vinci projects over seven years produced a training manual for office cleaning.

European sector-level social dialogue on lifelong learning has a comparative advantage over the other levels because of the limited number of occupations in one sector and the competence needs being fairly similar across the member states. The above-mentioned specific actions show the potential and relevance of this level of European social dialogue in the development of lifelong learning.

6. European works councils

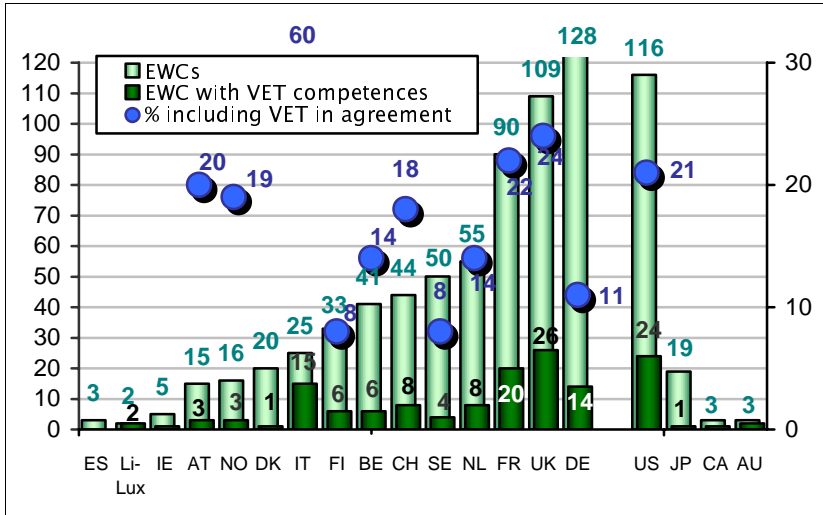
European works councils are the platform for European social dialogue in multinational companies. Diversity is also to be found among these multinational companies (Kerckhofs 2002). Some companies have only one very specific kind of economic activity, involving a limited number of occupations, while others cover a wide range of economic sectors and occupations. Furthermore, the characteristics of the vocational training system in the country of ownership, as well as the sector of ownership, are shown to influence the possibilities for social dialogue on lifelong learning. Finally, the number of countries in which a multinational company has operations determines the ease with which common arrangements can be built taking account of the diversity of local and national vocational training systems and practices.

From a survey of 660 EWC agreements, 145 (22%) were found to include vocational training as an issue on which the EWC should be informed and consulted. These 145 companies that have included training competences for the EWC are broken down in the graph below right, by the number of countries where they have operations. The majority of the companies concerned are present in six countries or more.

A large variety of experiences can be found if the number of companies with an EWC including VET competences is broken-down by the country of ownership. Higher proportions are noted for Italy, the UK and France. The comparatively low figures for Germany and the Netherlands may reflect the fact that in those countries VET tends to be more a matter for sectoral agreements and less a matter for company-level social dialogue.

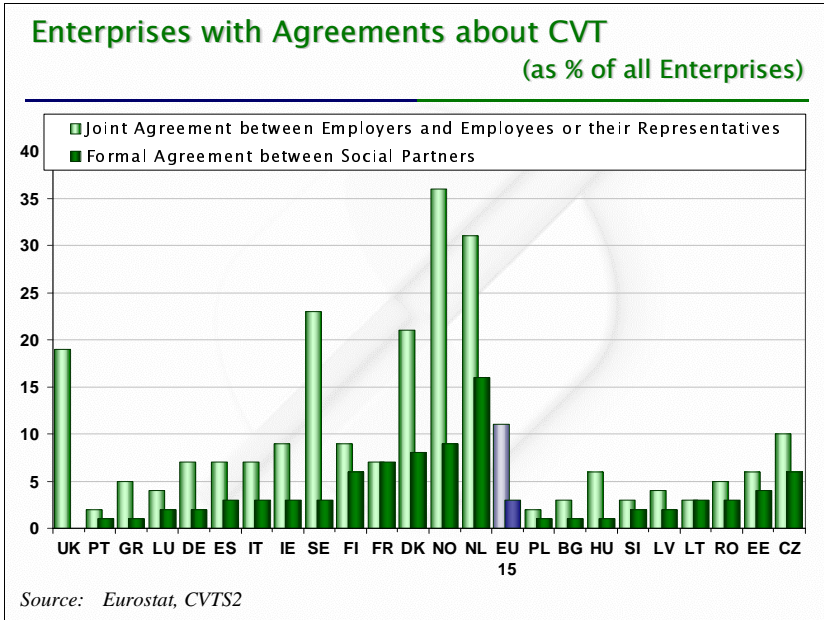
An examination of the sector of activity of the companies including VET in the remit of their EWC is shown in the figure below. First, it should be noted that some companies operate in more than one sector, and therefore, they have been classified by the sector in which employ the largest proportion of their workers. Proportionally the chemical sector scores highest, which may reflect a link between VET and health and safety arrangements (Winterton & Winterton 1994).

EWCs with VET competences and references in agreements



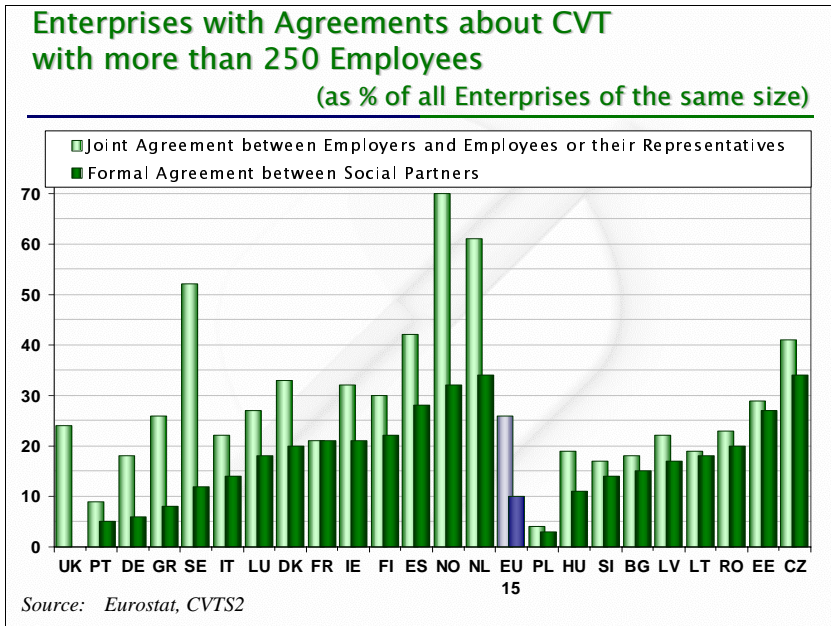
A common feature of all multinational companies is that lifelong learning is a factor in the competition pressures enforced by globalisation, technological innovation and financial markets seeking short-term benefits. Competitive advantages do not, however, depend exclusively on companies' financial and technological resources. Financial resources fluctuate, while technological resources are rapidly diffused and shared with competitors. Furthermore, shorter economic and technological cycles increase changes in products and services as well as the competences needed to produce or perform them. The sustainability of companies depends on their capacity to adapt to external changes, to anticipate market needs and to introduce internal change into the organisation. Consequently, the creation of added value in companies depends increasingly on their human resources and the development of this factor is one key to the competitiveness of multinational companies. However, lifelong learning is a long-term investment the effects of which on company performance are hardly measurable.

Figure 4



Since professional competences as such are not clearly visible, their development, evaluation, validation and encouragement are most obvious at workplace level. However, social partner agreements on lifelong learning are found in only 11% of private enterprises in the EU. Average figures more than double when only those companies with more than 250 employees are taken into consideration (ETUI 2003). This is shown in the figure below. Most of the subsidiaries of multinationals having European Works Councils are to be found in this group. This underlines the opportunities for EWCs in developing a dialogue on Europe-wide company approaches to lifelong learning in the workplace.

Figure 5



Another advantage for social dialogue on lifelong learning in EWCs is that these bodies are independent from structural weaknesses or unwillingness on the part of employers' organisations. Where central management is open to it, certain actions have already been undertaken in this direction. Without being representative of all, two examples of lifelong-learning actions in EWCs can give an impression of what is going on. Considering the diversity in vocational education and training (VET) systems and practices, the development of social dialogue on lifelong learning matters depends on continuity within the EWC.

The Elf EWC was created in 1991 on an experimental and informal basis. The 1994 EWC agreement does not mention vocational training. Nevertheless, a bureau was created within the EWC composed of 10 employee representatives. This working group commissioned Cereq to carry out a study on different VET systems in the countries where Elf has subsidiaries. The result is a 520-page book (Mobus & Aventura 1998), which confines itself to presenting and comparing national VET systems. The

authors did not develop ideas for EWC action in this field. Such ideas were not developed by the EWC either since the book was published in 1999, at the time when Elf was merging with Totalfina. Totalfina has had an EWC agreement since September 1999, but it was never established in practice because of the merger process. The post-merger EWC of Totalfina-Elf was created by the EWC agreement of 20 March 2001. In 2002 it held its first meeting. Vocational training matters have not yet been discussed.

While the example of Elf shows how the development of lifelong-learning arrangements at EWC level is obviously hindered by mergers which alter the EWC composition, the Danone case illustrates how EWC work on vocational training can play a role in a transnational restructuring which changes the scope of the company. Furthermore, the Danone case illustrates that a European industry federation – or in this case the world-level trade union organisation – is sometimes a more appropriate forum than the EWC for the negotiation of agreements. The dialogue between UIT (global food union) and management dates back to the 1980s, long before the EWC was set up. It resulted in a series of joint texts (Carley 2002). Within the EWC 90% of the representatives are affiliated to unions that are members of UIT. Therefore the agreements are not between the EWC and management but with UIT. UIT considers it obvious that bargaining is a trade union activity. According to the UIT, the EWC should limit itself to preparing agreements, for example by comparing differences and identifying weaknesses that can be solved by a social partner agreement.

This international social dialogue within Danone led to a framework agreement on skills and training in 1992. On 29 March 2001 a more specific agreement was reached for the biscuit division of the company, which since then has been undergoing European restructuring. Since this was announced well in advance, it permitted anticipation in the agreement which states: ‘Danone shall, if necessary, pay for or provide training which would allow former employees to qualify for jobs with the new employer’. There are follow-up meetings to verify whether this agreement has been respected. The first meeting was on 6 March 2002 and the second on 27 May 2002. For each country where there are plants involved, representatives from both sides are involved in this follow-up process.

EWCs are bound to encounter plenty of difficulties and challenges on the road to company arrangements on lifelong learning. Being at the intersection of the interests of management and workers in each of the subsidiaries, each opportunity or commitment risks being perceived somewhere by somebody

as a threat or waste of effort. Barriers include the huge diversity in national practices, low representativeness and union density of EWCs and the limitation of its competences to information and consultation on a number of issues among which vocational training is not always present. The EWC does, however, offer a most appropriate platform to develop in partnership a European company framework on lifelong learning.

Without such a European company framework, local management will perceive lifelong learning as a long-term investment the effects of which on company performance are hardly measurable, as a result of which they might not see the need to assess future job trends. Yet without attention to this aspect, there can be no preventive management of workers' competences, designed to increase their mobility inside as well as outside the company. The development of a European lifelong-learning plan between the central management and the European Works Council would provide the best possible framework to implement human resource development in harmony with organisational structures. For example, field managers have to be convinced and equipped to encourage colleagues in their competence development. Even though competence development offers win-win-situations, in the absence of information, consultation and dialogue, resistance can occur from any kind of actor inside the company as well as from external social partner organisations. For instance, where competence development plans create opportunities to base wage negotiations rather more on competences and qualifications contributing to performance and less on presence, seniority or levels of formal education.

For workers, competence development opens up possibilities to make individual workers act upon their professional projects. As individuals, they are not, however, able to take up responsibility for their competence development, since they are not always in a position to overview or control the environment in which their job is evolving. Without a supportive system of collective interest representation, individualised approaches to competence development risk weakening the position of workers with little or no competence. These are workers already most vulnerable to job loss because of industrial restructuring and shifts in production locations. Within multinationals that merge and restructure across borders, European Works Councils need to be supported to bridge over any difficulties, enabling them to set up a framework for the lifelong development of workers' competences for the benefit of the company, the individual workers and the society.

Conclusion

First of all this overview emphasises the importance and recognition of social dialogue on vocational training also at European level.

Voluntarism is a good context for explorative parts of social dialogue. Eventual bargaining of substantial agreements and their implementation could be served with more binding procedures. It looks, however, as if some social partner organisations at national level are reluctant to give the adequate competences, structures and resources to the institutions representing their interests in European social dialogue, at interprofessional and sectoral as well as at company level.

The challenges and opportunities are, however, clear and accepted. For the interprofessional level there are the Lisbon objectives, while for the sectoral level there are developments of industrial change and, for example for the electricity and railway sectors, the liberalisation of the market. At European company level, mergers and acquisition indicate a tendency towards Europeanisation and economic restructuring. While at the same time there is the challenge and opportunity to anticipate change in building shared views that can serve in the development of corporate competence development strategies.

To overcome difficulties, the question needs to be raised of what kind of incentives are required to support and encourage the European social dialogue and stimulate its development in the required directions. It would be helpful to introduce certain structural improvements into the procedural frameworks of the European social dialogue at each of the various levels. Material or expert support might also be considered. Material support for the European social dialogue can take the form of financing the development of joint projects, but it can also take the more indirect form of administrative support in the negotiation processes. Expert assistance and availability of expertise could be realised, for example in training the negotiators in vocational training aspects.

Finally, a need for coordination is emerging from this overview. The different levels of social dialogue do not yet sufficiently benefit from their complementarities. This is even truer of the political structures developing lifelong learning policies. A single coherent European policy on lifelong learning is not yet to be found in the multiplicity of platforms and organisations active in this field.

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Industrial policy as a modern tool for growth and employment: a trade union view

1. Industrial policy: main targets and policy framework
2. A new industrial policy profile - managing change instead of preserving structures
3. The role of the partners involved
4. Examples for industrial policy in different metal sectors
5. EU Enlargement and its impact on managing change
6. Industrial policy on the agenda of sectoral and interprofessional social dialogue

Conclusion

1. Industrial policy: main targets and policy framework

Industrial policy often has been declared dead, old-fashioned, without any perspective. All hopes for creating wealth, a competitive economic basis or future-oriented economic and industrial structures have been seen as the result of the invisible hands of the markets. Under the conditions of globalisation the central role of financial markets for the allocation of resources was virtually fully accepted in the political community.

It was so easy to relegate industrial policy to the history books of the early Sixties or - even better - back to the 19th century.

However, the result of the radical market approach believing in the strategic role of financial markets, following the illusions of the New Economy, did not fulfil its promises. Europe completely abolished industrial policy, in terms of global competition in particular; it seemed to be a non-word, an example of old-fashioned thinking and ideology. However just a short look across the Atlantic provides us with another lesson. The Americans, who have always been in favour of free markets and free trade, have always had a clear picture about the necessity of developing their own industry beyond market rules; this is what we have to develop in Europe as well. It is time to abolish market radicalism and to find the path to the future using a modern mix of markets, political responsibility and social participation.

Industrial policy has too often given reasons for creating misunderstandings. Industrial policy was often the synonym for state aid and subsidies aimed at preserving capacities and structures that were not useful for markets and consumers. Reducing industrial policy to this traditional approach of preserving the old structures and non-market related capacities leads us up a blind alley. A modern type of industrial policy is quite the opposite. Industrial policy takes account of the strategic needs of economies and societies to develop the economy, and especially industry, in line with the main strategic demands of the future. It is managing change that is the guideline, not preserving the old capacities and structures.

The European Union has a history ranging from pure state intervention to radical deregulation and neither of these extremes fulfilled its aims and targets.

On the one hand, case-by-case state intervention leads to the deterioration of markets, competitiveness and employment. When state aid starts fighting against state aid this is just the beginning of downward competition. There will only be losers in the end.

On the other hand, the absolutism of deregulation has never fulfilled its promises either. The idea that pure market deregulation will lead us to a powerful economic structure with economic and social benefits for everyone in the EU is an unproven myth. In fact it is just the opposite. Europe is losing ground against its competitors for the very reason that we are following market rules as if this were an absolute doctrine, whilst others, for example the US, clearly accept that priority should be given to a strategic option, will and purpose.

From this point of view, the presentation of the Commission Communication on Industrial Policy in an Enlarged Europe of December 2002 could be seen as a landmark. It could be the result of a revision of market ideology as a guideline for economic and industrial policy realising that there is a need for a modern type of industrial policy that not only creates a framework for markets and entrepreneurial decisions but takes its own political responsibility when the strategic means of the Union as a whole makes this necessary, e.g. in the aerospace, shipbuilding, and ICT industries, and in the armaments and automotive sectors.

The completion of the Single Market is an important aspect of European integration and trade unions are aware that some homework still has to be done. But a critical view must include the assessment that the Single Market, including the important innovation of a single European currency - the euro - has not completely fulfilled its promises to date. There might be two arguments for this, which ultimately are contradictory: one could think that sectors and infrastructure areas that have not yet been integrated are the reasons for the poor result of market integration. But then the radical logic would be that we have to take away all responsibilities from states and societies that are not market-related. This market radicalism is a political radicalism, which is against the tradition and perspective of the European model. However, there is yet another argument, i.e. that markets need a clear orientation and framework, that public institutions and society have to create a friendly environment which ensures that the potential of the fruits of market integration are exploited to the full.

Europe should always be a social market economy, which combines growth, competitiveness and social inclusion. The risk of market failure is not a lesser risk than the risk of state failure. Only a combination and a balanced swing between the two will provide us with the full potential of the markets. The exclusion of some elements of human life from market decisions is a clear, and is part of our European heritage - even if everybody does not

always appreciate this wisdom currently. Solidarity and social justice are not software values. Industrial structure and industrial perspectives within an environment of a dynamic, changing economy are vital areas of the development of society: a hardware core issue.

Under the conditions of global competition, Europe cannot exclude itself from the basic rules of competitive markets, but Europe can do everything to unite its productive forces to create favourable conditions that are at least as good as those operating in the continents of the other competitors in a global view.

The current Commission Communication provides, for the first time, a realistic description of the situation of industry in Europe. The Commission describes the danger of de-industrialisation. This is new language, new words. The danger of de-industrialisation is a homemade risk. For a long time the mainstream view both in the public and in the political institutions was to push structural change in the direction of a pure service economy. Even the European institutions participated in the wave of uncritical acclamation of the New Economy and the ICT bubbles. Industry, especially the so-called old industries, never attracted adequate interest from the Commission, Council or Parliament. Reducing industry seemed to be a necessary price to pay to follow the path of structural change and modernisation. In this respect the Commission Communication of December 2002 provides an opportunity to revise ideological thoughts and delusions. A new industrial policy has to break with the rules of the past. It has to respect the allocative functions of the markets whilst setting up its own framework of interactive responsibility between markets, political institutions and society. A modern industrial policy follows strategic targets and looks upon markets and competition not as an aim in itself but as tools to reach overall aims. A modern industrial policy focuses on managing change but at the same time supports employment and employment alternatives as well as social inclusion. A modern industrial policy combines the horizontal framework approach with a sectoral approach where the needs of industrial branches and sub-sectors are matched. A modern industrial policy sets up a framework of information and consultation and respects the role of an active and informed workforce within a strategy of change.

2. A new industrial policy profile – managing change instead of preserving structure. The view of the European Metalworkers' Federation

The aim of the EMF's industrial policy is to influence the survival and future development of the metal industry in Europe. The focus of that industrial policy is on sustainability, competitiveness and employment. It is essential to the survival of the European metal unions that competitiveness, sustainability and employment in the European industry are safeguarded and further developed in the face of heightened global competition by taking active steps to shape the situation and securing an appropriate framework for policy on growth.

As a matter of principle, the EMF's industrial policy supports the completion of the EU's Single Market through the euro as being positive for European industry. At the same time, in its industrial policy concept, the EMF emphasises that, alongside a market policy framework, politicians need to influence industrial development with a view to guaranteeing sustainability, competitiveness and a dynamic employment trend.

The EMF believes it is a harmful delusion to suppose that industrial development in Europe can only be controlled through the completion of the Single Market. Sustainability, competitiveness and a high level of employment are indispensable if European industry is to face up to its rivals in globalised competition. For this reason, the EMF advocates a formative industrial policy which is mindful of the competition policy framework applying in a Single Market, but which at the same time ensures it has a strategic effect on industrial development taking account of both sectoral and horizontal conditions.

The EMF's industrial policy approach sets out to help consolidate the balance between competitiveness and a high level of employment, between securing jobs and meeting requirements for restructuring and change, between coordinating market policy and guiding society. For this reason the EMF is aiming to achieve a balanced mix between market forces and an influential industrial policy, for the EMF believes that the market and competition are not ultimate ends in themselves, but must rather contribute towards underpinning and further developing the European social and economic model.

The EMF is critical of the inconsistency and ultimate lack of clarity of the European Commission's conception and practice of industrial policy.

- Any regression of industrial policy to horizontal questions is detrimental to European industrial development because it allows market forces to display their full destructive force in the face of the onslaught of real distortions of global competition.
- The programmatic, ideologically excessive neglect of the sectoral dimension is leading to fatal disorientation and fuelling existing inactivity. Faced with the realities of imperfect competition on a global scale, industrial policy must focus on sectoral development options. The fact that this is happening in part (STAR 21, the steel conflict with the United States, the block exemption rule in the automotive sector) makes it clear that economic reality is asserting itself against the Commission's ideological leanings.
- The programmatic reduction of the Commission's industrial policy to what in the end boils down to a single micro-economically oriented stance is entirely fatal and, when all is said and done, unacceptable, for such a narrow view will ultimately have fatal consequences for European industrial development, with the branch or sector henceforth no longer figuring in active steps to shape policy and industry.

In the EMF's opinion, industrial policy does not necessarily conflict with a competition policy which ensures the reality and development of a Single Market. Rather, the rules of competition policy also require justification, especially with regard to how they help to guarantee competitiveness, sustainability and high employment throughout Europe in the face of globalisation.

For this reason, the EMF regards industrial policy as an opportunity to deploy a differentiated structural policy instrument, but not to voice general support or even the reintroduction of state aid to prop up companies that are unable to compete. State subsidies for uncompetitive companies lead to the employment risks being shifted to companies that are capable of holding their own on the market and often located in other EU member states.

On the one hand it is almost impossible for companies to compete against countries, but on the other hand it is utterly inconceivable that national budgets should in principle serve to subsidise employment in industry.

The EMF's industrial policy is characterised by the close links between horizontal and sectoral instruments.

The key instruments of the EMF's industrial policy's horizontal dimension are competition policy, policy on education and training, research policy, trade policy, environmental policy and energy policy.

Horizontal policy approaches also affect the various branches of industry in different ways. Indeed, it is precisely for this reason that a sectoral industrial policy designed to ensure competitiveness, sustainability and employment is required.

But if competitiveness, sustainability and employment are to be achieved, in addition a sectoral approach is needed to help protect the future potential of the various branches of industry and other areas of activity beyond. With this in mind, the EMF is gearing its industrial policy concept not only towards the European metal industry as a whole, but also in particular towards other sectors of industry, such as the automotive, steel, shipbuilding, ICT, aerospace, defence technology, lift and mechanical engineering sectors.

The EMF's industrial policy strives to achieve security amidst a climate of change, first and foremost for workers, but also for companies. In so doing, the EMF supports restructuring and development as long as they are guided by the criteria of sustainability, competitiveness and employment with regard to the workforce affected. Thus the EMF's industrial policy entails shaping change without neglecting people's legitimate needs for security.

The EMF's industrial policy attempts to forge a close link between horizontal and vertical (sectoral) policy approaches. It is bent on combining competition policy with organisational policy. It serves to guide the actions of the member states as well as those of the European Union, and relies on industrial and sectoral dialogue between the social partners. It also takes on board the shaping and control of globalisation by international financial and trade organisations and provides a framework for an industrial policy work programme for the EMF and its member organisations.

Industrial policy is embedded in the active formation of prevailing macro-economic conditions, which is where it differs in certain key respects from 'conventional' industrial policy. Today, for individual production sites, industries and branches of industry, national subsidies and barriers to the market, whether collectively agreed or not, are increasingly being replaced

by a mixture of different policy building blocks. One consequence of the heightened significance of growth-oriented macro-economic coordination is the observance, evaluation and influencing of decisions made by the European Central Bank regarding its monetary policy and interest rate policy, the financial policy of the EEA countries and EU member states and the economic influences resulting from collective agreements.

On the other hand, the horizontal aspects must be reflected in both the EMF's action plan and its industrial policy profile. Past experiences with restructuring processes (especially mergers and takeovers) have resulted in the EMF finding itself dealing with questions to do with competition, trade conflicts, skills development and vocational training, product innovation and technological development. One particular challenge in this context entails combining these horizontal aspects with vertical options for taking action at sectoral level - options which primarily take account of the competitiveness of companies, sustainability and securing and boosting employment. The vertical approach aims largely to impact on the qualitative and quantitative aspects of employment as well as sustainability and competitiveness at all production sites run by European companies in the European metal industry and also to further develop instruments for representing interests at the company level and trade unions, the objective being to be capable of exerting an appropriate degree of influence on industrial restructuring and of tangibly sharing in the anticipation and shaping of change.

In addition, the EMF is becoming increasingly involved in dialogue with metalworkers' unions facing up to the economic climates of other continents and in the debate with international institutions about global financial policy and trade and investment agreements insofar as they affect the metal industry. The steel trade conflict with the United States and the unfair international competition in the shipbuilding sector are examples of this. Furthermore, the wholesale transfer of production sites in the ICT industry, for example, makes it clear that alongside the European instruments of worker participation and trade union influence, a suitable response to the new strategies for coping with globalisation being implemented by the major groups in this sector is also required at international level. In this regard, there is a pressing need for close coordination with the International Metalworkers' Federation and for realistic cooperation, firstly with other industry federations, and beyond that with the ETUC.

3. The role of the partners involved

European institutions: the European Council, the European Commission and the European Parliament

After heavy criticism by different governments (i.e. Spain, France and Germany) of the neglect of industrial policy by the Commission, the Council itself has to take its responsibility more seriously. The new Council of Ministers for Competitiveness (established during the Seville Council 21st/22nd June 2002) is responsible for Internal Market, Industry and Research Policy questions. This decision-making body has to look after industrial policy aspects in the frame of sustainability and in relation to the Lisbon strategy. Therefore the Council has to balance different interests in this respect. Beside the fact that the Council has to ask the Commission for more and regular reporting concerning the situation in industry, especially regarding the situation in various industrial sectors. The Council as such has to discuss industrial policy issues in depth, regularly and in close cooperation with the different Directorates-General of the European Commission involved. But even in the title of the Council a misunderstanding may already be apparent. 'Competition' is not the only tool, nor the only decisive tool for developing the European economy and especially industry.

Following globalisation and Europeanisation of industry there is good reason to give the European institutions a better and stronger right in economic governance and industrial policy. Here we see an important challenge for the European constitutional debate.

With the foreseen implementation of a Tripartite Social Summit on Growth and Employment, the European Council takes its responsibility by giving the social partners the possibility of being actively involved in the process of fulfilling the Lisbon strategy. This has to lead to consultation between the social partners and the Council in its first spring meeting on a regular basis.

It has to be ensured that industrial policy is one priority on the agenda of the tripartite summit. It is essential to put industrial policy at the top of the agenda. If the tripartite summit fails to discuss industrial policy items, the same consultation procedure has to be implemented in the area of industrial policy within the Council for Competitiveness, at its first autumn meeting and on a regular basis. These consultations should look also on industrial restructuring and ensure the balance of competition and employment aspects in this respect. They should also include trade and internal market aspects.

From our point of view the European Council should immediately properly focus on European industry.

This means

- delivering an annual report on the situation and the development perspectives of industry in Europe in a global view,
- giving an evaluation and drawing up industrial policy conclusions by middle range guidelines for the future developments of industrial policy to manage change in European industry.

In July 2002 – after a long period of silence – the Commission organised an internal seminar on industrial policy and took the decision to revisit its strategy, which was set up in 1990 ‘Industrial Policy in a competitive and open environment: guidelines for a Community approach’ and continued with setting a framework in 1993 with the ‘White Paper on Growth, Employment and Competitiveness’, in 1994 with the Communication ‘An industrial competitiveness policy for the European Union’ and in 1999 with the Communication entitled ‘The competitiveness of European enterprises in the face of globalisation – How it can be encouraged’. This strategy has mainly focused on competition policy and support for small and medium-sized enterprises. The General Director of DG Enterprise, Jean-Paul Mingasson, shows, within his article in ‘Enterprise Europe No 9’ about ‘Revisiting industrial policy’, a new sensitivity within the Commission as far as industrial policy is concerned. Following this the European Commission launched its Communication on ‘Industrial Policy in an enlarged EU’ on December 11th 2002. The return to a 13-year-old strategy does not give the impression that the Commission thought that much about what industrial policy could mean under new global conditions, in the single currency zone and in an enlarged Europe.

In this latest Communication the Commission’s DG Enterprise does not describe very clearly what it is going to do itself on industrial policy. There are a lot of responsibilities for other actors in the Commission, such as the responsible DG for trade, competition, internal market or regional policy, following the idea that industrial policy has to be seen as a horizontal issue. But DG Enterprise does not describe its own tasks appropriate. The few sectoral examples mentioned in the annex to the Communication were developed as a result of initiatives from stakeholders outside the Commission. In other industry areas such as the ICT industry – damaged by the burst bubble – including the interdependences between the so-called new

and old economy no analysis has been made at all. What DG Enterprise has to do in future, on a regular basis, for all industrial sectors in Europe is become clearer following these 'best practices'. The need for a modern type of industrial policy is well defined and clear. For industrial, and the European metalworking sectors in particular, this means that the Commission is called upon:

- to set up an action programme to support industry in managing change, the challenges of globalisation, integrating horizontal and sectoral industrial policy approaches for competitiveness and employment
- to make regular analyses of the situation in the different metal sectors concerning productivity, trade, R&D, employment, training and wage figures which have to be presented each half-year to the stakeholders, including the social partners;
- to make updates of these figures with the assistance of the stakeholders and the social partners and efforts to come to a common interpretation of these figures;
- to make forecasts in respect of the possible development of the individual sectors in the short, medium and long term, based on these analyses;
- to develop alternative scenarios for the various sectors and analyse these in close cooperation with the social partners and other stakeholders in order to anticipate change and give all the partners involved a platform for managing restructuring (ongoing restructuring, special cases of restructuring);
- to open and fill its tool-box in order to be practically involved in managing restructuring in specific cases (unfair competition, trade conflicts, far-reaching sector crises) and to assist at specific times the transition to a stabilised working environment;
- to ensure that competitiveness is combined with a high level of employment in a restructuring process which achieves a balance between the social needs of employees and the competitiveness issues for industry;
- to take the expertise of the EMCC into account.

Following these proposals it is clear from the EMF point of view that, as far as industrial policy is concerned, the Commission cannot simply go back to its strategy of 1990 because this does not provide the appropriate basis for anticipating change and managing restructuring.

The European Parliament, as a central player in European decision-making, has a key role in the field of industrial policy and the management of change. Beside declarations on industrial policy and restructuring there has not been a real political initiative by the European Parliament concerning anticipating change and managing restructuring as a tool for industrial policy.

This issue cannot simply be handled during seminars, statements or in reaction to Commission initiatives or proposals for EU directives. Since the members of the Parliament are elected within regions and sometimes individually take care of companies in their home region – which, incidentally, is not a real *European* manner to behave – there is no common strategy of the European Parliament in the case of industrial policy including the anticipation of change and managing restructuring.

Therefore, the European Parliament should set up a continuous evaluation on restructuring and managing change in its main committees. There should be continuous involvement of the social partners in the evaluation and monitoring process.

We would like to see the European Parliament start specific initiatives in the area of industrial policy with regular debates about the specific situations in the different industrial sectors clearly indicating what has to be done in economic crises and in preventing these.

Therefore the European Parliament is a strategic partner for the EMF and possibly a motor as far as European industrial policy is concerned.

The European Parliament should follow up major merger and restructuring issues – and discuss them in the light of a balanced approach of competitiveness and employment. In the Parliament there could be an ongoing debate about the never ending story of restructuring in European industry.

The European Parliament could have a valuable impact on European industrial policy through:

- continuous monitoring process on economic structural change especially in respect to sectoral and economy-wide change
- regular benchmarking of industrial restructuring and the management of change, especially in comparison with examples in the US and Asia.

The social partners as stakeholders: employers and trade unions

European industry associations and employer organisations should be prepared for regular consultations in the field of industrial policy with the European institutions and the EMF. The final goal should be the setting up of common working structures with the EMF to be jointly involved in anticipating change and managing restructuring on a European sectoral and company level.

Individual lobbying of companies to the European institutions is not and will never be an alternative to a coherent strategy in the case of managing change in a socially acceptable manner by taking all relevant aspects (Part II) into account. Both social partners have to be able to consult the European institutions – or to be consulted by the European institutions – jointly and on an equal basis.

Therefore the European industry associations and employer organisations have to prepare themselves by moving responsibilities from their national member organisations and individual company members to the European arena.

This includes readiness for discussions and negotiations in the framework of social dialogue and industrial relations connected with the national level for the balancing of interests in concrete cases of managing restructuring.

The EMF is able and willing to discuss the different aspects of industrial policy with all partners involved. This includes the dialogue with industry and the European institutions with the respective responsibility. In addition to this we need a visible framework for a coherent industrial policy within the ETUC. This has to be combined with a macro-economic policy to give the appropriate platform for individual industrial policy issues as far as trade, competition and sustainability are concerned.

4. Examples for industrial policy in different metal sectors and companies

The EMF's industrial policy is characterised by the close links between horizontal (e.g. competition policy, policy on education and training, research policy, trade policy, environmental policy and energy policy) and sectoral strategies for priority sectors. Industrial policy has to address horizontal as well as sectoral issues if it is to be a useful tool for managing industrial change and restructuring. The EMF does not support the definition

of industrial policy as an instrument to 'pick the winner' through direct intervention in favour of certain sectors. However, it is clear that horizontal initiatives have to be implemented at the sectoral level if they are to be of any practical value. Horizontal policy approaches affect the various branches of industry in different ways. But if competitiveness, sustainability and employment are to be achieved, a sectoral approach is needed in addition to help protect the future potential of the various branches of industry and other areas of activity beyond. With this in mind, the EMF is gearing its industrial policy concept towards the European metal industry as a whole, but also to the metal sector as a part of European industry, including industry-related services.

From the EMF's point of view there is a need to develop an initiative within the EU framework for the future development of the different industries. Such an industrial initiative at the level of the European institutions should produce a united European framework of industrial policies and a coherent approach for Europe's metal sector and its output, encompassing all issues related to these high-tech sectors in Europe. The common initiative of the Commission, industry and the trade unions within the aerospace sector, the STAR 21 (Strategic Aerospace Review for the 21st century) initiative is from the EMF point of view, a good example for developing a future oriented platform for the other metal sector industries as well.

Shipbuilding industry

Favourable conditions for the development of industrial sectors and enterprises do require active industrial policy measures. Creating the right framework conditions for otherwise healthy enterprises to thrive is an important task for European policy makers. In that context, combating unfair trade practices remains a key issue for the metal sector, in particular for the European shipbuilding industry and the steel sector.

The European shipbuilding industry has lost several years fighting unfair competition practices from South Korean shipyards. This situation requires a determined response from the EU authorities and institutions, mainly the Council and the Commission.

It is indispensable that the dumping practices, both economic and social, of the South Korean shipbuilding industry cease. The decisive action that finally has been taken in bringing the Korea case to the WTO is welcomed by the EMF. However it is very important that the EU, and in particular the Council, maintain a firm stand before WTO.

The initiative 'LeaderSHIP 2015' proposed by industry and the Commission is an excellent first step to finding a comprehensive approach for the needs of the shipbuilding industry. The involvement of the EMF sets a good and new example of how to interpret human resource policies and social cohesion strategies in sectoral industrial policies.

In respect of the sectoral social dialogue in the shipbuilding industry the EMF and Committee of EU Shipbuilder's Associations (CESA) have recently applied jointly to the Commission for the establishment of a sectoral social dialogue committee. It is from the EMF's point of view very important to put the industrial policy related issues at the top of the agenda in such a dialogue if competitiveness, sustainability and employment are to be achieved in the sector.

Steel industry

In 2002 combating unfair trade practices was on the top of the agenda in the European steel sector. The EMF applauds the determined stance taken by the European Union against US protectionism vis à vis steel. Both sides should find a way back to multilateral cooperation and commit to practising free and fair trade. It is clear that unilateral import restrictions do not demonstrate how to reduce surplus capacity levels or how to restructure in a socially acceptable manner. In February 2002, a delegation of EMF representatives met with steel experts in the USA to discuss the controversy over plans to introduce customs duties and quotas in the US steel sector. For their part, the Americans, not very surprisingly perhaps, were very interested in Europe's experience of the ECSC Treaty.

On 23 July 2002 the ECSC Treaty expired after 50 years. The ECSC experience demonstrated that restructuring in a socially responsible manner is possible and that a competitive European steel industry is the result of continuous research and innovation activities supported by a continuous sectoral social dialogue. The ECSC Treaty introduced the first example of sector-based dialogue at European level through the setting up of the ECSC Consultative Committee, a body composed of representatives of the producers, workers, consumers and dealers of the two industries (steel and coal).

Research and innovation programmes, programmes for the training and retraining of staff, social measures, loans for investment, building programmes, prices and competition policy, statistics and structured sectoral dialogue have in fact proved effective instruments for a single, consistent

development strategy. Research activities have also helped substantially to improve working conditions and the environmental compatibility of production technologies, incorporating socio-economic aspects, long before other sectors considered them.

The EMF has made great efforts in respect of how to follow up the ECSC Treaty. The legacy of the ECSC experience will not be lost, but will be used appropriately in the continuation of research activities under the 'Research Programme of the Coal and Steel Research Fund'. Furthermore, it is clear that the experiences of the ECSC should be taken on board by the Economic and Social Committee (ESC). Under the title Consultative Commission on Industrial Change (CCIC) a new working group was set up within the ESC in summer 2002, with the aim of transferring the ESCS sectoral intervention model to the other major European industrial sectors. The EMF considers it very important that the ECSC experience be used to support the restructuring process that will follow the EU enlargement.

The ECSC experiences from the social dialogue of the Mixed Committee Steel should also be used through the establishment of a committee for sectoral social dialogue for the European steel industry. The EMF strongly confirms its willingness to continue a substantial industrial and social dialogue and meaningful consultation with industry (EUROFER) and the European institutions, especially the Commission and Parliament. The EMF appreciates that EUROFER has declared its intention to open the industrial policy discussion in the framework of a future social dialogue in the steel sector.

ICT

With its dogmatic focus during the last decades on competitiveness alone on the one hand and main support for the so-called 'new economy' on the other hand, the Commission ran into a trap, ignoring the well-known fact that services are interlinked with other parts of the economy and not seriously analysing the consumer side of services – as it should have done for industry-related services. The Commission is well advised to come back to a more balanced approach to industrial policy.

The EMF has been wondering for years why the Commission to date has not been able and/or willing to undertake serious analysis on the different parts of the so-called new economy as there are different substructures of the ICT industry and about the interlink of the ICT industry with so called traditional industries.

There is of course another question: was the Commission never warned about the consequences of a very limited policy approach in respect of the ICT industry? Was the Commission never warned about the resulting employment aspects within the industry as a whole following ICT activities with delocalisation of manufacturing to outside Europe?

The EMF therefore calls on the European Commission to draw up a clear description of the situation in the ICT sector, including scenarios in respect of possible future developments in the sector – taking responsibility for employment, global aspects as well as EU enlargement into account

The following are the four most important demands, as we see them, for an initiative in the medium term:

1. Presentation of a European report on competitiveness and employment trends in the ICT industry (the analyses and statements produced by the ICT watchdog EITO (European Information Technology Observatory) fall far short of what is required).
2. Discussion of this report by means of its inclusion on the agenda of the meeting of the Council of Industry Ministers as soon as possible.
3. Establishment of a sectoral ICT Forum to provide information on the industrial restructuring processes already under way in the ICT industry. The Forum must help to ensure that benchmarking via industrial restructuring in the ICT industry results in the spread of best practices.
4. Production of a European model for the ICT industry with proper involvement of the stakeholders.

5. Enlargement and its impact on managing change

European integration as a tool to handle globalisation

The main answer to the neo-liberal concept of globalisation is the European integration process with its social dimension. The EU enlargement towards central and eastern Europe (and the Mediterranean countries) is historical in many senses. The majority of the incoming member states are countries that were previously characterised by a centrally-planned economy and state ownership. With the breakdown of the Communist system and the transition to a market economy the situation now clearly demonstrates that capitalism did not win but was left behind.

With the EU enlargement to former Communist countries, all the stakeholders involved can now show whether they learned something from the de-industrialisation as a result of a misleading policy in German reunification. Managing a proper balance between competition, employment and regional development has yet to be shown.

Considering that companies in all metal sectors operate more or less globally and that Europe is only one strategic field amongst others, the enlargement to central and eastern Europe has to be looked at as a part of global company strategies in the metalworking industry.

Industrial policy: a tool for managing change in the enlargement process

With the implementation of the 'acquis communautaire' the EU also made clear that enlargement is not a common project between two big groups of countries but a clear EU concept – with internal reform lagging behind however.

In its Resolution on EU enlargement of November 2000 the EMF made it very clear that this process has to lead to a win-win situation. What does this mean as far as industrial policy is concerned and when a proper balance between shareholder and stakeholder interest is our demand (east-west, south-north)?

The EMF is aware that the necessary flow of foreign direct investment (FDI) and relocation are going hand in hand, with varying consequences in various industrial sectors with respect to the different countries involved. This has also different consequences on the regions where relocation takes place. However, in its Communication on industrial policy in an enlarged EU dated 11th December 2002, there is no indication of what the EU Commission learned from lesson number one because its toolbox is almost empty. The vague hint about the Structural Funds is of course not wrong, but this is only one aspect and one that is handled outside of DG Enterprise.

The empty toolbox perhaps reflects the fact that knowledge about the real situation of the central and eastern European industry (as in 1989/90 about the industry in the DDR) is not that deep or poses problems for the analysts.

It is of course simpler to continually refer to competition policy aspects, as no better alibi exists for doing nothing.

The existing institutions seem to be not really prepared for handling the enlargement process and are moving the subject from one institution to another and from one agenda to another.

However, it cannot be in our interests to see the new member countries enter the EU in a way that leads to the collapse of industrial areas and migration produced as a result of non-activity in the field of industrial policy. In addition to the 'acquis communautaire' we need common strategies for handling the enlargement process in practice as far as industry is concerned. Some instruments are already mentioned in part III of this paper. Additional flexible tools for certain periods should include the following:

- ad hoc tripartite expert groups in a country/sector mix managed by the European Commission;
- the setting up of East/West networks of research institutions to assist with analyses and forecasts in specific areas (sectors/regions);
- the nomination of independent monitors to ensure that all interests are covered and that all the partners involved are both heard and respected (good practice in respect of CSR could be attained here as well);
- use of the analysis of the European Monitoring Centre on Change to anticipate change.

In more or less all the metalworking sectors we are focusing on worldwide over-capacities as far as the lack of consumers is concerned. This makes the enlargement process even more complicated because company strategies will lead us to the minimising or cutting production lines. In western Europe we have had our first experiences of negotiating restructuring plans at company level to solve the problem of redundancies.

Now we have partners involved who will have no direct access to the EU law on information and consultation rights for the next one and a half years at least. Therefore special negotiation bodies at company level and bilateral sector committees have to be set up for a certain period of time to build a bridge to future social dialogue structures in an enlarged EU at company and sectoral level. This has to be tackled in areas where companies from other world regions are moving FDI into the new member states as well.

In general the Commission has to take the initiative to set up an 'Industrial policy forum on enlargement' for the next ten years to look at growth and employment issues, especially within the new member states but which should be open to the associated countries in the Balkan region - also and

especially for companies moving from other world regions into the new member states.

Anticipating change and the management of restructuring in a market economy is a double challenge for all the partners involved in the new member states. As far as industrial restructuring in the enlargement process is concerned the EU Commission has to do the following from an industrial point of view:

- to set up clear criteria as to what has to be respected in the case of restructuring within the framework of sustainability and trying to fulfil the Lisbon strategy;
- to prepare a proper agenda to discuss all related aspects in the above-mentioned forum;
- to provide access to the results of good practices concerning industrial restructuring to the partners involved in the new member countries so that they have the chance to participate and to take advantage of these.

The case of the Czech steel industry

The Czech metalworking industry is presently undergoing a deep recession, the second of this kind since 1989. Czechoslovakia used to be a major steel producer until 1989. In 1989, the total production of steel edged up to 14.7m tonnes, of which 10.1m tonnes were made in the Czech Republic and 4.6m tonnes in Slovakia. The first crisis was linked with the disintegration of Council for Mutual Economic Assistance (CMEA) markets and was characterised by the abrupt decline of steel production when output dropped from 10.7m tonnes in 1989 to 6.8m tonnes in 1993. A moderate improvement followed with production climbing to 7.2m tonnes by 1995. The second downturn started in 1997 with 6.75m tonnes, which gradually shrank to under 6m tonnes by 1999.

In the negotiations with the EU Commission the privatisation and restructuring of the steel industry is the most problematic industrial challenge in the process of enlargement.

Worldwide over-capacities, a lack of productivity and competitiveness, mono-structured regions, polluted areas and high unemployment show clearly that the future can only be managed with a good policy mix on a cross-border basis. This could cover the Czech and Polish steel regions in one way if there is a clear vision of restructuring and compatibility of restructuring plans on the one hand and clear proposals from strategic investors on the other.

An independent European moderator should be established to promote the process with all the stakeholders involved and achieve balanced restructuring in the European steel industry (East and West) in a socially acceptable manner.

In the light of the fact that western European steel producers are looking to buy on the US steel market in due course, the European scenario for a well-structured steel industry ought to be agreed soon.

The case of the Polish shipbuilding industry

The situation in the Polish shipbuilding industry gives a differentiated picture of how successful or unsuccessful restructuring of heavy industry can be.

The shipbuilding industry in 1990/91 was in deep crisis. Old orders from the Soviet Union were no longer paid and there was no prospect of new orders. In the early Nineties the management of the Gdynia shipyard – different to other shipyards in Poland – started a deep restructuring process in the yard supported by the trade unions.

The result showed that if you start restructuring in time and with a clear concept you can succeed in a tough world market alongside other competitors. The crisis in the Polish shipbuilding industry now has to be seen in the light of the unfair competition practice of Korean shipyards on the world market and the effects on the whole of the European shipbuilding industry.

The outlook in this respect is not very positive and restricts the room for new actors coming from Croatia, Romania and Bulgaria. But even here the role of strategic investors or partners coming from outside Europe – i.e. from Korea or other countries – can generate guidelines on the period of time necessary for the process of privatisation and restructuring.

The expectations for the Polish shipbuilding industry are similar to the forecast for the European shipbuilding industry as such after successful integration into the market.

Company managements within the European shipbuilding industry have not been able as yet to describe a future strategy for the European shipbuilding sector, including the new member states, because of the national fragmentation of this industry. The pressure of the world market is obviously not high enough to bring European shipbuilders together to set up

a common strategy for their sector in close cooperation with the stakeholders involved.

In our two examples on shipbuilding and steel there is a need for a comprehensive industrial policy for managing change, which supports:

- an integrative employment policy which supports adjustment and change
- strong and competitive industry;
- a strategic approach to promoting active investment from outside;
- a reduction in capacity with the active support of the EU;
- the abolition of state aid for maintaining or increasing capacity whilst improving national and European help for managing change and decreasing capacity;
- improvements for industry as regards technology and quality in accordance with market needs;
- promotion of an active labour market policy;
- the establishment of a long-term training system;
- restructuring of the regions;
- the fight against pollution.

6. Industrial policy on the agenda of sectoral and cross-sectoral social dialogue

Managing industrial restructuring through industrial policy in the social dialogue

In the area of industrial policy, bearing in mind the importance of managing restructuring in a socially responsible way, the opportunities for growth, productivity and employment are of great concern. In this context the social dialogue will help the trade unions to assess the necessary steps to be taken in order to develop the European industry.

However, without active encouragement of the sectoral and cross-sectoral dialogue at European level, it will remain limited in its scope and impact. In order to actively encourage and to strengthen the dialogue between trade unions and employers' organisations at the European level it is clear that the primary goal of these measures has to be to overcome the reluctance on the employers' side to engage in dialogue.

New initiatives have to be developed vis à vis the Social Partners in those sectors especially effected by industrial change and which therefore play a decisive role in implementing employment strategy. The EMF therefore welcomes the fresh impetus for the initiation, promotion and consolidation of the social dialogue at European level as expressed in the Commission Communication 'The European social dialogue: a force for innovation and change' dated 26 June 2002. The EMF applauds the Commission's submission of this Communication, particularly coming as it does at a time when Europe-wide solutions for accommodating the interests of workers are so evidently being uncoupled from the development of market policy and political integration.

Social dialogue is no mere by-product of the European social model, but is rather a fundamental, constant factor of change and further development in the context of globalisation. Consequently, in addition to serving as a fundamental tool for shaping industrial relations between the social partners, social dialogue must also be a structure for information, consultation and negotiation that prepares the ground for and then monitors decisions taken by the European institutions, for example in the field of industrial policy. In this context, the EMF is however critical of the Commission's lack of reflection on the importance of having industrial policy on the agenda of the social dialogue.

The EMF will support the Commission and the other European institutions wherever opportunities arise to generate fresh momentum in an attempt to overcome social problems within the area of industrial policy, such as market policy, contractual policy, transnational companies and especially in relation to employment-related issues with regard to the promotion of socially acceptable restructuring measures.

The social dialogue could also lead to the development of a form of benchmarking along the lines of improving workers' social conditions as a strategic foundation for competitiveness. Such a form of benchmarking can result in the development of sectoral bargaining principles with respect to the application and dissemination of these results.

Strategic importance of the sectoral and multi-sectoral social dialogue

The Commission's Communication fails to appreciate just how important a role the social dialogue at sectoral level can play in injecting fresh dynamism into Europe's social dimension. Owing to the strategic gap in the area of the sectoral social dialogue, neither tripartite summits nor multi-

sectoral dialogues can meaningfully help to make progress in the social domain. This insufficient consideration of the sectoral social dialogue is a strategic deficiency in the Commission's Communication.

The EMF warns the Commission against breaking down the sectors of industry for the social dialogue in an overly global manner. At this point in time, the Commission is considering the metal industry as a whole; this is not being specific enough to foster the development of work programmes on the sectoral social dialogue. For example the automotive industry, the aerospace industry, the steel industry, the defence industry, the shipbuilding industry and the ICT industry all have their own specific industrial profiles.

If the ambition is to engage in specific work programmes designed to boost the prospects of industrial development, competitiveness, employment, and people's social interests, the sub-sectors must be allowed to play a central role in the sectoral social dialogue.

The sectoral and multi-sectoral social dialogue could also play a strategic role for the Commission if it were to use it as a consultation tool for any issues that may seriously impact on industrial development, employment and the social interests of workers. Wherever sectoral or multi-sectoral social dialogue is absent, the European Commission should make a point of eliciting (preferably joint) opinions from the relevant industrial and social partners. The EMF calls upon the Commission – and DG Employment in particular, though not exclusively – to consult the industrial and social partners on any issues falling within the respective industrial and social domains.

Industrial policy in the social dialogue at company level

Managing change in a socially responsible way at company level implies informing and consulting workers at a very early stage and at the highest level of decision-making and establishing a continuous social dialogue. Recent restructuring processes in ICT multinationals companies took place disregarding basic rights for information and consultation of workers.

To help companies and their employees to cope with a situation of continuous change, the tools for the anticipation of industrial change have to be improved. Though mentioned in the conclusions of the Lisbon Council, not much has been done in this respect in the past year. The EMF would like to re-launch the idea of 'Managing Change Reports' (first mentioned in the Recommendations of the High Level Group on Restructuring, the so-called

Gyllenhammar Report, in December 1998). To encourage (or even oblige) companies to report on a yearly basis on the challenges they are facing and the ways and means used to prepare the company and its workforce for these changes would be the starting point for a fruitful dialogue between management and employees. The EMF considers that these Managing Change Reports and their discussion with the workforce should be part of a companies' social reporting obligation.

Conclusion

We welcome the Commission Communication (2002) 714 on 'Industrial Policy in an Enlarged Europe'. We appreciate the process of revisiting the Commission's industrial policy approach, which provides a new opportunity to develop an appropriate policy approach and tool-box for managing change and developing the potentials for a strong European industry within the framework of the aims of the Lisbon Summit in the face of the challenges of globalisation. The new Commission Communication faces a decisive challenge, to not only contribute effectively to growth and competitiveness and a high level of employment in western European industry but at the same time to provide support for the successful integration of industry in the enlargement countries into the process decided in Copenhagen in December 2002.

We welcome the Commission Communication as the starting point of an open process of information and consultation with all stakeholders. We see the Communication process as an opportunity to unite the efforts of the Commission and Council, industry (the industry associations and the employers organisations) and the trade unions. We see elements of change, which create an opportunity for a new and realistic approach to fight against the fact that in recent years industry has not developed - and has not been given the appropriate support to develop - all its potential for growth, productivity and employment. As a consequence, the growth potential of the overall economy has deteriorated and industry has not yet realized its possibilities.

We note that the Commission Communication of December 2002 makes reference to earlier initiatives starting from the 1990 document 'Industrial Policy in a competitive and open environment: guidelines for a Community approach', continuing with the setting of the framework in 1993 with the 'White Paper on Growth, Employment and Competitiveness' and in 1994 with the Communication 'The competitiveness of European enterprises in

the face of globalisation – How it can be encouraged’ and other initiatives in the following years in which competitive aspects were always at the core. Industrial development has shown that this approach is too restricted.

We recognise that there has been a move on from the too simplistic point of view that only market regulation will create a strong and competitive industry in Europe. In some Commission positions one could find this more or less ideological view, i.e. that at the end of the day market deregulation alone would lead us to a competitive economic structure including a strong and competitive industry. This approach was a real theoretic approach; under the conditions of globalisation, where there has been a lot of deterioration in the light of pure competition, the European Union often seemed to be trying to be the top pupil in the ‘competition’ class, but what was obviously neglected was the fact that the main competitors in the US and Asia were organising strong support for their own industrial bases. The European Union has hopefully changed its position and realises that a strong European industry has to be supported by a coherent horizontal and sectoral policy.

We take note of the internal discussion of the Commission on industrial policy based on internal seminars after having recognised that the completion of the Single Market and a stable macro-economic framework alone cannot prevent the jeopardizing of the goals set at the Lisbon Council in 2002, i.e. to make the EU by 2010 ‘the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs and greater social cohesion’.

From our point of view, the Commission has contributed to neglect of the importance of industry at the European level. The Commission has looked to the miracles of the ICT industry and the New Economy far too often and for too long. The burst bubble has brought us back to reality and even the ICT industry has now to be the subject of a modern type of industrial policy. The Commission has failed completely as regards facing the real challenge, the interconnection between the Old and the New Economy, between services and ICT on the one side and industry on the other.

Employees and their representatives in industry could often have had the impression that the Commission and the Council were not really interested in what impact European policy decisions would have on industry in Europe. There is a strong need for responsible monitoring and checkups to ensure that all stakeholders may know what impact European policy decisions and directives will have on industry perspectives.

We reflect the political and social demands with which industry is confronted. Industry has to be pro-active to respond to increasing political, social and environmental demands. We regret that there is no integrated approach in the Commission Communication so as to deliver a framework for a coherent industrial policy approach. From our point of view, the sustainability approach, with its balanced recognition of economic, social and environmental aspects, has to be the focal point of a modern industrial policy strategy. The Commission Communication gives some idea of this, but it is not consistent as regards developing economic, social and environmental aspects in an equal way within a balanced approach.

We see the Commission Communication in a positive light when it breaks with the simple hypothesis that market deregulation and market operation alone would lead us to a strong European industry. We agree that industrial policy must be a liberated policy approach where all stakeholders have to shoulder their responsibilities. As far as the European institutions, and the Commission in particular, are concerned, reducing industrial policy to framework policy is not sufficient. Reducing industrial policy to framework policy neglects the potential and the responsibility of the reflected role of the European Union institutions and the member states in supporting the sustainability of European industry.

We completely agree that the old-fashioned style of industrial policy that depends on State aid and subsidies to protect industry against competition and maintains capacities even when they do not meet producers' or consumers' needs is no guideline for the future. Industrial policy as a sustainability policy has to ensure support for change in industry that meets the criteria of stability in economic, social and environmental terms.

Industrial policy as the 'managing change approach' has to bring all the stakeholders into the pro-active process of developing competitive-ness, high levels of employment and good environmental standards. Social Dialogue is an important and decisive tool to keep all relevant interests in a productive balance. The Commission Communication obviously contains some idea of this interaction, but does not indicate any willingness to elaborate the structure and substance of such a dialogue.

We consider that a modern type of industrial policy has to combine horizontal and vertical aspects. A modern industrial policy combines framework approaches with a clear sectoral approach. The Commission Communication gives some indication of this but in so far as the real

sectoral issues are excluded in the annex there cannot be said to be any real integrated approach at all. The Commission is obviously a prisoner of its own prejudices. The STAR21 Report for the European aerospace industry has obviously reflected the role of the member states and the European institutions in promoting industry in all respects. The European Commission however fails to give a coherent analysis of the reality of industrial policy compared to the ideology of industrial policy - which is not always coherent with the ideology of market liberalisation.

We draw attention to the fact that the absence of a coherent industrial policy and the rigid belief in market forces in some industries has brought the latter to the edge of their possible substantial contribution to European competitiveness. The disaster of mass redundancies and bankruptcies in the ICT industry has led us to a situation now in which even core activities in production, research and development and the maintaining of a qualified workforce cannot be safeguarded. This is a clear illustration of the fact that on the one side the Commission has overstressed the contribution of the ICT industry to growth and employment and on the other side has neglected the real deterioration process.

We agree with the Commission on the important role of SMEs as regards innovation and employment, but at the same time points out that we need strong global players in European industry who are prime contractors and system leaders. Big multinationals should not be punished on the grounds that they are big. Industrial policy in Europe, including competition policy, should be part of a policy that creates a differentiated structure composed of SMEs and big, multinational prime contractors in Europe.

We consider that there are a number of good examples in the Commission Communication that highlight the role played by a qualified workforce as regards competitiveness and growth of industry. If education and training is a decisive strategic tool for the implementation of high technology, a broader use of ICT, and hence increasing growth productivity and employment, then a Commission Communication on industrial policy has to be far more substantial in matters of education and training policy. We have already seen that skill shortages form a serious barrier to growth and employment in the metal sector.

From our point of view the enlargement issue is not sufficiently covered - even if this is part of the title of the Communication. It is not enough to say that the main adaptations between the enlargement countries and the

European Single Market have already taken place; in fact the opposite is true: we are about to face a huge wave of adjustments, which have to be matched by a coherent industrial policy strategy. Being integrated in the Single Market and applying equal competition rules is one thing, but the path from State aid and subsidies to guaranteed employment, towards regaining productivity and competitiveness is not only long, it is difficult. The path has to be properly managed and organised. Here lies a decisive responsibility of State authorities both on the EU level and on the level of the member states.

A modern type of industrial policy has to create a framework for industrial development. It has to recognise that industry is the source of Europe's wealth. In addition to the framework there is a need for specific sectoral policies that can be seen as a tailor-made suit for each sector. This should include education and training policy, energy policy, trade policy, innovation, as well as the implementation of ICT technology, new forms of work organisation, new types of production chains and new competition policy approaches. The Commission Communication will be a great success when the Commission officially accepts that industrial policy has to be a mixture of general horizontal and specific vertical approaches. The Commission will be responsible for its own failure if, at the end of the day, the revisiting of industrial policy does not deliver this specific tool-box but simply reveals that the only true industrial policy is no industrial policy, i.e. the domination of the markets.

Philippe Pochet and Etienne Arcq

UNICE and CEEP in 2002

Introduction

1. The social dialogue
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Conclusion

Introduction

Following their joint declaration to the Laeken summit, in December 2001, the European social partners¹ undertook to draw up in 2002 what was to be an autonomous work programme (Arcq and Pochet, 2002). For the record, they clarified in the aforementioned declaration the differences between tripartite concertation (social partners - public authorities), social dialogue (bipartite talks between the social partners, whether or not prompted by a Commission consultation) and consultation of the social partners (taking one of several forms). In December 2002 they unveiled an autonomous three-year programme (2003-2005) comprising twenty or so initiatives. This programme is tailored to the strategy pursued via the Lisbon objectives, on the one hand, and to the preparations for enlargement, on the other. The social partners held talks throughout 2002 with a view to identifying topics of common interest. Three topics emerged: employment, enlargement and mobility. These are to be addressed by a variety of means ranging from European agreements to opinions, recommendations, exchanges of experience, etc. Furthermore, an agreement on telework signed in July was the first one to go down the road of 'voluntary' agreements at cross-industry level, i.e. implemented by the social partners themselves at national level.

This clarification of the terms used, the agreement on telework and the new work programme provide scope for a major change in European industrial relations, at least from a procedural point of view (strengthening the bipartite social dialogue). It also marks a new strategy direction on the part of UNICE which, as we have reported year after year, has always taken one step forward and two steps back when it comes to the social dialogue - and even then only under external pressure. For the employers' organisations, and for UNICE in particular, it is a matter of proving that direct negotiations with the trade unions are a possible course of action. Whereas something important has happened in procedural terms, pointing to a change of stance by the main parties to the social dialogue, our analysis of other texts produced by UNICE indicates by contrast that its former attitudes remain deeply ingrained.

¹ The Union of Industrial and Employers' Confederations of Europe (UNICE), the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC).

UEAPME is now fully involved in the cross-industry social dialogue - a remarkable turnaround in less than ten years. As for CEEP, it seems to be continuing its mutation into the representative body for local services of general interest, and to be focusing mainly on European-level debates around services of general interest. Our reading of UNICE and CEEP opinions on social matters in 2002 makes it perfectly plain that they do not express views on the same subjects. For this reason we shall devote a separate section to CEEP opinions this year.

Our first section is devoted to developments concerning the social dialogue. The second deals with social protection, and pensions in particular. It is worth mentioning in this connection that UNICE has now come out clearly in favour of the use of the Open Method of Co-ordination (see for example UNICE, 2002a and 2003). Our third section covers UNICE's other opinions in respect of social affairs; the fourth reports on CEEP opinions, especially regarding services of general interest. We shall conclude by speculating as to UNICE's position concerning this new development, the autonomous social dialogue.

1. The social dialogue

2002 was marked by three important events: the signing of a voluntary agreement on telework, the unveiling of the social partners' three-year work programme and the Commission Communication on the future of the social dialogue. In addition, the social partners adopted a non-binding framework agreement on training in February 2002². Talks on the subject of company restructuring, on the other hand, made little headway.

For the record, in March 2001 UNICE proposed opening autonomous negotiations on telework. The ETUC was taken by surprise, since UNICE had previously voiced reservations about this matter (Degryse, 2002). It had no intention of seeking a framework agreement between the social partners - any such agreement would subsequently be turned into a directive - but rather a voluntary agreement to be implemented by the social partners nationally. The start of the negotiations was clouded by uncertainty as to what status should be given to any future agreement. According to Degryse,

² 'Framework of actions for the lifelong development of competencies and qualifications'. The signatories undertook to promote the agreement among their members and to produce an annual report. The actions are to be assessed after three years.

the agreement signed on 16 July 2002 represents a test case: UNICE's change of tack 'is in keeping with the spirit of the times: 'soft law' and open methods of co-ordination are currently enjoying a favourable wind, especially in the area of social policy' (Degryse, 2002: 34). The agreement contains commitments by members of the ETUC, UNICE and CEEP that implementation will be in accordance with the social partners' specific practices in the member states (Degryse, 2002 and 2003). The new procedure adopted implies that the social partners themselves undertake to monitor the implementation of their agreement. It is their members (national employers' federations and cross-industry trade unions) who are responsible for implementation in each member state. An *ad hoc* group was formed under the auspices of the Social Dialogue Committee for the purpose of monitoring the agreement. One genuine cause for concern is that considerable discrepancies in the balance of power between the social partners in the member states could lead to very different outcomes in different cases, which could not have happened under traditional legislative procedures.

One reading of this agreement would be that after some setbacks (temporary work; information and consultation at national level), the pendulum has swung back the other way prompting the conclusion of an agreement. Perversely, the failure to enter into negotiations on European works councils in 1994 worked to the advantage of the negotiations on parental leave. Furthermore, it is also worth pointing out that telework is a relatively new issue on which the member states have no fixed body of legislation. There are however grounds to believe that, by putting contact between the social partners on a firmer footing, this procedure will strengthen their capacity for dialogue.

This agreement on telework has been bolstered by the agreement on a three-year work programme. Some of the aspects addressed in the social partners' three-year programme are likewise new, such as the implications of enlargement³. This is in any event a new phase for both trade unions and employers, in that it explores the contractual relations limiting the role of the Community institutions. For UNICE, it is also a matter of proving that this type of agreement can function. A number of questions nevertheless remain

³ Some joint work has already been done in this area. The weakness and fragmentation of employer representation (for instance, no fewer than nine organisations in Hungary) is a threat to UNICE too.

unanswered as concerns implementation and its consequences at national level, most notably about the legal safeguards linked to such agreements (Degryse, 2003).

One key point in UNICE's approach is to assert the autonomy of the social partners. The extent to which the political environment⁴ and external pressure⁵ have been crucial to the conclusion of agreements in the past is no secret. It is particularly interesting in this connection to dwell briefly on UNICE's position paper concerning the Commission Communication of June 2002 on the future of the European social dialogue, and to explain the employers' current understanding of this notion of the social partners' autonomy.

In June 2002 the Commission presented its latest Communication, entitled *The European social dialogue: a force for innovation and change* (European Commission, 2002a). Let us recall its main points before looking at UNICE's reaction. The document begins by stressing the fact that the social dialogue is 'the driving force behind successful economic and social reforms (...). Negotiations between the social partners are the most suitable way forward on questions related to modernisation and management of change' (European Commission, 2002a: 4). The Commission calls on the social partners to play a more active role in connection with the European employment strategy and the Lisbon strategy. It does however recognise the need to improve and strengthen the social dialogue: the trade union and employers' organisations must be able to participate more fully, especially in the context of enlargement. These are among the most important points:

- *Improved consultation*: the Commission will draft an internal code of conduct on consultation with the social partners. This pre-legislative consultation is deemed to take precedence over, and go beyond, ordinary consultation through existing structures such as advisory committees (comprising the social partners). There will in addition be consultation

⁴ The stop-and-go approach to entering negotiations on information and consultation at national level will be remembered (see Yearbook, 1999 and 2000). According to Branch and Greenwood (2001), this was due to guarantees received by the German BDA that the government - including the new social-democratic government - would enter a veto, and later to Italy's refusal to negotiate for reasons of national policy.

⁵ Treaty reform and the rather negative attitude of the European Parliament towards the Social Protocol have contributed in the past to making UNICE's positions more flexible.

about implementation of European legislation at national level, in the form of transposal reports.

- *Representativeness of the social partners*: fresh studies are to be conducted on the representativeness of trade union and employer organisations, in sectors not yet covered by existing studies (these studies are being co-ordinated by the *Institut du travail* at the Catholic University of Louvain la Neuve, cf. <http://www.trav.ucl.ac.be/recherche/dg5-part2.htm>) and in the candidate countries. The list of representative organisations involved in the social dialogue will be updated in the light of these investigations.
- *Closer links and greater involvement at the various levels*: the White Paper on governance (European Commission, 2001a) emphasised the need for more interaction between the decision-making level and that of implementation. The social partners are present at all these levels (from company level up to European level), and organisations' internal structures should hence reflect the need for closer links and better communication.
- *Greater transparency*: the social dialogue is not sufficiently well known or understood. For this reason the Commission has offered a new website on the social dialogue and its outcomes, as well as a series of round tables bringing together all the sectoral and cross-industry participants.

Among the aspects welcomed by UNICE are the Commission's intentions to draw up an internal code of conduct on consultation with the social partners and to launch a fresh study on representativeness. The employers' organisation likewise backs the plan for the social partners to meet with the troika and the President of the Commission prior to each Spring European Council.

On the other hand, two aspects come in for particular criticism. Firstly, in UNICE's view, the Commission Communication fails to respect the autonomy of the social partners and is incompatible with their declaration to the Laeken Council in respect of the European employment strategy. The Commission should not suggest topics for examination but should, rather, realise that the social partners are keen to devise their own work programme. This is a recurrent fear on the employers' side: having managed to curb the Commission's influence in the social sphere, UNICE now fears that the European employment strategy requires the social partners to play a

more prominent role. It is true that the employers have a logical argument here. The Commission cannot at one and the same time praise the autonomy of the protagonists and threaten them with a more or less binding work schedule. Yet UNICE also refuses to comply with the Commission's request for improvements in its internal decision-making rules (in plain language, the fact that negotiating mandates and acceptance of the outcomes of negotiations with the trade unions are not adopted by a qualified majority vote). This is particularly illogical and undemocratic, because it makes adoption of an agreement on any given topic more difficult to achieve between the social partners than within the Council. Furthermore, it limits the room for manoeuvre of the employer's own negotiators.

Secondly, UNICE does not believe that the Communication offers a response on the issue of strengthening the social dialogue and its participants in the candidate countries in the run-up to enlargement. Two other aspects should remain outside of the social dialogue according to the employers: relations with NGOs and corporate social responsibility.

In short, UNICE is brandishing autonomy as a weapon designed to undermine the legitimacy of proactive moves by the Commission. That being so, it means that results must be reaped with the trade unions: the implementation of the agreements signed will be an interesting indication, as will the success of the work programme. An early example will be stress at work, a topic about which the Commission consulted the social partners on 19 December 2002. The latter had in fact planned to hold a joint seminar on this subject as part of their work programme with a view to negotiating a voluntary agreement. In a joint letter to the Commission (dated 15 January 2003), they ask it to await the outcome of their seminar which is scheduled for late February 2003.

As we stated in our introduction, UNICE's stance on certain matters has hardly altered at all. This is the case for the issue of company restructuring and its social consequences. UNICE made its position known in response to the Commission's call for social dialogue on ways of anticipating and managing the social consequences of company restructuring. It responded to the Commission's first consultation on anticipating and managing change. Its view on this matter (position paper of 8 March 2002) was altogether predictable. Whereas in the aftermath of the Lisbon summit, which resolved to make Europe the most competitive knowledge-based economy in the world, government policies need to be geared to facilitating change rather than preventing it, UNICE sees no need to lay down any new Community

principles in this area. 'European businesses must be able to change work organisation to take advantage of new technologies and boost productivity or pursue economies of scale in order not to fall behind global competitors.' The employers believe that social legislation should not make change difficult, 'as this could deter the initial decision to invest and therefore have negative effects on employment in the long term'. UNICE believes that a substantial legal framework already exists at national, sectoral and company levels, along with collective agreements and individual traditions. In stating this, it is denying that there is a level of economic decision-making in multinational groups of companies which lies largely outside the scope of national legislation, provided that the group's strategic decision-making centre is not located in the country concerned.

The European employers' organisation nonetheless considers that there could be 'value' in organising exchanges of experience on business practices for anticipating and managing change in order to promote a positive attitude to change across Europe. Following a seminar held in Knokke (Belgium) on 17-18 October, Degryse (2002) concluded that UNICE/UEAPME seemed to be hamstrung from the very outset by certain employer delegates who were violently opposed to discussion, and that it had no room for manoeuvre whatsoever. It was apparently impossible to make any proposal for action following that meeting. Nevertheless, the social partners' action plan (2003-2005) does set out to 'identify orientations that could serve as a reference to assist in managing change and its social consequences...' as well as a 'study on restructuring in candidate countries'.

2. Social protection

There were several developments in respect of pensions in 2002.

The Commission unveiled a Communication on portability of supplementary pensions rights, to which UNICE issued a very measured reply in an opinion dated 24 July (UNICE, 2002b). The problem is fairly straightforward: workers who move from one member state to another have little guarantee of the rights associated with supplementary pensions. Such people are of course few in number, but this is a very real problem connected with freedom of movement. UNICE seems to fear that the Commission, by broaching this topic, is going beyond the strict minimum needed to ensure their mobility and would like action to be restricted to exchanges of experience and good practice. On several occasions the employers have recalled the principle of subsidiarity, the diversity of national solutions, and

the importance of allowing employers and employees to find their own solutions.

The key to understanding UNICE's attitude can be found in the following paragraph:

'UNICE strongly believes that transferability of supplementary pension rights should be facilitated and any unnecessary obstacles should be removed. However, in the majority of EU countries, supplementary pension schemes are set up on a voluntary basis and establishing a European legal framework instituting an obligation to transfer upon both old and new schemes could discourage employers from setting up such schemes.'

In other words, UNICE's priority in the present economic climate is to develop private pension systems. Similarly, while acknowledging that the existing rules may discriminate against women, it does not wish to see any harmonised European rules on vesting periods or minimum age requirements for entitlement to occupational pensions.

This attitude is likewise apparent from a reading of UNICE's opinion on the proposed directive regulating the activities of institutions for occupational retirement provision (UNICE, 2002c). For the record, this proposal is primarily geared to facilitating mutual recognition of occupational pension funds in all member states. Some fear that this may constitute the first step towards a higher profile for private pensions (for more details see de la Porte and Pochet, 2002; Pochet, 2003). In this opinion the employers' organisation fulminates that 'the size of the potential gains makes it all the more incomprehensible that there should be such limited progress in the Council'. To UNICE, these gains are a better, more intensive and more fluid capital market, in that occupational pension institutions could invest in the markets of the Fifteen. There would be gains for the employers too, because according to UNICE (here echoing the Commission's words) money-purchase pensions reduce pension costs due to high stock market returns. The stock market crisis of the past two years seems not to have had the slightest impact on the employers' habitual arguments. Following on from this initial position paper, a policy compromise was reached on 4 June 2002, leading to a further position paper on 20 September. This one is supportive of the compromise reached in the Council, stating at the same time that 'for the directive to have its full-intended effect, elimination of tax obstacles to cross-border provision of occupational pensions is necessary'.

A strikingly different tone is adopted by CEEP on the subject of pensions. Its opinion of March 2002 on the Communication 'Supporting national strategies for safe and sustainable pensions through an integrated approach' (European Commission, 2001b), CEEP expresses its 'conviction that the reliability of first pillar pensions is a particular quality which is sometimes missing in other pension systems'. We would also draw attention to a CEEP opinion on social inclusion indicators (CEEP, 2002a). CEEP supports the process of drawing up indicators while recalling that the decisions made are political. It puts forward two priorities: firstly, the question of discrimination and, secondly, the importance of access to non-market services and services of general interest.

3. Other position papers

In this section we shall analyse UNICE's opinions on temporary work, on the Commission's new work programme in respect of health and safety, the recognition of professional qualifications and finally education.

3.1. Temporary work

Negotiations in this area became deadlocked in the year 2000 (Pochet and Arcq, 2001). UNICE adopted a wait-and-see attitude and did not agree to enter into negotiations until May 2000. But its readiness to negotiate was subject to severe constraints and the talks were broken off in March 2001. The main reasons for this standstill relate to equal treatment for temporary workers and the conditions under which businesses use temporary staff. The Commission then drew up a proposal for a directive on working conditions for temporary workers (European Commission, 2002b), about which UNICE issued a position paper on 27 June 2002. The Commission clarified the points having given rise to disagreement during the negotiating phase: these revolve mainly around the principle of non-discrimination and the notion of comparable worker.

UNICE does not object in principle to a directive on temporary agency work. However, it believes that 'the content of the Commission proposal could lead to legal uncertainty, unnecessary bureaucracy, and hamper job creation'. It argues for a very general text, in keeping with the wide diversity of procedures in member states. This freedom of choice relates above all to ways of assessing the discrimination to which temporary workers might fall victim: either by analogy with an employee of the user company (the option followed in countries where temporary work is strictly regulated), or by

analogy with a temporary worker employed by the same agency. This second option is very liberal, since its aim is to make the temporary staff member a worker *sui generis* in an abstract sense, without any link to the actual job he/she performs in a specific company. Most particularly, wages are not set by analogy with the employees whom the temporary worker replaces or with whom he/she works, but by analogy with other workers employed by the temporary staff agency. UNICE strongly backs the second option, arguing that ‘the EU has [not] and should not have competence to determine salaries for any sector of activity. Wage setting is a core competence of the social partners. Any interference of the EU in this area would seriously undermine national social dialogue. Temporary agencies and their employees must be allowed to determine their employment conditions in accordance with national negotiating practices like in any other sector of activity.’

The European Parliament heavily amended the draft directive in the direction of deregulation. Careful comparison of the texts should make it possible to assess the capacity not only of UNICE, but also of the temporary employment sector itself, to exert pressure on the decision-making process underway in the European institutions.

3.2. Occupational health and safety

UNICE has traditionally been very much in favour of the Commission’s proposals concerning occupational health and safety. This was the case once again in 2002 in respect of the Communication from the Commission ‘Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006’ (European Commission, 2002c). The employers nevertheless draw attention to the fact that the promotion of well-being advocated by the Commission is a much broader aim than health and safety in the workplace: ‘(...) the promotion of physical, moral and social well-being at work is not solely in the hands of employers, but also depends on circumstances in the private life of employees, their life style, the social and cultural environment, political and societal developments, etc. It is therefore a shared responsibility of all.’

UNICE also calls for a greater degree of ‘soft law’ in this area, recommending the ‘development of non-legislative tools in order to promote an effective implementation and application of existing legislation’ (UNICE, 2002d). It believes that the existing ‘substantial corpus of legislation’ is adequate, and that further specific legislative initiatives would not appear to

be the best way of tackling certain complex emerging risks. UNICE does not believe that the answer to violence at work and moral harassment lies in the adoption of a Community instrument. These risks are 'too complex, multifaceted, difficult to assess and differently perceived (...) to be more effectively tackled through an additional legislative initiative in the form of a specific Directive.'

On the subject of 'new emerging risks', the employers' organisation regrets that the Commission emphasises only psycho-social risks such as stress, violence in the workplace and harassment. The range of new possible risks is much broader. In this respect, UNICE welcomes the role given to the European Agency for Safety and Health at Work, which will act as a 'risk observatory' through the systematic gathering of information, scientific opinions and good practices.

3.3. Recognition of professional qualifications

UNICE has adopted a position paper on the Commission proposal for a directive on the recognition of professional qualifications for regulated professions (UNICE, 2002e). This is a subject which typically affects the functional need of businesses for occupational mobility at international level. Although the employers applaud the Commission's intention to create a single regime for the recognition of professional qualifications for regulated professions, they regret that the reform 'does not lead to a reduction in the number of regulated professions' and that the decision as to which profession is regulated, and which not, is still left to national authorities. In its contribution for the Barcelona Council, UNICE stated that further actions (primarily exchanges of experience) are needed to promote recognition of learning achievements and transparency of qualifications⁶.

3.4. Education and training

The Lisbon European Council (March 2000) set out a new strategic objective in a bid to bolster employment, economic reform and social cohesion in the context of a knowledge-based economy. Following the joint UNICE-CEEP-ETUC contribution to the Lisbon objectives on developing life-long learning (a contribution submitted to the Barcelona summit), UNICE is favourably disposed towards the open methods of policy co-ordination which are taking shape (cf. Degryse, 2002). It is in this context

⁶ UNICE, European business says: Barcelona must revitalise the Lisbon process.

that the employers adopted a position paper on ‘future EU cooperation in the field of education and training’ (7 February 2002). They stress in particular that ‘coherence between the future process for coordination of education and training policies and the Luxembourg process for employment must be ensured’. Such co-ordination may be useful, but ‘further work needs to be done on indicators and benchmarks’. Finally, in a field where responsibility remains mainly national, exchanges of experience and actions are desirable ‘with a view to improving employee mobility and transparency of competencies and qualifications on the labour market’.

4. CEEP

CEEP has issued relatively few opinions about social matters this year, with the exception of the one on pensions referred to above. It has evidently felt more concerned by matters pertaining to the legitimacy of services of economic and general interest, issues central to the policy of deregulation currently affecting markets formerly controlled by the public service monopolies now being dismantled one by one.

CEEP’s attitude to labour standards is fundamentally different from that of UNICE. Whereas UNICE is tireless in its insistence on the principle of subsidiarity, the need to restrict European legislative intervention in the social sphere and the advisability of promoting ‘soft law’ instead, CEEP takes a more favourable attitude to across-the-board voluntary regulation. We would cite its opinion on the Commission Communication ‘Promoting core labour standards and improving social governance in the context of globalisation’ (CEEP, 2002b)⁷. The Commission raises questions about the balance between economic and social affairs, i.e. about a socially equitable economic system and governance. CEEP ‘fully agrees with the determination to improve world social development (...)’ by promoting core labour standards, but also calls for consideration of ‘the reasons behind this imbalance, as well as its very nature and causes. This would result in the questioning of economic choices and the economic system itself, in terms of its goals and values rather than simply its methods of organisation and functioning (...)’. CEEP recalls that between ‘market governance’ and social governance there is scope - and a need - for ‘political governance’. This ‘citizenship’ dimension is not sufficiently marked in the Commission’s Communication. Elsewhere in its opinion, CEEP expresses support in

⁷ We did not find a UNICE opinion on this Communication.

particular for those Commission measures aimed at consolidating international labour standards and the role of the ILO, and comes out in favour of 'regular international dialogue under the aegis of the UN concerning trade and social development, and covering core labour standards'.

CEEP has continued its institutional mutation into less of a generalist organisation and one more concerned with local development. An opinion dating from August, in response to the Commission Communication on strengthening the local dimension of the European employment strategy, highlights the importance of services of general interest - of which CEEP wishes to be the (direct or indirect) representative.

Thus, in its declaration on services of general interest for the Barcelona European Council (CEEP, 2002c), CEEP recalls the essential guidelines which, it believes, must feature in the text adopted by the Council. In the context of deregulation of the various public monopolies and the generalisation of competition in public services, CEEP points out that it is imperative to strike the right balance between missions of general interest and loyal, fair and transparent competition. The purpose of services of general interest is to respond to the needs and expectations of users, and of society at large, in accordance with principles giving definite shape to its common values: equality of access and supply, quality and continuity of service, safety, adaptability, long-term preparation, etc. The Union must therefore clearly comply with the principle of the freedom of territorial and local authorities to supply public services not subject to market forces (freely to define the services of general economic interest within their remit, freely to choose the management method and financing methods).

In an opinion published in April 2002 (CEEP, 2002d), entitled 'What European evaluation of the performance of the services of general economic interest?', CEEP submits proposals aimed at developing a culture of evaluation of these services by creating a European Monitoring Centre responsible for evaluating the missions, objectives and purposes laid down by the Union. It also sets out the general principles which must underpin this evaluation (the evaluating authorities must be independent and open to the whole range of actors, they must deal with a particular sector, cost must always be placed in relation with the advantages expected, etc.).

It is also interesting to note the attention paid by CEEP to the Ferring ruling handed down by the Court of First Instance⁸, which establishes the principle that compensation for the accomplishment of obligations of public service constitutes State aid if its sole objective is the compensation of costs arising from the accomplishment of a service of general interest. Rulings are pending in other cases, and case law is now being formed in this area. Be that as it may, CEEP is of the opinion that the regulation of services of economic and general interest should be reassessed so as to 'allow reconciliation of all aspects of the Treaty, both the aspects of a general nature and the concrete aspects of financing the OPS [obligation of public service]'

Conclusion

From a procedural point of view, two step-changes have occurred in the social dialogue over the past ten years. The first was implementation of the legislative aspects of the Social Protocol and the achievement of negotiated legislation. These results owe a good deal to the process of periodic Treaty revision, about which the employers had their doubts, uncertain whether the collective bargaining method would stand the test of time if no agreement were signed (Compston and Greenwood, 2001). Some European collective agreements did come to fruition, while legislative activity in respect of social affairs declined markedly and the Commission began increasingly to 'lay down the law', reminding the social partners of their responsibilities (Pochet, 2000). This phase contrasted sharply with the Delors period, when to a certain extent the Commission compensated for weakness on the trade union side by playing an active role in this area.

None of that has altered the attitude of UNICE, which still has no strategic approach to the conclusion of collective agreements. The intrinsic dynamic of this process has however compelled UNICE to intensify its activities as a protagonist in European negotiations.

CEEP is fully engaged in this social dialogue, but seems unwilling or unable to turn it to its own advantage. An analysis of its opinions reveals views fundamentally different from those of UNICE. CEEP represents services

⁸ Ruling of 27 February 1997. Case T-106/95 FFSA; the Ferring ruling was confirmed by the European Court of Justice ruling of 22 November 2001 in case C-53/00, Ferring S.A. vs Agence centrale des organismes de sécurité sociale (ACOSS).

which have, as it were, 'suffered' market deregulation and seems not yet to have realised that the interests of service sector workers now confronted by competition are more at odds with those of the employers than was the case in the era of classic public services. For this reason, the dynamic of the social dialogue seems to be determined more by the effect of a power struggle between UNICE/UEAPME and the ETUC.

This new configuration and the consolidation of UNICE as a social partner, but also the Commission's retreat from its period of social activism, have led to the second step-change, namely the autonomy of the social partners, both in drawing up their work programme and in implementing by themselves the European agreement on telework. This is a radical change. A number of uncertainties still persist, most notably legal ones, but we would recall that the same applied to the collective bargaining method in the early 1990s (Dølvik, 1997). Branch and Greenwood (2001: 43) concluded that: 'although institutional forces, socialisation and learning have been important, the attitudes of these organisations towards social partnership and social dialogue are nevertheless instrumental. The shift in UNICE's position did not, then, reflect a conversion to a new philosophy. Instead, its attitude was one of 'realpolitik', namely a change in strategy in response to a change in political realities.' It is worth remembering, on this point, that the Community discourse - be it in the European employment strategy or in the field of social policy - values and promotes the notion of social partnership. The pressure is of course less intense than the threat of legislation which existed ten years ago, but it can nonetheless exert not insignificant indirect influence by determining the attitudes and positions held in high regard at European level.

Given this remark, which is borne out by our own research and interviews, the most significant change to the European collective bargaining landscape is the likelihood (in a longer or shorter time-frame) that the ongoing Treaty reform begun in 1985 with the Single European Act is to be completed. The main aim of the Convention on the future of Europe and the IGC thereafter is to consolidate the building of the Community. In this respect, both UNICE and the ETUC have appealed for Articles 138 and 139 not to be amended, even though they do not wish to use them in the same way (see the joint contribution by the social partners' representatives in the Convention working Group on Social Europe, 14 January 2003). The report to the Convention from the Working Group on Social Europe heeded their call and proposed that the Treaty remain unchanged on this point (European

Convention, 2003). If this really does come about, it will mean that the employers no longer have any cause to fear Treaty reform (at least in the short and medium term). Progress on the social dialogue front will then be dependent mainly on internal factors within the organisations. The expectation appears to be that UNICE will turn a new corner and agree to position itself strategically as a social partner.

Translation from the French by Janet Altman

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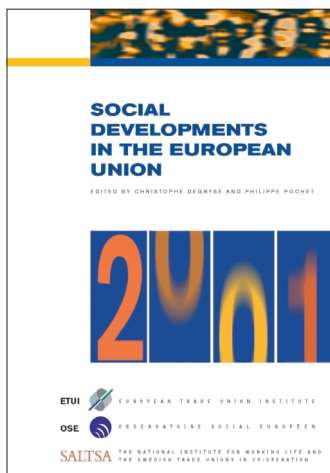
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SOCIAL DEVELOPMENTS IN THE EUROPEAN UNION 2001

Edited by Christophe Degryse and Philippe Pochet



This edition of the annual report on European Social Policy looks at two major new policy areas initiated in 2001: on the one hand, the developments concerning the quality of employment, in the broad sense, i.e. encompassing legislative initiatives, social dialogue and the European employment strategy; on the other, the application to new European fields of action of the open method of coordination. Yet social policy cannot be considered in a vacuum and, for this reason, two important political events affecting the future of social Europe are also examined: the completion of the Maastricht agenda for full implementation of economic and monetary union (and its corollary “economic governance”); and the preparation of institutional reform in the run-up to EU

enlargement. An analysis of some of the judgments of the European Court of Justice that have had an important impact in the social affairs sphere accompanies this report.

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Employment, labour market and social protection

Andrew Watt

Economic trends and policy developments in the EU in 2002: inadequate response to prolonged downturn

Introduction

1. Overview of macroeconomic developments in the EU in 2001
2. Macroeconomic policy developments
3. Economic policy debates

Conclusion

Introduction

This contribution reviews economic trends and policy developments in the EU in 2002. The focus is European: national trends and policies are treated only to the extent that they impinge on European decision-making. Unless otherwise indicated, the figures date from end January 2003. The contribution seeks to:

- provide a succinct, comprehensible overview of macroeconomic developments in 2002, not least as a background against which the political and social developments described in other articles in this volume can be analysed (section 1);
- describe changes in the main macroeconomic policy instruments (section 2);
- describe and analyse changes in the economic policymaking regime in the EU, and the policy debates that accompanied them during 2002 (section 3);
- and finally to consider to what extent economic policymaking in the EU shows signs of becoming more integrated coordinated, and effective in terms of promoting growth and employment (conclusion).

1. Overview of macroeconomic developments in the EU in 2002

This section briefly reviews developments in the classical ‘outputs’ of economic policies during 2002: growth, employment, inflation, wages, productivity and the external position.

1.1. Economic growth

As in the previous year, 2002 was marked by a steady downward revision of the forecasts for economic growth: if the revision was less steep, this was largely because, unlike in 2001, even the initial expectations had been modest.

The European Commission forecasts, in particular, show that optimism that growth would be ‘reasonable’ in 2002, as the economy recovered steadily from the effects of the terrorist attacks of September 2001, the slide in equity prices and higher oil prices, and would be in line with what it sees as potential growth by 2003 remained essentially intact during the winter months. Yet while economic growth did recover from the contraction at the

end of 2001, to a quarterly rate of 0.4% in the first quarter of 2002, there was no subsequent acceleration¹.

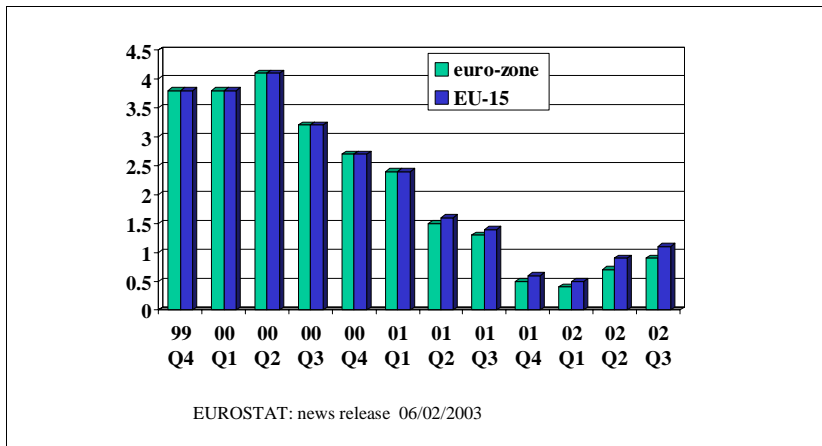
Table 1: Forecasts of economic growth in the EU in 2002

Institution	Data as of	Forecast for 2002	Forecast for 2003
ECB*	Nov 01	0.7-1.7	2.0-3.0
ECB*	Nov 02	0.6-1.0	1.1-2.2
OECD	April 02	1.5	2.8
OECD	Nov 02	0.9	1.9
EU Commission	Nov 01	1.3	2.9
EU Commission	April 02	1.4	2.9
EU Commission	Nov 02	0.8	1.8

Notes: * Euro zone; assumes no change in monetary policy.

Sources: European Economy, 10/11/2001, 2/2002, 5/2002; ECB Monthly Bulletin, December 2001 and 2002; OECD Economic Outlook, no. 71 and 72.

Figure 1: Annualised real growth rates (Q/Q-4)



¹ According to the latest EUROSTAT estimate (6/2/03), quarterly real GDP growth remained constant at 0.4% in the second and third quarters.

In terms of annualised growth rates, on the most recent figures real GDP in the third quarter of 2002 was just 1.1% (EU-12: 0.9%) higher than a year earlier. Clearly the EU has struggled to shake off the negative impulses of 2001: the euro area has performed slightly worse than the EU-15. At present it is still unclear where the additional demand necessary to raise output to potential is going to come from: hence the consensus forecast of below 2% for 2003.

In purely statistical terms, the ‘reasons’ for the extremely sluggish recovery can be readily identified (Table 2).

Table 2: Contributions of expenditure components to change in GDP

Change in GDP Q3-02/Q3-01.

	GDP	Private consumption	Government consumption	Gross fixed capital formation	Change in inventories	Domestic demand	External balance
EU-12	0.9	0.4	0.5	-0.6	0.0	0.3	0.6
EU-15	1.1	0.8	0.5	-0.6	0.0	0.7	0.4

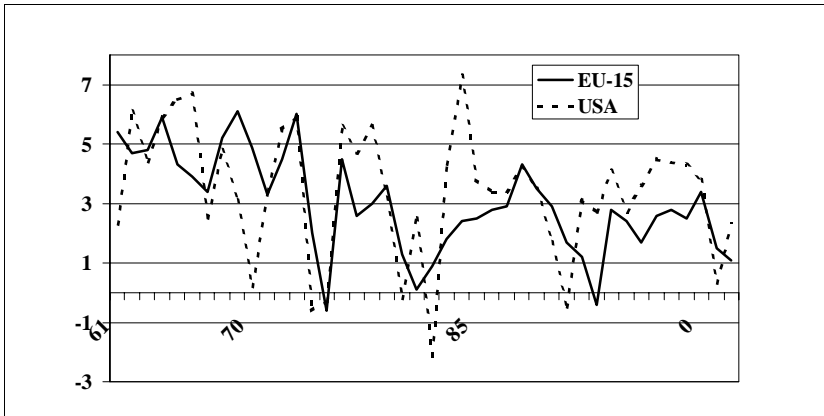
Source: EUROSTAT news release 16/2003 (06/02/03), Table A8.

The most striking fact to emerge is that, in the euro area, by far the greater growth stimulus came from net exports: domestic demand was extremely weak, whereas in the EU-15 the result was more balanced. In both areas the impact of the built-in fiscal stabilisers – automatically increased spending and reduced revenues in a period of growth weakness – has stabilised the economy (adding half a point of growth). Although the quarter-on-quarter figures indicate a gradual turnaround, contracting investment remains the main source of growth weakness. Private consumption is still weak.

At a more fundamental level the Commission suggests (Autumn Forecast, 2002, p. 2) that the underlying reasons for the downturn were prior over-investment (especially in ICT), higher food and oil prices that eroded purchasing power, and the confidence effects on investment and saving of the stock market crash and geopolitical tensions. In the face of this ECB monetary policy was kept on hold (see 2).

To put European growth rates into focus, we may note that the Commission's Autumn Forecast for the USA was 2.2% (with the same rate for 2003). Moreover, in terms of the political targets set at the European Summit in Lisbon in 2000, which foresaw 3% annual average economic growth, the EU has already started to fall behind schedule. Figure 2 shows growth rates – overall, not per capita – in Europe and the US since 1961. In terms of long-term averages the US performance was almost one percentage point higher². US output has fluctuated considerably more than that in the EU (countries). In terms of recent developments one notes the far better performance of the US during the second half of the 1990s, followed by much sharper fall in output, but also signs that the US economy is recovering faster. Comparing the late 1980s with the late 1990s expansions, what is striking is the failure to avoid repeated set-backs to the recovery in the latter period.

Figure 2: Real GDP growth rates, EU-15 and USA, 1961-2002



Looking to the future, the steep fall in growth from almost 5% to below zero in the early 1990s must give cause for concern in the current juncture: will the combination of military conflict, high oil prices and an inadequate

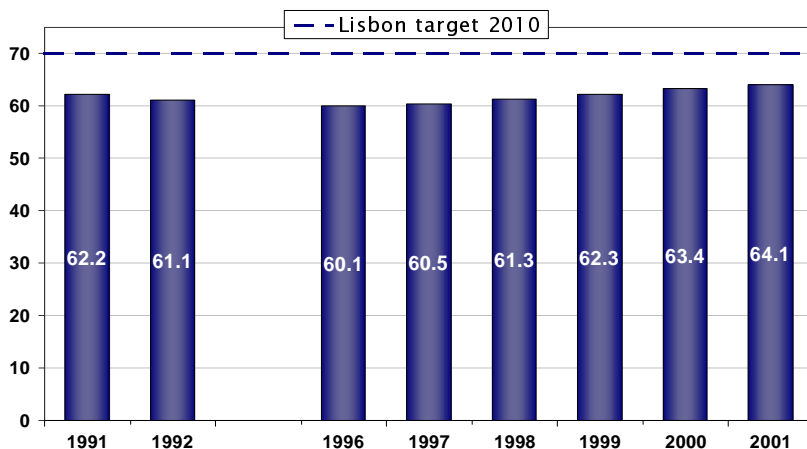
² At fractionally over 3% and under 4% p.a. Note that this may reflect many causes, notably population growth, working hours, participation rates, extent of non-market work, etc. that preclude simplistic conclusions concerning economic welfare.

attempt by macro policy to offset their recessionary effects lead to a renewed crisis? 2003 is certain to be decisive year. At the moment output appears to be stabilising at a very low level, while avoiding an outright recession (in the EU as a whole). But this is by no means assured and a double-dip recession still seems a highly plausible scenario³. Much will, of course, depend on the resolution of the Iraq crisis, which was unclear at the time of writing.

1.2. Employment and unemployment

Despite the marked growth slowdown in 2001, indeed the contraction in the fourth quarter, the EU employment rate – the proportion of the working population in work – continued to rise, albeit very slowly (Figure 3). To some extent this reflected the normal lagged response of employment to economic trends. Also it was widely thought that the economy would soon recover, so firms were inclined to hold on to staff to avoid re-hiring costs.

Figure 3: Employment rates EU-15 (% pop. aged 15-64)

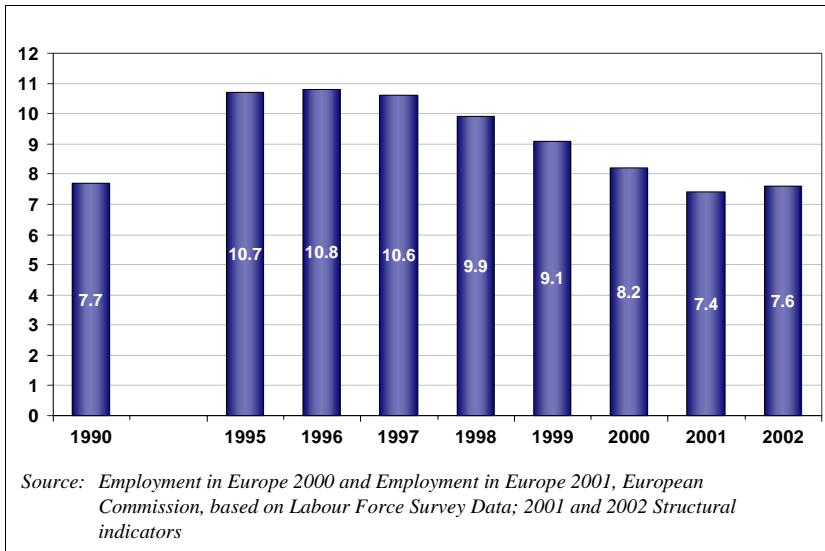


Source: *Employment in Europe 2001*, European Commission, based on Labour Force Survey Data; 2000 and 2001 Structural indicators

³ Particularly in view of the still huge imbalances in the US economy, which cannot be discussed here: see D’Arista (2003) and Godley (2003).

The Autumn forecasts predicted continued slow growth in the number of people in employment for 2002 (0.4%), but both unemployment (see below) and the labour force also increased: at best the employment rate will have stagnated in 2002 at the previous year's level. Thus in terms of the EU's Lisbon target of raising the overall employment rate to 70% by 2010, a year – at least – has been lost. If the employment rate does not begin to rise substantially in the current year, the target will be seen to be increasingly unrealistic.

Figure 4: Unemployment rates EU-15 (% of labour force 15+)

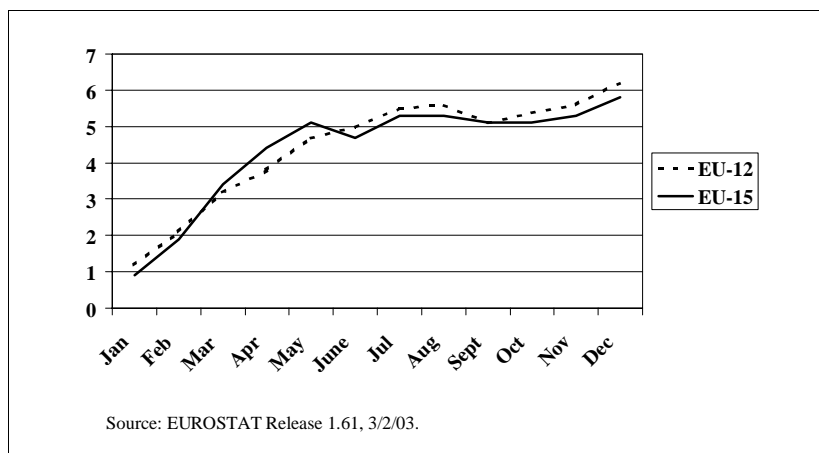


The average unemployment rate in the EU was 7.6% in 2002, up from 7.4% the previous year. As with economic growth, the unemployment trend now seems to be at a critical juncture. Having fallen only to the level achieved at the height of the last upturn around 1990, unemployment has started to rise. If the slowdown is not quickly reversed, unemployment may well rise as it did in the early 1990s - over the cycle as a whole Europe will then have made no progress in resolving its paramount social and economic problem: the failure to offer work to all those seeking it.

Annual average figures react sluggishly to changes in trend. The monthly figures rose from 7.4% in January to 7.8% in December. Figure 5 reports Eurostat figures showing the monthly increase in the number of people

unemployed based on the ILO definition⁴ compared with the same month the previous year. These data show that unemployment began to rise very rapidly at the start of the year, and that the rate of increase, far from abating, accelerated even more at the end of 2002 (the data are seasonally adjusted, so this does not reflect seasonal influences). This may indicate that firms, initially content to hoard labour across a temporary ‘soft spot’ (Greenspan) in the economy, are now beginning to retrench as it becomes increasingly likely that, even in the absence of a double-dip, economic growth is set to remain sluggish for the foreseeable future⁵.

Figure 5: Increase in unemployment (compared with same month the previous year)



1.3. Inflation

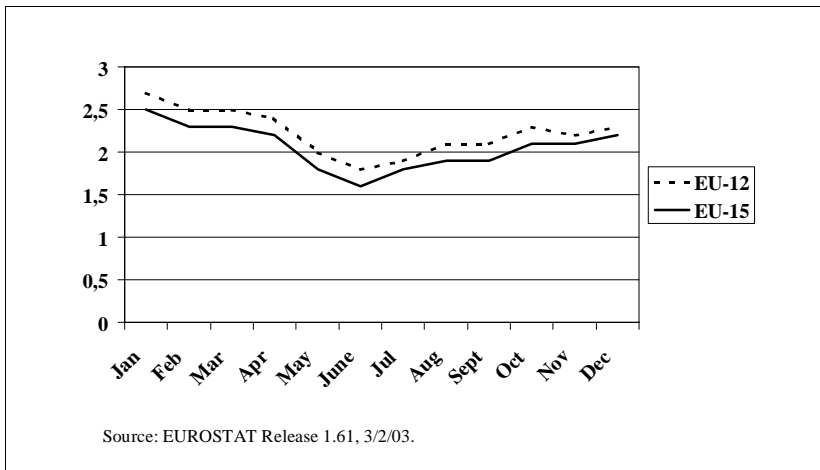
Having been above the maximum of 2% that the ECB's regards as acceptable in the medium term for the whole of 2001, EU-15 inflation, as measured by the Harmonised Index of Consumer Prices (HICP), declined rapidly during the first half of 2002, in the face of the economic slowdown,

⁴ Out of work, available to start work within two weeks, have actively sought work during past four weeks.

⁵ A more extended discussion of employment and unemployment trends, with break-downs by Member State, gender, age-group etc. can be found in ch. 1 of *Benchmarking Working Europe 2003*.

to reach 1.6% in June. Subsequently, however, the monthly rate (compared with the same month the previous year) rose almost as rapidly, to reach 2.2% by December. As Figure 6 shows, the trend for the euro area was the same, but approximately 0.2 percentage points higher.

Figure 6: HICP inflation (compared with same month the previous year)



Breaking down the overall price index into its components⁶, overall inflation subsided largely because previous energy and food-price hikes had been unwinding. After the summer, though, energy and commodity prices surged once more, a trend that would have been worse if the euro had not appreciated against the dollar (see 1.5). More fundamental price measures, such as unit labour costs and goods and service prices, indicate only very moderate inflationary pressure, compatible with the ECB target, although service prices continue to run above 3%, 1-1.5 points faster than goods prices⁷.

⁶ The following analysis is based on ECB Monthly Bulletins and refers to the euro area.

⁷ This is interesting not least because the ‘stubbornness’ of inflation in the face of the slowdown is often ascribed to institutional rigidities, imperfect labour markets and, of course, the trade unions. Yet all these factors are much more likely to be found in manufacturing than in services, whether high or low-skill.

Table 3: HICP inflation rates in EU-12 countries, Feb 03/Feb 02

Belgium	1.6
Germany⁴	1.3
Greece	4.2
Spain	3.8
France	2.5
Ireland	5.1
Italy	2.6
Luxembourg	3.2
Netherlands	3.2
Austria	1.8
Portugal	4.1
Finland	2.1
EU-12	2.4

Source: Eurostat news release 31/2003.

As can be seen from Table 3, there is still considerable variation in inflation rates across the euro area, in spite of expectations that the fixed exchange rate plus greater price transparency would bring rates of price increases into line. The average of 2.4% concealed a range from 1.3% in Germany, the largest euro area economy to 5.1% in Ireland. Apart from the likelihood of competitiveness problems if such differentials are maintained, this makes the task of setting monetary policy considerably more difficult – the ECB is mandated to consider only euro area averages, and indeed does not publish national figures – but also has interesting implications for the coordination of fiscal policy (see 2.1)

1.4. Productivity and wages

The combination of the unexpectedly sluggish economy and the lagged effect on employment largely determined productivity trends, while higher-than expected inflation influenced real-wage and thus unit labour costs in 2001 (see also the article by Mermet in this volume).

Figure 7: Gross domestic product at 1995 market prices per person employed National currency; annual percentage change

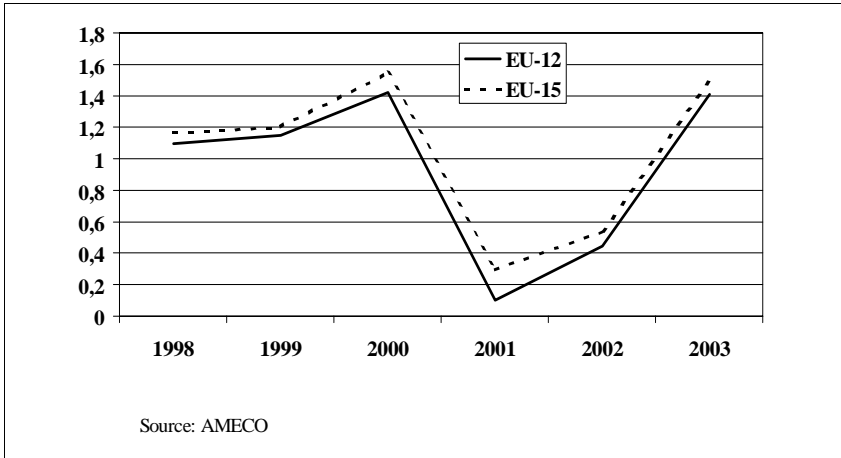


Figure 8: Real compensation per employee, deflator GDP; total economy National currency; annual percentage change

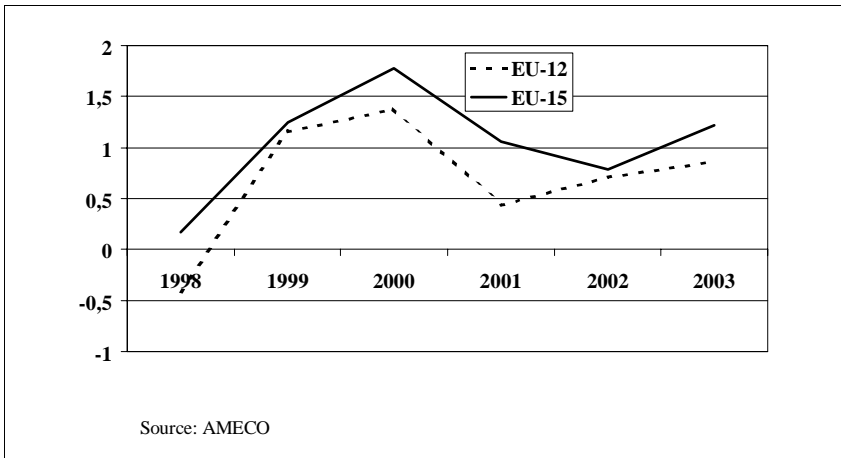


Figure 9: Nominal unit labour costs; total economy; annual percentage change

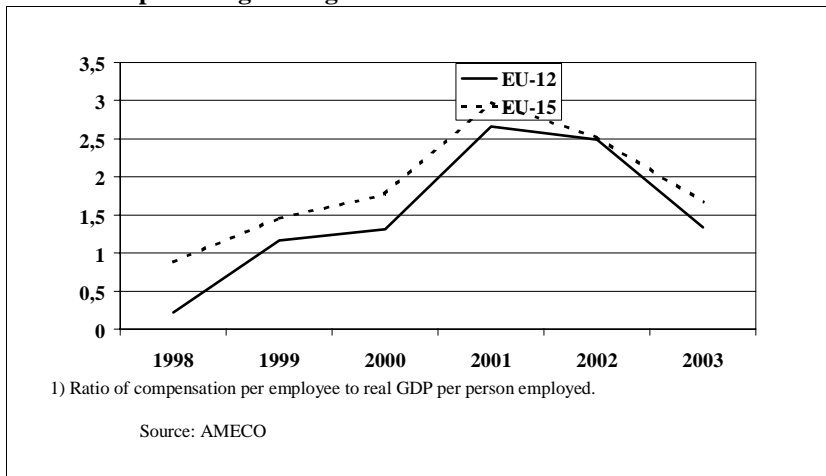


Figure 10: Real unit labour costs; total economy; annual percentage change

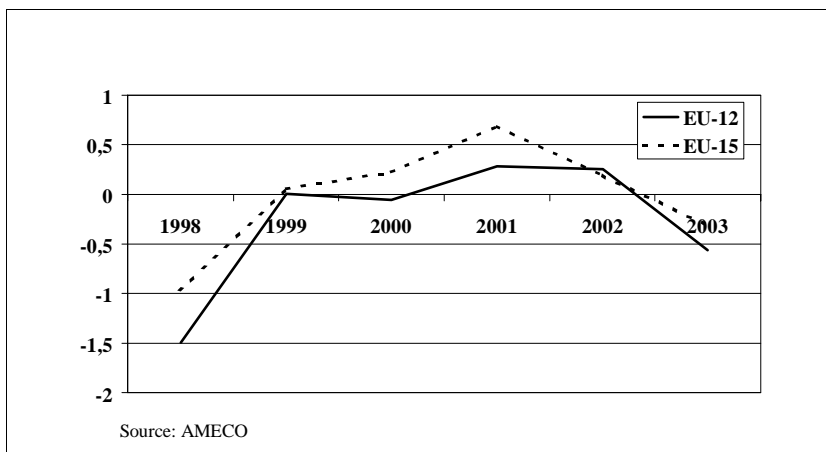


Figure 7 shows the usual pro-cyclical response of productivity⁸, which fell by about 1.5 percentage points due to the slowdown. It is forecast to return to its recent trend of just under 1.5% in 2003, although clearly this is contingent on the promised recovery materialising. Figure 8 shows that the change in real wages has broadly followed the same trajectory as productivity, but that the dip was considerably less pronounced: as a result real unit labour costs (RULC) have increased in recent years (although they are set to decline again). Over the medium term it is desirable for real wages to track productivity growth: this maintains the wage share in the economy and permits balanced economic growth. Real unit labour cost growth – see Figure 10 – is then equal to zero. In the short-run, however, it is not desirable for wages to follow dips and peaks in productivity (and price trends), as this would exert a destabilising effect on demand.

Empirically unit labour costs (ULC) are an important leading indicator of inflation. Figure 9 shows that, for the cyclically induced reasons just mentioned, ULC have recently been somewhat above the ECB's inflation target. However they were considerably below it during the late 1990s and are forecast to fall below it already in 2003. Although the alarming reports about European competitiveness that dominate the media debate on European economic performance might give a different impression, real unit labour costs fell every year from 1992 to 1998, and were virtually constant in 1999 and 2000: thus wages declined as a share of output. In short, over the cycle wage trends remain compatible with price stability as defined by the ECB.

1.5. Exchange rate and current account

Following the sharp fall in the external value of the euro against the US dollar following its introduction during 1999 and 2000 – thought to be one factor inducing the ECB to put up interest rates – in 2001 the currency, oscillated around 90 cents. 2002 saw a sustained rise, however, as war fears, the recession and falling investor confidence in the wake of corporate scandals in the US combined to depress the dollar. Between December 2001 and 2002 the euro appreciated by 14.1% and by January 2003 the single currency was at three-year highs of around USD 1.06. Other things equal,

⁸ Note that all the variables in this section are calculated per person employed. It would in many ways be preferable to calculate on a working-hour basis, but such data are not available. The results remain valid, however, as the same reference value is used in both the numerator and denominator.

this reduces both inflationary pressure and aggregate demand and thus permits, indeed calls for, lower interest rates, although the roller-coaster of the $\text{€}/\%$ exchange rate, in particular is clearly erratic and as such an uncertain element on which to build policy (see 2.1)

Figure 11: Euro-zone current account and components, €bn

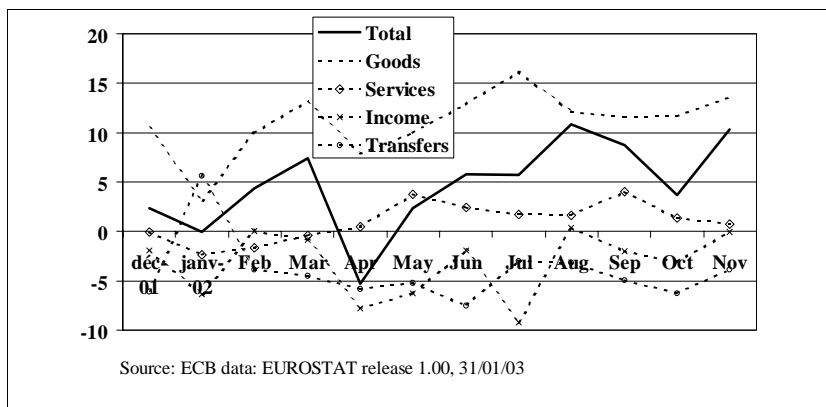
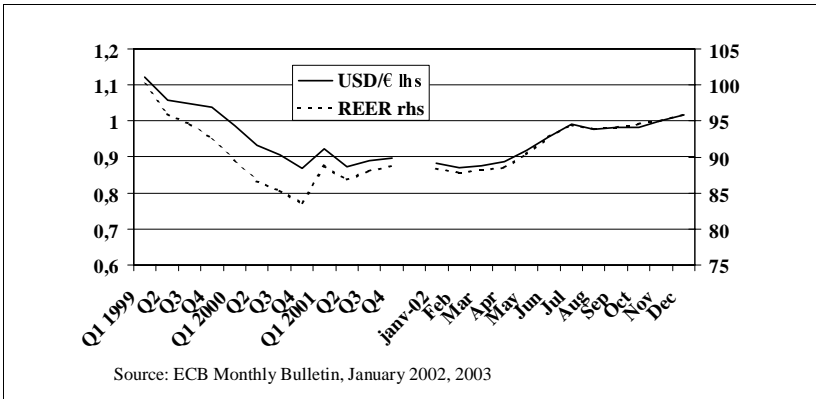


Figure 12 tracks the real effective exchange rate against a broad basket of currencies. It allows for inflation differentials (consumer prices) between countries and thus indicates the price competitiveness of the euro area⁹. The substantial improvement in 2000, considerably greater than the decline in the nominal value of the currency against the dollar, laid the foundations for Europe's export-led recovery in 2000 and early 2001. During 2002 the REER tracked the nominal rate against the dollar very closely. Even so, by the end of the year the euro area was around 5% more price-competitive on world markets than when the single currency was launched.

⁹ The series is based on an index which sets the Q1 1999 figure at 100. A decline in the index indicates higher price competitiveness, because the nominal value of the currency has declined more than (or risen less than) the inflation differential.

Figure 12: Euro-US dollar exchange rate, 1999-2002 Real effective exchange rate of € (index: Q1 1999 = 100)



During the course of 2001 the EU current account, which had moved into deficit during 1999 and 2000, moved back into the black. Figure 11 shows that throughout 2002 the EU-12 have recorded a ‘healthy’ current account surplus, primarily on goods and services trade. The third-quarter current account surplus for the EU-15 as a whole represented 1.4% of GDP. This confirms the analysis of GDP growth components above (1.1), which showed that Europe is not suffering from a lack of external competitiveness; rather its problem lies in sluggish domestic demand.

1.5. Summary of economic trends in 2001

In 2002 the EU economy once again confounded predictions of a rapid recovery: faster foreign demand in the early months of the year failed to ignite an expansion of domestic demand. The fiscal stabilisers helped avoid an even more disappointing result. Consumers and particularly investors appear to be holding their breath, waiting to see how quickly and painlessly the imbalances in the global (and particularly the US) economy can be resolved and whether – increasingly: when and in what form – the US will launch an attack on Iraq. The sustained rise in the euro makes it easier for the central bank to contain inflation, but also threatens net exports, which in recent years have been a mainstay of what little economic growth that Europe has managed to attain. Let us now review how macroeconomic policy reacted to these developments during the year.

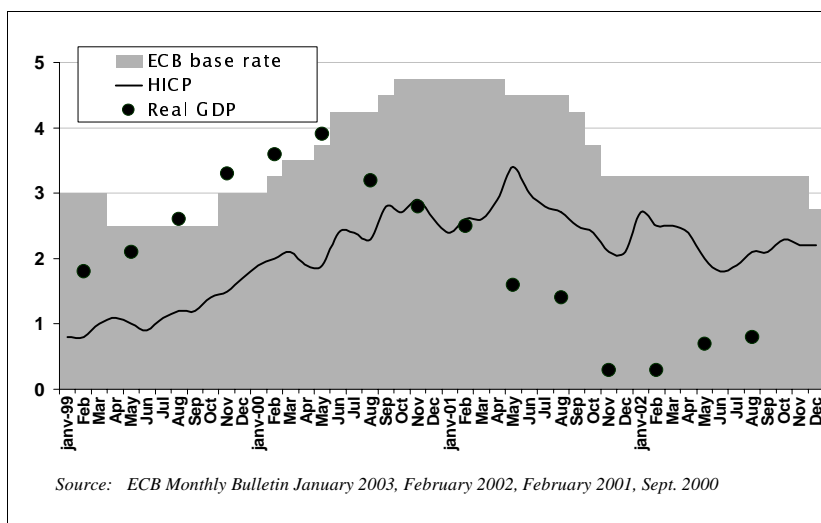
2. Macroeconomic policy developments

This section briefly reviews the changes in the two main macroeconomic policy ‘levers’, monetary policy and fiscal policy¹⁰, at the European level during 2002.

2.1. Monetary policy

In a delayed response to the rapid fall in GDP growth during 2001, the ECB cut its base rates four times, making two half-point cuts in the wake of the terrorist attacks of September 2001 (Figure 13).

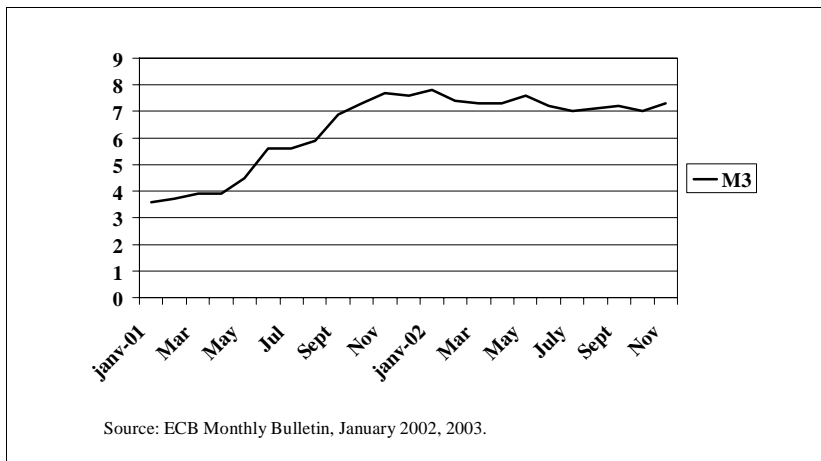
Figure 13: ECB main refinancing rates, inflation and real growth, 1999-2001



¹⁰ Structural and labour market reforms are often now considered to be macroeconomic policy, and certainly account for an important part of European intervention (e.g. in the Broad Economic Policy Guidelines). While some reference is made to these debates (see especially 3.3), they are not covered in detail. The reader is referred to other articles in this section of the Yearbook. For the debate on the macro versus structural origins of unemployment see Watt 2000.

Thus the main refinancing rate started the year 2002 at 3.25%. Throughout the year, as GDP growth struggled up from 0.3 to 0.8% – compared with even the ECB’s conservative assumption of 2.25% potential growth – and although the current rate of inflation (never mind inflation expectations) declined to below the 2% ceiling during the summer, the ECB kept rates on hold. Indeed, during the early summer a number of hawkish statements by ECB officials prompted speculation that the Bank would soon be raising rates to contain inflation, as core inflation was felt to be stubbornly high. However, as the economy continued to languish, finally, after 13 months of inaction the ECB cut rates – by half a point – on 5 December 2002. Even so, the resulting rate of 2.75% compares with 1.25% for the US equivalent (federal funds rate): in November the US Federal Reserve had made a 50-point cut, which added to the pressure on the ECB.

Figure 14: Annual rate of M3 growth



Under the first pillar of its monetary policy strategy, the ECB has set a reference value of 4.5% for the growth of M3¹¹. Figure 14 shows how the M3 growth rate formally exploded in the second half of 2001 – a period during which inflation was falling – to almost 8%, and that a level in excess of 7% was maintained throughout 2002. Taken by itself this should –

¹¹ For an explanation of the two-pillar strategy and a discussion of the weakness of the monetary pillar see Watt 2002.

according to the monetarist doctrine underpinning the use of the monetary target – indicate a sustained surge in inflation. Consequently, as in previous years, the ECB was forced repeatedly to point to temporary distortions in the demand for the various components of M3 to explain why it was not in fact *raising* interest rates. In reality, of course, the indicator function of M3 for price trends is increasingly seen as redundant by most observers. However, at the end of the year the ECB reiterated its commitment to an (unchanged) reference value (ECB Press release 5 December)¹².

The decision to cut rates in December was justified with reference to the perception that ‘inflationary pressures are easing’ and recognition that the ‘downside risks to economic growth have not vanished’. The latter must surely be considered an understatement in view of the constant stream of downward revisions in economic growth forecasts. The ECB had been subjected to a barrage of appeals, more or less coded, from the financial media, international financial institutions and, not least, national governments and trade unions. ECB interest-rate policy during 2002 certainly confirmed that its prime concern is inflation, as defined by the ECB itself, and that it is slow to respond to growth weakness *per se* (only to the extent that it curbs inflationary pressure. While the ECB is certainly somewhat more pragmatic than its mandate might indicate (see the discussion in Watt 2002), it is clearly a long way from the sort of balanced concern with growth and inflation that many observers want to see and that the US Federal Reserve – in a low inflation environment – has practised.

ECB rates by the end of the year were certainly low by historical standards¹³. Yet the timing is also important. During 2002 the ECB fiddled while the euro area economy stagnated. Even if the year had ended at the same rate, the slowdown could have been foreshortened if the cuts had been made earlier, when there was already ample evidence from leading indicators that the economy was not recovering¹⁴. The more rapid turnaround of the US economy at least partially reflects the more aggressive

¹² Paul de Grauwe, who had openly criticised the use of the monetary pillar, was sidelined as a candidate to the ECB Governing Council (Financial Times, 15/04/02).

¹³ For a more detailed exposition of the critique of ECB interest rate policy see CSC/ETUI (2003).

¹⁴ For instance the OECD’s leading composite indicator for the euro area – which predicts cyclical turning points around 9 months in advance – started to decline in May-June 2002 (OECD Main Economic Indicators).

monetary easing adopted by the Federal Reserve¹⁵. On top of this, towards the end of the year, came the appreciation of the euro, which, uncorrected, has the effect of tightening monetary policy.

2.1. Fiscal policy

Unlike monetary policy – which can choose whether or not to react to a cyclical downturn – fiscal policy does so, in part at least, automatically: tax and social insurance revenues decline while spending on unemployment and other social benefits rises. These so-called ‘built-in stabilisers’ automatically produce a more expansionary fiscal policy stance when the economy slows, helping to prop up growth. Fiscal policymakers are left with the decision whether to use discretionary policy – changes in spending levels and tax rates – to either counteract or to supplement these effects. In making discretionary changes the long time lags need to be borne in mind before fiscal policy measures are decided, approved and implemented.

According to the Commission’s Autumn Forecast, the fiscal deficit in the euro area as a whole was expected to reach 2.3% in 2002, compared with just 1.5% the previous year. It is interesting to note that the Spring Forecast just six months earlier had predicted 1.4% for 2002: this shows the extent to which the unexpectedly low growth – rather than discretionary policy – led to the significant worsening of the deficit: overall the Commission estimates that 0.6 of the 0.8 percentage-point deterioration was due to cyclical influences. The change was split evenly between lower receipts and higher expenditure.

The 2001 figure itself had been 1 percentage point higher than the Commission had expected in the autumn of that year. Partly this reflected a re-evaluation by Eurostat of national accounts (especially in Portugal, Italy and Greece): the scope for manipulating the fiscal numbers is much greater than for other economic variables.

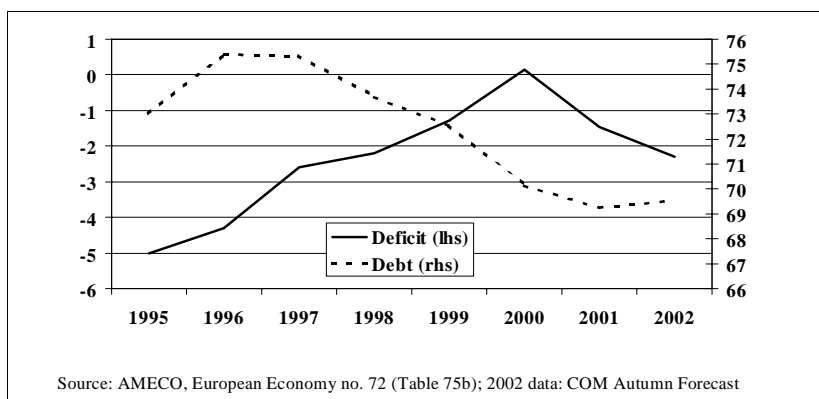
In terms of government debt, the widening deficits led to a slight increase from 69.3% of GDP in 2001 to an estimated 89.6% in 2002.

In order to put these abstract numbers into perspective I have plotted the development of the deficit and debt (on standard definitions) since 1995

¹⁵ The fiscal easing was also more pronounced in the US, although the longer-term impact of the tax cuts is a cause for concern (cf. the sustained critique of US fiscal policy in the New York Times op-eds by Paul Krugman).

(Figure 15). With the deficit leading the debt by around a year, the curves show the substantial improvement in both variables during the expansion of the late 1990s. The overall fiscal position briefly went into surplus in 2000. The recent deterioration is minor and, as yet, short-lived. Once again, everything will depend on whether it proves possible to limit the duration and depth of the slowdown. It is also interesting to look abroad: the Commission estimates the fiscal deficit in the USA at -3.2% and at a massive -8.0% of GDP in Japan. Thus both the historical and geographical benchmarks caution against overdramatising the current fiscal position in Europe.

Figure 15: General government consolidated gross debt net lending (+) or net borrowing (-); general government percentage of GDP at market prices (excessive deficit procedure)



While the overall fiscal position of the EU-12 is clearly important – for if anything is to have the alleged impact on the stability of the currency, it is surely the aggregate fiscal stance – in fact the attention of the Commission, which has the task of watching over fiscal policy in the euro area, and the focus of policy debates have been on national fiscal policy. Media attention has focussed on threatened or actual breaches of the 3% of GDP limit set by the Stability and Growth Pact. These debates will be picked up in section 3.2. The Commission forecasts for the fiscal deficits by country for 2002 and 2003 are given in Table 4. The cyclically adjusted figures are an attempt to filter out the effects of the business cycle on government finances.

Table 4: Government deficits and cyclically adjusted deficits in the EU, forecasts for 2002, 2003

Country	2002		2003	
	Deficit	Cyclically adjusted	Deficit	Cyclically adjusted
B	-0.1	0.2	0.0	0.2
DK	2.0	2.1	2.0	2.1
D	-3.8	-3.2	-3.1	-2.4
EL	-1.3	-1.7	-1.1	-1.8
E	0.0	0.3	-0.3	0.3
F	-2.7	-2.7	-2.9	-2.8
IRL	-1.0	-1.4	-1.2	-0.8
I	-2.4	-1.8	-2.2	-1.6
L	0.5	--	-1.8	--
NL	-0.8	-0.6	-1.2	0.0
A	-1.8	-1.7	-1.6	-1.5
P	-3.4	-3.0	-2.9	-1.9
FIN	3.6	3.7	3.1	3.3
S	1.4	1.3	1.2	1.3
UK	-1.1	-0.6	-1.3	-0.9
EU-15	-1.9	-1.5	-1.8	-1.3
EU-12	-2.3	-1.9	-2.1	1.6

Source : Commission Autumn Report, Annex Table 37 and Box 2.2

An important phenomenon to emerge from these data, when compared with national inflation rates (see Table 3), is that those countries with 'problematic' deficit positions (especially Germany and France) are those who, with their low inflation rates, are 'helping' the ECB keep inflation under control, whereas the fiscal 'model students' (especially the Netherlands, Spain and Ireland) are those whose inflation rates is helping to ensure higher than necessary interest rates. Portugal is the only exception, with relatively high deficits and inflation. This casts serious doubts on the

official ideology according to which only fiscal ‘responsibility’ can ensure price stability. The simple explanation, of course, is that weak (strong) economic growth tends to push deficits up (down) and inflation down (up).

3. Economic policy debates

At the European level the major occasions for economic policy developments and debates during a given year are: the reviews by the Commission and Council of the progress made by member states with respect to the Broad Economic Policy Guidelines, the Stability and Growth Pact and the Employment strategy guidelines (see Serrano Pascual in this volume); the meetings of the 12 finance ministers of the so-called ‘Eurogroup’; the meetings of the twice-monthly meetings of the board of the ECB, in which decisions on interest-rate policy are taken; the twice-yearly meetings of the macroeconomic dialogue (Cologne process); the four summit meetings of the European Council, in which major new initiatives can be launched by the heads of state and government.

In 2002 an additional important forum was the Convention of the Future of Europe, a deliberative body set up to discuss the institutional reform of the Union with a view to imminent enlargement and to propose appropriate changes to and a consolidation of the founding Treaties. The outcome of the Convention debate in the fields of relevance here is discussed briefly.

Subsequently the lively debate on the Stability and Growth Pact (SGP) and more generally on fiscal-policy making is reviewed, followed by a look at the more arcane issue of the coordination between employment-policy, economic-policy and structural policy-coordination (‘coordination of coordination’).

The aim in tracking these debates is to determine to what extent and in which directions the EU policy-making regime in the area of economic and employment policy is evolving; this is the subject of the conclusion.

3.1. Convention on the Future of Europe

The proceedings of the Convention have consisted of a series of plenary sessions, underpinned by on-going work in a large number of working groups, one of which was on economic governance. While, in principle, this represented a significant opportunity to introduce changes in the Treaty and thus in the institutional framework, this would have required a degree of

consensus which could not be obtained in the working group. Thus, in fact, few changes of substance are to be expected¹⁶.

Specifically, there was very little support for changes to the ECB mandate to incorporate growth and employment considerations, or in the rules of the SGP (e.g. to take account of investment spending); there were majorities in favour of strengthening the role of the Commission in the BEPGs, of anchoring the open method of coordination in the new Treaty, and strengthening the role of the Eurogroup, also by including it explicitly in the Treaty (see Watt 2002). In each case, however, a substantial minority was opposed. From this the President of the Convention, Valéry Giscard d'Estaing concluded that there was a general desire for greater coordination of economic policy, but no agreement on how this should be achieved.

Thus the hope, expressed at the end of this author's article in the 2001 European Trade Union Yearbook, that the Convention provided an opportunity for positive change against the background of a positive shift in public opinion, seems likely, to prove overoptimistic. The forces for change are relatively strong, at least in some areas, but not strong enough to be able to overrule significant minorities in favour of the *status quo*. The mandate of the ECB remains more or less taboo. The Convention continues, however, and it may be that when the deals are done on the basis of the various working group reports more will emerge in the economic governance area. It is possible that the Iraq crisis may strengthen the hand of the 'federalists' on the Convention and that this will have positive effects in terms of economic policy-making.

3.2. A 'stupid' Stability and Growth Pact?

Whereas in the previous year the most controversial debates had been on the implementation of the BEPGs, in 2002 it was the Stability and Growth Pact that occupied centre stage throughout the year, Commission President Prodi provoking great media attention by terming the Pact 'stupid' in a newspaper interview. Three main countries were involved during 2002: Portugal, Germany and France (with Italy).

¹⁶ The following is based on the final report of the working group (CONV 357/02, issued on 21 October 2002).

Portugal

When the centre-right took over from the socialists in March 2002, they quickly announced that the preceding government's budget figures and forecasts were inaccurate. The deficit figure for 2002 was raised from 1.8 to 4.1% of GDP, taking it substantially above the 3% limit of the SGP, the first country to do so. Portugal immediately committed itself to tough austerity measures, including a rise in VAT and social spending cuts, in the face of already weak growth, with the aim of meeting the 3% target (Financial Times, 9.5.03). As a result of the 2001 transgression – identified late – the Commission formally opened the excessive deficit procedure (EDP) against Portugal in September 2002, showing for the first time how the mechanisms provided for under Article 104(3) of the Treaty were likely to be applied.

First the Commission produced a factual report (24 September) detailing fiscal developments in Portugal and castigating the authorities for the 'serious deficiencies in the production of public finance data in Portugal' (Commission press release, 24/9/03). The report noted that the deficit had not resulted in an unusual event outside the control of the country nor from a recession: it also noted, however, that the deficit was approximately equal to public investment. It recognised that Portugal had already committed itself to far-reaching measures, but questioned whether this would be enough to avoid a renewed transgression in 2002. On 16 October it published an opinion formally identifying the existence of a deficit and called upon the Council to address a recommendation to Portugal that the excessive deficit be resolved as rapidly as possible and by 2003 at the latest: a deadline of 5 March 2003 was set for the implementation of measures. The Commission said it would review the situation in March 2003. The Council adopted this recommendation on 5 November.

Germany

Estimates of Germany's fiscal position also steadily declined during the year, with economic activity stagnant and extra spending occasioned by serious summer flooding. The author of the SGP, Germany seemed to spend most of the year doing its utmost to avoid an official reprimand, only for an official EDP to be opened in the autumn – after the German elections. At the end of January 2002 the Commission issued a formal warning to Germany, as it was felt to be sailing very close to the fiscal wind. Both the Commission and Eichel emphasised that there were in agreement both on the planned fiscal policy measures and on the need to uphold the SGP.

Unlike in the case of Portugal later in the year, however, the warning was not endorsed by the Council. Instead a compromise was agreed under which both countries accepted assurances of extra vigilance and a renewed commitment to the balanced budget target by 2004.

The compromise aroused the suspicions of fiscal hawks that Germany was being let off the hook, but many commentators saw it at the time as a sensible approach, given the underlying agreement on the 'necessity' of bringing the deficit down.

By the end of the year, however, the economic slowdown had removed any illusions regarding German's ability to meet the 3% ceiling and the EDP procedure was implemented¹⁷. Subsequently a number of tax loopholes were reduced, planned tax cuts abolished, and spending cut (Financial Times, 15 October 2002), as the country, and particularly the finance minister, in the face of opposition from within the governing social-democrats, publicly committed themselves to do everything to meet the 3% limit, in spite of the severe economic slowdown. This contrasted with France (see below) and led to claims of broken electoral promises, while further reducing demand in the sluggish and deflation-prone German economy.

France and Italy

The situation with regard to France and Italy was rather different. Firstly their fiscal position was less serious, in the logic of the SGP, than that of either Germany or Portugal. On the other hand, during the summer the two countries repeatedly argued that national priorities and political commitments (notably election promises of tax cuts) took priority over EU guidelines: the wider deficits were thus more clearly policy-induced than as a result of sluggish growth. Moreover, Italy was heavily criticised by the Commission over its budgetary accounting practices. Although France was careful to say that it would keep to the 3% limit, it based its forecasts on optimistic growth predictions and also said that it would not pursue further fiscal consolidation, postponing the balanced budget target until 2007. At the Seville European Council (Financial Times 22/23 June 2003), France was permitted to make achieving the balanced budget by 2004 subject to the

¹⁷ Commission report on Germany (19.11.02); Commission recommendation on 8 January 2003, a decision accepted this time by the Council on 21 January 2003.

– unrealistic – condition of 3% annual economic growth. The debate on France's compliance with the SGP continued on into 2003¹⁸.

The Commission was widely seen as having had to back down, leading to an unprecedented rebuke of France by ECB President Duisenberg (BBC News, 5.7.03). A group of small European countries also expressed its anger with what it saw as Commission kow-towing to the 'big boys', whereas they had been obliged to swallow bitter fiscal medicine (Financial Times 26.9.03, p. 2). The calls for the SGP rules to be strictly applied were also echoed by the main European employers' federation, UNICE (infoBASE database record 6076, 02.10.02).

Some conclusions can be drawn from the actions taken regarding countries infringing (or in danger of doing so) the rules of the SGP during 2002:

- There can be long delays in identifying deficits (notably in the case of Portugal and Italy, where 'creative accounting' had clearly been employed; this is creating pressure for better and faster reporting.
- European-level warnings and injunctions are being used – for good or ill – by national governments as a lever in pushing through unpopular reforms, but also to depress demand in already sluggish economies.
- the Council has shown its willingness to endorse Commission recommendations, despite the fact that other countries also faced early warnings: it had been widely speculated – particularly by 'stability-conscious' economists – that other member states would be unwilling to endorse such recommendations as they were likely to be facing similar constraints at the same time or at least subsequently¹⁹.
- the fact that Portugal was particularly assiduous in following Commission recommendations may be due to the fact that they helped to discredit the previous government and made it easier to push through unpopular reforms, but also may reflect the fact that Portugal was in a weaker bargaining position, because of its dependence on the EU Structural Funds.
- On the other hand, the case of Germany shows how the SGP can have major restrictive effects on fiscal policy, even in a large country, at least

¹⁸ An early warning decision was finally taken in January 2003 by the Council forcing France to take action to reduce the deficit.

¹⁹ On the experiences during 2001 with the – rather different – procedure under the BEPGs, see Watt 2002: 244 ff.

where the fiscal authorities have repeatedly emphasised their commitments to the Pact. This in turn may reflect ideological difficulties on the part of the country that had in effect drawn up the Pact, but also ‘chance factors’ such as the personality of the finance minister²⁰.

- The position taken by France indicates that some countries continue to insist on ‘national priorities’ and thus show a reluctance to submit to common rules in this area – leaving aside the value or otherwise of the rules themselves (see conclusion). Both the French and German cases showed that both member states and the Commission are keen to avoid a showdown and to find compromises. If France and Germany had combined to reject the Pact’s strictures, the SGP would almost certainly have been killed off.
- The importance of these struggles is shown by the lobbying attempts of other interested parties (other member states, the ECB, interest organisations). The vocal opposition on the part of small countries to allowing the ‘big boys’ to get away with fiscal laxity shows the force of peer-group pressure. Unfortunately, though, this is based more on political considerations than a realistic appraisal of the economic costs and benefits (see conclusion).

These, at times acrimonious, debates came to a head in October when, unexpectedly, the President of the European Commission conceded that the Pact was stupid, because overly rigid. It is still not clear to what extent this was a *faux pas*, or whether Prodi, conscious of the damage being done to the credibility of policy coordination by the increasing recognition of the Pact’s dysfunctional nature and the resulting interminable wrangles, was giving the green light for reform proposals.

Whatever the case, the Commission swiftly took steps to withdraw from indefensible positions to ones that it considered tenable. On 21.11.03 it issued a Communication on *Strengthening the co-ordination of budgetary policies* (COM (2002) 668 final). While reaffirming the importance of the SGP and defending the goal of a balanced budget as ‘economically valid’, it identified a number of implementation difficulties, notably statistical problems, the difficulty of reaching agreement on the cyclically adjusted

²⁰ This is suggested by the very much more independent-minded (one can also call it ‘nationalistic’) position taken by the French. One is tempted to speculate on the outcome in Germany had Oskar Lafontaine remained finance minister.

fiscal position, the failure to run sound policies during upswings, enforcement, consistency and communication problems. In response the Commission proposed five principles of interpretation and four sets of measures to improve implementation.

- Focus on cyclically adjusted ('underlying') budget figures.
- Countries with underlying deficits should take account of economic conditions in their consolidation attempts, but should ensure at least 0.5% improvement per year in the cyclically adjusted deficit.
- Effective measures – which the Commission did not specify – are necessary to prevent fiscal loosening in 'good times'.
- Investment or tax cuts could be excluded from deficit calculations where they stimulate growth in the medium term, provided the deficit and debt situations are not too far out of line, the medium-term benefits are evident, and the 3% limit is respected.
- Greater emphasis should be made on fiscal sustainability and thus the level of debt, but also the implications of ageing, etc.

In the light of this the Commission proposed:

- a political reaffirmation of the SGP by the member states;
- improved analysis of economic and fiscal policies (better statistics, work on cyclical adjustment procedures, agreement on reliable growth forecasts²¹, focus on quality of public finances);
- more effective enforcement (clearer criteria, based on the size of the budgetary slippage, whether this is due to cyclical or discretionary factors and the likelihood of deficits rising towards the 3% threshold, implying earlier use of the early warning procedure);
- prevention of pro-cyclical loosening, and greater clarification on the debt criterion (notably what is meant by a 'satisfactory pace' of debt reduction);
- better communication.

²¹ Ironically the Commission says that it will check whether national forecasts are realistic by comparing them with its own growth forecasts: yet as section 1 and Watt 2002 clearly show, the Commission itself has been consistently overoptimistic in its predictions in recent years.

The Commission's proposals show awareness of the concerns raised by many commentators and groups, not least the trade unions, over recent years, and a willingness to meet them. Of course they also reflect the fact that some positions simply cannot be enforced by the Commission against resolute member state opposition. Although the proposals mark a step in the right direction the requirement, in particular, that countries tighten fiscal policy through discretionary measures representing 0.5% of GDP every year, irrespective of the state of the economy, until budgets are in balance or surplus indicates that the coordination regime, although moving forward, is still hidebound to an outdated view of the threat to monetary policy if fiscal policy is not subjected to tight constraints.

3.3. Streamlining of economic and employment policy processes

Although certainly less in the public eye than the debate on the SGP - i.e. coordination within a policy area – the year 2002 saw a continuation and intensification of the debate on coordinating *across* policy areas ('coordination of coordination'). Towards the end of the year these debates led to concrete proposals regarding the streamlining of the economic and employment-policy coordination processes, which are now being applied in 2003.

It was widely felt that there was a lack of coherence between the Luxembourg process for coordinating employment policy and the Broad Economic Policy Guidelines that are the basis of economic and structural policy coordination. Partly this reflected the different timing used, despite the fact that both are annual policy cycles. Partly because of this there was a tendency, criticised particularly by the trade unions, for the BEPGs – which are largely emanate from the ECOFIN Council (i.e. ministers of finance) – to 'stray' onto the terrain of labour market reform, at times contradicting measures agreed by a separate process (and one where labour ministers and also the social partners play the leading role). Other concerns included excessive 'tinkering' with the guidelines that reduced transparency and made it even more difficult to interest a broader constituency in the coordination procedures than the existing specialists.

In September the Commission issued proposals to address these issues (COM (2002) 487 final)²². The main points are as follows:

- the employment and economic policy coordination processes are to be put on the same timescale (see appendix), with a central role being given to the Spring Summit of the European Council to evaluate progress and give political orientation or the next cycle, on the basis of which the Commission will propose a package of guidelines covering both policy areas and the internal reform agenda;
- although the annual cycle will remain, both the BEPGs and the Employment Guidelines themselves will be subject to review – barring extraordinary circumstances – only every three years, emphasising their medium-term nature;
- accordingly, the annual review will focus more clearly on evaluating the implementation of the existing guidelines.

These changes, which will take effect as of 2003 are broadly to be welcomed. In particular it will make it more difficult for the BEPGs to override employment guidelines that are presented and discussed at the same time. Of course the proposals do not address some of the more fundamental concerns about the overall employment strategy. They are unlikely to change the macro-policy emphasis on stability, rather than growth and employment, in the BEPGs, without which the Luxembourg process of labour market reforms cannot be expected to make major inroads into unemployment. Nor is it clear – although this was a goal of the Commission – how the changes will help to increase the involvement in the employment coordination process of parliaments and the social partners at both European and national level. While progress on the first issue does not seem likely, campaigning on the question of participation and involvement may bear fruits in the coming year. A positive sign in this respect is the decision at the Barcelona Spring Summit to institutionalise a social partner summit prior to future spring summits. The first is about to take place at the time of writing. Time will tell whether this will be more than just a formal exercise and intermittent exercise, but rather serving as the kernel of

²² Of course the ETUC and other actors had other, more fundamental criticisms of these processes, notably the lack of provision for short-term stabilisation in the face of shocks in the BEPGs, but these were not ‘on the reform agenda’.

something like an on-going ‘social pact’ for the European Union (on social pacts at national level see Fajertag and Pochet 1997 and 2000).

Conclusion

This section has sought to draw out some of the major debates on economic policy-making at the European level involving several actors and or interaction with the national level that took place during 2002. The overall conclusion must be that the policy-making regime is evolving, largely in the right direction, but that it is doing so far too slowly and that major problems remain. There remains a lack of coordination and even cooperation between the major actors: the ECB, the national fiscal authorities, the social partners and the Commission. The Macroeconomic Dialogue²³ remains a potential forum for such cooperation, no more and no less.

Europe lacks, in particular, mechanisms that would enable it to react appropriately to external shocks and to at least lean against the wind of changing domestic demand trends. This is clearly shown by the demands made by the ECB and (some) national fiscal policy makers of each other that the other actor should react ‘appropriately’ to the unexpected economic slowdown. The simple fact is that both fiscal and monetary policy can be an appropriate reaction to demand shifts. But in the absence of coordination, and given the major uncertainties involved, situations are common in which rational action by each actor leads to a sub-optimal overall result: in the case of Europe in 2002, the outcome was that the overall fiscal-monetary stance was simply too tight in view of the deteriorating economic situation. The fact that the high-deficit countries tended to be those with the lowest inflation (and conversely it was the low-deficit countries that were making life difficult for the ECB on the inflation front), shows that a simplistic rule, according to which the fiscal authorities ‘put their house in order’ and monetary policy does the rest is just not sufficient.

The debate on the SGP had its positive and negative aspects. There is increasing recognition of the dysfunctional nature of the Pact. However, those critics of the Pact that are in favour of closer fiscal policy coordination – but one more oriented to achieving positive spill-overs between national policy and more effective joint economic stabilisation and stimulus – are

²³ As no major developments in this forum are to be reported for 2002, the interested reader is referred to the discussion in Watt 2002.

placed in a difficult situation by the stand taken by the French and Italian finance ministers. In purely economic terms, their stance is largely to be supported. Europe needs a fiscal boost, particularly in the low-inflation countries, to help it out of the economic doldrums. Politically, however, such unwillingness to abide by agreed rules makes it more difficult to argue the case for a coordinated policy. The Commission has made a number of useful suggestions, but the danger of pro-cyclical tightening remains, at least in the short term.

All in all, Europe continues to underperform, to rely on external demand, rather than taking its economic (at least!) future into its own hands. Faced with persistent sluggishness of the economy, the usual suspects (dismissal protection, 'overgenerous' welfare benefits, 'rigid' pay structures, etc.) are coming under an intensified barrage of attack, particularly in Germany. The fate of Japan serves as a constant reminder of where an economy can end up if it fails to stabilise demand, exacerbated by oversaving, deflation and a belief that 'structural reforms' alone – however important they may indeed be in the longer term – can pull the economy out of stagnation.

Neither Germany nor the euro area are in that situation yet. But as long as the recovery is delayed, macro policies are hamstrung while the debate concentrates almost exclusively on areas that cannot bring about a renewed upturn by themselves²⁴.

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²⁴ This argument has recently been very forcefully and succinctly made by a former head of the UK employers' federation (see Turner 2003).

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Amparo Serrano Pascual

A contribution to evaluation of the European Employment Strategy: what lessons from the first five years of implementation of the EES?

Introduction

1. The potential of the EES: what the EES could be?
2. The European Employment Strategy in practice: is the potential of the EES fulfilled?

Conclusion

Introduction

The European employment strategy (or Luxembourg process) probably constitutes one of the most credible attempts to date at creating a social Europe. Its aim is to put in place mechanisms for the European-level coordination of employment policy which is thus being used to take the first steps towards complementing economic convergence with social convergence, even though the actual control of employment policy will remain in the hands of national governments.

But why is there a need for European coordination to develop social Europe? The Europeanisation of social affairs is important for different reasons. Since the achievement of Economic and Monetary Union, there has been a major asymmetry between market efficiency (economic policies have been Europeanised) and policies to promote social protection (which are still conducted at national level). The European employment strategy can, it might be argued, serve as a counterweight to European Economic and Monetary Union. Economic integration has, furthermore, reduced the capacity of member states to use traditional national economic policy instruments (exchange rates, deficit spending, monetary policy, increase in labour costs) as a means of pursuing self-defined social policy goals (Scharpf 2002). Last but not least, there is the risk of wage dumping (Jacobsson and Schmid 2002). Firms' ability to relocate production might lead to downward pressure on taxes, wages and social security systems. These are some of the reasons why the social dimension of the European integration needs to be strengthened.

But this strengthening of the European project comes up against the diversity of Welfare States. This diversity implies not only differing abilities to pay for social transfers (Scharpf 1999; Scharpf and Schmidt 2000a), but also different underlying values, historical arrangements, social philosophies and normative preconceptions about what is or is not fair, as well as diverse situations of social groups on the labour market, adding up to a tremendous diversity of problems. Furthermore, social affairs is a highly politically sensitive area – the result of longstanding political compromises and deeply embedded cultural values – so that national governments are not prepared to transfer to the European institutions control in this area or to accept the further dilution of their power that would be entailed.

Legal or hard coordination is thus difficult to achieve in the field of social policy; agreement on common European solutions is hard to reach. As such, it is not easy to progress beyond the relatively low minimal standards

acceptable to all member states (Scharpf 2002). Furthermore, collective agreements at the European level are jeopardised by the reluctance of employers to travel down that road.

These are some of the reasons behind the adoption of the so-called 'open method of coordination' which is at the core of the European Employment Strategy (EES). This method consists in four stages:

1. The European institutions draw up a set of general measures and targets (European guidelines).
2. These European guidelines are translated into national and regional policies (National Action Plans).
3. As a means of comparing countries and identifying best practices, the European institutions develop a series of indicators (benchmarking).
4. The NAPs are reviewed by the European institutions (leading to the proposal of recommendations in the 'Joint employment report') and also by peer review.

The aim of this strategy is therefore to produce convergence towards certain employment policy goals within a context of national institutional diversity.

This method of coordination has been called 'open' because, first of all, it is not legally binding and policy choices remain at national level. A second reason is that it is 'open' in its nature, i.e. open for discussion and revision and easy to adapt to changing situations. The principle behind it is to promote common objectives and indicators and, through comparative evaluation of national performance, it is intended to promote policy learning. Last but not least, it is called 'open' with reference to the possibility of 'multi-level governance', that is, it allows for cooperation and participation of multiple players.

The aim of this article is to discuss some of the main contributions to the debate on evaluation of the EES. There has indeed been a profusion of studies dealing with this issue over the last two years, mainly in the context of the evaluation exercise undertaken by the European institutions after five years of the implementation of this strategy. This evaluation has been tackled from different angles resulting, in the main, from different theoretical approaches towards the topic of research. My aim here will be to gather together this wide range of approaches in order to raise some preliminary conclusions about the direction, the strengths and the potential risks of this exercise.

I will start by discussing the potential benefits of this strategy and the extent to which it is important to promote it and enhance it further. But the fact that the benefits are currently merely ‘potential’ is what has to be stressed here for, at this stage, the potential has, in a number of respects, not been realised, and, moreover, a number of obstacles have jeopardised implementation of this exercise. In a second section I will try to pick up the main criticisms of this implementation process, showing the areas in which the European Employment Strategy should perform better. The third section discusses some of the potential risks of this strategy. The article will conclude with some indications of the direction in which the strategy should/could go to avoid these potential risks and to exploit its positive potential to the full.

1. The potential of the EES: what the EES could be?

In a number of important respects the European employment strategy represents a considerable potential in terms of policy efficiency and social cohesion. It could serve as a tool for policy learning (1.1), for the promotion of a culture of evaluation (1.2) and a factor for raising awareness of – often underestimated – social problems (1.3).

1.1. Policy learning

The European employment strategy seeks to improve the efficiency of social Europe (Goetschy 1999). The open method of coordination, which characterises the European Employment Strategy, could serve as a tool for policy learning, and in this way the European institutions might be said to be playing an important socialising role. The main learning-promotion mechanisms of the EES are based, above all, on encouraging the transfer of labour market policy between member states through the identification of common intervention paradigms, dissemination of best practices and evaluation by peer review, the close involvement of different players (regional, local, national, social partners, NGOs, etc), as well as on its flexible and open nature, such that recent acquisitions can be regularly assessed and policy measures redefined in the light of evaluations. All these factors can push national and European policies into a ‘reflexive stage’ where they can benefit from the evaluation exercise, and can put some pressure on national states to improve the efficiency of employment policies (Goetschy 2002).

Transfer of labour market policy between member states

The EES can promote policy learning through information and the exchange of best practices. In this way, this strategy encourages member states to compare their own results with those of the best performers and pushes actors to redefine collectively objectives and policies (Trubek and Mosher 2001). The EU thus serves as a hub for exchange, in order to enrich policy knowledge within a network of countries. By spreading concepts into national discourses, it is in a position to influence the social representations of domestic actors. Member states are encouraged to focus on jointly defined problems, and the strategy can therefore act as a vector to standardise knowledge by promoting a common interpretative framework, shared policy objectives, improved comparability and common indicators. The annual repetition of individual recommendations addressed to the member states places them under pressure to adapt these recommendations (de la Porte and Pochet 2001).

With its emphasis on identifying, spreading and exchanging ‘best practices’, the EU’s strategy seeks to make it possible to share diverse practices and to promote the concept of learning from each other (Pochet 2000). The aim is to organise a European-level process of acquiring knowledge (de la Porte and Pochet 2001). This exercise allows comparison of each country’s performance with that of its peers and the use of benchmarking is intended to promote continuous improvement of policies. Periodic monitoring, evaluation and peer review can allow mutual learning processes, the overall aim being to encourage member states to learn from each other. The development of reciprocal learning processes is at the heart of the method (de la Porte, Pochet and Room 2001).

Enhancing participation of different players and coordination among levels of government (multi-level governance)

Different social players are supposed to participate in the preparation of the NAPs and in their implementation, allowing a multi-level surveillance procedure. Moreover, the participation of a wide range of actors in policy formulation, implementation and evaluation are key aspects for the effectiveness of the process because it allows account to be taken of different experiences and perspectives, benefit to be derived from local knowledge and involved players to be kept responsible and accountable for carrying out their commitments (Zeitlin 2002). This process enables the establishment of multi-level intervention by a range of actors with diverse

viewpoints, leading to the advantages of a combined approach. It could enhance ‘policy dialogues’ among diverse groups and social players on a regular basis and it might foster deliberation, leading to the creation of an ‘epistemic community’ (Trubek and Mosher 2001). It is also meant to improve transparency and deepen democratic participation (de la Porte 2002) and, in some cases, this process could enable a strengthening of social dialogue.

Moreover, the OMC can also promote interaction between different levels of power and spheres of intervention (EU, member states, different administrative departments, local and regional actors, social partners and civil society) in a multi-level network. Given the proliferation of actors it is necessary to ensure appropriate coordination between the various levels and actors that are harnessing their efforts to find a suitable response to this complex situation (Serrano Pascual 2001). This cooperation is crucial for the effectiveness of policies, as it makes it possible to stimulate innovation, facilitating the use of the knowledge of groups working in the field, enable adaptation to individual needs and local settings, and encourage the establishment of a holistic intervention that deals with the various dimensions of the problem horizontally (Serrano Pascual 2001).

In a labour market characterised by growing complexity, the strict segmentation of responsibilities and the traditional institutional boundaries between policy areas characteristic of public interventions have made the system of social intervention unusually rigid. This rigidity partly explains the ineffectiveness of these policies which fail to address the plural, multidimensional nature of unemployment problems. Hence the importance of stimulating cooperation between the various levels by means of hybrid, multi-sectoral policies, based on a syncretic model of social intervention (Serrano Pascual 2000). Such cooperation might promote boundary-crossing results, allowing the coordination of different policy fields.

Last but not least, the EES could provide strategic opportunities and political resources for some organisations and social movements to improve their relative position on the labour market and in society (women’s organisations, ethnic minorities’ associations, etc.) (Cram 2001; de la Porte and Pochet 2001). In this case, the NAPs could be understood as a political tool enabling such actors to push group proposals into the policy agenda.

Flexible regulation

The open form of coordination of the EES allows for a type of regulation which falls somewhere between more legislation-based regulation, which is considered to be inappropriately inflexible, and more flexible forms of 'soft regulation' (official recommendations, exchange of information, best practice, development of structural indicators, joint information, etc). It is designed to increase the legitimacy of European-level actions whilst still respecting both the huge diversity of labour markets in the member states and the national regulatory systems (Goetschy 1999). Indeed, it could be argued that more rigid forms of legislation-based regulation would be poorly suited to today's rapidly changing world. In this framework, the OMC is characterised as a 'post-regulatory' approach with a preference for procedures rather than detailed and non-flexible regulations (de la Porte, Pochet and Room 2001). In this context, it might serve as a tool for policy adaptation, showing itself capable a priori of adapting goals, policy instruments and institutions in the light of the evaluation of past policies.

This method of coordination of employment policies could allow progressive accommodation to changes in the economic and labour market situation and results of evaluation reports. New information and ideas can be incorporated into the new guidelines, which might change each year.

1.2. Promotion of a evaluation culture

The EES could serve to enhance evaluation tools in member states as it allows an external control of peer review, is open to revision and encourages the development of statistical tools.

Peer review

National performances are exposed to comparative benchmarking on the basis of agreed indicators, to peer review and to public monitoring; as such this process provides favourable conditions for learning. Standardised measures are identified in order to improve the efficiency of policies and to allow a process of exposing them to public examination, facilitating explicit comparison with the performance of other countries (Goetschy 1999). Although there are no official penalties for failing to implement the strategy, peer pressure could well ensure a high degree of compliance. The only sanction for non-compliance takes the form of peer pressure and public opinion (de la Porte 2002). Thus, whilst the guidelines may not be legally enforceable, the symbolic importance of meeting them is considerable. The

EU recommendations issued to specific member states might place them in an uncomfortable ‘finger-pointing’ situation. Poor results on the basis of the structural indicators established by the EU are likely to provoke considerable political debate domestically, putting pressure on the member states to converge towards the benchmark that has been selected as the ideal goal to be achieved (Pochet 2001; de la Porte, Pochet and Room 2001).

Development of statistical tools

This process of exerting pressure on EU countries to converge toward commonly defined goals could involve not only making explicit what are the main targets for member states, and the tools needed to reach such targets, but also a pressure to monitor this process through common indicators. It could therefore enhance the development of more sophisticated and common statistical tools for evaluating the effectiveness of employment policies. The requirement of common statistical tools could place pressure on the national states to improve their own tools for monitoring the effectiveness of employment policies (Goetschy 1999).

Open to revision

On the basis of common statistical categories and indicators, the concepts proposed by EU institutions are compared and assessed in the member states. That might be a tool to assess how well the aims are being met and how greater effectiveness can be achieved. Indicators and benchmarking allow synchronic (between EU countries) and diachronic (through time) comparison of situations, in order to evaluate performances. This process might constrain EU countries to converge (de la Porte 2002). The evaluation results of the implementation process could well prompt national and European institutions to reconsider previous policies and concepts.

1.3. Awareness-raising

The EES could serve to direct and influence public debate on topics that are not often on the agenda of political and social discussions, thereby serving as a tool of political mobilisation. In this framework, EU institutions could give new impetus to topics that were previously almost absent from the policy analysis. This strategy can serve to increase sensitivity about the situation of certain groups in society (e.g. women, working poor, inactive people, older people and ethnic minorities) or to push on to the agenda very important topics that are often undervalued at the national level (for instance, the issue of quality of jobs). Furthermore, it could enhance

political commitment to certain issues concerning employment and social cohesion. As such, this exercise might allow national states to become increasingly aware of the weaknesses of their labour market and to call into question problematic situations that are often taken for granted.

These three axes, which represent the potential of the OMC of employment policies at European level, are also the main factors for legitimacy of the European project: technical legitimacy (based on a search for effectiveness), political legitimacy (deepening democracy) and social legitimacy (enhancing public sensitivity). But the question we could raise is whether or not this process has any real influence in practice, and if so, in which direction? Does it indeed provide *political opportunities* for different groups in civil society? Does this process allow the supply of *methodological tools* to enhance efficiency (as statistical tools, new institutions, etc.)? Does it facilitate change in policy priorities and serve to enhance *political will* in different member states?

2. The European Employment Strategy in practice: is the potential of the EES fulfilled?

If in the above section we have underlined the important strengths of this process in terms of policy efficiency and social cohesion, the aim of this chapter is to show that in practice things are not always happening as they could/should be, and that still we need to go much further than has been the case so far.

I would like to focus, in the main, on eight points that summarise, in my understanding, the main areas of criticism directed at this process: it consists in a merely formal exercise (2.1); it is 'too open' (too dependent on national willingness, too unstable, too asymmetrical, offers an open door to deregulation) (2.2); it lacks links with macro-economic policies (2.3); there is a limited bargaining field for third actors (lack of democracy, excessively top-down approach) (2.4); it lacks boundary-crossing capability (2.5); it prioritises quantitative aims to the detriment of qualitative ones, good practices are difficult to transfer (2.6). My intention is to discuss these main areas of criticism in the light of some of the results of multiple collective research projects coordinated by the ETUI on the evaluation of the EES for young people, women and, to some extent, ethnic minorities.

2.1. Socialisation competences of the EES despite the vagueness and ambiguity of the concepts

The ‘openness’ of this method of coordination, which is partly the source of its strength, represents also one of its main weaknesses. In order to maintain ‘open’ goals, the main concepts of the EES are extremely vague and ambiguous. This vagueness and weakness of the concepts which underpin the strategy – for example, employability, activation, flexibility, partnership, etc. – make it easy for member states to simply continue their existing policies.

Take the example of the concept of employability, which is one of the main pillars of the EES. This concept has been translated in different ways, according to previous policy traditions. If in Germany, the concept has been translated mainly into training, in UK and Nordic countries it has been understood mainly as activation, and in France as prevention (Serrano Pascual 2000). These different ways of interpreting the concept are the result of previous policies, and therefore, the drafting of the NAPs could consist more in a mere linguistic exercise than a genuine re-forging of previous policies. This has led some authors to claim that the drafting of the NAPs is indeed a mere formal exercise (Goetschy 1999; Jacobsson and Schmid 2001; Keller 2000, Watt forthcoming, etc.), consisting in the dressing up of existing practices as part of a European strategy. As result of this merely formal exercise, most of the NAPs fail to adopt an integrated approach and do not clearly specify concrete targets, the resources available for implementation or the budgetary implications or the indicator to be used for evaluation. They are often a list of discrete initiatives lacking overall integration, and without any detailed timetable (Goetschy 1999; 2001).

Nevertheless the vagueness of many of the concepts employed does not necessarily have to constitute a weak point; indeed, it could be construed as a strength, since it makes it easier to adapt the strategy to different national labour markets. The main concepts promoted by the EES are so broad that it also enables them to be adjusted to the different welfare models and political philosophies (de la Porte 2001; Serrano Pascual forthcoming). Furthermore, even the simple exercise of reclassifying existing policies within the framework laid down by the employment guidelines has an important ideological impact. As a consequence, national policies are gradually approximating to the social representation of the discourse of the EU institutions. A certain vocabulary (employability, partnership, activation, gender mainstreaming, etc.) has spread into the national political discourses (Barbier 2001; Behning and Serrano Pascual 2001; Serrano Pascual 2000;

2001). This adoption of the 'language' proposed by the EU institutions has had an important impact on the construction of the terms of the problem of unemployment or/and poverty, influencing the main lines along which the debate has been conducted and the way in which the problem is described. Although these concepts were not invented by the European Union, it has nevertheless made them into official terms and popularised them.

Therefore, European institutions play an important role in determining the direction of the debate (socialising role), intervening in the terminological constructions employed to designate the problem of exclusion from the labour market, and in proposing common frames of reference. This is certainly one of the conclusions that can be reached regarding the impact of the EU's strategy on young people and women (Serrano Pascual 2000; 2001; Behning and Serrano Pascual 2001). In this framework, the regulatory nature of the European Union is the harmonisation of ideas, representations and policy goals (Palier 2001). There can be little doubt that the socio-cognitive influence of EU discourse is increasing and that national policy is increasingly adapting to the framework and approach of the European Union (Barbier 2001; Jacobsson 2002). As the evaluation of the EES in some of the member states (France, Spain, etc.) shows, the EES has framed the terms of employment policy in the country. As such, member states are rethinking national policy in the light of common problems (Jacobsson 2002). An EU-wide interpretative framework for social and employment policy has taken place and this has encouraged a common understanding of employment policies. The EU is having an important impact in 'framing' domestic debates on employment policy and social protection (Barbier 2001).

This represents the basis for building appropriate methodological conditions for policy implementation. In the case of groups such as women and old people, this process has led to greater emphasis being placed on evaluation and has promoted awareness of the need to develop suitable statistical indicators (Behning and Serrano 2001). This in turn has meant better information, a better understanding and greater awareness of the problem. In the evaluation reports some countries report that this awareness-raising promoted by the EES has served to develop statistical monitoring (Italian case, Dutch case, French case, etc.).

The EES has promoted new ways to think about and discuss the problem of unemployment and social exclusion, establishing for instance a linear causality between employment and taxation (Jacobsson and Schmid 2001; Impact evaluation of the EES, Tax-benefit reforms and taxation on labour

2002), employment rate and economic growth (Alaluf 2001), unemployment benefit and activity rate (Serrano Pascual forthcoming). The activity rate replaces the unemployment rate as key reference, or lifelong learning becomes a central topic of debate (Evaluation of the EES: the French case 2002).

The EU institutions have therefore played an important role not only in defining the terms of the debate, but also in placing some items on the agenda. In the evaluation reports required by the Commission, some countries, for instance the Netherlands, underline that the EES has helped to give higher political priority to topics such as lifelong learning, has served to legitimise new policy proposals and to allocate additional power to certain policy decisions (Evaluation report of the Netherlands 2002). In areas such as lifelong learning, active ageing, equal opportunities, etc., there are important changes in the policy thinking of member states.

However it is debatable whether this process is more a two-way interaction or a one-way impact (Zeitlin 2002; Watt forthcoming). In some cases, there was already substantial policy consensus and the changes were already observable before implementation of the EES (Evaluation report of the Netherlands 2002; Evaluation report of UK 2002; Trubek and Mosher 2001; Zeitlin 2000; Watt forthcoming), especially in the case of activation and training; but even in these cases the EES might be said to have reinforced and legitimised these policy changes.

In any case, we should say that rather than seeking to describe the impact of the EES as a whole (de la Porte and Pochet 2002), we need to take into consideration which area of the EES we are talking about, because the impact varies between policy areas (Trubek and Mosher 2001). If the question of employability and activation, as well as the issue of equal opportunities, seem to have had a great influence, at least in the areas of framing public debates and political discussions, that is not the case with other issues such as organisational changes, tax policy, ethnic minorities and job creation.

This convergence process promoted by the EU institutions may also be seen to vary considerably from country to country. If in countries such as the Nordic ones, the reference to EU policies might have more negative results (Jacobsson and Schmid 2001), this is not true of the southern countries.

On the other hand, this convergence trend could be more obvious in countries in which the political philosophy is better attuned to the main aims and rationales of the EES. Countries such as the Nordic countries and

United Kingdom may be closer to most of the concepts of the EES, and particularly the concept of activation, than is the case with continental and southern countries. Therefore, the evaluation reports of countries such as the UK or Denmark conclude that employment policy developments have largely coincided with the aims and goals of the EES, but there is no certainty about a potential linear causal link and automatic relationship between the two processes. It seems that this process is having a more influential role in continental and southern countries, especially insofar as it is playing an important role in framing the employment debate and in integrating topics which might be not so popular without the existence of the EES (Evaluation of the EES in the case of France 2002; evaluation of the EES in the case of Spain). In any case, the EES seem to push member states towards some degree of policy convergence, such that the distance between different development paths is becoming smaller (Móssesdóttir 2002).

2.2. Is the open method of coordination ‘too open’?

It could be too dependent on national willingness

The OMC of the EES is neither legally binding nor enforceable. Unlike the case of EMU (Economic and Monetary Union), the EES is based on guidelines and recommendations and no specific penalties are provided for in the event of failure to follow these guidelines. Consequently, the employment strategy is in no way comparable to the verifiable and very clearly defined criteria for economic convergence, where penalties were in place for countries that failed to meet the criteria. Furthermore, one of the main regulatory tools of the European Commission, the provision of recommendations to member states, might turn out to be a weak weapon. The European Commission needs to find an appropriate mid-way position between, on the one hand, exerting pressure on member states to cooperate in the process, and, on the other hand, not irritating them by the kind of harassment which might well undermine the national willingness to cooperate (Goestchy 1999). Therefore, the strength of this regulatory method based on peer pressure and the capacity to serve as a tool for policy learning is rather limited. European institutions might reinforce the exchange of best practices, but it will be too risky politically to encourage the discussion of ‘bad practices’ or ineffective policies, from which it is also so important to learn. This method implies a voluntary process of cooperation; as such, the benefits of this strategy depend on the willingness of national actors.

But, although no formal sanctions are available for non-compliance, nevertheless there are other subtle and powerful forms of regulation which might take the form of peer pressure and public opinion pressure. But this process of regulation via ‘persuasion’ is still not well researched.

It could be too unstable

Some authors (Meyer 2000) underline the incoherent nature of EU policy as a result of which the real content of the ‘social dimension’ of the European project is extremely vague. The main concepts of this strategy have been borrowed from very different ideological and political philosophies as result of very broad compromises. Furthermore, there is also the question of the extent to which this project might be dramatically transformed when the political climate changes throughout Europe.

So far, however, no radical changes have taken place in the European Guidelines and none are foreseen. In some cases, the goal was to make certain proposals more precise, but in others new goals and targets have been introduced (to raise labour market participation of older people, promote quality of jobs, combat gender segregation, change tax and benefit policies to combat poverty traps, introduce better procedures for skills certification, etc.) (Goetschy 2002 Trubek and Mosher 2001). Nevertheless, this process is placed in a fragile situation. ‘Too many’ changes could be seen as leading to confusion and incoherence, but ‘too few’ changes might also be interpreted as a sign of rigidity, indicating that too little policy learning in the light of previous experience is taking place.

It could be too asymmetrical

The ‘room for bargaining’ and therefore the areas of intervention in the framework of EU social policy are limited by the EMU criteria. To cite the example given by Scharpf (2002), if expenditures on health are rising, there is no room in the EES to encourage price controls for pharmaceuticals. The risk is not only the essential imbalance between policies to promote market efficiency and those – protection against the market – to promote social protection, but also the subordination of social aims to economic ones (for an example concerning public pension reform, see de la Porte and Pochet 2002; for the case of activation see Serrano Pascual forthcoming).

It could be an open door to deregulation

The regulatory weakness of the OMC might serve as a tool for reinforcing a negative integration (erosion of regulations) rather than a positive integration

(construction of common rules) (Scharpf 2002; Watt 2000). Accordingly, Scharpf (2002) underlines the need to reinforce the OMC with complementary European social legislation that can provide a legal counterweight to the supremacy of market competition laws of the EMU.

Furthermore, Europe is regarded as a valuable political resource to legitimise politically sensitive and delicate changes. This makes it easier for national governments to implement unpopular policies by arguing that these are areas no longer within their control, but subject to EU dictates (Evaluation report of the Netherlands 2002). By a method of 'externalisation of constraints', it becomes easier to carry out unpopular reforms and place the political blame on the shoulders of the EU (Goetschy 2002)

2.3. Need to have a link with macro economic policies

The main emphasis in the four pillars has been on supply side factors (activation, benefit and tax systems, etc.). Policies such as employability cannot limit themselves to interventions in factors of labour force supply; there must also be jobs into which to be integrated (Aragón 2001; Serrano Pascual 2001). Employable people need appropriate jobs to fulfil their potential. Moreover, the encouragement of employability alone might have perverse effects, such as placing the blame on unemployed or inactive people, legitimising polarisation on the labour market, damaging motivation, exacerbating over-qualification, and fostering increasingly precarious terms and conditions of employment (Serrano Pascual 2000). An approach aimed at matters linked to labour force supply needs to be combined with other factors associated with labour force demand. Demand factors such as the lack of available jobs, the quality of the jobs and the discriminatory practices dominant in most organisations are also key factors in explaining the permanent exclusion of certain categories of the population from the labour market (Móssesdóttir forthcoming, Serrano Pascual 2000).

Therefore, in order to be successful these employment guidelines need to be compatible with macroeconomic policy, tax coordination, etc. (ETUC 2001; Foden 1999; Goetschy 1999; evaluation of the EES in the German case 2002). But in the EES, no clear links appear between employment and macro-economic policy in the EES.

2.4. Provision of political opportunities?

It seems that the EES has led to empowerment of certain social groups as it has, in some cases, encouraged the participation of a wide range of actors. In

the case of women's movements, for instance, the guidelines on gender mainstreaming have been useful in enabling them to demand government action in this area (Behning and Serrano Pascual 2001). Furthermore, the EES has enhanced the coordination of local, national and EU issues (Trubek and Mosher 2001). The EES has boosted the coordination of employment policies with regional governments, and to some extent with social actors, and it has enhanced partnership among institutional actors (assessment of the EES in Spain 2002, evaluation of the EES in France 2002; Trubek and Mosher 2001; Zeitlin 2002).

But still one of the main weaknesses of the EES has been the limited participation of a wide range of actors and therefore the limited scope for mutual learning (Zeitlin 2002). Local and regional actors have not been adequately integrated into the process. The *top-down approach* of the drafting of the NAPs appears as an obstacle for a greater involvement of local actors in the European employment strategy (Jacobsson and Schmid 2001). Some member states have formulated regional and local employment action plans, but in general there is a need to strengthen the territorial dimension of the EES.

Concerning the participation of social partners, the conclusions are less clear. On the one hand, it seems that the process of involvement of social partners in the formulation, implementation and involvement of the NAPs has been improved in comparison with the first years of implementation of the European guidelines (ETUC 2001; Jacobsson and Schmid 2001; Trubek and Mosher 2001; Zeitlin 2002). But this participation varies considerably from country to country, depending on the participative and social dialogue culture and traditions existing at the national level. Nevertheless, this participation seems to be restricted to a formal cooperation, rather than a substantive one (and, in any case, the level of participation has been inadequate (Goetschy 2002)). Because the participation of social partners is crucial for the legitimacy of the strategy, whose approach is still too top-down, it has been encouraged increasingly and yet remains rather restricted. The room for participation of social partners is therefore rather limited. They could have a word to say on proposals coming from the EU institutions, but it is the Commission which structures the framework and the terms in which different actors have to interact and which defines the terms of the debate. Social partners might modify, contest or respond to the content proposed, but they cannot intervene by changing the framework of the debate. Furthermore, the EES seems to play a role in the articulation of

the topics for bargaining between social partners (Evaluation report of France 2002). In this framework, the European Commission plays a socialising role, promoting social players to internalise the terms of the debate (Goetschy 1999).

Furthermore, the participation of other civil society groups is rather limited (Zeitlin 2002), and rather selective (Darmond 2001).

Some authors have emphasised the need for a more bottom-up approach as a condition for strengthening learning capacities and democratic deepening. De la Porte, Pochet and Room (2001) argue that a necessary condition for the EES to act as a vector of policy learning is the provision of decentralised learning networks.

Another question is to what extent the proliferation of multiple players will result in a more efficient policy. Although participation of diverse players is an important prerequisite for the maximum effectiveness of public interventions, it does not necessarily follow that collective action will be established: it can have perverse effects such as instrumentalisation, arbitrariness, failure of the State to take responsibility, etc. (Serrano Pascual 2001). The prerequisites to enable the building of cooperation are the establishment of communication mechanisms, the presence of appropriate representative institutions, the existence of a negotiating tradition, the feeling of trust established between the actors, and actors' autonomy (Serrano Pascual 2001).

2.5. Not part of a wider concern

To what extent has the EES enhanced formal mechanisms to cooperate among several administrations? Without such boundary-crossing practices, the results of the EES will be very modest. It seems that the EES has, in some member states, promoted an administrative reorganisation, greater horizontal integration and coordination of administrative areas (labour market, education, pensions, etc.) and of levels of government (national, regional, local), as well as greater decentralisation, but not to the degree necessary (Trubek and Mosher 2001; Zeitlin 2002). In some countries, this process has represented an encouragement for the reorganisation of the labour market institutions which might create a synergy between different ministries concerned by the EES, which traditionally have been characterised by their compartmentalisation, as well as an increasing participation of private actors and regional and local players (Evaluation of the Italian case, 2002). In some cases, the EES has served to stimulate a

better integration of tools and goals among different efforts linked with employment policy (Evaluation of the EES in France, 2002).

In general, however, it seems that the drafting of the NAPs is often subject to very little publicity, remaining the task of a small group of civil servants, without involving the whole group of administrations (Jacobsson and Schmid 2001; evaluation of the Italian NAPs; Zeitlin 2002). Jacobsson and Schmid underline the very weak connection existing between labour policy processes and the civil servants responsible for the NAPs, and the lack of integration of the NAP process in the agenda of the national ministries and local authorities.

Nevertheless, this weak dissemination among civil servants of the EES varies according to country. In countries such as Denmark and Sweden, it seems to be the concern of a small group of civil servants, while in the case of the Netherlands the dissemination of the EES within the public administration and in the media is quite efficient (Evaluation report of the Netherlands 2002). Further research is needed to monitor the way in which this situation is developing in other EU countries.

2.6. Prioritising quantitative aims and neglecting qualitative ones

To push people into work may be the main goal of the EES. But there is the risk of subordinating employment guidelines to economic criteria. A high employment rate could enhance economic growth, but it is not clear that it will have positive effects for workers' quality of life. Paid work is seen as the panacea to solve all problems, and therefore, the main policies have been built around four axes, increasing the activity rate of women, enhancing labour market participation of older workers, employment-friendly tax and benefit systems and removal of administrative and fiscal obstacles to entrepreneurship (Barbier 2001). The question of the quality of the jobs these policies are creating has been scarcely addressed, although this issue of job quality has come increasingly to be perceived as important in the last two years. This emphasis on 'any job' being better than 'no job at all' might be justified if this work allows people to get better jobs. As the latest *Employment in Europe* shows, temporary jobs are not always a stepping-stone towards jobs of better quality (especially true in the case of those with few skills, older people and women) (European Commission 2002).

This dominance of this principle of quantity of jobs is behind the criteria to evaluate good practices. For instance, the number of individual Action Plans is a criterion for the good implementation of policies, but this criterion says

nothing about the quality of the plan. We need indicators not only to take into account quantitative dimensions (number of jobs), but also the quality of this integration (Evaluation of the EES in the Netherlands 2002; Barbier 2001; Goetschy 2002).

2.7. Question of transferability of good practices

The exchange of best practices has served in some cases as a tool for policy learning (Evaluation of the EES in France 2002). Nevertheless, some problems have been identified: the problem of identifying good practices, which could turn out to be more of a political than a technical exercise (de la Porte, Pochet and Room 2001), and the question of how to transfer from one country to another. As a collective research project undertaken on the role of social and civil partnership to enhance employability has shown, a good practice is defined not so much by the content of the practice, but more by the institutional framework which explains that a practice was able to emerge or otherwise (Serrano Pascual 2002). Let us take the example of training on the job, an experience which produced very good results in integrating young people in Germany, Austria, etc. This good practice has been subject to attempts at reproduction in other countries with very different institutional and social backgrounds, including France, Spain, etc., with much more modest results. How are these different results to be explained? One of the hypotheses is that in a country like Germany the transition into work has been integrated into institutionalised policies, in which the educational and professional systems are intertwined. There is a long tradition of cooperation among the players that represent both systems, and the dual system could be successful only where these institutional conditions are available. If the nature of the OMC is to ensure a convergence of goals and policy approaches, but it lacks any scope for encouraging convergence of institutions and policy tools, the limits of this exercise become quite evident.

Conclusion

It might be said that the EES has given significant impetus for policy change, but that the actual extent of the change varies from country to country and over time. In any case, the EES appears to have taken up some of the main directions of an ideological climate already prevalent in the mid-nineties with the spread of ideological positions close to the 'third way', so that this strategy might be said to have accelerated and supported this process of policy change.

We have discussed the extent to which the EES has important potential in terms of the political opportunities it could provide, the methodological tools that could be enhanced by this process and, finally, the policy priorities it could transfer. According to some of the evaluation reports, it seems that the main successes of the EES are found in three main areas. Firstly, the EES has been quite successful in prompting awareness of the situation of certain groups in the labour market (women, older people and, in some instances, ethnic minorities) and endowing them with 'problematic' status, which could constitute a crucial tool and preliminary condition for political mobilisation. Secondly, a positive effect of the EES has been the provision of political tools for some groups of civil society, for example, women's movements, social partners in some countries and other lobbying groups in civil society. Finally, this strategy has, to some extent, promoted awareness of the importance of – and at the same time an improvement in – the methodological tools (better statistical tools, development of structures and institutions for the conception and evaluation of employment policies).

Nevertheless, there are also important areas in which the strategy should perform better. These may be summarised as follows:

- the link with macroeconomic policy is not made adequately explicit, while being excessively geared to the supply side;
- the focus is on aims but there is a lack of room of manoeuvre for intervening in institutional setting;
- there is a need to reinforce participation of other actors and cooperation among different players,
- excessive focus on quantity to the detriment of quality criteria.

These four main points represent, in my opinion, the main weaknesses of this strategy.

Another conclusion is the need for further research in the evaluation of this strategy, particularly in some areas such as the impact of the EES in public debate and the mass media, the meaning of participation by third actors and pressure groups and the construction of policy aims of the EU institutions, the link with the European Structural Funds and other community resources, and the evaluation process and peer review pressure. Though a very large number of studies have been conducted over the last two years, most of them focus on specific areas of this strategy only, and it will be necessary to broaden the spectrum of research on the evaluation of the EES.

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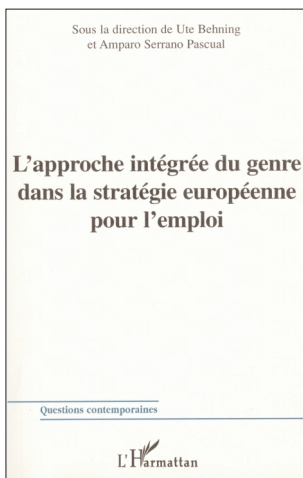
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L'APPROCHE INTÉGRÉE DU GENRE DANS LA STRATÉGIE EUROPÉENNE POUR L'EMPLOI

sous la direction de Ute Behning & Amparo Serrano Pascual



Grâce au Traité d'Amsterdam, l'égalité entre hommes et femmes est maintenant un principe qui doit être promu par l'Union européenne (EU). Ce livre est un recueil de contributions d'experts nationaux au débat sur le concept du *gender mainstreaming* couvrant l'évolution en la matière dans douze pays européens. Les sujets discutés incluent les principales approches de la politique de l'égalité des chances concernant l'emploi établies et mises en oeuvre dans les vingt dernières années, l'évaluation de l'impact de ces politiques, les changements au niveau de la participation inégale au marché du travail et l'impact sur la répartition des tâches à la maison, et l'adaptation du concept de *gender mainstreaming* conformément aux différents dispositifs et l'impact du concept européen du *gender mainstreaming* dans les pays concernés.

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Pierre Tilly

The role and participation of trade unions in the management of the labour market at local, territorial and cross-border levels

Introduction

1. Local development: an integrated approach
2. Creating and regulating employment at local level in a European framework
3. The autonomy of territories and local actors
4. The concept of governance
5. Local development observatories
6. Conclusion: ideas for the role to be played by trade unions

Introduction

The ideas presented in this article derive largely from analysis of a set of surveys carried out among trade unionists at local, territorial and cross-border levels. The data collected confirm the relevance of, and need for, increasingly active trade union participation in local employment policy. At the present time, there is considerable variation in this participation from one country to another. The partnerships put in place have a more institutionalised character in certain countries, such as France and Belgium. In Sweden meanwhile, this trade union participation tends to consist in the creation of local bodies, and in Finland trade unions are actually involved in the decision-making process. In southern Europe, at least in Spain and Italy, the trade unions are involved in the integrated management of projects, which is a translation of their explicit request to participate at all levels of the process. In the case of Italy, however, it must be pointed out that trade union participation is based more on formulating proposals than on any management role. To complete this rapid general survey, it should be mentioned that in Portugal trade union participation is essentially part of the combat to reduce the increasing disparities in terms of development existing between different parts of country.

Underlying these specific national, territorial and local characteristics are trends and forces that have been at work for more than 20 years in Europe and on other continents. These give meaning and legitimacy to actions which, though local, reflect a global approach (Petrella 2002: 67-81). In apprehending these changes it is important to bear in mind the characteristics of the local development process that is taking place. An equally fundamental aspect is changing modes of labour market regulation in Europe; and, finally, the major trend towards local-level action raises, in new terms, the question of governance between different levels of power that are being rapidly reconstructed and seeking new legitimacy. This article will address these three central points in turn, before going on to put forward some specific proposals for action.

1. Local development: an integrated approach

Local development is a voluntary approach by actors who cooperate within a relatively small expanse of territory in the interests of the future of their locality. Its action must be seen in relation to other administrative and political levels in the country to which the locality in question belongs. Local development is part of a broader and all-encompassing approach within which the organisation of geographical territory is conceived as one system in relationship with other systems and other actors.

What are the objectives of this approach? The aim of local development actors is, first and foremost, to improve living conditions in their locality. This involves, in particular, developing employment and taking into consideration new social needs, as is emphasised by local Swiss organisations. In Finland, no less than 70 local partnerships for employment, to which the trade unions are often party, were created in 2001. In approximately a third of cases, the definition of local employment strategies is supported by European projects.

Coming back to the question of local development, one of the factors vitally affecting the success of the operation is the need for action plans to be based on an integrated development strategy, including a range of practical aspects such as the development of services for people and relating to the environment, health, housing, and training as well as support for local businesses. The services in question are aimed a wide-ranging population groups and categories, such as women, job-seekers, young people, the elderly, migrants and also members of ethnic minorities. This integrated and cross-sectional approach is a fundamental feature of local development but there is one major obstacle to be overcome and this is stressed by the Spanish trade union organisations which complain that 'the strategies developed at local level are confined to active employment policies and do not take far enough the idea of local development'.

The approach adopted in the framework of local development calls upon local industrial traditions, stressing, in particular, the need to incorporate cultural values and make use of cooperative practices. This is sometimes referred to as social capital. The approach has, in all cases, a cross-sectoral and sub-regional character, and embraces both the business and not-for-profit sectors. This perspective of integrated development is based not only on employment and the economy, but also on social considerations. In Italy, the '*Forum degli interessi*', created within the Territorial Pact of Matese in

Molise, is based on a type of mixed management (public-private) and ‘implies enhanced responsibility for all the partners in the construction of a local development project’, emphasises an Italian trade union organisation.

For the trade union actors, the locality is a pertinent level for more social and participative democracy. It is at local level that the most suitable answers can be provided, thanks to the local actors’ first-hand knowledge of the target population. ‘It involves remaining firmly in touch with social realities’, the Belgian trade unions stress. ‘Our involvement at local level allows us to devise policies which correspond to the population’s needs’, adds a Romanian trade union. But to achieve this, the belief, especially in France, is that ‘this must be accompanied by new rights of action for employees in order to go beyond the consultative democracy phase’. This trade union involvement is part of a contemporary political development that is characterised by the emergence of decentralisation and a demand for increased subsidiarity from local and regional actors. The transfer of competences between the State and local and regional entities should increase, despite a long historical – and sometimes deeply-rooted – tradition, in certain European countries, in favour of centralism. For local areas to take on more responsibilities, they must not only be given increased competences, but also be in possession of the requisite resources. Once these have been acquired, the results depend also on the willingness of the various actors to set up partnerships. The specific characteristics of each actor must be recognised, which does not always seem to be the case, especially in France, according to the analysis of the trade union organisations.

This trend towards delegating greater responsibilities at regional level in the management of the labour market, and the decentralisation of employment services which accompanies it, is seen as a positive development by the Interregional Trade Union Council of Frioul-Venetia-Giulia/Slovenia. It nevertheless remains the case that bureaucracy and delays in the transfer of financial resources observed at national level still too often hold back the development of a truly dynamic regional current.

Everyone agrees that it is at local level that the most innovative solutions in the areas of the development of employment, combating exclusion and improving the quality of life and work (European Commission 2002: 11) are to be found. Partnerships between actors working in networks in order to develop synergies between their strategies can be created on the initiative of companies or, more generally, on that of bodies representing the interests of employers. They demand, in such cases, a special place in the economic

decisions implemented in the locality. In the framework of a real dialogue, this can facilitate, according to a French trade union, the ‘construction of coherent local demands starting at company level to develop actions based on solidarity between employees and populations aimed at the bodies where solutions to social and economic needs are decided and organised’.

Other positive experiences need to be emphasised. In Denmark, for example, trade union organisations are resolutely committed to a process of partnerships at local level. ‘The role of trade union organisations is to develop networks and pacts with a view to producing local plans for employment and to participate in several activities at local level over time with a view to supporting a quality approach’. There are several prerequisites to the success of this role and participation. Access to knowledge and to specialised information is an essential condition for the success of this type of partnership.

To conclude this first part of the findings, it must be stressed that the success of action projects at local level requires the development of bargaining training, the setting up of integrated, cross-sector projects, the creation of know-how and the spread of these assets to other localities. As an instrument of consultation, local development has the capacity to transfer to its beneficiaries, namely the local actors, the responsibility for planning and implementing new sustainable development strategies. Consultation, as well as evaluation of the results, are judged essential by the trade union organisations which in some cases express regret concerning ‘the lack of determination to translate pre-established diagnosis into practical solutions’. There is a clear need for a precise, in-depth diagnosis of the needs and potential of the locality. This must be based on cartography and an inventory, starting out from monographs, aggregated statistical data and a scientific analysis. In this context, the contribution of universities may prove invaluable in producing a work of quality.

2. Creating and regulating employment at local level in a European framework

In this new ‘adventure’ of integrated local development, time is an essential concept. It is necessary to adopt a long-term approach in order to establish the partnerships. In addition, in order to maximise this potential in the framework of the European Employment Strategy, a consultation coordinated at European, national, regional and local levels is desirable. The

increasing number of local references in the National Action Plans for Employment (NAP) reflects this.

However, the national leaders and European institutions, in particular, still have to recognise the legitimacy and autonomy of action of the local actors. This is also a real challenge for trade unions, since the tradition of industrial relations in Europe remains strongly rooted in bargaining conducted at company, sectoral and national levels. But this new architecture cannot be limited to a game of institutional musical chairs. It implies far-reaching changes and a willingness to embrace new realities. Thus, one of the essential questions remains that of the regulation of the labour market at local level – as distinct from the company level which falls within the scope of the social dialogue.

The vast majority of the trade unions consulted during our survey emphasised the positive impact of the European Employment Strategy on the social dialogue at local level, even though knowledge of the process applied at European level appears limited, a situation that is due, in large measure, to a lack of the requisite information. Several regional trade union organisations in Spain suggest that the European strategy has clearly reinforced consultation at all levels through closer planning and management of actions in their region. The close link established between training policy and development policy thanks to the EES is assessed very positively by the trade unions, which stress the need to go beyond individually tailored, corporative type visions in order to share the new knowledge generated by local partnerships. The role of the structural funds in this development, though considered positive, is given less emphasis. Though their positive impact is widely recognised, relatively less attention is paid to the actions developed thanks to the European Social Fund. Significant progress has clearly been made more as a result of a combination of stimulating factors, rather than simply through the influence of the European Employment Strategy.

New dynamics are undeniably at work at local level. The partnership idea advocated by the European authorities contributes to the renewal of social consultation ‘that requires trade union and employer organisations to review their bargaining attitudes and practices’ (Leloup and Waltery 2002: 30). In France, the development bodies created by the Voynet law of 25 June 1999 ‘open up the way to new trade union participation in the territorial social dialogue by reinforcing the debate between employees, users and citizens’, explains a French trade union. In Italy, the trade unions welcome the closer spirit of cooperation that is being developed between the public and private

sectors in the framework of local job creation initiatives. The lack of tripartite structures is emphasised in Poland, but in Romania, by contrast, the restructuring operations at the firm Dacia have led to strengthening of the local authorities' role through the implementation of new partnerships involving a broad range of actors.

This positive development of local and territorial partnerships is in contrast to the trade union assessment regarding development of the social dialogue, which they see as more worrying. This positive atmosphere established in the local initiatives is indeed in stark contrast with the more tension-ridden climate found at company level, according to the trade unions consulted.

For the sake of clarity, it is important to dissipate the prevalent confusion between social dialogue at company level, existing as an inherent and clearly defined component of established industrial relations systems, and the new 'arena' represented by territorial consultation which becomes, in certain respects, a kind of civil dialogue involving a multitude of partners. These two practices have very different bases, hence the importance of being aware of their respective features while seeking to establish synergies.

2.1. The regulation of employment

Will State regulation supplant collective bargaining, in accordance with an employer preference identified by sociologists as early as the 1970s: 'there is every appearance of a preference on the part of employers – despite their protests and statements – for binding State regulation rather than cooperation between them and bargaining with unions representing employees' (Bunel and Saglio 1977: 401). After the wave of deregulation of the 1980s, the item is probably no longer even on the agenda.

Indeed, what seems clear, is that collective relations are undergoing a sea change, as demonstrated by recent in-depth studies indicating a move towards increased decentralisation, albeit to different degrees in different countries. Is company-level bargaining (once more) becoming central (Traxler 1995: 3-19) to the process? The granting of 'express mandates' to one or more employees to conclude agreements at company level in specific cases clearly restricts the bargaining process to the company level. The idea of local joint committees, either sectoral or inter-sectoral, with a view to creating a local structure for SMEs supports this hypothesis. In the Rhône Alpes region in France, an active network of structures to provide assistance and advice to the social partners has been given a strong boost by the Aubry law on the reduction of working time. This network is an example of the

development of mediation for non-unionised workers, the purpose being to combine an approach that involves studying the reorganisation of working time with one based on support for the social dialogue in the framework of a participative approach that brings together management, trade unions and members of the workforce (Rey 2001). However, this development is neither linear nor uniform (Leloup and Walthéry 2002).

The fact remains that advocates of decentralisation are focusing particular attention on trends at company and local levels. In Italy, the principle of territorial concertation has made important progress in recent years, while in Spain its virtues are being discovered gradually, albeit with significant differences between the regions. In France, public leaders are legally empowered, in the cause of ‘territorial harmony’, to intervene in collective bargaining¹. Virtually everywhere, the nature and extent of government intervention is cause for constant concern to the social partners. In Portugal, for instance, trade unions claim that they are given inadequate opportunity to contribute in the context of existing partnerships in the area of employment and training. While such agreements remain in the minority, the proliferation of new forms of employment calls into question the traditional concept of subordination on which the law of employment contracts is founded.

2.2. The new regulatory provisions

In the new arrangements that have emerged in France – such as ‘employer groupings’ and ‘territorial collective agreements’ – the problem of employment is set in its context, entailing its integration within the locality. In this case, collective action by employees, collective bodies, employers and local government bodies is an opportunity to redefine the problem of employment, by addressing it in its local context. This enables definition, within the local context, of the resources available to the different actors to address the problem. Production facilities, business networks, innovation capacities and professional skills can be deployed, within the locality, as resources to be combined for the more efficient development of new markets, new products and services (Salais 1997: 74).

Can the sectoral and national levels, the pillars of industrial relations, be integrated into the local and territorial levels as a relevant parameter? The

¹ Aubry law II, law relative to the negotiated reduction of working time of 15 December 1999, CHI <durée légale>, Art.1,§.VII.

answer is complex, even bearing in mind that the local level has been envisaged only as one component of or variation on sectoral bargaining (Morin 1999: 681). Is collective bargaining in the local context condemned to be developed in the national-level mould?

3. The autonomy of territories and local actors

The strength of a local partnership between social actors stems less from the fact that the different partners belong to the same locality than from the concrete concerns that they share as employers and employees, with their common local roots and reciprocal trust reinforcing a latent feeling of mistrust of recommendations emanating from the actors at the top.

Are the attempts to regulate industrial relations at local level favourably viewed by the institutional actors, in particular the social partners accustomed – according to different practices in the different countries – to national and sectoral level domination of these areas? In order to be persuaded to ‘join the party’ the actors need, at any event, common interests outside the company and the sector, while in localised or decentralised bargaining, the negotiators must operate in the field, at local level. In Switzerland, only a few occupational sectors have a local presence and ‘joint networks need to be created for the professional sectors’.

The locality is becoming a ‘relevant bargaining unit’ according to Alain Supiot (1999). Others argue that action by the public authorities can encourage the development of collective bargaining by subordinating the role of the actors, in areas which fall within their competence – training, developing local employment – to the conclusion of collective agreements (Morin 1999). These claims, which should not go unchallenged, require further studies and monographs to be confirmed or invalidated.

If, in some countries, the relative autonomy of systems of public action and sectoral relations at local level allows local actors a margin of creativity, they must, of course, be capable of putting forward an alternative to the standard treatment of the externalities as they affect employment? Can local collective bargaining represent a means of enhancing employment stability? It is obvious that collective agreements concluded in the framework of a local partnership harmonise local employment conditions and, consequently, have an impact on the behaviour of firms. This would be in keeping with a revalidation of the role of the public authorities as arbiters of collective action for the common good, as represented by the level of employment,

exercising, in this capacity, political pressure to force employers to incorporate into their calculations the external effects of their decisions on employment. Since it would be possible to calculate this factor it would therefore be profitable (Salais 1997: 74). For the trade unions, an enlarged concertation between a large number of actors inevitably raises the fundamental question of the respect of the agreements reached, their strength as standards and subsequent implementation and enforcement.

In order to create quality jobs, local forces must be harnessed and adverse factors tamed. The behaviour of subsidiaries of multinational companies will invariably be governed by the need for competitiveness. Defending employment in the locality can be an objective shared with other actors faced with the group to which the company belongs. The creation of jobs at local level, as at other levels, depends however on the corporate spirit and the capacity of the actors to promote employment through new innovative approaches. To this end, the local actors must have the necessary managerial skills to ensure the sustainability of the projects and jobs created and the Finnish trade unions emphasise, in this respect, the importance of training trade union leaders.

Should trade union organisations be involved in the management of local projects which can sometime be very burdensome? The surveys reveal, at any event, a concern to be party to decisions, a desire for involvement not only in the design phase of projects but also in their implementation and evaluation. The human and technical resources available in the field must be an important parameter for a more active role by trade unions in the everyday management of these local initiatives. In any event, for influence to be exerted over decision-making processes and strategic choices requires numerous skills and a consistent long-term approach. In Italy, certain organisations are in fact in favour of setting up monitoring committees in which trade unions would combine a supervisory role with the continuing formulation of proposals. There is a need here for greater flexibility in adapting strategies to the inevitably distinct characteristics of the specific partnerships established.

It is nevertheless a fact that the weakness of the third sector and of local government bodies in certain areas is cause for concern among trade unions which cannot fail to observe that the management resources of the productive sectors are regarded, by certain local actors, as more attractive and better organised.

3.1. Territorial concertation and negotiated planning: the Italian and Spanish cases

In Spain, the trade union actors in the Vallès Occidental near Barcelona have participated in recent years in projects for managing the labour market. They have negotiated agreements with companies and public institutions, despite the absence of a tripartite agreement with the Spanish government. This is in line with a trend in Spain towards an increasingly clear decentralisation of collective bargaining to the company level. Local bargaining is still in its infancy with territorial pacts for employment, but a model for the management of the local labour market in cooperation with the local authorities is being tested. In Spain, in certain cases, local trade union actors are involved in labour market management projects. The new multilateral, flexible decentralised concertation model which emerged in the 1990s with greater mobilisation of the grass roots in trade union actions has given a real boost to local actions. There is clearly an increased interest in immediate local problems.

This also reflects a change which is taking place at company level. The dynamism of the industrial fabric of small companies undoubtedly has a decisive influence on the way in which local labour markets are structured, as well as on the elaboration of management and social relations models. In Spain, territorial concertation is still in its early days. It is in all cases judged satisfactory by the social partners at the regional (Catalonia) and local (Vallès) levels which have important competences in the area of employment.

The case of Italy is equally interesting. The legislative process geared to reorganisation of employment services and decentralisation, launched in the mid-1990s, was a prerequisite for active employment policies. The history of negotiated planning in Italy, which is fairly recent from a legislative point of view, began with the major tripartite agreements on income policies of 1992 and 1993. This was just before the pact for the South, which was then a concertation agreement for the development of the *Mezzogiorno*, as the latter no longer benefited from aid under a special State programme. This pact undoubtedly played a role in the finalisation of these agreements. The experience of negotiated planning was finally developed in Italy, against the backdrop of a serious crisis of economic growth, as a possible solution when the special programme for the South ended. If the macroeconomic variables were the subject of a national concertation between the government, the trade union organisations and the *Confindustria* (the main employers'

organisation), the development of local resources and the promotion of the role of the social partners were also quoted as driving forces behind the development.

The implementation of these agreements led to the emergence of a new method of concertation and enhanced responsibilities for the managing classes at regional and local levels. Thus, there gradually emerged a new class of local actors relying on the mobilisation of existing resources at local level and vindicating the opponents of the traditional system of centralised development. Under this approach, the locality becomes one of the dominant factors in the development of a region.

To translate this change into fact, law n° 341 of 8 August 1995 established the territorial pact, to supplement existing instruments for negotiated planning, such as programming contracts and programme agreements. Thus, a proposal by the social partners and confederal trade union organisations, in particular, has become an instrument for action. On 24 September 1996 an employment agreement was signed to combat the employment problem in Italy, making use, fundamentally, of shock treatment applied to the least developed areas and those suffering from high unemployment in the South.

This action in favour of employment relies on three management and monitoring tools:

- a permanent concertation between the public authorities and the social partners with a view to monitoring the progress of initiatives;
- a determination to simplify procedures and improve their quality;
- the adoption of ex ante evaluation criteria for projects.

Territorial concertation seems to be a means for trade unions to exert an impact on small businesses where the establishment of traditional negotiating procedures seems difficult. That is the case of the Belgian trade unions which carry out actions aimed at SMEs. Likewise, such concertation is an instrument whereby the same trade unions can monitor the contractual commitments entered into by companies in the context of fragmentation of the productive fabric. Such monitoring is increasingly difficult in the framework of company agreements, as the situation in the region of Prato in Italy shows. It is to be noted that contractual links can also be created in the framework of company networks, thus raising the question of the coordination of these companies and making industrial relations even more complicated. The fact nevertheless remains that one of the major challenges

for actors in the field, in Italy for example, lies in the full recognition of territorial concertation as a standard approach and not simply an instrument for use in situations of adversity as in the past. However, the conflict between concertation at this level and national agreements still has to be resolved, when dispensations from the minimum conditions negotiated at national level, considered as being '*primes inter pares*' according to a hierarchical principle, are introduced at local level. This challenge is even more important for the trade unions, since concertation is one of their main levers for action.

3.2. Negotiated flexibility

In current production processes, market demand drives the productive chain. The keyword is flexibility, within which flexible networks of small production units or integrated development poles are the most innovative vehicles. In fact, numerous studies show that type of work organisation and nature of employment contracts are important factors of differentiation between local economies. New methods of regulating the labour market correspond to new industrial structures.

The current globalisation process gives rise to something of a paradox insofar as it increases the mobility of companies while at the same time increasing the potential impact of the locational dimension on local development processes. New companies, whether large or small, are in fact increasingly dependent, for their success, on the context in which they operate.

It is particularly interesting to examine the answers contributed by the socio-economic actors faced with the challenge of globalisation. They may take the form of defensive flexibility, as seems to be the case in Hainaut in Belgium where the creation of wealth is given priority, or of offensive flexibility, as in Vallès in Spain, or in Liguria, where the more important concern is quality of employment.

The balance between flexibility and security thus becomes particularly important when defining the model to be defended by the social partners. In England, an agreement has been concluded between the transport workers' union and the company Manpower according to which temporary workers would benefit from the same rights as employees insofar as they are encouraged by these temp agencies to join a trade union. That is one kind of answer.

In an ideal industrial relations model, the central level should guarantee, in terms of standards, conditions of flexibility adapted to local experience, while placing controls on competition between locations which must not be reduced to a simple price-cutting race that, in the long term, would benefit no one.

In Italy, another negotiated planning instrument at territorial level is the '*contratto d'area*'. In this type of agreement, the question of the sustainable character of the investments provided for within regional contracts is envisaged by way of a joint control of the regularity of investments in terms of compliance with labour standards. Thus in the '*contratti d'area*' of Terni, Spoleto and Narni the trade unions can, three months after the launch of a company, hold employee meetings to check that the agreements signed have been respected. The trade union concern is to develop employment, not free zones in terms of social standards. Thanks to the contracts for specific zones, agreements have been obtained in the most advanced territories in terms of concertation with more substantial participation in the management of the local labour market. The fact remains, however, that this action in favour of the quality of employment is difficult to justify in areas where the objective is above all to create jobs.

The '*contratti d'area*' have contributed to the development of the idea of negotiated flexibility. Thus, in the area of Nuoro, in Sardinia, trade union organisations have started to pursue a policy of concertation on the flexibility of working hours, the organisation of work and training with reference to financing programmes to encourage the absorption into employment of the long-term unemployed. This involves flexibility negotiated with new companies providing for pay moderation during the first three years of the new company's operations.

Agreement between the social partners is, therefore, one of the components of this type of instrument, with a view to creating an industrial relations climate favourable to the emergence of new investments. However, this negotiated flexibility applies only to jobs created in the framework of new investments and not existing investments. The social partners can then obtain the requisite legislative amendments, as in the agreement of Terni for example 'to fix an age threshold of 40 for access to training and work contracts for this category of people'.

This method of planning concertation is not without its risks:

- there are some cases of concertation that are devoid of any concrete commitment or diminished by the strong role played by one of the parties to the detriment of the others;
- the inability to make choices and select localities, because of a wish to satisfy every zone;
- an institutional consultation incapable of envisaging development in terms of the creation of entrepreneurial activities and, consequently, a propensity to promote projects supported mainly by public actors and that are not particularly innovative;
- the incapacity or impossibility, under the procedural standards in force, to assure an integrated approach in the actions undertaken.

4. The concept of governance

Since the first reform of structural funds (1989-1993), local development has become the responsibility of structural policies through the ERDF.

The creation of strategic agencies for local development, such as those set up in the Italian Marches and in Lombardy, is one response to the risk of the development of fragmented actions. The role of these agencies is to promote inter-institutional and functional cooperation and to harmonise a series of local development projects. This amounts to regulating the fragmentation by enhancing the local fabric, while integrating their own action into an overall regional vision.

In Italy, which, along with the Netherlands, is a pioneer in this area, the development of such territorial regulation has resulted in the increasingly frequent application of the concept of governance. This means that the capacity of a territory to 'produce growth' does not depend only on the public actors, but relies also on good relations between public and private actors, on a good network of relations between the collective actors, between companies, between workers and company heads to constitute what could be called a region's social capital. The case of the region of Prato in Tuscany is a good example of a process of reconverting the local social capital in the area of the regulation of work at local level and re-codifying shared rules.

Local governance helps to improve the organisation of planning in a specific territorial context. This makes it possible to give a new geographical context to public action, thereby optimising the development of instruments which ensure that public resources are used more effectively through negotiated planning, involving the operators and social partners in the framework of local public-private relationships based on greater participation and sharing. In this framework, the national and European levels must create development policies capable of encouraging and making full use of – as a development tool – the potential for cooperation between local actors. This new configuration of the social dialogue can be outlined as follows.

Table 1: Configuration of the social dialogue

	Central level	Decentralised level
Social dialogue	New regulatory framework to combine flexibility and security	Implementation of flexibility wide variety of forms of organisation in companies
Instruments	Collective agreements National agreement	Company-level agreements Territorial concertations

This example demonstrates the cooperation between decision-making and planning processes through regional governance of institutions and a governance of operators representing the socio-economic fabric and civil society. This facilitates the promotion and coordination of local development networks. This dynamic is based not only on theories of local development but also on the promotion of citizen participation. The very close inter-dependence between development and society helps to create a capital of trust.

It is possible, via a more precise analysis of the role of the actors, to establish a more or less schematic link between the actors and the actions². The advantages of such a classification lie not only in the possibility of identifying the actors and their actions but also in ensuring that they can be traced with a view to assessing their true impact.

² A table which will, of course, vary from one country to another depending on the institutional and administrative context of each territory. In our view, it has the merit of establishing a reference framework for territorial development.

Table 2: Links between the actors and the actions

Actions ► Actors ▼	Control Mediation	Funding	Planning	Marketing	Know how
European Union					
Ministries					
Regions					
Provinces					
Cities and towns					
Public development and employment agencies					
Private development agencies					
Universities					
Banks					
Trade union organisations					
Employers organisations business associations					
Civil society					

5. Local development observatories

The creation of local observatories of industrial change and innovation would enable the collection and compilation of reliable data that could be used for comparative purposes with regard to changes taking place on local labour markets through the elaboration of concepts, indicators and methodologies suitable for purposes of diagnosis and for monitoring the

implementation and effectiveness in terms of local job creation of the measures adopted. This would make it possible to progress from information indicators, which do not allow assessments to be made, given the diversity of structures and the weakness of certain data, to evaluation indicators which can be used to establish a true benchmarking policy at local level.

This would also make it possible to produce, in the 'spirit of Lisbon', a series of basic performance indicators, measuring current trends in the area of employment and work in conjunction with certain macroeconomic variables. In this area, the European Trade Union Institute has devised a list of social convergence criteria based on eight themes:

- employment
- division of income
- working time
- social security
- health and safety in the workplace
- teaching and ongoing vocational training
- social infrastructure
- regional coherence

Moreover, under the Belgian Presidency of the European Union, indicators on the quality of employment were established in October 2001³. Although these criteria are clearly useful, they are nevertheless very general and require a serious methodology for the collection and analysis of data so that the local actors can apply this list in practical terms. Over and above the need for data to be reliable, they must also be sufficiently up-to-date, which is not the case for the figures on poverty, for example.

As regards the application of the approach to the management of a particular locality, the case of the provincial agreement, concluded in 1996 in Pordenone in the Italian Frioul and renewed in 2000, is interesting in several respects. It includes a menu of six indicators, from which companies can

³ EES special edition of *Alter Echos* on the Belgian Presidency of the EU, Brussels, January 2003.

select the indicators they consider most appropriate and which are subject to joint annual control by the parties⁴.

Traditionally, trade unions, on the question of working time for example, include the quantitative factor – time spent working – in their list of demands. The quality factor is, however, just as important, since there is an increasing interaction between working time and private life. Therefore, in order to ensure a positive dynamic, it is necessary to refer more generally to the quality of employment, while incorporating the question of the choice of development, i.e. the choice of a suitable social organisation to back up the structural changes occurring on labour markets.

It is also obvious that, in this age of high company mobility, the defence of the interests of workers cannot be based solely on traditional company-level bargaining. Nor can it be based on the restrictions and rigidity of the Fordist labour market which is no longer appropriate for the post-Ford world of work of flexible specialisation. It is an illusion to believe that development, employment and the reduction of inequalities can be accomplished, as in the past, by centralised macroeconomic-type action by the public authorities. On the contrary, local development requires integrated projects, which provide a basis for the joint regulation of industrial relations, training, mobility, social services and the other dimensions related to infrastructures, including social infrastructures, and to services for companies.

This requires the social partners to be in possession of a wide range of skills going beyond those acquired by company-level bargaining and those related to macroeconomic-type centralised concertation. Accordingly, there is a need for standards if the potential of local development is to be exploited to the full. This also raises the question of the change in trade union services, moving from the traditional role of representation in the workplace towards the negotiated acceptance of flexible work disseminated among highly diverse companies in both industry and the services sector. This indeed reflects a move towards a new labour market and new living conditions beyond and outside work. Trade unions could revisit and renew, from their historic roots, their means of action on the labour market, by integrating

⁴ In 2000, agreement was reached on ten indicators and the calculation methodology was fine-tuned without amending the system of territorial coordination put in place with regard to information. New themes were introduced, including part-time work, specific training programmes, and working time.

more local social aspects and new forms of organisation governing the relations between the territorial, vertical and sectoral structures.

6. Conclusion: ideas for the role to be played by the trade unions

If trade unions wish to continue to play their historic role as an actor in the regulation of the overall labour market, they must meet the challenges of the new governance which coordinates the different levels of power and action (local, territorial, regional, national, European and international), based on enhanced synergies, far removed from the earlier structure organised along hierarchical lines. In order to coordinate its actions, the trade union movement must propose a consistent platform of demands which take into account the interaction between decentralised policies and the other levels of power.

The European Employment Strategy has undoubtedly contributed to the development of local, territorial, even regional, concertation. Several trade union organisations (Belgium, Finland and Spain for example) have emphasised the positive role played by the EES in enhancing the consistency and improving the coordination of the policies implemented. In precise cases, such as Sweden, it has even reinforced existing local partnerships. More ambitious objectives have been launched on the heels of the Lisbon Summit of March 2000, while the links with the structural funds are increasingly close, notably in France and Sweden. The contribution of the Territorial Pacts to reinforcing regional and local partnerships is equally beyond dispute.

Trade unions can, therefore, no longer limit themselves to being regulators of the labour market in the historic meaning of the word. They play, and will be called upon to play, an increasingly active role in devising strategies to protect jobs, based on actions and management approaches alongside the traditional, recognised social concertation bodies. From a trade union standpoint, it seems obvious that this local development must focus on the creation of new jobs in the framework of firm commitments to the economic and social development of the locality. Similarly, the creation of networks of private and public actors within a locality must not always be left to the initiative of the public authorities, but must also be the result of joint or individual initiatives by the social partners. The tangible added value for the social partners of this involvement lies in the reinforcement of their capacity to understand and analyse at local level, by co-ordinating this critical

reflection with their actions at other levels, either national, sectoral or European.

In order to be completely horizontal and integrated, this local participation still has several obstacles to overcome. The problems which trade union organisations address are too often traditional, such as employment, the fight against discrimination, questions of transport and mobility. The emergence of issues such as social inclusion, the digital divide (which results in important inequalities in the use of and access to the new communication technologies), the new social needs, or else the link between training and development in the concept of life-long learning, highlight the need to integrate new social needs which go beyond the traditional employee problems. Thus, in Finland, the question of corporate social responsibility is at the centre of trade union concerns. Mainstreaming, which must be integrated into all policies developed in the framework of the multi-governance of employment, is still too frequently no more than a secondary consideration for trade unions, which too rarely refer to the European strategy for social inclusion as a coordination and action tool to supplement the actions of the EES. In any event trade, trade unionism appears neither as the initiator of projects giving priority to these new challenges facing society nor as a vehicle for innovation in this area. This, therefore, raises the question of the capacity of the trade unions to commit themselves to new areas of action.

New work ideas

6.1. From a dialogue of the deaf to a meaningful civil dialogue

Relations between the social partners and the third sector at local level seem to be particularly tense. The former accuse the latter of unfair competition (a criticism often made by company representatives) and with weakening acquired social rights and gains (a criticism often made by the social organisations). The emergence of a civil dialogue bringing together associations, cooperatives, mutual benefits societies, companies, social partners, universities and local authorities is still problematic on account, in particular, of the mistrust existing between these different actors that still need to become more 'cooperative'. In the field, the tensions are sometimes heightened even further by the fact of the proximity of the territory. But, if this proximity and local roots are placed at the disposal of local development, they can also be tools to overcome this culture of mistrust.

This civil dialogue must not exist at the local level alone but must form part of the synergies between the different levels of power and action right up to the international level.

6.2. The trade unions as the regulator of a quality labour market

The social partners seem to be ideally placed to assess in a consistent and soundly reasoned manner the potential for adopting locally-based initiatives on a wider scale. For the social partners, two of the most important criteria are, of course, the impact of a good practice on employment and its cost. The inclusion of social clauses in the creation of public sector jobs is one good example of how trade unions can make a significant contribution. Local job-creation initiatives must not be developed in a second-tier labour market, characterised by precarious conditions of pay and work as well as by lower levels of qualification. The development of a social dialogue and collective agreements at territorial level therefore raises the question of the validity of the agreements, their place in relation to the law, the hierarchy of standards and trade union representativeness. The autonomy of collective bargaining in the area of employment is clearly at stake. The trade union organisations cannot avoid facing this issue by falling back on a company-level and sectoral approach.

6.3. Organisation plans as a tool of governance

It is essential to establish effective coordination between local development initiatives in which the social partners participate and the national and European framework characteristic of employment policies and industrial relations. How do the trade unions carry out their responsibilities at the different levels of power, while seeking to establish an overall consistent approach through a hierarchy of standards? The answer varies considerably from one locality to another. The trade unions often have to take deliberate steps to make their presence felt in these local partnerships. According to the results of the survey, this coordination between the different levels does not seem to be in-built. While in France, the trade unions tend to operate according to theme, the coordination appears generally inadequate in the case of Sweden, Belgium or Italy based on the results of the survey.

The enlargement of the European Union to take in ten new member states by 2004 will make the problem of governance between the local and European levels around the EES even more pressing. The trade union organisations in Poland, Slovakia and Romania want to participate in all stages of regional labour market management, from the design to the monitoring of projects.

In the framework of a governance co-ordinating the different levels, organisation plans where every level has its own responsibilities, as in Denmark, can constitute – together with other tools – the first steps towards meeting the needs of the coordination, involvement and information of the local actors of the new or future member states even if, in Romania, for example, this local involvement is still at an embryonic stage.

The lack of experience in project engineering must also be rectified through enhanced exchanges between the trade unions and the support of other public and private actors, such as universities and training institutes.

6.4. Information-training-method

Everywhere in Europe, trade union involvement at local and territorial level is confronted with a lack of resources and skills. The shortcomings in this area tend to be heightened by the difficulty, increasingly felt by the social actors, of accessing European subsidies. Training in project management, the creation of databases on local actions integrating the diagnosis, challenges, methods and implementation, are among the relevant and concrete tools required by local trade union actors if they are to enhance the added value of their participation. This internal effort must be reinforced by greater access to technical assistance in the framework of structural funds.

In a knowledge-based society where strategic information is a formidable lever for action and power, the trade union organisations cannot disregard the new socio-economic dimensions. The lack of feedback and networking of information acquired at the different concertation levels is flagrant. The pooling of knowledge within the trade union movement remains a major challenge. But, in order to be able to participate on an equal footing with other partners, the trade union organisations must incorporate into their effective priorities both life-long learning and more technical and specialised prior training, as called for by a Portuguese trade union, in order to manage the complexity of the current systems. This approach must be integrated, in our view, into a multidisciplinary and multidimensional approach, which is alone capable of taking on board the many-sided realities.

In our view, the trade union movement cannot call upon others to do what it has not achieved within its own structure.

The capacity to control strategic information by means of the formidable tool represented by training involves learning working, evaluation and

information dissemination methods in order to ensure that projects supported by trade union organisations are monitored more rigorously. The tools exist at both local and European levels. In order to become efficient and useful, they must above all be adopted both individually and collectively, while integrating a process of mutual learning.

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Iain Begg

The way forward for ‘social’ Europe

Introduction

1. Social policy in an integrated Europe
2. The roots of social exclusion
3. Policy co-ordination and the approach to integrated policy
4. The outlook for the 2003 NAPincls

Conclusion

Introduction¹

'Social Europe' has made surprisingly rapid advances since the Treaty of Amsterdam was signed in 1997. In the past, 'social' had largely been equated with working conditions and the social dialogue, whereas more contentious matters such as employment policy, let alone social protection or the fight against social exclusion, tended to be left in the 'too difficult' box. Assigning any competence to the EU level for these social policies was unacceptable to most member states, not least because they are the outcome of sensitive national accommodations. Yet in spite of the apparent weakening recently of the traditional Community method of integration in favour of softer methods that rely more on inter-governmental agreements, the last few years have seen notable developments in the social sphere. This apparent paradox raises the question of whether they constitute a sea-change.

It is worth recalling some of the key developments. The first was the establishment in 1997, even before Amsterdam had been ratified, of what we now know as the Luxembourg process. Five annual cycles of this process have now been completed and it has become an accepted part of the policy co-ordination system in the EU. But it has also shown that it can, indeed must, evolve, and the proposals published in January 2003 by the Commission will, if adopted, substantially alter its character and focus.

Then, at the Lisbon European Council in March 2000, agreement was reached on a set of ambitious targets for the EU economy, emphasising the wish to make the EU the most dynamic and knowledge-based economy in the world. Although this aim appeared to presage an intensification of neo-liberal structural reforms, the Lisbon conclusions also stressed the need to promote social cohesion. This has led Tony Atkinson (2002) to argue that the real significance of Lisbon may well be that it paved the way for a major enhancement of EU involvement in social policy.

Later in 2000, at the Nice European Council, the heads of state and of government decided on a new policy initiative to promote social inclusion, using a methodology very similar to that in force for Luxembourg process, albeit with a two-year cycle. As Atkinson *et al.* (2002: 68) note, the

¹ This article draws on the findings of the 'EXSPRO' project, funded by the European Commission, and on research in progress on employment policy in the UK and Germany, funded by the Anglo-German Foundation. The author is very grateful for the support received.

preparation of National Action Plans for social inclusion (NAPincls) is 'now an obligation placed on member states every second year, but it is one that runs with the grain of national thinking'. A first set of these plans was duly prepared by the member states in June 2001 and the second round is due later this year. It can be argued that the manner in which the second round is conducted will be the test of what these NAPincls amount to.

Looking at these developments, two key questions arise: first, do they constitute a breakthrough for social Europe that will take European integration on to a new plane? and, second, can the approach that has been followed up to now sustain the momentum, or will it need to be reinforced? The aim of this article is to look behind the recent advances made by social Europe to speculate on why, and how, it might evolve in future.

1. Social policy in an integrated Europe

Social policy in the European Union (EU) is on the horns of a dilemma. As the EU economy becomes a progressively more integrated market, an expectation is created that complementary policies should be developed to deal with the possible adverse consequences of more open markets. In this regard, measures to forestall social exclusion and to promote inclusion are seen as especially desirable in deepening European integration. These arguments were eloquently made in relation to the single market and will receive further support as EMU is consolidated². The case for a more extensive EU role is reinforced by the common societal values that underpin the systems of social protection that have evolved in all EU member states and the shared concern for social justice.

'Europeanisation' of social policy is, however, staunchly resisted by many because it is seen as either a step too far or as a recipe for inappropriate policy responses, quite apart from any legal or constitutional obstacles. Any suggestion that the EU should acquire a role in re-distributive policy is anathema to member governments concerned to prevent further 'mission creep' by EU institutions, against a backdrop of charges that these institutions are poorly administered. Moreover, whereas economic integration can, largely, be justified on the grounds that there are resulting gains in the economic efficiency needed as a response to increasingly open markets, the

² For a discussion, see a report derived from the 'EXSPRO' project (Begg *et al.* 2001) and the empirical findings in Muffels *et al.* (2002).

normative and political foundations for a Europeanisation of social policy remain to be built.

It is also clear that the freedoms of the EC internal market are limited and that this raises further political economy problems. Thus, the directives that grant freedom of movement apply only to employed workers, but not to job-seekers. On the one hand, this is legally at odds with the promotion of EU citizenship as postulated in the Treaty. But there are also political and economic constraints on a legally more consistent solution. These constraints stem from legitimate concerns such as the public's fear of 'social tourism', i.e. marginally employed households migrating to more generous welfare states. Even though there is scant evidence that this phenomenon is significant, the spectre of migration alone alarms the public and, as a result, politicians. This is a particular threat to national social protection systems that rely heavily on non-contributory benefits.

Problems of compatibility can also arise, for instance, with respect to means testing. A tax-payer who has faithfully contributed to finance social security in his or her country has no acquired rights when moving to a country where contribution-based benefits prevail. Another prominent example for compatibility problems is related to the extension of privately funded pensions. In contrast to statutory social protection programmes, supplementary pensions are not covered by Community regulations on co-ordination. With reforms tending towards partial privatisation of social protection, this is likely to become a more important issue.

2. The roots of social exclusion

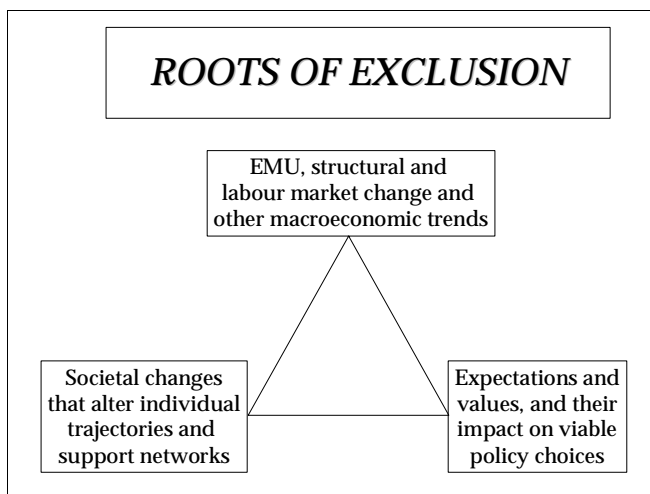
In order to develop appropriate policies to promote social *inclusion* it is manifestly important to understand the roots of social *exclusion*. Figure 1 summarises three broad groupings of influences on it. A substantial amount of research has been devoted to the analysis of how individuals become trapped, and there is now a solid body of knowledge that traces the impact not only of poverty and unemployment, but also of a range of other more complex social and individual processes. It is now much more widely accepted that the multi-faceted character of social exclusion necessitates a more comprehensive approach to combating it that goes beyond income support, especially through job creation.

Yet it is also important to acknowledge that there are significant top-down influences that are the direct result of the transformations being wrought in the 21st century economy. EMU, for instance, is not just notes and coins in different livery or a single interest rate set in Frankfurt; it is also a new economic governance system to which economic and social actors are adjusting only slowly in what is bound to be a lengthy period of learning-by-doing. Social protection outlays averaging 28% of GDP in the EU are bound to play an important role in the economy. They not only have an impact on stabilisation of aggregate economic activity by acting as automatic stabilisers, but also help to equilibrate regional imbalances. These, however, are essentially passive, albeit substantial macroeconomic effects. A more active role for social policy can be envisaged in the context of supply-side reforms.

The third category of determinants is, perhaps, more abstract, yet no less important. European society is simultaneously adapting and striving to retain the core values that underpin that elusive notion the European social model. Some elements of the social model are, probably, inviolable: a decent level of social protection and regulation of the workplace that provides acceptable conditions of employment are not about to be withdrawn. But the detail matters and what is under review are questions such as how much, under what conditions and to which beneficiaries (see Ferrera *et al.* 2000). The agenda for change includes trying to make social protection contribute more extensively to the upgrading of human capital through facilitating adaptation of those currently employed and easing the transition to work for those currently excluded. In this respect, there is much common ground between employment and social inclusion policies.

Changing policy principles and approaches have been evident in many member states since the mid-1990s, and a number of novel orientations in EU and member state policies aimed at dealing with social challenges can be discerned. The first is the shift away from direct job creation through either public sector employment or explicit labour subsidies towards a focus on activation and employability, on the one hand, and preventative measures on the other. Despite initial resistance from some member states and the suspicions of many union leaders, employability was given pride of place as the first 'pillar' of the EES and inspection of successive national action plans suggests that most member states have fully embraced this pillar.

The problems of marginalisation in contemporary European society call for the invention of new forms and mixes of public and private action. In particular, fresh thought is needed on the relationships between long-term unemployment (more so than temporary or frictional unemployment), social exclusion and the 'new' requirements of the workplace in terms of flexibility and employability while maintaining security or protection against social risks. Other facets of 'social exclusion' also demand new approaches involving the entire community and implying the utilisation of the huge reservoir of 'human and social capabilities' in society.



3. Policy co-ordination and the approach to integrated policy

Social policy is apt to be judged primarily on whether it succeeds in alleviating the immediate social problem it is designed to address, such as reducing homelessness or providing income support to vulnerable groups. The argument here is that appropriately configured social policy can also contribute to the solution of macroeconomic adjustment problems. It is in this context that the scope for social protection to have productive effects is critical. In the emerging EMU policy framework, different policy areas will combine to determine the overall macroeconomic impact. The challenge will be to ensure that the trajectory for demand management is not set so as to exacerbate social exclusion, but equally that the package of social

measures is consistent with stable growth. Put differently, it is finding an optimal way of co-ordinating economic and social policies that is required.

The open method of co-ordination (OMC) – the name coined at Lisbon for the procedures common to the employment and social inclusion policies – clearly provided much of the impetus for both the employment and social inclusion co-ordination processes. Simply explained, OMC can be seen as a means of reconciling the desire of member states to maintain their autonomy in sensitive areas of policy, while conforming to common aims and guidelines articulated at the supranational level. But it is vital not to lose sight of the underlying aim, namely ensuring that the aggregate of member state policies supports common aims.

It was also embraced (at Laeken in 2001) for aspects of pensions policy in which a common interest has been identified and, although viewed with some suspicion by the Commission (notably in the rather lukewarm tone of the White Paper on Governance issues in 2001) and others, is clearly here to stay as a method of integration. How it is taken forward by the Convention will be one of the interesting dimensions of the imminent constitutional development of the EU.

OMC is not, however, a panacea, although as a novel approach to both integration and co-ordination it has the potential to be developed in diverse ways. Given the lack of alternatives, the challenge may be to work out 'how' rather than 'whether' to use OMC. But a robust response to social exclusion would entail going beyond the agreement reached at Nice on national plans to combat poverty and social exclusion to develop more explicit and forceful guidelines for national policies. One potential benefit would be to persuade public opinion that the EU was adopting a constructive approach to the promotion of social inclusion.

4. The outlook for the 2003 NAPincls

Looking forward to the second round of the NAPincls, a number of challenges can be identified. No doubt, each individual plan will be replete with high ambitions and worthy targets. However, a legitimate fear about the 'soft' co-ordination approach is that it can generate warm-sounding words about proposed policy, yet ultimately have little impact. This trap has, for the most part, been successfully avoided in the Luxembourg process, insofar as governments have been prepared not only to put serious effort into their employment packages, but also to provide the means – financial and

administrative – to put them into practice. Hence it will be important to ensure that the policy proposals included in the NAPincls are properly resourced.

A second, related concern is that plans will be submitted that do little more than reiterate existing policy, possibly with minimal input from *inter alia* the social partners and other relevant actors. It will, therefore be essential to avoid a scenario under which the impression is given that an effective European response is emerging when in reality little is changing. Encouragingly, the experience of the first round of NAPincls, with Ireland taken to task for just this reason, suggests that a combination of Commission oversight, the policy learning that has already taken place and the vigilance of social groups will ensure that comprehensive plans *are* submitted. There must therefore be a reasonable expectation that meaningful policies will be developed, especially if the social partners and others are given, and take, the opportunity to contribute to the plans.

A third broad challenge is to determine how much common ground there should be between national policies, bearing in mind the very different traditions and practices among the member states. Here the evidence of the 2001 plans is revealing. Atkinson *et al.* (2002: p189) point out that ‘there are interesting differences between the National Action Plans, but overall there is a remarkable degree of convergence among the member states in thinking and in policy.’ It can be argued that there is a common analysis behind this convergence and that, in turn, these reflect the values and political imperatives that have shaped the approach adopted.

The 2001 plans were pulled together quickly and could, in consequence, be excused for being patchy and incomplete. Clearly, too, there were only very general guidelines for what they should cover. It will be different in 2003 because not only have the member states had more time, but they can also draw on the experience both of the implementation of the first round of plans and of the functioning of the co-ordination machinery through bodies such as the Social Protection Committee. The conjuring trick that will have to be pulled off is to make the guidelines sufficiently strategic to capture the essence of the common thinking to which Atkinson *et al.* refer, yet be specific enough to ensure that member states tackle the broad range of problems.

In addition, the scope for the mechanisms of ‘soft pressure’ on member states to enhance their policy approach has to be fostered. Attention should, consequently, be paid to the mechanics of the process from this perspective. At the EU level, a framework is required both to give strategic direction and

to create a process in which countries and regions can learn from one another, a key element in achieving a better quality of policy. Member states have to be open and to take a relaxed and constructive view of scrutiny by the Commission (more so, arguably, than peer pressure), benchmarking, exchange of experience and the other features of OMC. These procedures should be seen less as means of apportioning blame and criticising the efforts of others, than as an opportunity for improving policy in a 'race-to-the-top' involving upward convergence, rather than through cost-cutting and erosion of public responsibilities. In doing so, a priority should be to bring in local actors: social partners, firms, municipalities, institutions and social groups: those who are most aware of the problems and ways to solve them.

Conclusion

As monetary union is consolidated, there is a good case for looking at the scope for the EU level to play a more extensive role in social policy, particularly in developing an over-arching framework within which local actors can deal with social exclusion. Social exclusion is clearly something that European society as a whole has to face. Therefore, just as the recognition of a common problem motivated the employment strategy, it can be argued that the fight against social exclusion should similarly be a shared endeavour.

A particular concern under the EMU umbrella is that too much of the policy agenda is predicated upon a narrow definition of remits, with social inclusion policy falling almost exclusively under the welfare label, while macroeconomic policy only pays lip-service to social aims. Employment policy is gradually becoming better integrated with fiscal and monetary policy, the two conventional poles of macroeconomics, and the 'streamlining' of the various co-ordination processes will reinforce this concertation, but it has been a slow and tortuous journey. Social inclusion policy, however, is not (so far) seen as part of the streamlining agenda and a fear must be that an excessive compartmentalisation of policy will not only be unhelpful, but also lead to poorly informed choices. This is more than a plea for more 'joined-up' government in responding to social exclusion. The complementary challenge is to develop a conceptual model of policy-making that recognises the interplay and reciprocal impact of policy areas in shaping social outcomes.

Nevertheless, there are solid grounds for believing that social policies, generally, and measures to counter social exclusion, in particular, should remain predominantly a national competence, not least because the

European welfare states are so different. Even accepting that there are common values and problems, the character of social exclusion and the desirability of tailoring responses to local circumstances argues persuasively for avoiding top-down solutions, notwithstanding the broadly agreed frameworks of social protection and labour market policies. Yet the debate should not be conducted purely in defensive terms: what we have, we keep. The relevant question is, thus, not 'whether the EU should do more', but rather 'what is the most desirable distribution of competencies between different levels of governance?'

Although EU welfare states plainly face difficult times, there is no compelling reason to believe that they need to be either dismantled or radically reined back. Certainly, further modernisation is required, although as Esping-Andersen *et al.* (2002) show, much has already been achieved. The imperative now is to steer a careful course between, on the one hand, common solutions and the energy and innovation that comes from decentralised, bottom-up approaches; and, on the other hand, between modernising social protection and retaining the essential values of the European social model. Properly used, the OMC can help. As Belgian Social Affairs Minister Frank Vandenbroucke put it: 'Without considering it as a magic formula, I am convinced that the open method of co-ordination can be extremely useful in this field, as well as in others. But we have to make sure that we deal with this method in a well-considered way.'

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What strategy for active ageing?

Introduction

1. Preliminary evidence of what keeps older workers in employment
2. Incentives and disincentives deriving from the tax and social security systems
3. Training and employment policies
4. Working conditions
5. Care infrastructures

Conclusion

Introduction

The decline in labour force participation among workers aged 50 and over is one of the major features of labour market change in recent decades. Although the extent of the decline varies somewhat across EU member states, with Sweden showing the smallest variation and Belgium the largest, a common feature is that it has been generated via early exit schemes, the shape, extent and generosity of which vary from one country to another.

Through the 1970s and 1980s the various early exit schemes – e.g. special conditions for older unemployed workers, early retirement pensions, disability pensions – were considered, by both governments and social partners, a socially acceptable way of decreasing the labour supply of older workers. Giving incentives to older workers to withdraw from the labour market before the official retirement age was regarded as a good solution to the unemployment crisis in most EU member states. Firstly, it was deemed less stigmatising for the employee to take early retirement than to be unemployed and, secondly, employers could shed their less productive and more expensive employees and hire younger less expensive ones.

Unfortunately this strategy turned out less successful than expected. Firstly, the reduction in the labour supply of older workers did not make more room for younger workers. Secondly, this solution turned out to be extremely costly for the state as it is very popular among older workers and some companies incorporate the various early exit schemes as instruments into their human resource management. Hence, with the steadily growing share of older workers in the working age population and the estimated decrease in the working age population, social partners as well as governments have come to understand that actions need to be taken to increase the average effective retirement age.

Active ageing has become a major policy concern in most EU member states during the past ten years. Retaining the over-55s – or even over-45s in some countries – in the labour market is seen as increasingly crucial for the sustainability of the social security system and, to some extent, to compensate for tight labour markets. However, few countries have succeeded in reversing the effect of increasingly earlier retirement and most EU member states still have a long way to go. Policy-makers have realised that reversing the trend of early retirement is far from straightforward but demands a complex and multidimensional approach. While an integrated public policy seems to be the way forward, only Finland stands out as applying this approach.

The need to raise the employment rate of older workers is a priority for the very near future in order to guarantee the sustainability of the pension system. Undertaking reforms that will be effective by 2035 is an inadequate approach because most pension systems will face financing problems as early as 2010-20. This is quite apart from the problem of labour force scarcity that is already encountered or that will arise in the European Union. Other solutions that have been proposed to alleviate the burden on the pension system – such as funding, immigration and increasing the contributions/decreasing the benefits for the younger generations – are inappropriate or not politically feasible. People need to work for longer than the currently prevalent norm and the question is how this change is to be achieved.

This paper builds on the research findings of a recently completed ETUI research project on 'Active Strategies for Older Workers', the aim of which was twofold: firstly, to identify the various situations of older workers in nine European Union member states and the policies adopted to encourage them to stay in the labour market; secondly to conduct an in-depth analysis of the main policies used to maintain older workers in the labour market. The research results are published in two volumes (Jepsen *et al.* 2002 and 2003). Several publications, including this one, have recently identified the main policies used to retain older workers in the labour market:

- Removing incentives to early retirement and encouraging later retirement and flexible retirement;
- Legislation to counter age discrimination and awareness-raising campaigns among employers with a view to effecting a change in attitudes;
- Guidance and training programmes targeting older workers;
- Employment incentive schemes including active employment policies and special job offers for older workers.

Two other policy issues identified as vital to an integrated approach to active strategies, albeit rarely implemented, are care infrastructures and working conditions.

An in-depth analysis of these policy areas has resulted in the five articles published in Jepsen *et al.* (2003). The main finding is that all the above-mentioned issues are of equal importance and that all are multidimensional and complex in themselves. This makes the issue of active ageing even more challenging for policy-makers.

1. Preliminary evidence of what keeps older workers in employment

The aim is to create the right incentives to remain in the labour market while preventing a situation whereby a section of the working population experiences conditions even more precarious than is the case today. When it comes to identifying what will induce people to work longer, evidence shows that a dynamic labour market – with good jobs available – is a prerequisite for keeping seniors in work or persuading them to return to work. Economic growth and job creation are key words. Other factors also play a major role, however, such as the firm's attitude towards older workers. Older workers are considered less productive and this image persists even though several studies have shown that differences in productivity are greater *within* age groups than *between* age groups. The difference in productivity that has been found between age groups should not be exaggerated and in some cases productivity even increases with age (gains attributable to experience). It seems that firms that do employ older workers are those that have no choice or that deliberately choose them as a part of their strategy of diversity in human resources. Research evidence shows us also that these tend to be firms that have improved the working conditions of their workforce in general. No special efforts have been undertaken to retain older workers as such, but rather the effort has been made to retain workers in general (see section 4 below for more details).

When it comes to the attitude of workers, it is vital that, besides collective agreements, the social security system should offer the right incentives. Several studies have shown that countries with high employment rates for the over-55s are those with social security systems that make it worthwhile to work. This complex issue is dealt with in section 3.

So, apart from these three basic elements, what is needed for firms to find older workers more attractive and for older workers to remain in the labour market? Firms often complain about the high cost of older workers as well as the lack of up-to-date skills. Chassard (2003) proposes a possible trade-off between abolishing the link between promotion and seniority and promoting the employability of the workers. This implies changing the wage system, but most importantly it demands that lifelong learning become an integrated component of professional experience as a means either of becoming highly specialised or of expanding the professional horizon. Unfortunately lifelong learning is a much-preached and little-practised phenomenon. The preventive approach is by far surpassed by the curative

approach. However, it is difficult to imagine the abolition of seniority-based wages or promotions in order for remuneration to become completely skill-based, unless employees are offered the possibility of acquiring the needed skills, which requires an increase in the preventive aspect of lifelong learning in order to promote employability.

This leads to the next main issue, namely the debate on preserving employment opportunities and promoting the mobility of older workers. Most current policies seem to concentrate on keeping older workers in employment, but it is vital that intra-firm as well as extra-firm mobility be debated. This issue is ambiguous insofar as mobility may very well leave the worker better off than if he/she had left the labour market but it can equally well lead to a worse situation than in the former employment. What are the relevant ways and means? Where are the limits? Is Europe ready to accept a system like the Japanese one where older workers¹ can remain in the company but receive less wages for the same job? These issues need to be discussed.

Working conditions stand out as being a core element in the promotion of active strategies for older workers. Firms need to adapt working conditions to the needs of their entire workforce, not only those of older workers. It is possible to adopt a curative aspect to working conditions whereby they are directly targeted at older workers in order for them to remain productive, but the best approach is to ensure that working conditions are adapted in such a way as to keep up the productivity of the workforce throughout their working lives.

However, all three aspects require caution as they imply a certain degree of reregulation of the labour market. This cannot be envisaged without the necessary security for the employees and calls for trade unions to reflect on new ways to combine increased positive flexibility with security for the workers. This aspect is even more important as the discourse on the three aspects often relates to the core workers and disregards the situation of the outsiders, i.e. part timers, tele-workers, home-workers, low skilled and temporary workers, a majority of whom are women. Will they be able to benefit from training, better working conditions, new evaluation methods, or will they become even worse off in the process of increasing the employment rate of the over-55s?

¹ In Japan older workers are workers that have already retired but remain in employment.

Common to these issues is the importance of efficient public policies as well as negotiations between the social partners in order to promote the above three aspects. A solid and comprehensive framework is needed, together with a local negotiated implementation. The Netherlands and Finland stand out as providing good examples of successful policies that have turned around the downward employment trend. The policies/programmes being used have been carefully negotiated between the social partners from conception to application.

2. Incentives and disincentives deriving from the tax and social security systems

One of the most widely discussed instruments to keep older workers in the labour market is incentives originating from the tax and social security systems. Delsen (2003) reviews the very complex puzzle of incentives and disincentives and gives a good overview of the various systems and reforms that have taken place in the EU. The main focus is on changing the incentives for older workers – supply side (benefits and contributions) – rather than on the employers – demand side (contributions). The main challenge for the EU countries has been and is to reform their social security system away from the excluding mechanisms introduced during the 70s-80s and to introduce attractive measures that will encourage older workers to re-enter or remain in the labour market. The EU member states seem to use common instruments in order to achieve their goals of assuring the financial viability of the pension system and reversing the trend of ever earlier retirement. Abolishing the mandatory retirement age, raising the age of pension entitlement, introducing flexible and progressive retirement, increasing the required number of years of contribution, increasing the contribution rate and cutting benefits are the most common policies. However, moves can also be observed towards efficient social security systems with incentive-compatible contribution schemes, including defined contributions, privatisation, and funding.

In spite of these major reforms, little change has been observed with regard to retirement patterns. The effectiveness of these policies is questioned for two main reasons. Firstly, increasing the age of pension entitlement or reducing benefits may not have the desired effect if other public or private pathways out of work are available ('communicating vessels'). Secondly, when increasing the contributions or/and decreasing the benefit entitlements that follow, the increase in the pension accrual rate might just not be large

enough to induce the older worker to remain in the labour market. The reforms might even go as far as to decrease the pension wealth at the end of the career and hence induce early retirement. The privatisation and individualisation of pension accounts may also have a counterproductive outcome as it may lead to segregation and adverse selection. While the well-off and highly productive workers will have the possibility of retiring early, or even may be induced to do so, the less well-off and less productive workers will not have this choice, since they will be financially constrained to continue working in order to build up more pension rights. This effect is not only undesirable for social reasons; it also leads to a narrowing of the tax base.

Policy measures that focus on tightening access to benefits or reduction of pension levels impose a disproportionate burden on the low-income population who are more reliant on social security provisions than those with higher incomes. Flat-rate pension benefits give incentives to the low-income population to retire early. Earnings rules², and means-testing, lead to pension, poverty and unemployment traps, notably for those at the lower end of the earnings scale. However doing away with these mechanisms and introducing pensions solely based on actuarial fairness may result in inadequate retirement income which could lead to poverty, segmentation and polarisation.

Introducing a flexible pension age and introducing a favourable progressive retirement via part-time retirement regimes is a necessary but not sufficient step towards raising the effective retirement age. If other public and private early-exit schemes (e.g. full-time early retirement) are not abolished or altered, such a step might result in no perceptible change. Furthermore, research shows that the change in incentives needs to be substantial in order to have an impact on the worker's decision to retire or to combine work and pension. More importantly all decisions taken in relation to employment will have an influence on the retirement decision, i.e. changes in contributions as a result of change in employment characteristics result in changes in the later benefit level. This implies that all reforms should be seen in the light of the working life perspective and not only in the light of the last years of work. Working-time preferences of all individuals should be taken into account at all stages of life, as this will have an impact on the later

² By earnings rules we mean the right to accumulate pension and earnings from employment.

retirement decision. Social security reforms have in general been ‘stick’-based, i.e. punishing early exit, and the results have been quite meagre. Maybe policy-makers should start thinking of introducing ‘carrot’ reforms by better rewarding late exit from the labour market.

3. Training and employment policies

The importance accorded to the incentives from the social security system is justifiable; however, creating the right incentives alone will never solve the problem of early retirement. Tight labour markets, training and employment policies, as well as changing the attitudes of employers as well as employees (individuals and trade unions), are also of vital importance. Lafoucrière (2003) concentrates on training and employment policies that are aimed at older workers. While the European Employment Guidelines acknowledge the importance of lifelong learning and other active labour market policies in order to maintain older workers in the labour market, an in-depth analysis of the national action plans for employment shows a lack of coherent strategies, mainly due to a lack of overall understanding and truly targeted approaches, although some member states do focus on measures taken with regard to anti-age discrimination legislation and initiatives (campaigns), age-neutral personnel and training policies and in-house training as well as public employment programmes. Recent studies seem to confirm that targeted labour market policies and programmes are effective in reversing the trend of early exit from the labour market. In particular, training/retraining appears to be a central element in the retention of older workers on the labour market as well as in facilitating the reintegration of the long-term unemployed via an updating of their skills. However, it could also appear that training alone cannot change the face of the labour market as it stands currently. Job-creation schemes, personal guidance initiatives, anti-age discrimination policies and campaigns are all vital factors if older workers are to be perceived as being an integral part of the labour force and not only a ‘reserve army’. Paradoxically the opposite can also be said to be true. When dealing with shortage and/or erosion of skills, the above-mentioned active labour market policies and programmes must nearly always be linked to vocational training programmes. These measures must complement each other in order to be successful. Another crucial issue related to the policy measures mentioned above is where the responsibility lies and where the decisions come from. In this context state and industrial relations and traditions play a vital role. Examples from the different EU member states do not point towards a unique model for distributing

responsibilities and decision-making powers. They do, however, tend to point to the fact that there is a need to establish formal government legislation providing for an overall framework within which further actions can be taken. The combination between a high degree of regulation and industrial self-organisation eased by government structures capable of devolving much to regional government, coupled with a demand-led system which provides for a high level of specialisation and consultancy practices, involving different actors, appears to respond well to the issues concerned. Finland and Denmark, albeit via quite different systems, seem to point to an efficient mode of further development.

It must be stressed that, despite all the discussion of the principles of lifelong learning, the issue remains inadequately understood. The tightening of the labour market seems to have induced better training processes, but a malfunctioning of the different systems in place is apparent. It is essential to understand the concept of lifelong learning as a preventive and lifelong process, whereas the national experiences are evidence of a general tendency to regard the issues as end-of-career problems, thereby introducing a curative aspect instead. The social partners, therefore, have an important role to play in altering mentalities and actively encouraging training practices to take place throughout an employee's working life. Although patterns of lifelong learning differ tremendously according to different national contexts, the obligatory pattern witnessed in countries such as France has, more often than not, sent the 'wrong' message, sometimes serving to strengthen the negative perception of older workers' skills. These obligatory patterns are certainly not to be condemned, for they can indeed be useful in providing a formal framework, but they should be accompanied by further financial contributions, as well as clearer quotas and targets. More incentives/rewards are needed for lifelong training in order to make sure that workers never become 'older workers' but remain 'employable' throughout their career. The general trend of curative measures for older workers, which often predominates, is evidence of an overall malfunctioning of lifelong-learning systems in general. It is crucial, therefore, that national social partners should seize the opportunity given them by the EES and create a synergy within which concrete preventive responses can be found and coherent national strategies arise.

4. Working conditions

Another prerequisite for keeping workers on the labour market for a longer time relates to working conditions. This subject covers two issues, namely working time as a way of adapting working conditions, and the ergonomic aspect of working conditions.

With regard to working time two aspects arise, namely, flexible working time and reduced working hours. It is assumed that more relevant working-time patterns help to promote higher labour market participation among older workers. Reduced working time seems to entail many advantages. It limits the reduction in productivity that might come with age, while the reduction in duration can offset the need to adapt the nature of the working conditions themselves, and both workers and firms might be less reluctant to compromise, insofar as their preferences are better met.

Jolivet (2003) identifies a wide range of already existing schemes to reduce working time in the EU member states. Some are aimed at older workers in particular, while others are aimed at workers in general. The effect and desirability of the scheme depends on its features. Is it actually helping to increase the age at which individuals retire and thereby increase the labour supply, or is it decreasing labour supply by encouraging part-time instead of full-time work? It is also questionable whether the schemes should be targeted towards older workers alone, insofar as this might stigmatise them. Access conditions and wage compensation naturally play a major role in the success of the schemes; equally important, however, is the availability of good quality part-time jobs and how older workers are managed in general. Another criticism, or feature to note, is whether reduced working-time is available in the internal labour market (as in Belgium) only, or whether the schemes are also available for older workers changing jobs or re-entering the labour market. This last question is rarely touched upon.

Turning to the ergonomic aspect of working conditions, it should not be forgotten that ageing is partly a product of work. In order to combat this aspect a multitude of complex factors need to be considered. Three crucial elements can be identified: working conditions, the option of acquiring/developing skills, and the characteristics of the career path.

The initiatives undertaken in the EU member states can be divided into two possible approaches. In the first, older workers are perceived as a special group for whom special solutions need to be proposed: 'soft' jobs, and end-of-career routes within or outside the firm. This policy approach imply two

risks. The first is that the number of people involved will be out of step with the number of posts available, and the second is that 'sidelining' these workers will cut them off from the activity of the firm. The second approach is an overall approach covering both working conditions and career pathways, and it involves adapting work organisation and the management of mobility to suit the diversity of the workforce. The positive aspects are that it avoids stigmatisation, offers a wider range of opportunities for an older workforce with very different characteristics, and encourages advance management of the situation. It no longer implies, for example, that all older workers are shielded from certain working conditions but creates, instead, a less demanding combination of working conditions for everyone (by introducing greater autonomy and freedom of action). On the other hand, this type of approach is more difficult to implement because it involves rethinking working conditions, organisation, mobility and changes that might be regarded as being dictated by exogenous variables to the firm, such as the economic and competitive situation.

An analysis of the policies currently applied in the EU member states clearly shows the need for a renewed look at the issue. Several recommendations can be made to policy-makers. The most important are: to put an end to the conventional way of thinking of end-of-career schemes as only for those in the internal labour market and to start including those in the external labour market; to identify what makes some decline participation in the schemes on offer; to make the schemes reversible; to be clear about the aim of the working-time reduction (WTR); to give serious support to the introduction of WTR; to encourage discussions on working conditions in firms as well as at sectoral level; to introduce preventive as well as curative dimensions into age management.

The main message is that it is important not to introduce short-sighted, inflexible measures. What is definitely needed in the current landscape is a more flexible approach to WTR, as well as an appropriate adaptation of working conditions. A warning should be issued concerning the narrow focus on the internal labour market, which leads to neglect of the external one which is equally if not even more important.

5. Care infrastructures

The last issue dealt with in this paper is an issue often wrongly overlooked when discussing active ageing, namely provision of care for children, parents and spouses. Although this aspect might seem to be less of a priority

when discussing active ageing for men, Pacolet and Hedebouw (2003) demonstrate its importance for women, and hence also indirectly for men, insofar as couples tend to retire together. The significance of social spending on family/childcare for female labour market participation in general has been demonstrated by several studies, but very little is known about the influence on older women's labour market participation. Nevertheless the scant evidence that does exist points to the fact that grandmothers play a major role in the care of grandchildren. This implies that future grandmothers will be placed in a dilemma as their parents will still be living and probably also needing care, hence the term of 'sandwich' generation. Figures show that even in countries with a well-developed system, i.e. formal care provided, the bulk of the care is provided by the household, family or neighbours, even though it is not a full-time job. This implies that formal care cannot work completely as a substitute for informal care, though it can alleviate the situation. Notwithstanding, the demand for care is bound to rise and this needs to be taken into consideration when discussing active ageing.

An important factor is that a high employment rate amongst younger women seems to produce higher employment rates among older women as well. There appears to be a continuity in the rate of employment. This means that child-care provision ensuring higher employment rates among the younger women will, over time, have a positive effect on the employment rate of the older workers and could support them to remain in employment for longer. In the worst scenario, assuring adequate formal care provision to replace informal care, for children as well as the elderly, will prevent the employment rate from decreasing as the demand for care increases with the ageing population. Once again, the less skilled are more likely to withdraw from the labour market to provide informal care, thereby contributing to their already fragile position as older worker. However, one should not lose sight of the fact that the decision to leave employment to provide care is an individual choice; however, it is also a social choice to provide care or not and this can influence the individual choice. The more formal care is provided, the less will be the pressure to leave the labour market; however the demand for care provision should be evaluated on a life-cycle basis, as older women's labour market participation will be strongly influenced by having participated at a earlier stage.

Conclusion

From the research undertaken at the ETUI and published in Jepsen *et al.* (2002 and 2003) it is obvious that, although special measures are needed for older workers, the main conclusion to be drawn is that, in order for older workers to stay in the labour market, action should be taken on a lifelong basis. Many of the measures discussed in connection with active ageing (incentives from the social security system, working time reduction (WTR), training, working conditions, social infrastructure, etc.) actually should apply to all workers. Applying the measures to older workers alone will stigmatise and may not have the expected effect as they are not sufficient to keep older workers in the labour market. Actually most of the policies proposed for older workers would be appropriate for the entire work force. One could say that anti-ageism legislation and campaigns targeted towards employers, employees and trade unions are specifically needed; however, it must be hoped that they are needed only on a temporary basis until older workers are seen as being fully a part of the labour force and not as a 'reserve army'; however if women are taken as an example of this, the temporary might not be so temporary. Another very important issue is the discussion on the internal/external labour market. Many of the policies proposed focus on the intra-firm situation of older workers; however it is very important to include or even promote the idea of external labour markets. It might not be the best idea to create special jobs/careers for older workers as it might create precarious conditions. This leads to the next conclusion to be drawn from the discussion on active ageing. When closing the pathways for early exit from the labour market, very little focus is placed on the 'weaker' individuals in the labour market (temporary workers, part-timers, low skilled). When designing the strategy for active ageing, these groups need to be placed in the centre of the focus as otherwise there will be a high probability of creating segregation, poverty and a new precarious group on the labour market. Flexibility of the schemes is another issue to raise. The schemes need to be flexible in order to fit the various sectors, jobs and individuals. They should also be reversible; a decision taken at one point should not be the final one.

Finally, we insist on the fact that changing incentives from the social security system alone will not work; training alone will not work; introducing WTR alone will not work, etc. The complexity encountered when dealing with early exit challenges and senior issues calls for an appropriate mix of measures. Whether or not supported by formal

legislation, anti-age discrimination campaigns will undoubtedly be condemned to failure if not accompanied by deeper personnel policy reforms, involving all actors. The fiscal and financial aspects of early retirement trends are key issues; policy-makers therefore have a crucial role to play in establishing age-neutral pay systems and reducing employers' costs, thereby truly helping to change employer attitudes. Employees should be given real 'carrots' for staying in the labour market, for example via specific tax reductions. The role of social partners should not be neglected as they have an important part to play not only at the national level as a social partner but also at the local level in order to motivate change in the workplace. Although their intervention should motivate reform agreements in the long term, they should also be highly proactive in finding responses for the shorter term. Changes in government policy should entail a series of reforms mainly in the field of social security, taxation, recruitment, training policies, working conditions and, last but not least, care provision.

Although some efforts have been deployed in this direction, an integrated public policy approach considering the link between employment, pension and learning is still needed. Furthermore, it is vital that the policies directed towards the older workers should be compatible with other policies. With the economic downturn and growing unemployment, it will be interesting to see whether governments will continue to be as eager to undertake reforms to encourage older workers to stay or re-enter the labour market as has been the case in the past five years.

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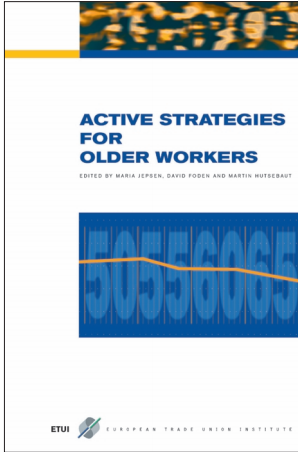
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ACTIVE STRATEGIES FOR OLDER WORKERS

edited by Maria Jepsen, David Foden, Martin Hutsebaut



For some time now governments have been trying to direct more attention to the employment opportunities for older workers. Besides the question of sustainability of welfare states, governments are confronted with growing labour shortages in numerous branches of the economy : premature exclusion or exit from the labour market only sharpens these imbalances.

This book sets out to describe how, in nine EU countries (Belgium, Denmark, Finland, France, Germany, the UK, Italy, Sweden and the Netherlands), social partners and governments have been successful in increasing the employment rates of older workers, or have failed to do so. Different paths have been tried out in different countries, some with more success

than others. The book highlights good and bad practices in the field of employment, training, social protection and taxation policies. Current policies are evaluated and proposals are made for further successful action. Amongst major reforms discussed, the book refers to the development of systems of partial, phased, progressive or flexible retirement.

This study, which brings together the most recent national findings and European statistics in this field, has been drafted by a group of specialist academics : Lei Delsen, Annie Jolivet, Gerd Naegele, Kari Vinni, Peter van der Hallen, Geert Vandembroucke, Eskil Wadensjö, Alan Walker, Hans Hansen, Angelo Paulli, Mara Tagliabue, Axel Bremermann, Henri Lourdelle, Céline Lafoucriere, David Foden and Maria Jepsen.

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Caroline de la Porte

Is Open Method of Coordination on pensions credible?

Introduction

1. The link between pensions OMC and other processes
2. Analysis of pension reform proposed through OMC and link with pension reform at national level

Conclusion

Introduction

This article will describe the interesting developments in the open method of coordination on pensions (pensions OMC) during the past year. Rather than comparing pensions OMC to other OMCs under the auspices of social protection like last year (de la Porte 2002) the article will locate the issue of pensions OMC compared to other more consequential and binding co-ordination processes and regulatory initiatives taking place in the European sphere.

Might it be argued that the debate on pension reform is, notably through the comprehensive policy framework proposed through the OMC, at the forefront of Europe's political agenda? Or is it due for extinction, having been introduced because of a favourable institutional and political setting that has since been superseded? To answer this question, a twofold analysis will be conducted. Firstly, the way in which OMC pensions is integrated with the other European level co-ordination processes and legal initiatives, as well as how participatory it is, will be analysed. Secondly, the pension reform agenda, proposed through OMC against the background of national reform processes, will be discussed. Finally, the article will conclude with some words on future prospects, touching upon how relevant and credible OMC pensions really is in the light of the overall policy process.

1. The link between pensions OMC and other processes

1.1. Pensions OMC

First, some words of introduction to the content and process of pensions OMC.

The OMC in the area of pensions seeks to propose a line of reform for pension systems as a whole: state pension schemes, occupational pension schemes and private personal pensions (CEC 2002a). The European debate on the reform of pension systems, through the OMC, began in March 2001, when the Stockholm Council suggested that the Economic Policy Committee (EPC) and the Social Protection Committee (SPC) should define the European policy line on the reform of pension systems. In practice, it has proved to be a struggle between economically- and socially-oriented players, which was fruitful in that it led to a political consensus or 'cognitive convergence', on the European framework for pension reform. In terms of policy content, eleven objectives around three 'pillars' – adequacy, financial sustainability of pension systems, responding to changing needs – have been

agreed between the SPC and the EPC and endorsed by the European Council (de la Porte and Pochet 2002a; de la Porte 2002). The advantage of the holistic policy framework was highlighted by Pochet (2003a) who argued that '[...] the more complex the discussions at European level, the more weight they carry, and the more options they offer for dealing with the challenges of ageing'. In particular, it has provided a means for the socially-oriented players to *legitimately* integrate their concerns into the debate that had been dominated by the economically-oriented players through the Maastricht mandate.

However, while the OMC pensions does introduce some elements to balance the approach to pensions from an economic perspective to include social prerogatives, one important element is absent from the way that the pension reform process is framed. The need to conceive innovative and generous family policies to improve the pension-funding problem has been pointed to, *inter alia*, by the European Parliament (European Parliament 1999). Indeed, combined with the increased number of people in old age, the birth rate in Europe is low, and not sufficient for population replacement. The reflections on family policies, with changing family models, should go hand in hand with the policy proposals to adapt social protection systems in the light of the ageing of the population¹. The OMC pensions, as a holistic policy framework responding to changes in demographic balance, could include objectives for policies to incite women to have children, and seek to enable them to combine family and professional lives. These policies should also, ideally, enhance/favour the possibility of caring for the elderly, which would help to combat the sociological problem of isolation in old age. Indeed, demographic, family and child-protection policies should be addressed as a package of inter-linked policies (European Parliament 1999).

In procedural terms, one 'round' of pensions OMC has now been achieved, if the Lisbon definition is taken as the reference point – meaning the definition of guidelines, selection of benchmarks, transposition of the agreed guidelines to national level (reflected in the national reporting process) multilateral surveillance (CEC, 2002b) and peer review. Of the various OMC processes introduced in the social arena, it is the 'softest' to date (the others are in

¹ The European Observatory on the Social Situation, Demography and Family (http://www.europa.eu.int/comm/employment_social/eoss/index_en.html) addresses such issues, although, in its research and policy advice activities, it does not appear to take account of the OMC pensions process.

employment through the European Employment Strategy (EES) and on poverty eradication and social inclusion²). Key aspects of the procedure are actually labelled differently to reflect this. In particular, the ‘National Action Plans’ (NAPs) that are central to the EES have been replaced by ‘National Strategy Reports’ in the OMC pensions. The NAPs reflect how, through specific policy measures and actions, the member states comply with the employment guidelines at European level, while the latter, associated with less detailed European ‘objectives’, describe the strategies undertaken by member states in their national pension reform processes. The extent to which this theoretical difference actually holds in practice remains an open question.

1.2. How is OMC pensions integrated into the broader co-ordination processes?

Here, the article will identify how the issue of pensions is integrated with the European co-ordination processes.

Major changes have been made to ensure the overall coherence of the co-ordination processes at European level, viewed from the standpoint of the Lisbon aim of moving towards increased economic growth, full employment, but also social cohesion. The co-ordination processes associated with economic and monetary union, in particular the BEPGs, are central: ‘The BEPGs will continue to address macroeconomic policies’ (CEC 2002c: 6). As an overarching policy document, the BEPGs will ‘[...] put the necessary emphasis on structural policies and on reforms aimed at promoting economic growth potential, employment and social cohesion, sustainable development, and the transition towards a knowledge-based economy’ (CEC 2002c: 6), including the open method of co-ordination as it is applied to pensions. The role of the Spring European Council, characterised as ‘a defining moment in the annual policy co-ordination cycle [...] (it) gives general political orientations on the main policy priorities’ (CEC, 2002c: 4), is to be enhanced.

Within the ‘streamlined policy co-ordination process’, the specific roles of the different actors are clearly laid out, including the poor sister of the process, the European Parliament. It is more explicitly invited to participate in the process, with more time to consider the effective implementation of the guidelines of the European co-ordination processes. The European Parliament has, in effect, repeatedly and bitterly expressed dissatisfaction at

² In health care, the existing process cannot (yet?) be identified as an OMC (de la Porte, 2002; Baeten, 2003).

not being involved in the processes, including that of pensions. In its report on the Commission 2001 Communication on safe and sustainable pensions (European Parliament 2002) for which the Committee on Employment and Social Affairs was responsible, this was reiterated and very clearly spelled out. It perceives the OMC above all as a process governed by an inter-governmental logic and taking place behind closed doors. It particularly criticised the fact that the SPC and the EPC had not consulted the Parliament in drafting their joint report of October 2001: '[...] the exchange of views between the Parliament and the policy committees [...] has not to date taken place' and concluded that this was '*unacceptable*' (European Parliament 2002: 9). It strongly regretted not being able to express its opinion on the objectives and methodology adopted in the framework of pensions OMC for the Barcelona European Council. While the European Parliament will now be involved in the policy co-ordination processes concerned with the economic prerogatives of the European Union, this has not yet been envisaged for pensions OMC. If the OMC is integrated into the first part of the European Constitution, as is currently being discussed in the debates of the European Convention, then a mandatory participation of the European Parliament has been suggested.

In the revamped co-ordination procedure, there is an agreement on the need to further involve the national parliaments, and to improve consultation with social partners and civil society. Up to now, national parliaments have often been excluded from the debates, and have the impression that the European co-ordination processes, in particular when they lack a legal mandate, are a means for the Commission to increase its role in European affairs (this is particularly striking in Finland, where there is strong opposition towards the OMC). In its resolution on the European pensions process, the European Parliament also highlighted that it was crucial for the European social partners to be involved at all stages of pensions OMC, at national and European level. It also called specifically for '[...] the involvement of representatives of pensioners, social NGOs and women's organisations' (European Parliament 2002: 9) which has not been the case up to present. On this point, Telò (2002) has stressed that it is imperative for these actors to be involved in the OMC to ensure that it lives up to its promises as a more participative tool compared to the classic Community method. In the academic analyses of the OMC as a 'new', often presented as exemplary, mode of governance in the EU (Héritier 2003), this participatory dimension is emphasised and, indeed, used to differentiate it from the classic

Community method. To what extent does this dimension of the OMC, in the area of pensions, live up to its promise?

Among the eleven objectives of the OMC pensions, the last, in a fuzzy way, introduces the element of participation. It is of interest to note that this was not among the objectives proposed in the Communication of 2001 (CEC 2001a). The participatory element was subsequently added in the joint report of the EPC and the SPC of November 2001, defining the implementation modalities of the OMC to the area of pensions, which was then endorsed by the Laeken European Council (December 2001). This aim, combined with that of transparency is to '[...] promote the broadest possible consensus regarding pension policies and reforms [...]' (SPC and EPC, 2001: 7). The reference to participation is not as direct as in, for example, the OMC on social inclusion, which has a separate objective devoted to participation, naming the types of actors to be involved. Pensions OMC does not seek, according to its objectives, to be as participatory as the social inclusion OMC or even the European Employment Strategy, in which the participation of social partners has been institutionalised.

Who participated in the writing of the NSRs? They were generally written jointly by the ministries of labour and social security and economics and financial affairs, sometimes including ministries of business and/or industry. However, the configuration differs across member states, some including up to four ministries, while others are limited to one ministry. None of the NSRs indicated that social partners or other actors participated in the writing of the reports. However, other sources of information indicate that there was some consultation with NGOs at national level³, although the extent to which they influenced the process in substantive terms is not clear.

It is of interest to note that the participatory dimension has particularly been highlighted in countries where social partner contribution to pension policy design and implementation is an integral part of national practice. This includes, *inter alia*, France and Italy, where the social partners successfully opposed fundamental pension reform proposed respectively by Juppé and Berlusconi during the mid-1990s (Natali 2003). It does not appear that the pensions OMC as such has contributed, at the national level, to enhancing the participation of different actors in the reform of pension systems. However, the OMC pensions is new, and one could thus argue that it has not

³ I would like to thank Jonathan Zeitlin (University of Wisconsin-Madison) for this point.

yet been given the possibility to fully filter into national policy arenas on this and other dimensions.

In the European co-ordination processes, the Commission already plays a crucial role. Its role has now been strengthened as it is to put together an overall 'Guidelines Package'. This would include the Commission drafts for general and country-specific policy recommendations as contained in the BEPGs, the EGs and the annual employment recommendations to member states. In order for there to be a possibility for the policy aims to be integrated fully into national processes and to decrease the bureaucratic workload, this package is to be drawn up every three years. The first one should cover the 2003-2006 period (the package is due to be issued in April 2003). Reference is made in the Communication to the need to ensure consistency between the BEPGs, the outcome and conclusions of the Cardiff process and the internal market strategy (CEC 2002c: 4). The latter is to accompany the guidelines package and would be adjusted in the years thereafter only if necessary.

The way in which to streamline the 'heavy duty' co-ordination processes in order to enhance effectiveness and transparency and to decrease the possibilities of contradictory aims is well under way. However, this is not the case for the processes that are 'lighter', including OMC pensions, which does have a socially-oriented pillar where the key objective is to ensure an adequate replace for pensioners. It is important to recall that this and other OMC processes are above all [...] realised in the shadow of an economic and monetary model that continues to constitute the *idée-force* of European integration' (de la Porte and Pochet 2002b: 292). There is a risk that they will be sidelined further within the package of re-invigorated (economic) co-ordination processes.

While the need to create a coherent *ensemble* of the social co-ordination processes (employment, social inclusion and pensions) has been put forward repeatedly in the last two years, this has not yet happened. Following the technical and especially political evaluations (see de la Porte and Pochet 2003), the profile of the EES has been raised. The employment guidelines are now organised around three key pillars, and are, crucially, to be integrated into the 'heavy duty' co-ordination processes. One could thus argue that employment is part of the 'primary' block of co-ordination processes, while pensions and social inclusion are 'secondary' (see Pochet, 2003b).

Although the co-ordination processes in Europe are becoming more organised and of greater relevance for policy-making within the European Union, with the Spring Council playing a crucial role, and the BEPGs acting as the document globally integrating trends and priorities, the pensions OMC *per se* is not well integrated into this process.

1.3. What links are made between pensions OMC and legislative initiatives?

Substantial progress has notably been made during the past year on the (proposed) Directive on activities and supervision of institutions for occupational retirement provision (Council of the European Union 2002).

It has been identified as '[...] one of the Commission's first initiatives in its long-term plan to promote social protection in the EU. This includes plans to reduce the costs of running pension schemes, to encourage workers to opt out of state-run schemes and to tackle the ageing problem' (Freshfields Bruckhaus Deringer 2002: 2). The policy objectives agreed under OMC pensions also include reference to this issue. Objective 8 is to 'ensure that private pension provision is adequate and financially sound' (CEC 2002b: 74) which is precisely the aim of the directive, and objective 11 is to 'make pension systems more transparent and demonstrate their ability to meet the challenges' (CEC 2002b: 91). In other words, the pension systems, including the voluntary pillar, which is the focus of the pensions directive, need to be sound and transparent in order to gain legitimacy. It is thus surprising that these two initiatives do not feed into each other, but appear instead to be isolated from one another.

The Directive is to be adopted under the co-decision procedure. To summarise the steps taken up to present: the draft proposal received its first reading in the European Parliament in July 2001 (Freshfields Bruckhaus Deringer 2002) and, in November 2002, the Council adopted a common position in which it holds that '[...] this directive thus represents a first step on the way to an internal market for occupational retirement provision organised on a European scale' (Council of the European Union 2002: 16).

The Directive is part of the project of achieving a common European framework for financial markets. It concerns institutions for occupational retirement provision that operate on a funded basis and are voluntary. The prudential rules proposed have a twofold aim: 1) to guarantee a high degree of security for future pensioners, by putting in place supervisory standards and 2) to ensure efficient management of occupational pension schemes. To

achieve these aims, several measures are proposed. Member states must, firstly, require all such institutions to draw up annual accounts and reports taking into account each pension scheme operated by the institution; the institutions must also prepare written statements of investment policy principles. The process is to be transparent to the members, notably with a clear explanation of investment policy principles, investment risks and target level of retirement benefits where applicable. Competent authorities are to have the means to exercise their supervisory role. The member states will have the authority to require that the institutions have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes. The institutions will also be required to hold on a permanent basis additional assets above the technical provisions to serve as a buffer to absorb discrepancies between the anticipated and the actual expenses and profits. The institutions shall be required to invest in accordance with the 'prudent person' rule (Council of the European Union 2002: article 18).

Such rules exist, albeit in different forms, in all member states. They are to be harmonised in the light of provision of cross-border activities, which the Council regards as one of the most important features of the directive. Article 20 states that '[...] Member States shall allow undertakings located within their territories to sponsor institutions for occupational retirement provision authorised in other Member States' (Council of the European Union 2002: 26) and sets out the practical and legal steps involved in this process. It remains to be seen what position will be adopted by the European Parliament at its second reading.

It is of interest to note that, in the framework of the Directive, provisions have been set out, for cooperation between member states and the Commission, which contain some elements of OMC: 'Member States shall ensure [...] the uniform application of this directive through regular exchanges of information and experience with a view to developing best practices in this sphere and closer cooperation' (Council of the European Union 2002: 27). The competent authorities of the member states responsible for the overall surveillance are to work in collaboration with the Commission, with the support of an 'insurance and pensions committee'. No precise indications are given on the membership and status of this committee. Also, as with the OMC (the EES was reviewed after five years), the Commission shall issue a report on the progress achieved in the adaptation of national supervisory systems (Council of the European Union

2002: article 21). Elements of the OMC, or perhaps comitology (Joerges and Vos 1999), depending to a great extent on where the political and/or technical ‘expertise’ lies, are filtering into the more classic regulatory tools. Perhaps this combination is where the real advantage of the OMC and other techniques heralded as ‘new’ actually lies (Héritier 2003; Scharpf 2002).

In line with the discourses of the present *air du temps*, the Council proposal on the directive states that: ‘[...] the redirection of savings into the sector of occupational retirement provision is encouraged, thus contributing to economic and social progress’ (Council of the European Union 2002: 16). What about the links between this process and pensions OMC? On the one hand, there is no reference in the position to pensions OMC. On the other hand, there is a clear reference to the directive in the first Joint report of pensions OMC in the section on objective 8, on the need to ensure that private pension provision is adequate and financially sound.

2. Analysis of pension reform proposed through OMC and link with pension reform at national level

The discourse on pension reform that was established in 2001 along three pillars – adequacy, financial sustainability, responding to changing needs - has remained stable (European Council 2001). In December 2002, the Commission adopted the draft joint report of the Commission and the Council that evaluates the national strategies for adequate and sustainable pensions. A first reading of the report reveals that most member states have embarked on reforms that are in line with the European objectives. However, the Commission urges member states to make further reforms to be fully in line with the European aims, in some cases emphasising the more ‘social’ objectives, i.e. adequacy, and in others emphasising the more ‘economic’ objectives, i.e. financial sustainability. Implicit, rather than explicit, recommendations to member states are contained in the assessment made of their reform processes in the joint report of the Council and Commission. For the objectives pertaining to adequacy, to ensure that the pensions systems manage to combat poverty and maintain the living standard of pensioners, two countries – namely the United Kingdom and Italy – received a rather negative assessment. For these countries, the implicit recommendation is to take additional measures to address the poverty challenge. The verdict of the extent to which the pensions systems were financially sustainable for the present and future was negative for five countries: three countries from southern welfare state regimes (Greece,

Spain, Italy) and two from continental welfare state regimes (Belgium and France). Here the implicit policy recommendation is to take measures to cut public spending on pensions and to re-locate it under the other pillars. The objective of increasing labour force participation among the elderly group of the population (aged 55-64) has been reinforced by the quantitative benchmark agreed for the whole of the European Union (50% by 2010, Stockholm). This arguably puts more pressure on the member states to comply, also because it is at the centre of the Lisbon strategy. Seven countries fall into this category: three southern European countries (Italy, Greece and Spain) and four continental countries (Austria, Belgium, France and Luxembourg) (for more details see de la Porte 2003). But how are these implicit recommendations integrated into national reform agendas?

If we lived in a world in which the reform of national pension systems had not yet been initiated or was in the initial stages, one could imagine that the OMC pensions (and the implicit recommendations) could be of added value for the member states and, indeed, have some impact, if taken on board. However, for many member states, the reform process was initiated one to two decades ago, leaving little room for the policy framework proposed through pensions OMC to have much impact. What are the linkages between the reform agenda proposed through pensions OMC and those taking place at national level? While it is beyond the scope of this article to make an in-depth analysis of this issue, the prominent points related to this issue will be made here.

Analyses have shown that (even substantial) pension reform generally follows a path-dependent trajectory, and is a result of national dynamics, with specific normative discourses, institutional set-ups and actor configurations. Despite the discursive consensus on the demographic challenge facing Europe, there does not appear to be, in practice, a convergence in pension reform policies across EU member states. The driving forces for change emanate from national contexts through path-dependent institutional and participative structures. In the French case, the trade unions, which had not initially been consulted in the pension reform proposal by the government in 1994, proved able to mobilise, towards the end of 1995, their members and the public opinion on an ideological basis of the *acquis social* of pensions. In the Italian case, too, trade unions have proved to be effective as shields of the pension system, which led to mass demonstrations and the stepping down of the Berlusconi government. In the case of the United Kingdom, conversely, the government did not face any

strong opposition to the pension reform, as the trade unions do not have the same strong role institutionally as in France and Italy. As a consequence, the government has been able to introduce several reforms, the first in 1986, moving towards a greater role for private provision in the pension system. Similarly, in the Swedish case, the role played by trade unions, despite higher overall membership than in the French and Italian cases, has been weak. This partly has to do with the fact that trade unions are key representatives of the active population, while the pensioners are represented by separate organisations. The actors driving the reform were from the parliamentary arena (see Natali 2003 for more details).

As the pensions OMC is so new, it obviously could not influence reforms that have already been implemented. However, it could contribute to encouraging the social partners to participate in the pension reform processes in their respective national arenas, in an effort to ensure that more balanced reforms, taking account of the social dimension, are implemented in the member states.

The pensions OMC could, in this participative dimension as well as the more substantive dimension, be useful for guiding pension reform in the candidate countries. While many of them have already introduced substantial pension reforms, the reforms are often less anchored and still in progress. Through pensions OMC, the EU could thus, along with other international actors (on this point see de la Porte and Deacon 2003) contribute in a more comprehensive manner to social policy development in the CEECs. Currently, this has not been envisaged.

In the Commission's strategy paper on progress of the candidate countries in compliance with accession criteria, reference was made to the need to prepare for participation in the EES and the social inclusion OMC. However, there are no plans to integrate these countries into the pensions OMC process.

Paradoxically, the European discourse on pension reform as set out in the OMC, although isolated from the European co-ordination and the legal processes, appears to some degree to have become institutionalised. It was presented to a world assembly on ageing, where the European Union, as an international body, made policy recommendations that were targeted to feed into a more global agenda on pension reform policy (the UN is making efforts to develop a global framework for action on ageing). The EU highlighted three key challenges and responses of ageing globally, present to

differing degrees, in different countries. The first was that of securing a sufficient labour force, for providing for a growing population of retired people, a response to which could be to keep people 'economically active as they age for as long as they can manage'; the second requires the management of risks for fiscal stability and overall economic sustainability of public sector finances; the third risk highlighted was the need to tackle the issue of poverty in old age, particularly among women (CEC 2002d). Why, then, are there no apparent plans for the candidate countries to participate in this process? This remains an open question.

Conclusion

The OMC pensions has effectively brought social and economic prerogatives of pension reform together, the process has been rendered more transparent, and there has been some reference to the work through the legal route in pensions OMC (but not vice-versa). However, on a more negative note, it is isolated from the 'heavy weight' or 'primary' co-ordination processes within the EU.

While the substantive impact the pensions OMC could have on member states is questionable, it should place more emphasis on the participatory dimension and encourage this at the member state level. The EU should encourage the candidate countries to participate in the OMC pensions in order to contribute in substantive terms to the debate on pension reform in these countries and, in particular, to encourage participation of social partners. In other words, while the pensions OMC is positive as such, it has the potential to become a much more effective tool for the European Union.

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A broader Europe

Peter Scherrer

Political turbulence and trade unions in the Balkans

Introduction

1. Kosovo
2. Serbia and Montenegro
3. Macedonia

Outlook

Introduction

For the trade unions in south-east Europe 2002 was certainly not a year when developments stood still. In some countries the labour organisations saw changes in leaderships which had been in office for many years. In several countries the trade unions' work was influenced by political elections and in some cases this impact was overwhelming. One sobering aspect, in terms of progress towards democracy in the countries of former Yugoslavia, was the low level of participation in parliamentary and presidential elections. Some highlights from south-east Asia are presented below to illustrate the still precarious and tense political situation.

1. Kosovo

The European Trade Union Confederation coordinated, up to the beginning of 2002, a solidarity project – supported by the CFTD, CSC/ACV, CGT and FO – for the union of independent trade unions of Kosovo BSPK. After the end of the Kosovo War in summer 1999 the BSPK trade unionists were in a position, for the first time ever, to operate under conditions of full political freedom. The threat from outside and the reprisals launched by the Milosevic regime had given way to an atmosphere of euphoria, fostered, not least, by the hope of independence for the state of Kosovo. Within the organisation itself the sudden absence of an external enemy gave rise to internal conflicts which, on account of the 'external threat', had not surfaced in the past. The different factions threatened to leave or to set up a new 'alternative' trade union confederation. Given the immediate challenges – collapse of the economy, precarious security situation, new political situation, etc. – a split in the trade unions in Kosovo, already placed on the defensive, would have proved fatal.

Several western European trade union federations had a longstanding interest in supporting the trade unions in Kosovo but the financial and personnel resources were inadequate for the provision of extensive support, e.g. to individual sectoral unions. To offer support to the confederal leadership alone would have meant backing an administration which in many sectors, given the lack of cooperation, no longer had any kind of involvement with the industry unions. The ETUC, with the support of its affiliates, set up a combination of representatives of the industry unions and the confederation who came together to form joint offices. During project years 2001 and 2002 a total of five such offices ran the activities of the organisation as a whole. The main focus of their work was the introduction of the labour legislation in November 2001. As well as representing the trade unions at the United Nations Interim

Administration Mission in Kosovo (UNMIK), the Joint Offices also took over the internal reform of the trade union confederation. Preparations had to be made for the Congress, which had to vote new statutes – to take account of the new circumstances - and elect a new leadership. It was urgently necessary to reduce the number of trade unions, some of which had no more than fifty members. The BSPK had 24 affiliated unions, an over-inflated figure given a total population of two million in Kosovo where half of the working population, moreover, is unemployed.

In April 2002 the BSPK held its third statutory congress. The confederation's president of many years, Professor Hajrullah Gorani, did not, although much solicited, stand for re-election. In two rounds of voting a completely new leadership was elected. The new president is Bahri Shabani, president of the miners' union. The changes to the statutes, prepared in advance, were adopted after long and tough discussion, while the number of affiliated unions was reduced by one third, to sixteen. After election of the new leadership immediate steps were taken to achieve greater professionalisation of the work. The support project organised by the European Trade Union Confederation and its members ended at the beginning of the year. With the organisation of the congress and the opportunity for consolidation of the trade union confederation, the support project may undoubtedly be considered a success and the investment fully worthwhile. Agreement on aims and purposes and regular exchange of information among project partners was the guarantee that all participants were kept regularly informed about progress of the work. Financial support was implemented with a high degree of transparency and this was undoubtedly one factor contributing to successful cooperation with the BSPK trade unions.

A major political event in Kosovo was the election of an autonomous government in this region still under United Nations protectorate. In November 2001 an election was held for the first time to elect a parliament for the region of Kosovo as a whole. The winners were the parties that had already been victorious in the earlier local elections, namely, the LDK (Democratic League of Kosovo) which gained 45.65% of the votes cast and the PDK (Democratic Party of Kosovo) which gained 25.7%. The AAK (Alliance for the Future of Kosovo), with 7.83% of the votes, also formed part of the subsequent government. Electoral participation was rather low at 64.3%, and the formation of a government took months. In the first election of the municipal parliaments in Kosovo, after NATO had put an end to the

expulsion of 800,000 Albanians from their homeland, the election participation had been as high as 79% but, in the next elections to the local councils in October 2002, participation fell to 53.9%¹

The peculiar situation of Kosovo is rooted in the still uncertain status of this former autonomous province of Yugoslavia. The goal of UNMIK is to place full responsibility for government in the hands of the population of Kosovo but the difficult coexistence between the Albanians and the Serbs remaining in Kosovo requires the continuing presence of UNMIK and particularly of the UN troops (KFOR). In April 2002 the first steps were taken in the gradual handing over of powers to the elected government. The field of employment and social policy is, alongside security, the largest individual heading within the overall government budget. In this sphere rapid and determined attempts have been made to place full responsibility in the hands of the local politicians and officials.

In April the new government, together with the remaining UN administration (UNMIK), passed a law on the privatisation of the former state or, according to the Yugoslav model, 'socialised' undertakings. This law became a bone of contention between the employment ministry and the trade unions since the latter considered that their participation in the privatisation process was not adequately guaranteed. Their fear was that the old and mostly obsolete firms and factories would be simply sold off even though some of them, run according to the Yugoslav self-management system, were in a position to produce profitably and the unions argued that these firms that were attractive to foreign investors ought not to be sold off at knock-down prices and contrary to the wishes of their employees. In June 2002 the BSPK trade unions called for a major protest action in the capital Pristina. The UNMIK administration and the ministries responsible pushed through a legislative settlement which led to the creation of the Kosovo Trust Agency, a body on which the trade unions have both seats and votes. A special Supreme Court was also created for the settlement of disputes in connection with privatisation. There is significant trade union presence at political level. The BSPK has at no time called on its membership to vote for a particular party and its members are supporters and, in some cases active members, of both the LDK and the PDK. By maintaining good contacts with both parties the BSPK has succeeded in gaining for itself a non-voting seat in the parliament. As such, not only is the BSPK representative a permanent guest in the parliament but s/he is also

¹ All election figures taken from OSCE website: www.osce.org/elections

entitled to speak. For its trade union educational work the BSPK receives a sizeable subsidy from the government. Though the confederation undoubtedly has a close relationship with the world of politics, the trade unions are nonetheless independent and have a high level of mobilisation potential. External policy developments no longer play the dominant role they did during the crisis in Macedonia (summer 2001). Everyday trade union concerns have come increasingly to the fore and the security situation has become more relaxed. These favourable developments have also had a positive effect on the work of the trade unions in Kosovo.

2. Serbia and Montenegro

All three leading Serbian trade unions held congresses in 2002. UGS Nezavisnost, at its congress in January 2002, confirmed its president Branislav Canak and once more made it clear that it is the organisation of the opposition. A prominent guest was Milenko Smiljanic, president of SSS, the trade union confederation formerly loyal to the regime. The two organisations publicly promised improved cooperation and the SSS president vowed to tackle the explosive issue of the distribution of the trade unions' assets, a stance which was much applauded. A historic handshake took place between the two trade union presidents Canak and Smiljanic. At the SSS congress, Smiljanic was reelected by a tight majority in the second round. Basically, the congress was divided between the supporters of the Milsevic regime and those trade unionists who, gathered around Smiljanic, looked to western Europe and were prepared for reform. That this organisation is indeed in need of significant reform was more than evident from the sometimes highly chaotic organisation of its congress. Milosevic's supporters are still a significant and politically influential force in this trade union whose strength is in its numbers and which, at the end of 2002, was accepted into the membership ranks of the international Christian trade union confederation, the World Confederation of Labour. In the second half of 2002 the third and smallest trade union confederation, the association of independent trade unions of Serbia, also held its congress. This gathering was organised in a highly professional manner and turned into a publicity stunt for current labour minister Dragan Milovanovic, the trade union's founder. In spite of its low membership numbers, this trade union has been deliberately selected as the preferred negotiating partner since the new government came to power with obstacles being placed in the way of substantial social dialogue with the other two confederations, making such dialogue difficult and in some cases impossible.

The political highlight in Serbia was the mass disaffection displayed on the electoral front. The presidential election on 8 December was not able to be validated because the 50% voting mark was not reached. The elections were necessary because of the failure to achieve the requisite 50% turn-out during the first round in October. In Montenegro the picture was similarly negative. Already at the parliamentary elections in October 2002 voting participation fell, in comparison with the previous elections, from 82 to 75%. At the presidential elections on 22 December 2002 not even half the electorate turned out to vote. With a participation level of 45.6%, the electoral authorities had no choice but to call for another vote.

3. Macedonia

In March 2002 an important change took place at the head of the Federation of Trade Unions of Macedonia (SSM). After more than ten years of leadership by president Zivko Tolevski, the delegates to the 16th SSM congress elected as their new president Vansho Mutatovski, leader of the legal employees' union. The new president's rhetoric is in stark contrast to the rather moderate style of the consensus-oriented Tolevski and, in his very first speech after his election, Mutatovski announced a more hard-line approach to the Conservative government. A glance at the key economic indicators for Macedonia in recent years rapidly confirms that no excessive effort is required when mobilising workers to protest. Since Macedonia became independent from Yugoslavia, the unemployment rate has been, according to official statistics, in some cases well over 30%², while the trade unions' estimates are as high as 50%. The economic growth figures are not encouraging. In 2001 Macedonia's economy contracted (-4.6% growth) and the estimate for 2002 was 0%. Industrial production sank in 2001 by 11%.

The Macedonian parliamentary elections held on 15 September 2002 ran counter to the trend of declining electoral participation, since on this occasion 73.4% of the registered electorate turned out to vote. The SDSM (Social Democratic Union of Macedonia) was the winning party with 40.5% of votes. The Conservative VMRO-DPMNE Democratic Party for Macedonian National Unity was a net loser but with 24.4% of votes was the second strongest party in Parliament. In October the government 'Together for Macedonia' was formed under SDSM leadership. The socialists had been massively supported in their election campaign by the trade union

² cf. Balkan Observatory, economic data, <http://www.wiiw.ac.at/balkan/data.html>.

confederation of Macedonia. In April and May the government and president Georgievski were the butt of a massive wave of protest announcements and strikes. Basically the trade union actions were directed against the demands of the International Monetary Fund for further cuts in the social budget. Strikes were waged in almost all cases in demand for the payment of wages that were sometimes several months in arrears. After the government had been taken over by the socialist SDSM there was a short-lived let-off in the readiness to strike. At the end of November workers from the textiles, tobacco and printing industry went on strike, while a hunger strike was organised by the workers at the tin and zinc mines in Kamenica. After more than a week their wage arrears were paid in part and they agreed to end their protest. The trade unions had recourse to these forms of industrial action because, even after the change of government which they themselves had supported, policies changed only gradually. The Socialist government too is sticking closely to a strict programme of privatisation and cuts. Given the virtual bankruptcy of the state coffers, it is compelled, just as much as its predecessor, to pursue a policy of severe cuts. The trade unions, equally understandably, insist that their members receive their wages which are in some cases several months in arrears.

Outlook

The near future will undoubtedly be characterised by further tensions in the region as a whole. The economic indicators are anything but encouraging³. The same picture is to be found in virtually all the south eastern European countries. Prices will be able to be kept down thanks to a rigid budgetary and fiscal policy. Growth rates are in some cases significantly better than in most EU member states but the GDP is still below the pre-1990 levels. Unemployment is extremely high in all south eastern European states and, according to estimates from the Vienna Institute, will continue to increase in all countries. In Kosovo, Macedonia and Bosnia-Herzegovina unemployment has reached dramatic proportions. In all these countries very considerable financial resources have been made available by the international community and numerous programmes for the reconstruction of a civil society, and for further democratisation, have been devised and financed at high cost. In the last parliamentary elections held in autumn 2002 in Bosnia Herzegovina the representatives of the national parties won in all three

³ Stuart (2002)

'camps' (the Croatian and Bosnian in the Federation and the Serbs in the Republika Srpska). The international community has for several years, it is true, succeeded in preserving the ceasefire, but ethnic tensions are still perceptible. The politically insecure environment in many of the south east European countries holds many European and international investors back from committing resources to the Balkans. A good example of the immediate negative repercussions for the economy was provided in the aftermath of the violent clashes in Macedonia in the early summer of 2001. Even the relatively mild skirmishes between the government troops and the Macedonian UCK left the country with negative growth of -4.6%. In 2002 the former Yugoslav Republic once again found itself unable to record economic growth. Neighbouring regions, such as Kosovo, also suffered as a result of the clashes. The highly sensitive tourist industry, which in some countries represents a high proportion of GDP, reacts immediately to any renewed 'unrest' in the Balkans.

The goal of budgetary consolidation has the highest priority in most countries. The advisers from the international monetary bodies regularly issue exhortations to tighten belts. There is little scope for social security programmes; on the contrary, the already modest social welfare provisions are being constantly eroded. Meanwhile, the western governments and the European Union are trying, in the framework of the stability pact, to support and step up the efforts at democratisation of these societies. Levels of electoral participation show how high or how low is the interest and trust in democracy. If an increased flow of aid is not rapidly forthcoming via the stability pact, increasing social tensions and thus further conflict are highly likely. The European Trade Union Confederation has prefaced its work under the Balkans stability pact with the slogan: 'no lasting peace without social justice' and this slogan is today as immediately relevant as the stability pact. People need to see tangible progress. Democracy must also find expression in terms of better living and working conditions. Only then is there a chance that it will become infused with life.

Translation from German by Kathleen Llanwarne

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Rashid Khedim

The Euro-Med trade union forum

1. Founding objectives
2. Objectives of the trade union forum
3. Activities of the Euro-Med trade union forum
4. Looking ahead

1. Founding objectives

1.1. Overall context: reform

The partner countries have been engaged for over a decade in sweeping political, economic and social reform which has inevitably impacted on the region's trade union movement in several ways. For various reasons, the transition process still underway in the partner countries is almost imperceptible in political terms, rather difficult in economic terms and, in all instances, affected by a prolonged social crisis of varying intensity. The transformations made have in most cases been the result of urgent measures, most commonly at the behest of the international financial institutions. Priority has been accorded to economic reform rather than a firm commitment to the necessary political changes required for real political pluralism and the freedom to exercise all democratic freedoms, and trade union freedoms in particular.

The transitions apparent in most of the partner countries take the form of general economic reform dreamed up without prior consultation or dialogue, and are surrounded by a lack of transparency, to put it mildly. There can be no doubting the adverse effects on workers, with the trade union movement in the region being confronted by challenges of unprecedented complexity and magnitude. Circumstances differ and are differently perceived from one country to another, meaning that huge efforts are needed from the trade union movement, requiring a complete overhaul in some cases, a thorough transformation in others and in all cases a major adaptation of statutes and structures in particular. Indeed, in most instances trade union organisations in the partner countries have to face up to the following, often all at once:

- A marked drop, or even a freeze, in investment, worsened in certain cases because national elites, the most highly skilled labour and capital are fleeing abroad, thus complicating any prospects of an upturn in development or a deepening of the democratic process;
- Privatisation and industrial restructuring policies, with the closure of public and private companies and staff cutbacks, thereby fuelling unemployment which mainly affects young people and women, including school and college leavers;
- Greater or lesser devaluation of national currencies, a constant decline in the purchasing power of wages, a spreading of poverty, a weakening of the stability of social protection systems, a dismantling of price support

policies for staple consumer goods, and both a qualitative and a quantitative deterioration in essential public services;

- Rapid development of the informal sector and undeclared employment, cuts in funding to the authorities responsible, tax evasion and avoidance of social security payments, all of this compounded by growing insecurity in labour relations.

All these circumstances have repercussions on the trade union movement in the partner countries, which in some - if not all - cases has had to do all or some of the following:

1. Become more and more involved, along with the rest of civil society, in pushing for democracy and a reinforcement of the rule of law.
2. Assert its functional autonomy and independence of decision-making *vis-à-vis* the political and executive authorities, taking action to consolidate these where appropriate.
3. Review its fundamental aims so as to prioritise job preservation and creation, better working conditions and the exercising of fundamental workers' rights and hence all the trade union freedoms.
4. Alter its statutes and structures, where appropriate, so as to safeguard trade union unity and avoid any disintegration; bolster measures geared to better employee representation, enabling them to come together and organise.
5. Improve its capabilities and boost its funds and resources so as to ensure the development of increasingly decentralised collective bargaining, avoiding the pitfalls of unequal rights and benefits and a fragmentation, and hence enfeeblement, of trade union action.
6. Heighten its skills and abilities and augment its resources in order to participate more fully in the reform process and lessen the social repercussions on workers.
7. Learn how to gain a foothold in the private sector and in small and medium-sized enterprises, and ensure representation for employees in the informal sector.

It is for all these reasons, and for many others, including of course the Oslo Peace Accords, that in 1992 the ICFTU embarked on an overall programme to strengthen trade union rights in the Arab world, with a view to assisting the trade union movement in this region to meet the challenges confronting it.

1.2. Particular context: the Barcelona declaration

Once the Barcelona declaration was signed, the trade union movement perceived a need to become more involved in the process of creating a Euro-Med area of shared prosperity. It therefore set out to create a common trade union area aimed at participating more actively, formally and permanently in achieving the objectives enshrined in the declaration, namely to:

1. Participate in all activities geared to making the Mediterranean a shared area of peace and prosperity for the benefit of all peoples in the region.
2. Strive first and foremost gradually to redress the balance in the general structure of the Euro-Med project itself, in order to take more account of the social, cultural and environmental dimension, on the one hand, and, on the other, to fully involve organised civil society and trade union organisations in particular.
3. Promote a gradual, ongoing reduction in the huge imbalances between the European Union member states and the countries bordering on the southern and eastern banks of the Mediterranean.
4. Encourage the partner countries to intensify and better structure co-operation and trade among themselves, and implement in a global and coherent manner reforms which will at one and the same time further consolidate the rule of law, preserve and bolster social cohesion, allow for the exercising of democratic freedoms, attract investment and enhance compliance with fundamental workers' rights.

1.3. Specific context: the Stuttgart resolution

With these objectives in mind, the ETUC, together with the ICFTU, ICATU and USTMA, set about organising the Stuttgart trade union conference of April 1999, at which the participants recalled their commitment to realising the common aim of creating 'a Euro-Mediterranean area of peace and shared prosperity', and of doing so in a more democratic manner based on stronger social foundations. The Stuttgart Euro-Med trade union conference adopted a resolution proposing to:

1. Create a trade union forum to organise trade union co-operation and action and to represent the specific interests of European workers and those in the partner countries.
2. Set up a special Euro-Mediterranean social fund aimed at co-financing action accompanying reforms implemented by the partner countries and

policies promoting investment, employment, greater compliance with the core labour standards laid down by the ILO and practical measures to preserve or found social protection systems geared to strengthening social cohesion. In formal terms the resolution contained the following five points:

1. Strengthening and organising Euro-Med trade union co-operation.
2. Promoting balanced economic and social development.
3. Creating jobs and giving young people new prospects.
4. Establishing a genuine social dialogue at national and transnational level.
5. Striving for democracy and respect for human rights.

2. Objectives of the trade union forum

The Euro-Med trade union forum was basically founded in order to develop trade union co-operation in the region. Its objectives are to:

- Intensify contacts so as to generate a flow of exchanges of experience and information, with a view to improving the regional union movement's capacity for action and developing its activities;
- Plan and carry out trade union co-operation projects in order to promote the social dimension of partnership, especially in the fields of labour law, social protection, the labour market, vocational training, social dialogue and industrial relations;
- Step up the effectiveness of trade union action in the region. This will be done according to a fresh approach, namely the establishment of a trade union network whose members will maintain high-quality, long-standing bilateral and regional links on a regular basis;
- Set up a framework for stable co-operation between trade unionism internationally, represented by the ICFTU, in Europe, represented by the ETUC, and in the Arab and Mediterranean region, represented by ICATU and the partner countries' trade union organisations;
- Operate as a forum to promote trade and handle all specifically regional issues, in particular ones related to peace and prosperity.

2.1. Establishment of the trade union forum

The establishment of the trade union forum was an important stage in bolstering trade union co-operation and solidarity in the context of the Euro-Mediterranean partnership. To this extent, the forum is a tool in the Barcelona process and can help put into practice European commitments in respect of social policy. From a purely trade union point of view, it is the main outcome of the Stuttgart ministerial conference held in April 1999. The Forum is administered by the ETUC, and its activities are organised jointly under an internal agreement between the ICFTU and the ETUC. For ease of operation it has been equipped with a co-ordination committee and a co-ordinator.

2.2. Financing of forum activities

The activities of the Euro-Mediterranean trade union forum are financed under the external aid Grant Contract, which also covers support for trade union development in Arab countries through a training programme run by the ICFTU Office in Amman.

2.3. Composition of the Forum

Although the Euro-Med trade union forum envisaged in the Stuttgart resolution was intended to encompass all the trade union organisations in the region, only 45 members were to be funded under the project implemented.

- **Europe: 14 members:** Spain: 3. France: 4. Greece: 2. Italy: 3. Portugal: 2.
- **Candidate countries: 8 members:** Cyprus: 2. Malta: 2. Turkey: 4.
- **Partner countries: 18 members:** Algeria: 2. Egypt: 2. Israel: 2. Jordan: 2. Lebanon: 2. Morocco: 2. Palestine: 2. Syria: 2. Tunisia: 2.
- **Transnational: 4 members:** ETUC: 1. ICFTU: 1. ICATU: 1. USTMA: 1.
- **Project co-ordinator: 1.**

2.4. Composition of the forum co-ordination committee: 13 members

- **European: 4 members** by internal and external rotation: Spain/Portugal; France/Italy; Greece/Turkey; Cyprus/Malta
- **Partner countries: 4 members:** Algeria; Jordan; Lebanon and Egypt
- **Transnational organisations: 4 members:** ETUC 1; ICFTU 1; ICATU 1 and USTMA 1
- **Co-ordinator: 1**

2.5. Tasks

The forum provides an annual opportunity for policy debate and for determination of trade union objectives both by international and European organisations and by the EU member states and the partner countries.

- **Tasks of the forum's co-ordination committee**

The principal task of the co-ordination committee of the trade union forum is to work on specific topics identified by the partners relating to the Euro-Med partnership.

- **Main tasks of the co-ordinator**

- To perform a listening role, gather and disseminate useful information;
- To prepare the agendas and meetings of the co-ordination committee and meetings of the trade union forum;
- To make known the conclusions and commitments entered into at different levels.

2.6. Anticipated outcomes

The purpose of establishing the Euro-Med trade union forum is to:

- Strengthen democratic trade union structures;
- Enhance the trade unions' presence in the democratisation processes underway in the partner countries;
- Conduct an ongoing exchange of information and views in order to draw up useful, effective trade union strategies which increase not only recognition of the unions' role as a social partner but also their involvement in socio-political issues;
- Contribute to peace and prosperity in the region.

2.7. Anticipated impact

The project activities were designed to achieve:

- An improvement in the know-how, expertise and consciousness of trade unionists;
- A strengthening of the trade union organisations' capabilities in the fields of collective bargaining, involvement in economic and social issues, elaboration of trade union policies relating to privatisation, structural adjustment programmes and regional economic integration.

Implementation of the project was also expected to enable trade union organisations in the partner countries to have a greater input into:

- Moves towards ratification of ILO (International Labour Organisation) Conventions;
- Improving legislation in the social sphere and the conditions for its enforcement;
- Gradual introduction of Euro-Med social standards.

3. Activities of the Euro-Med trade union forum

3.1. Establishment and organisation of the Euro-Med trade union forum

The ICFTU and the ETUC made some preliminary contacts for the purposes of designating members of the co-ordination committee, but its first meeting was not held until the first quarter of 2000, in Casablanca (Morocco).

However, due to the deteriorating situation in the Middle East and its repercussions on the forum meeting in Marseilles in November 2000, it was not until a year later, at the Cairo meeting (April 2001) - boycotted by the ICATU and USTMA - that the co-ordination committee finally put in place the necessary mechanisms to carry through its objectives.

3.2. Meetings and programmes

Meetings of the co-ordination committee

The action plan for the project was adopted and updated in the light of the various meetings held by the Committee:

During 2001, three meetings

- The first in Cairo (Egypt) on 19 and 20 April 2001,
- The second in the margins of the Brussels civil forum on 19 and 20 October 2001,
- The third in Amman (Jordan) on 8 and 9 November of the same year.

During 2002, just one meeting

Last year's practical activities focused on the conduct of national studies in preparation for carrying out three comparative studies. The following events took place in this context:

- Three workshops of experts in the fields of labour law, social dialogue and social security, held in Madrid on 11-13 June 2002. They brought together fourteen experts from five partner countries: Morocco, Algeria, Tunisia, Egypt and Palestine. Jordanian representatives had been expected but were unable to attend;
- One meeting of the co-ordination committee, held in Madrid on 14 and 15 June 2002 following the three workshops;
- A meeting of labour lawyers only, held in Brussels on 12 October ahead of an ETUC conference on the Labour Code. Experts attended it from the UMT, UGTA, UGTT, ETUF and GFJTU. The PJFTU delegate was unable to travel;
- A second experts' meeting held in Barcelona over the three days 30 January to 1 February 2003, at which the comparative study projects were presented and completed.

3.3. Activities, programmes and results

Cairo meeting, 19 and 20 April 2001

It was attended by representatives of the various organisations comprising the co-ordination committee of the Euro-Med trade union forum. Outcomes of this meeting were:

1. Greater awareness of developments around trade union activity in Egypt.
2. Having analysed the situation in the Israeli-occupied territories, it was decided to step up solidarity with Palestinian workers. A resolution was adopted to this effect.
3. The co-ordinator was appointed and the main thrust of the 2001/ 2003 action plan laid down.

Brussels meeting, October 2001

The co-ordination committee held a meeting to coincide with the Brussels civil forum. All of its members were present, with the exception of the ETUF delegate (Egypt) who was deterred by trade union elections at home. The Committee co-ordinated its views on the topics addressed.

It was concluded by all those present on this occasion that the kind of relations to be pursued with non-governmental organisations should be more precisely defined, along with the fields, content and aims of co-operation.

Amman meeting, November 2001

All those invited were present, apart from the representatives of the Egyptian and Maltese trade union organisations. The following decisions were reached at this meeting:

- Investigate the nature, forms, fields and goals of potential co-operation with NGOs;
- Adopt the work programme and the methodology for carrying out the three comparative studies decided on in Cairo, taking stock of the situation in respect of labour law, social dialogue and social protection;
- Draw up a list of experts in the partner countries in the fields of labour law, social dialogue, social protection and public employment policy, as well as of those qualified to undertake assessments of economic and social circumstances as affected by the partnership agreements;
- Remind all the trade union organisations in the partner countries belonging to the Euro-Med trade union forum to nominate experts by the end of November and to ensure that the experts recommended are high-level academics having experience of, and close links with, the trade union movement;
- Ensure continuity in the work of the forum's co-ordination committee by reminding all of its constituent organisations to appoint a single, permanent representative;
- Have an ICATU representative on the co-ordination committee. This was decided after the co-ordinator reported back on his participation in the work of the ICATU statutory committee (Committee on International and Arab Relations);
- Set the place and date of the next co-ordination committee meeting, in association with the Spanish trade unions, holding it in Spain because of the Spanish presidency of the European Union; bring together the different expert groups on that occasion to discover the initial findings of the three studies.

Madrid meeting, 14 and 15 June 2002

It was attended by all members of the co-ordination committee apart from the representatives of the GFJTU (Jordan) and the USTMA. Emilio Gabaglio, Secretary General of the ETUC, was an invited guest. The main outcomes of this meeting were as follows:

- The speech by Rajab M. Maatug, ICATU secretary for international relations, was well received. He reiterated his organisation's commitment to stepping up inter-union co-operation in association with the ICFTU and ETUC, and declared his personal readiness and that of his organisation to provide whatever support is necessary for implementation of the Euro-Med Forum's planned actions and activities.
- It was noted that, despite several reminders in the form of letters and personal contacts, the Lebanese, Syrian and Israeli trade union organisations had not appointed experts.
- The principal outcomes of the Euro-Med experts' meetings, in the form of three workshops held in Madrid on 11-13 June 2002, were noted. The main points were:
 - The intensity of debate and its relevance to the effects of change on workers' achievements and the defence of their interests;
 - The unanimous expression of considerable anxiety as to the consequences of the reforms underway on the trade unions' negotiating power and capacity in view of burgeoning unemployment, the growth in the informal sector and undeclared labour, as well as the spread of insecure employment relations;
 - Concern about the fact that the economic and social criteria and indicators framing the social dialogue are not credible.
 - The trends described by the studies presented in respect of the changes underway, in particular in Egypt, where a new Labour Code drawn up with ILO assistance is to be introduced very soon (1st half of 2003).
 - The need for each expert to complete his work in the light of the debates and recommendations.
- The document entitled 'The Euro-Med Trade Union Forum and its inclusion in Euro-Med civil initiatives' was amended and then adopted.
- The deteriorating situation of workers in Palestine was noted.
- The activities carried out by the Amman office on behalf of trade unions in the Arab countries were noted, as was the wish of all concerned to strive for greater synergy between the two programmes.

- Looking ahead, it was decided that efforts to shape the content of social aspects of the partnership would be continued, by gearing inter-union co-operation towards the establishment of common 'Euro-Med social standards'.
- The co-ordinator was requested to continue his efforts in the following directions:
 - Attempt to encourage all trade unions not yet having done so to appoint experts, so as to include all the partner countries in the network;
 - Be certain to complete all three comparative studies during the first quarter of 2003;
 - Prepare the next meeting of the co-ordination committee in Istanbul, Turkey, and extend participation to include women's committee representatives from the ICATU, USTMA, ETUC and ICFTU in order to devote greater attention to women's issues;
 - Prepare the 2004/2006 action plan, considering how best to monitor the economic and social effects of the partnership agreements, the employment situation and government policies in that area, training systems and lastly the setting up of an information network on the labour-related practices of European companies in the partner countries.

3.4. Main results achieved

The principal task of the forum's co-ordination committee throughout the past two years has therefore been to intensify exchanges between the region's trade union organisations. Before this co-operation could be put in place, it first had to be imbued with content matching the expectations of the partner countries' trade union organisations, so as to support them in their efforts to adapt and square up more effectively to the challenges confronting them. With this aim in mind, the action taken was successful in:

1. Setting up several networks of 'Euro-Med' experts which, by the end of the first quarter of 2003, will produce national and comparative studies on the situation in six partner countries (Morocco, Algeria, Tunisia, Egypt, Jordan and Palestine) in the fields of labour law, the social dialogue and social security. They will also intensify their exchanges of experience in these areas.

2. Building and consolidating bilateral and multilateral relations geared to fostering greater solidarity for the common good of workers in the region so as to forestall, and also to counter, all forms of social dumping by pulling together to devise policies aimed at preserving and creating jobs and helping to bring peace and prosperity for all.
3. Striving to engage in global concerted action at Euro-Med level aimed at devising, adopting and subsequently implementing in a gradual, organised fashion a set of 'common Euro-Mediterranean social standards'.
4. Managing to create a Euro-Med social fund whose purpose is to finance economic and social reforms as well as gradually introducing Euro-Med social standards.

These achievements are the fruit of an approach advocated and adopted in the light of experience in Marseilles. Two key aims lay behind this approach:

- Regaining the confidence of all members of the forum through the renewed participation of ICATU and USTMA representatives at meetings of the co-ordination committee;
- Prioritising issues of direct concern to trade unions, thereby allowing inter-union co-operation to develop around determining the appropriate content for this co-operation.

By addressing trade union concerns in no uncertain fashion, the Euro-Med Trade Union Forum has encouraged those concerned to engage in defining the social aspects to be included in the partnership agreements, and to do so by gradually elaborating common 'Euro-Mediterranean social standards'.

4. Looking ahead

4.1. Present context

In addition to the aspects typical of the earlier situation which led to implementation of the original Euro-Med trade union forum project, the new context for its part is determined by four additional aggravating phenomena, which now justify more than ever the preservation of this trade union area. The forum now constitutes a special framework for ongoing, organised dialogue and orderly co-operation among trade union organisations in the Euro-Mediterranean region, as well as regular consultations between the

ICATU, ICFTU, ETUC and USTMA. For the time being, this new context is determined by:

1. The adverse effects of a stagnation, if not a worsening, of economic and social circumstances in the partner countries and their repercussions in particular on jobs, migration flows, the upsurge in extremism and violence, and lastly democratisation.
2. The adverse effects of the September 11 terrorist attacks on migrant workers and the deteriorating situation in the Middle East. Such a situation hardly favours the democratic progress awaited and longed for by the region's peoples.
3. The failure to tackle foreign debt, the weakness of European investment in the partner countries and the failure to set up a social fund for their benefit to underpin and accelerate reform: all these points heighten public scepticism.
4. The effects of eastward enlargement of the European Union on European investment and the allocation of available resources for development in the partner countries and the building of Euro-Med, in keeping with the needs, expectations and aspirations of civil society in the region.

4.2. Looking ahead

Results achieved and immediate prospects

Given the context and the resources made available under the initial project, combined with the newness of the experience, the results already achieved can be deemed encouraging, even though further efforts along the same lines still need to be made.

Results

Despite the continuing deterioration in the political and security situation in the region, the forum does at least exist and has, through its co-ordination committee, provided a very suitable framework for:

- Promoting periodic meetings at which ICFTU, ETUC and ICATU representatives can exchange points of view, assessments and analyses;
- Encouraging the USTMA to become more dynamic;
- Enabling the trade union movement in the region to redouble its efforts to achieve a common trade union position leading to an acceptable settlement of the Middle East conflict;

- Consolidating links among trade union organisations in the region and stepping up co-operation in areas of concern to them, bearing in mind the challenges facing all the partner countries.

More tangibly, the trade union forum has managed over this brief period to imbue trade union co-operation with specific content aimed above all else at drawing up a sort of inventory, i.e. pooling as much knowledge as possible about the political, economic and social challenges facing the union organisations concerned. This is being done by carrying out national studies on various topics selected by joint agreement.

Such knowledge is vital since it lays proper foundations for determining as fairly as possible the nature and scale of the support and assistance needing to be garnered and offered to trade union organisations in the partner countries, and hence defining the content of the co-operation to be developed.

Based on the findings of the studies conducted, this co-operation is geared to improving the negotiating capabilities of trade unions in the partner countries by:

- Gradually setting up several networks of experts to cover all topics of concern and interest to the trade union movement;
- Converting the findings of the studies conducted into teaching materials to be used in organising exchanges of experience, first among trade unions in the partner countries and then with those in the EU countries.

The extension of these activities to other studies in fields and on topics corresponding to the forum's objectives should enable it in the long term to:

- Define the social aspects of partnership by establishing 'common social standards';
- Adopt common approaches and strategies for gradual implementation.

Thus, by means of the different activities already carried out, the six partner countries belonging to the trade union forum - Morocco, Algeria, Tunisia, Egypt, Jordan and Palestine - have been able to:

- Conduct three comparative studies in the fields of labour law, the social dialogue and social security;
- Set up three networks of experts on the three topics.

Efforts have continued, and will continue, during 2003 to finalise, deepen and broaden the actions undertaken by:

- Holding in Barcelona, for the second time, a series of workshops in late January 2003, bringing together the experts concerned, so as to finalise by consensus the content of the comparative studies on the three topics;
- Converting the findings of the studies conducted into teaching materials, before the end of the first half of 2003, with a view to organising further meetings and workshops in the six countries concerned, so as to promote discussion and exchanges of experience within and among trade union organisations;
- Holding national seminars this year on the topic of social security in three partner countries, with support from CC.OO.;
- Arranging two meetings on social security and the social dialogue with the backing of the ICATU and the ALO (Arab Labour Organisation);
- Identifying, for each country and for each topic, the challenges likely to face a given trade union organisation, and the issues and points it will have to address, and assisting organisations in their attempts to determine a stance and a response strategy;
- Gathering the data crucial to pinpointing the nature and magnitude of support and aid required by each trade union organisation;
- Beginning to make the necessary preparations for fleshing out a Euro-Med trade union position on all social issues, to be submitted to the relevant bodies and institutions.

4.3. Medium-term outlook

In the light of past experience, efforts must continue in the same direction so as to:

- Encourage and support all initiatives favouring a renewal of the Middle East peace process, by creating a realisation wherever possible, among trade union organisations in countries bordering on the Mediterranean, of the need to become more involved in bringing about peace;
- Restructure relations between trade union organisations in the region and civil society, with a view to increased exchanges and closer rapprochement thanks to an ongoing, organised and orderly dialogue aimed at upholding democratic freedoms and social rights;

- Redouble efforts, in a coherent and global fashion, to have more impact on the legislation and regulations governing terms of employment, working conditions, social protection, the labour market, training systems and the social dialogue, paying closer attention to assessing the reliability of the reference criteria.

4.4. Potential resources and activities

Given the resources deployed, and in view of the nature of the tasks to be addressed, the objectives pursued and the complexity of the general situation obtaining in the region, the results already achieved should constitute a platform on which to build further action more suited to the needs identified. Such action should of necessity follow on seamlessly from that undertaken during the period 2000/2003, while being broadened and deepened thanks to a co-ordinated intensification of multilateral and bilateral relations and co-operation between trade unions in countries on the northern shore of the Mediterranean and those on its southern and eastern shores. In order to have the desired effects, the action envisaged must necessarily take a long-term perspective and therefore requires:

- A permanent structure to co-ordinate the activities of the Euro-Med trade union forum, which should be expanded to encompass all representative trade union organisations in the region and should cater for the incipient trade union pluralism in the partner countries. Thus it would take in a larger number of trade union organisations in the European Union and candidate countries, as well as those of all the partner countries, the goal being closer involvement of certain union organisations in northern and eastern European countries in building Euro-Med;
- A co-ordination committee comprising a dozen members (six for trade union organisations in the EU member states and six for the partner countries) with a three-year term of office;
- Increased resources comprising, if only symbolically, contributions from all the trade union organisations belonging to the Forum.

4.5. Justification of proposals made

1. Enlargement of the forum to bring in some trade union organisations from northern and eastern European countries will send a clear signal confirming Europe's commitment to the partner countries. It will also help allay the present misgivings and the increasingly widely shared feeling in the partner countries that Euro-Med has become a matter exclusively for

Spain, France and Italy with backing from Greece and Portugal, which seem - for predominantly security-related reasons - to be tasked with 'keeping hopes alive and managing expectations and illusions'.

2. Enlargement of the co-ordination committee should be envisaged in order to overcome the practical difficulty of holding meetings of the trade union forum due to the Middle East conflict and the lack of any immediate prospect of a fair and lasting peace.
3. In addition, given the nature of the tasks conferred upon him, the co-ordinator should operate on a full-time basis. Indeed, this official should be in a position to undertake action to develop trade unionism in the region, gradually upping the pace and streamlining the use of resources committed under the various bilateral and multilateral programmes currently underway or in the pipeline. In this context, the co-ordinator should wherever possible make it a priority to harness all available resources to attain the stated goals. Another justification for this request is that co-ordination is also the best means of making known all the activities carried out within Euro-Med and promoting co-operation and exchanges with the different components of civil society. The co-ordinator should likewise promote the gradual establishment of a tripartite Euro-Med framework in association with the body representing the region's employers.

The draft three-year programme for the period 2004/2006 should therefore be a continuation of the work carried out during 2000/2003 and should put the underlying justifications into practice on the ground. For example:

- Periodical evaluations of the political, economic and social effects of the partnership agreements;
- The type of activities to be pursued by the trade union movement in the region should propel forward the process of building the 'area of peace and shared prosperity';
- Gradual development of the social aspects of the partnership agreements, by establishing 'common social standards';
- An improvement in the status of women and their participation in political, economic and social life;
- A reduction in poverty and exclusion, and hence the promotion of employment in general and for school and college leavers in particular.

Given the objectives set, the trade union forum should develop its plan of action along the following lines:

- Continue its efforts to establish a network of trade union experts in various fields from the partner countries' trade union organisations, so as to improve their analytical, practical and negotiating capabilities, as well as training and information resources for their officers and activists;
- Encourage activities aimed at boosting the trade unions' autonomy of operation, independence of decision-making, internal democracy and representation of all workers, whatever their occupational, sectoral and political differences;
- Promote links between civil society and the trade union movement in areas of activity of interest and relevance to the latter.

Translation from the French by Janet Altman

Faruk Şen

Turkey's Road to the EU: Problems and Prospects

1. Brief historical outline and stance of EU-Turkey relations
2. Turkey as an accession candidate
3. The EU's policy towards Turkey and reciprocal perceptions
4. Problematic areas in EU-Turkey relations

1. Brief historical outline and stance of EU-Turkey relations

Turkey submitted the application for association with what was at that time the EEC on 31 July 1959, shortly after a similar step had been taken by Greece. This application was not motivated by primarily economic goals, or by any particular wish on the part of Turkey to improve its relationship with Europe. It was a merely political decision prompted by Turkey's wish not to remain outside an organisation of which Greece was a part.

On 12 September 1963 the Association Agreement was signed in Ankara¹. It outlined the steps to full membership, which, after a preparatory, transitional and final phase, provided for the creation of a Customs Union by 1 January 1995, as well as for the free movement of labour by 1 December 1986. In addition, Turkey was to receive financial resources from the EC to aid it in reforming its economy in line with EC structures and to compensate for the negative economic consequences entailed by the abolition of customs duties in the course of gradual creation of the Customs Union.

In the following years, the relationship between Turkey and Europe was adversely affected by three military coups in Turkey. In 1978, due to an economic crisis, Turkey's obligations with regard to dismantling customs duties were, at its own request, placed on hold for five years. The military coup in Turkey on 12 September 1980 prolonged the standstill in relations and the Association Council did not meet again until 16 September 1986. Seven months later, on 14 April 1987, Turkey submitted an application for full EC membership. The reply stated² that the EC was unable to embark on accession negotiations with any country until after the completion of the EC internal market. Other reasons cited were the continuing economic gap – in spite of positive developments in recent years – between Turkey and the EC average, as well as the shortcomings in the practice of democracy and human rights. The road to Turkish membership was not, however, completely blocked. The Commission Report to the Council of Ministers of 5 July 1990 specified ways in which Turkey was to be brought closer to the EC. The Customs Union was to be completed by 1995, while the €600 million from the 4th financial protocol, which since 1981 had been consistently vetoed

¹ Cf. 'Agreement establishing an Association between the European Economic Community and Turkey; signed at Ankara, 12 September 1963', *Official Journal of the European Communities*, No L 361/1.

² European Commission, 23rd Annual report, § 801.

by Greece, were to be paid to Turkey as quickly as possible. To date, the sum in question has not been remitted.

Turkey stated its readiness to implement all necessary measures to achieve Customs Union by the deadline set by the EU. This involved approximation of its national legislation, above all in the economic sphere, to Community law and required Turkey to amend or adopt around 100 laws. Though the Customs Union would be of greater benefit to the EU and would, in the short to medium term, entail negative economic effects for Turkey itself, the Turkish government was very keen to achieve it rapidly. The reason for this was that the Customs Union was, quite possibly, Turkey's last trump card in forging a closer, long-term link with the EU which was now broadcasting its intentions with regard to eastwards enlargement. In other words, the Customs Union might possibly serve, under changed circumstances within the EU and in world politics, to ensure a potential prospect of full membership in the long term. This is probably also why Turkey had to work so hard to provide a convincing case for the Customs Union, for the EU and European Parliament were reluctant to go ahead, given their reservations concerning human rights practices in Turkey. European industrialists strongly supported Turkey's plans and after heated argument and a very close vote in the European Parliament (in December 1995) the Customs Union (for industrial goods) came into force on 1 January 1996. This makes Turkey the first – and only – country that has entered into a Customs Union without being a full member of the EU.

However, neither the achieved Customs Union nor the longstanding Association Agreement were regarded, in the first instance, by the EU as sufficient argument to include Turkey in its enlargement plans. At the Luxembourg Summit in 1997, where the Commission's Agenda 2000 was adopted, the possibility of full membership for Turkey was postponed *sine die* and Turkey was not included in the list of candidates for accession. As a result of the Luxembourg Summit, Turkey, the country with the longest-running Association Agreement, was merely offered the option of attending the European conference to be held regularly to discuss cooperation (European Council 1997). The EU's stance of rejection triggered deep disappointment in Turkey, expressed in Prime Minister Mesut Yilmaz's official announcement that Turkey's political relations with the EU would be severed.

2. Turkey as an accession candidate

At the summit of EU Heads of State and Government held on 10 and 11 December 1999 in Helsinki, Turkey – 40 years after its application for association status – was granted official accession status (European Council 1999), thereby enabling the political freeze, which had characterised relations between Turkey and the EU since the 1997 Luxembourg Summit, to be brought to an end.

Its official candidate status brought perceptible and lasting change to Turkey. In March 2001 the Turkish cabinet adopted its national programme containing a timetable in which Turkey committed itself to implementing the reforms required by the EU's accession partnership document. From this point onwards Turkey made significant progress in fulfilling the Copenhagen EU accession criteria. The progress includes a wide range of legislative amendments, particularly the reform of the Constitution adopted by Parliament in October 2001, followed, in November 2001, by a wide range of reforms in civil law that have served, among other things, to achieve a lasting strengthening of women's rights. The demands of the new constitution are met, in particular, by the most recent legislative package adopted by Parliament in early August 2002 which also represents a breakthrough for the fulfilment of the political accession criteria of Copenhagen, namely, abolition of the death penalty, guaranteed teaching in mother tongues other than the official language of the country's administration, and the authorisation of radio and TV programmes in Kurdish and other languages. This amazingly rapid pace of change in Turkey reflected the pressure under which Turkey found itself to secure its accession prospects by beginning the requisite negotiations with the EU before its imminent enlargement to include ten successful applicant members. Of the 13 countries whose applications have been accepted, Turkey is the only one with which the EU has not, so far, begun accession negotiations. This is because the Copenhagen political criteria have not yet, in the opinion of the EU, confirmed by the progress report of the EU Commission on 9 October 2002, been met (European Commission 2002).

The Copenhagen Summit in 2002, which brought Europe closer to a broader vision, was conducted under time pressure and thus characterised by tough negotiations. The historic unification of Europe, entailing the greatest enlargement so far with an additional ten states due to join the EU as from May 2004, will greatly change conditions within Europe itself but also those of its relations with the world beyond. Hence Turkey's concern and

corresponding endeavours to begin the accession negotiations as quickly as possible. The path followed by the former EEC, to which Turkey applied 42 years ago, to become the EU of today entailed the forging of new structures, challenges and options which have, to date, adversely affected Turkey's prospects for EU membership. Every enlargement of the EC or EU, not just the accession of Greece but also that of Spain and Portugal, worsened not only Turkey's membership prospects but also its general status within the EU. This is bound to be, even more strongly, the case in the face of the next and now imminent enlargement.

Turkey was indeed not satisfied with the decision of the EU Council in Copenhagen. In its statement issued on this occasion, the EU:

'...encourages Turkey to pursue energetically its reform process. If the European Council in 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay.' (European Council 2002)

The postponement of the deadline for a decision until after December 2004 means that the accession negotiations will begin only after full acceptance of the other candidates, making the overall conditions for Turkey harder, insofar as, once the new enlargement has taken place, the fight for EU resources will be tougher. Even if Turkey were to receive assurances that the ten new members will have no right of veto in this respect, this guarantees nothing about the stance that may be adopted by the old members in the wake of enlargement.

What is positive about the decision is that Turkey is now offered a prospect, albeit hardly an unequivocal one. It is stressed, furthermore, in paragraph 18 of the decision that Turkey, according to the decision taken in 1999 in Helsinki 'is a candidate state destined to join the Union on the basis of the same criteria as applied to the other candidate states' (European Council 2002: § 18). This statement renders superfluous, and once and for all beside the point, the discussion of political opinions about where the frontiers of Europe are deemed to lie and whether or not Turkey is culturally and geographically a part of Europe.

It is really not clear, from a perusal of the Copenhagen decision, why, in the event of fulfilment of the Copenhagen criteria, a decision could not be taken concerning accession negotiations in December 2003, given Turkey's extraordinary and unprecedented preparedness and determination to rapidly overcome its shortcomings. After all, the Commission's regular progress report will already have been issued before the EU Summit in December 2003.

3. The EU's policy towards Turkey and reciprocal perceptions

To date, an examination of the EU's policy towards Turkey serves to reveal the European Union's utterly ambivalent position with regard to this country. On the one hand, there exist treaty links and simultaneously strategic interests which prevent the EU from completely turning its back on this economically, geo-politically and internally important country. On the other hand, there are a number of objectively founded (economic and political criteria of Copenhagen), but also emotionally grounded reservations (Turkey does not belong to western Christendom and lies on the far confines of Europe) to the accession of Turkey.

Over and above all these factors, there is a lack of consensus within the EU countries concerning the future role of the EU, making it more difficult to arrive at any clear vision, in particular in questions of foreign and security policy, the area in relation to which Turkey's significance for the EU can best be measured. Europe's uncertainty about its own role and about the likely future significance of Turkey leads, alongside the fact that it is at present so closely and legitimately preoccupied with the rapid stabilisation of eastern Europe, to a situation in which, in spite of binding treaty links, no clear answer can yet be given to the fascinating riddle 'where is Turkey headed?'

The EU tries to deal with this situation by a policy of holding back or hesitation while at the same time seeking not to provoke any loss of motivation on the part of Turkey. As long as Turkey was not yet ripe for accession to a EU that was not yet ready to accept it, a short-term plan for continuing relations was not needed. Such a plan did become necessary when Turkey actually began to take the steps towards reform in fulfilment of the Copenhagen criteria laid down by the EU which had not reckoned with such swiftly implemented reforms and strong determination, even on the part of the new and religious AKP-led government. Its assumption had been rather that Turkey would continue its former relaxed attitude in its efforts to raise standards in the areas of democracy, legislation and human rights.

After settling the matters concerning which undertakings had been given to the EU in the framework of the national action programme, Turkey went ahead with a self-confident demand for an accession negotiation timetable. The hesitant reaction of the EU, which referred to the lack of practical implementation of the reformed legislation, strengthened on the Turkish side the already present mistrust and the sense that the EU is failing to behave honourably and fairly with regard to Turkey. For with all other twelve accession candidates, including Romania and Bulgaria, the EU is conducting accession negotiations, even though Bulgaria and Romania, in particular, received strong criticism in the Commission's annual progress report³ on account of their restriction of freedom of opinion, mistreatment of minorities and corruption. The EU has ranked all twelve countries since 1997 as countries meeting the Copenhagen political criteria.

It is a fairly widespread perception in Turkey that the EU treats it like a poor relation. In virtually any public debate in the country one hears comments to the effect that the EU will never let Turkey in, however many additional EU demands it fulfils. There will always be additional off-the-record reservations, such as the proximity of Iran, Iraq, Syria and Armenia, which would bring conflicts right onto the EU's doorstep, the budgetary impossibility of accession, the flow of unemployed Turks into Europe, or the lack of a common history and religion.

4. Problematic areas in EU-Turkey relations

It is a fact that perceptions of Turkey in the EU are dominated by anxieties and concerns, some of them deep-rooted, which must be taken seriously. But these anxieties of today are projected into the future as if there were no way that they might ever change. Yet the Turkey of the future, ripe for accession, will, if it receives fair support and clear prospects from the EU, be quite a different Turkey from the present one. It is a question of supplying energetic backing for the process begun in Helsinki and clearly indicating the route to be followed. Turkey should be accepted only when it can guarantee stable, institutional structures, democracy, the rule of law and respect of human rights, as well as fulfilling the economic criteria. What objection can there be to accession of Turkey, once it meets all these conditions, except one based on religious and cultural rejection? Yet it is

³ Cf. European Commission: report on the progress of Romania to accession for 1988 and 2002, page 13 ff. taken from the Commission's enlargement website.

this kind of exclusion which stands in flagrant contradiction to the content of the pluralistic community of values defended by Europe and, further, makes the content of the Copenhagen criteria utterly superfluous.

There can be no rational justification, on the basis of European values, for the recently rekindled discussion of Turkey's geographical and cultural heritage and values⁴. Furthermore, since the Helsinki decision (recently confirmed in Copenhagen) such a debate has become completely irrelevant in legal terms and emotionally extremely counterproductive.

It is a fact that an early accession of Turkey at present represents a challenge for the EU on technical, institutional and financial grounds. The position of Turkey will also depend decisively on the future structural and institutional shape of the EU. Turkey's wish is not for rapid accession, but for a clear prospect in this direction and to this end. Everywhere in Turkey people are perfectly aware of their country's shortcomings and deficits in comparison with EU standards. EU accession by Turkey would rest in practice upon five pillars and these are, to some extent, the areas on which the anxieties of the EU are focused. These would be:

1. Representation of Turkey in the Parliament, the EU Council and the Commission
2. Customs Union
3. Free movement of workers
4. Eligibility for funds from the EU budget
5. Turkey's contribution to the EFSP

Re 1: Representation of Turkey in the Parliament, the EU Council and the Commission

During the Nice Summit of 7-11 December 2000, at which fundamental institutional and structural reforms of the EU were to be decided in the run-up to enlargement, it is well known that no adequate solution was found but only a minimal consensus (European Council 2000). The Nice decisions, which related principally to future decision-making mechanisms and power

⁴ Cf. Comments by Convention President Valery Giscard d'Estaing: <http://www.spiegel.de/politik/ausland/0,1518,221971,00.html>; Helmut Schmidt: http://zeus.zeit.de/text/politik/leiter_schmidt; Position of the German CDU/CSU: Antrag der Fraktion der CDU/CSU „Für ein glaubwürdiges Angebot der EU an die Türkei“ vom 04.12.2002 an den Bundestag 15. Wahlperiode, S.

relations in the EU bodies, take account of all candidate countries with the single exception of Turkey. The reason for this is not, as is claimed, that Turkey is currently not conducting accession negotiations with the EC. It is much more a question of the fear of the decisive influence that a country as large as Turkey can exert on power relations within the EU and it is, as such, a question primarily of concern to the large countries, the so-called core countries, of the EU.

Since Nice, all the accepted candidates, with the exception of Turkey, know how many members of the European Parliament (MEPs) they will be entitled, how many votes they will have in the EU Council and by how many Commissioners they will be represented by once they accede to the Union. Using the figures contained in the Nice decisions, it can be worked out that Turkey, on the basis of its population size, which is 12% of the current EU and 38% of all applicant countries, would, if it were to accede to the EU, have 74 members in the EU Parliament (the same number as France, Great Britain and Italy), one Commissioner and 29 votes in the Council, like Germany, France, Great Britain and Italy. In addition, Turkey would send between 1000 and 1500 civil servants to work in the Commission and other EU institutions.

Re 2: Customs Union

Regarding the second pillar, namely the Customs Union, Turkey has passed the requirements since 1996. The EU was the main beneficiary of the Customs Union. In the period from 1996 to the present the EU's export surplus in its foreign trade with Turkey was over US \$ 60 billion⁵. The Customs Union, currently applicable to industrial goods only, must be extended to cover also services and agriculture.

Re 3: Free movement of workers

The Association Agreement (AA) of 1964 and the Additional Protocol (AP) of 1973, together with various later decisions of the Association Council, form the foundations which, among other things, regulate the free movement of labour between Turkey and the EU. It was originally foreseen that free movement would be gradually implemented between the 12th and the 22nd year after entry, but this was not possible to achieve.

⁵ Own calculations based on foreign trade statistics from the Turkish Foreign Trade Office.

In the case of full Turkish EU membership the member states fear that free movement could generate further unemployment in Europe. These arguments were also high on the agenda before the accession of Greece (1981) and Spain and Portugal (1986) but the fears turned out to be unjustified. In addition, Turkey has already frequently indicated its readiness to comply with EU demands on this question, namely, to further postpone the right to freedom of movement in the case of full membership. Further the question of freedom of movement has to be viewed in a new light, given the need of nearly all EU countries for immigrants to redress their own population developments.

Re 4: Effects on the EU budget

One of the arguments used against full membership for Turkey is that it would constitute an unsustainable burden on the EU budget. These fears have been refuted by research from the *Zentrum für Türkeistudien (ZfT – Center for Turkish Studies)* (Şen and Akkaya 2002). It emerges clearly from the calculations that although Turkey would, it is true, belong to the net recipients, it would not represent an excessively heavy budgetary burden on the EU. Using figures from the study by the German board of trade and industry including eastern European states, the ZfT calculated that Turkey would, in the case of full membership in 2001, have paid € 1.9 billion into the EU funds and would have received from them a total of € 10.208 billion. This would place it only slightly ahead of Spain which, with the receipt of €7.2 billion, is at present the greatest net beneficiary.

Re 5: Turkey's contribution to the EFSP

In terms of security policy the significance for the EU of Turkey, with its strategically vital situation between European and Asia, is uncontested. The development of a European security policy is that much harder if Turkey, as a member of NATO but not of the EU, is thus torn between the Transatlantic fronts. Turkey also is fighting a battle against international terrorism and is one of the few Islamic states that affirms an openness to secular values and democracy. It is still the most important western bastion in protecting Europe from Islamic fundamentalism. Turkey is becoming increasingly important in questions of missile defence systems for Europe. It is a guarantor of stability in the Black Sea region, creates a counterbalance to Russia in the Caucasus, controls strategic access from the Black Sea to the Mediterranean, remains the bulwark on the southern flank of the NATO defence system and plays an important role in the solution of the conflicts in

the Balkans. Finally, the gas and petroleum needs of Europe are met to the tune of almost 60% by countries in Turkey's immediate neighbourhood. The significance of Turkey from the security and defence policy angle has been proven in the past in a number of crises, not least in the case of the events following 11 September 2001. In the light of the EU's new policy goals and security policy ideas, Turkey is indispensable for the stability in the eastern Mediterranean, the Middle East and the Caucasus, as well as being a positive influence in the Islamic world.

Turks in the EU

Another factor of relevance to the relationship between Turkey and the EU, are the Turks living within the borders of the European Union. They play an important role that should not be underestimated. For the past forty years 3.8 million migrants from Turkey have been living in the EU countries, and 1.3 million of them already have the nationality of an EU country. Increasing numbers of Turks within the EU adopt the nationality of their country of residence. The rejection of Turkey on cultural grounds implies also the non-acceptance of this population insofar as it is classified as non-European. Such an attitude is clearly not conducive to its integration in and identification with Europe. Furthermore, it has been shown that a high correlation exists between the political instability of the countries of origin and domestic policies in the EU host countries, as was clear in the case of reflections by Kurds or the question of the Middle East.

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European institutions, institutes and organisations

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A comparative overview of industrial relations in the EU, USA and Japan

1. Economic and employment context
2. Collective bargaining
3. Pay
4. Working time
5. Part-time and temporary work
6. The organisation and role of the social partners

In its four-year programme 2001-2004, *Analysing and anticipating change to support socio-economic progress*, the European Foundation for the Improvement of Living and Working Conditions undertook to monitor key developments and trends in the European Union, on several aspects of living conditions, working conditions and industrial relations, taking into consideration, for instance, the effects of globalisation. In particular it was decided to expand the European Industrial Relations Observatory (EIRO) to include developments outside the EU. Since the year 2000, EIRO has published a yearly overview comparing industrial relations developments among the world's three leading economies – the European Union, Japan and the USA. The latest report, which focuses on a number of important structures, processes and key issues, has been prepared by the EIRO editor Mark Carley. The report can be downloaded from the EIRO website (www.eiro.eurofound.eu.int).

This contribution presents the main findings of the report.

1. Economic and employment context

Table 1 provides a comparison of the main economic and employment indicators for the three economies. There was noticeable a slow down in GDP growth in all three economies. US inflation eased from 3.4% in 2000 to 2.8% in 2001, while the EU rate rose slightly from 2.1% to 2.3%. Continuing the trend of recent years, prices continued to fall in Japan. After many years of growth, employment fell slightly in the USA in 2001, while a greater fall was recorded in Japan, where employment has been declining since the late 1990s. In all three cases, male employment rates exceed female rates. The EU unemployment rate remained about half as high again as that in both Japan and the USA.

As in 2000, the USA saw the greatest pay and productivity increases in 2001. Nominal compensation growth exceeded that in Japan by over five points. US productivity growth remained higher than that in both the EU and Japan, but in all three cases the growth figures were considerably lower than in 2000. In Japan, both nominal wages and nominal unit labour costs fell in 2001.

Table 1: Economic and employment indicators, EU, Japan and USA, 2000-2001

	EU		Japan		USA	
	2000	2001	2000	2001	2000	2001
GDP growth	3.3	1.7	2.4	-0.5	4.2	1.2
Inflation (CPI)	2.1	2.3	-0.7	-0.6	3.4	2.8
Employment rate	63.7	64.2	77.2	76.6	82.3	81.6
Employment growth	1.9	1.2	-0.2	-0.5	1.9	-0.1
Unemployment rate	8.1	7.6	4.7	5.1	4.0	4.8
Growth in nominal compensation per employee	3.0	3.3	0.4	-1.0	5.1	5.2
Labour productivity growth	1.5	0.4	2.6	-0.1	2.1	1.3
Nominal unit labour costs increase	1.4	2.8	-2.1	-0.9	3.0	3.9

Sources: European Commission- Employment in Europe 2002 and European Economy 2002.

2. Collective bargaining

The level at which collective bargaining is conducted is perhaps one of the most notable differences between most EU countries in comparison with Japan and the USA, where the predominant bargaining level for pay and all other issues is the individual company. Intersectoral or sectoral bargaining is virtually unknown (with some exceptions at industry level in the USA). Although the picture is not uniform among member states, collective bargaining is much more centralised in the EU than is the case in its two major competitors.

However it should be noted that in Japan, there is a degree of coordination on both trade union and employers' sides during the annual 'Shunto' bargaining round. The general pattern for these spring-time negotiations is that major manufacturers in leading industries such as electrical goods or cars take the lead in bargaining and are then followed by other large companies and then by small and medium-sized enterprises (SMEs). In the USA, many trade unions seek to conduct 'pattern bargaining', whereby an

agreement is achieved in a particular company or companies and then extended to other firms in the sector.

Table 2: Wage bargaining levels, EU, Japan and USA

.	Intersectoral level	Sectoral level	Company level
Austria	.	XXX	X
Belgium	XXX	X	X
Denmark	XX	XX	X
Finland	XXX	X	X
France	.	X	XXX
Germany	.	XXX	X
Greece	X	XXX	X
Ireland	XXX	X	X
Italy	.	XXX	X
Japan	.	.	XXX
Luxembourg	.	XX	XX
Netherlands	.	XXX	X
Portugal	.	XXX	X
Spain	.	XXX	X
Sweden	.	XXX	X
UK	.	X	XXX
USA	.	X	XXX

X = existing level of wage bargaining; XX = important, but not dominant level of wage bargaining; XXX = dominant level of wage bargaining.

Source: EIRO (see Wage policy and EMU).

It may be noted that when new member states start to join the EU from 2004, the general picture of relatively centralised bargaining may be diluted to some extent. Taking 10 candidate countries examined by recent EIRO research (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), it is clear that the company is the dominant pay bargaining level in all cases apart from Slovakia, Slovenia and Cyprus. Intersectoral bargaining is absent from all countries apart from Slovenia and, to a lesser extent, Hungary and Latvia. Sectoral bargaining (in a broad sense) plays the dominant role only in Slovakia and Cyprus, is a very important bargaining level in Slovenia, and a relatively significant bargaining level in Hungary and to a lesser extent the Czech Republic. It exists in Estonia, Latvia and Poland, but is of very limited significance.

It might thus be argued that the expanded EU may be rather more similar to Japan and the USA in terms of bargaining structure than is the case for the current member states.

On average, around 80% of the relevant workforce in the current EU member states are covered by collective bargaining.

Direct bargaining coverage is relatively low in the company-dominated systems of Japan and the USA. The USA is very much distinguished by a division between a 'union sector', where collective bargaining determines pay and conditions, and a 'non-union sector', where management decision governs pay and conditions. The union sector covers only around 15% of the workforce. In Japan, there is a similar distinction between the 'bargaining sector' and 'non-bargaining sector', with the former covering only 21% of the labour force. However, it should be noted that the wage increases agreed in the Japanese bargaining sector have a major influence on general wage levels, both setting the market rate in the non-bargaining sector and being passed on through recommendations on the wages of public servants and through the minimum wage system.

Again it is interesting to note that the candidate countries for EU membership generally have a lower level of bargaining coverage than the current member states, with an average rate of around 40%. There are exceptions such as Slovenia, Cyprus and Malta (and to a lesser extent Slovakia and Hungary). However, the expanded EU is likely to have lower overall levels of bargaining coverage than at present, though remaining above Japanese and US levels.

Table 3: Collective bargaining coverage, Europe, Japan and USA

Country	Coverage
Austria	98%
France	90%-95%
Belgium	90%+
Sweden	90%+
Finland	90%
Italy	90%
Netherlands	88%
Portugal	87%
Denmark	83%
Spain	81%
Average of 13 EU member states	c. 80%
Germany	67%
Luxembourg	58%
Average of 9 candidate countries	c. 40%
UK	36%
Japan	21%
USA	15%

Sources: figures for EU member states and candidate countries – referring to various years from 1999-2002, and in some cases estimated – are in most cases as calculated by EIRO; figure for Japan (2001) is from JIL; figure for USA (2001) from BLS.

3. Pay

In Japan, the average pay increase resulting from the annual spring bargaining round in 2001 was about 2%, while inflation stood at -0.6%, indicating a real collectively agreed pay increase of around 2.6%. However, it should be noted that the spring wage increases are not directly reflected in the trend in average wages.

In the USA, collective bargaining plays a far less important role in setting overall pay increases than in most EU countries or Japan. Furthermore, no statistics are available on average collectively agreed pay increases. However, the Bureau of Labour Statistics (BLS) does provide figures on the average increase in the wages and salaries of 'union workers' in private industry. These increased by 4.4% in the year ending December 2001, up from 3.4% in 2000 (the equivalent figures for 'non-union' workers were 3.6% in 2001 and 4.0% in 2000). This indicates a real pay increase for these workers of 1.6% in 2001, given inflation of 2.8%. More broadly, all private industry wages and salaries rose by 3.8% for the year ending December 2001, compared with a 3.9% increase in 2000.

Given its negative inflation, real pay increases in 2001 thus seem to have been considerably greater in Japan than in the USA or the EU, as was the case in 2000.

Table 4: Pay developments in EU, Japan and the USA, 2000-2001 (%)

	EU		Japan		USA	
	2000	2001	2000	2001	2000	2001
Average nominal collectively agreed pay increase	3.1	3.4	2.1	2.0	3.4	4.4*
Average real collectively agreed pay increase	1.0	1.1	2.8	2.6	0.0	1.6*
Average nominal earnings increases	3.9	4.5	0.5	-1.2	5.4	3.6
Average real earnings increases	1.8	2.2	1.2	-0.6	2.0	0.8

** Figure refers to wages and salaries of 'union workers' in private industry.*

Sources: EIRO, US Department of Labor, JIL

In the USA, the median usual weekly earnings of full-time wage and salary workers in the private sector rose by 3.6% between 2000 and 2001, down from 5.4% over 1999-2000. In Japan, total cash earnings fell by 1.2% from 2000 to 2001, following an increase of 0.5% in the previous year. Again correcting for inflation, it seems that real earnings in 2001 increased by most in the EU (2.2%), followed by the USA (0.8%) and Japan (-0.6%).

Minimum wages

A statutory minimum wage system underpins pay in Japan and the USA and in many EU countries.

The US statutory national minimum wage has remained unchanged at \$ 5.15 (€ 5.75) per hour since 1997. Individual states often have their own statutory minimum wages, which are in some cases higher than the Federal rate (the higher rate always applies). Alaska (\$ 5.65), California (\$ 6.75), Connecticut (\$ 6.70), Delaware (\$ 6.15), the District of Columbia (\$ 6.15), Hawaii (\$ 5.75), Maine (\$ 5.75), Massachusetts (\$ 6.75), Oregon (\$ 6.50), Rhode Island (\$ 6.15), Vermont (\$ 6.25) and Washington (\$ 6.90) currently have minimum wage rates higher than the federal level.

In Japan, minimum wages legislation provides for the establishment of minimum wage rates by geographical area (prefecture) and industry. In January 2002, the weighted average minimum wage by Prefecture was JPY 5,292 (€ 48.7) per day, or JPY 664 (€ 6.11) per hour, while the weighted average minimum wage by industry was JPY 6,022 (€ 55.4) per day.

Table 5 below provides estimated cash monthly minimum wage rates at the beginning of 2002 for the nine EU member states with a national minimum wage system, along with the US Federal minimum wage and the Japanese average Prefectural wage. While these absolute values do not take into account factors such as variations in the cost of living or exchange rates, or the relationship of the minimum wage to average wages, they do suggest that there is relatively little difference between the EU average and the Japanese and US figures. However, there are EU countries with minimum wages significantly above and below the Japanese and US levels.

Table 5: National minimum wage rates, EU and USA, and average rate, Japan

Country	Monthly minimum wage (€) (January/February 2002)
Luxembourg	1,290
Netherlands	1,207
Belgium	1,163
France	1,126
UK	1,124
Japan	1,071
Ireland	1,009
USA	951
EU average	924
Spain	516
Greece	473
Portugal	406

Note: Japanese figure calculated on basis of weighted daily average minimum wage by prefecture, assuming 22 days per month.

Source: for EU and USA - Eurostat Statistics in focus, Population and social conditions No.5/2002, 'Minimum wages in the European Union, 2002', for Japan, JIL, Labour situation in Japan 2002.

Gender pay inequality

One feature of pay which is common to the EU, Japan and USA is the gender wage differential. In the EU (plus Norway), women's earnings (based on hourly figures) were on average 79.6% of men's in 2000. In the USA, the equivalent figure for 2001 (based on the median usual weekly earnings of full-time wage and salary workers) was very similar, at 76%. In Japan, the figure ranged in 2000 from 64.3% for workers who are graduates of senior high schools to 75.5% for graduates of higher professional schools

or junior colleges. Although the gender pay gap appears to be narrowing somewhat in Japan, the USA and most EU member states, it remains persistent and relatively high

No legislative or collective bargaining initiatives relating specifically to gender pay equality are reported from either Japan or the USA in 2001 (both countries have equal pay legislation in place). However, in the USA, trade unions continued to campaign over the issue in 2001. According to the American Federation of Labor and Congress of Industrial Organisations, unions pursue a number of equal pay strategies. In the area of collective bargaining they seek: pay upgrades for lower-paid and female-dominated job classifications; job reclassifications and new classifications; and pay equity studies with phased-in pay adjustments. In other areas, they: support individuals who take out individual grievances or discrimination cases, or take such action collectively (claiming a number of significant victories in court cases); and support enhanced federal and state equal pay legislation. In Japan, a major priority for trade unions in 2001 was achieving equal treatment and pay for part-time workers, a large majority of whom are women.

4. Working time

According to EIRO estimates, the average normal weekly working hours set by collective bargaining across the EU (plus Norway) stood at 38.2 hours in 2001. In most EU countries, relatively high collective bargaining coverage levels mean that the average collectively agreed normal working week is probably relatively close to the actual normal working week.

Figures on collectively agreed normal weekly hours are not available from Japan and the USA, but some comparisons can be made with the former. For Japan, the figure for 'average scheduled weekly working hours' was 39.2 hours for full-time workers in 2001 (one hour higher than the EU average figure), the same level as in 2000. Working time reduction was on the agenda of the Japanese social partners in 2001, with a debate on maintaining employment focusing on sharing out employment opportunities though cutting working hours ('work-sharing').

Comparison of *actual* hours worked is also very difficult, owing to a lack of uniform statistics. According to Eurostat's 2001 Labour Force Survey, the average usual weekly hours worked by full-timers stood at 40.1 (varying between 43.5 hours in the UK and 38.3 in France), compared with 40.3 in

2000. In the USA, full-time workers – defined as those working at least 35 hours per week – worked an average of 42.8 hours per week in 2001, compared with 43.3 hours per week in 2000. The Japanese figures for actual hours worked do not distinguish between full- and part-timers and are expressed in monthly, rather than weekly, terms. However, the figures indicate a slight decrease between 2000 and 2001.

Overall, it seems that there was a slight decline in the duration of weekly working time in 2001 in the EU, Japan and the USA.

Perhaps the best way of comparing working time between the EU, Japan and USA, and of assessing trends, is to look at annual working hours. The Japan Institute of Labour (JIL), based on various national figures, has produced estimates for annual total hours actually worked (by production workers in manufacturing industry) for Japan, the USA and three of the largest EU countries – France, Germany and the UK – see table 6 below.

Table 6: Annual total hours actually worked (production workers in manufacturing industry), Japan, USA, France and Germany, 1980-2000

	1980	1990	1996	1997	1998	1999	2000
Japan	2,162	2,214	1,993	1,983	1,947	1,942	1,970
USA	1,893	1,948	1,986	2,005	1,991	1,991	1,986
France	1,759	1,683	1,679	1,677	1,672	1,650	1,589
Germany	1,719	1,598	1,517	1,517	1,525	1,525	-
UK	1,883	1,953	1,934	1,925	1,925	1,902	1,902

Source: JIL.

Turning to *normal* annual working time, figures for average collectively agreed annual working hours are available from EIRO for eight EU countries where working time is measured on this basis, while JIL has produced figures for ‘scheduled’ annual working hours in Japan and the USA – see table 7 below. Allowing for differences in calculation methods, the table indicates that the differences between the EU countries, Japan and the USA are generally far less when considering normal/scheduled hours

than for actual hours. This suggests that the differences between the EU, Japan and the USA lie more in the overtime and additional hours worked in the latter two cases.

Table 7: Average collectively agreed or scheduled annual working hours, EU, Japan and USA, 2000

Country	Annual hours
Japan	1,795
Spain	1,762
USA	1,747
Netherlands	1,740
Italy	1,739
France*	1,735
Finland*	1,723
Average of 8 EU countries	1,721
Belgium	1,714
Denmark	1,695
Germany	1,658

* 1999 figure

Source: JIL and EIRO.

With regard to *statutory* working time limits, all EU member states have a framework of legal rules on maximum working times. These should respect the provisions of the 1993 EU Directive on certain aspects of the organisation of working time, which include a 48-hour maximum working week (on average over a reference period not exceeding four months).

In Japan, the normal working week was set at 40 hours by the Labour Standards Act in 1988 – however, as is frequently the case, extension of working hours may be specified in individual labour-management

agreements, although guidelines issued by the Ministry of Health, Labour and Welfare set a maximum limit. In 2001, the average scheduled weekly working hours for full-time workers was below this 40-hour norm, at 39.2 hours. In the USA, there is no statutory maximum or normal working week as such, but employees covered by the Fair Labor Standards Act must receive overtime pay for hours worked in excess of 40 in a working week (at a rate not less than 50% over their regular rates of pay). With full-time workers working an average of 42.8 hours per week in 2001, there appears to be considerable overtime working in practice.

Leave

Another important aspect of working time is the amount of paid annual leave to which workers are entitled, a factor which obviously influences the annual duration of working time. In the EU, figures are available from EIRO for the average number of days of collective agreed annual leave for 13 countries (harmonised on the basis of a five-day working week). These indicate an average annual leave entitlement in 2001 of 25.7 days (varying from 31.5 in the Netherlands to 20 in Ireland) – a slight increase from 2000.

For Japan, figures are available from JIL on the average paid holiday entitlement, which stood at 18.0 days in 2000, up from 17.8 days in 1999. However, a notable feature of holidays in Japan (which is not known to be a major issue in the EU), is that by no means all of this leave entitlement is actually taken up. In 2000, only 49.5% of annual leave entitlement (8.9 days) was taken on average, down from 50.5% (or 9.0 days) in 1999. This rate of take-up has been decreasing as leave entitlement has increased over the past decade.

The latest figures available for the USA from BLS refer to 1997 and cover 'average vacation days' in the medium and large private sector. No overall figure is available for all workers, but separate ones for varying lengths of service. Thus, annual vacation days stood at 9.6 days at one year's service, 13.8 days at five years' service, 16.9 days at 10 years' service and 20.3 days at 20 years' service. All these figures had increased slightly over the previous decade.

All EU member states have a statutory minimum period of paid annual leave. The EU average is 22.3 days' leave (harmonised for a five-day week). In Japan, legislation entitles workers with at least six months' continuous service to a minimum of 10 days' paid annual leave, with the number of days increasing with the length of service. There is no statutory annual leave

entitlement in the USA. The 1997 BLS statistics referred to above indicate that 89% of employees in the medium and large private sector had paid holidays in 1997 (down from 96% in 1988).

Table 8: Annual leave and public holidays in the EU, Japan and USA

Country	Average annual leave entitlement*	Statutory minimum annual leave entitlement	Public holidays per year	Average annual leave plus public holidays	Statutory minimum annual leave plus public holidays
Austria	25	25	13	38	38
Belgium	NA	20	10	NA	30
Denmark	30	25	9.5	39.5	34.5
Finland	25	24	12	37	36
France	25	25	11	36	36
Germany	29.1	20	9-12	38.1-41.1	29-32
Greece	23	20	10-12	33-35	30-32
Ireland	20	20	9	29	29
Italy	28	20	12	40	32
Luxembourg	27	25	10	37	35
Netherlands	31.5	20	8	39.5	28
Portugal	24.5	22	12-14	36.5-38.5	34-36
Spain	NA	25	12-14	NA	37-39
Sweden	25	25	11	36	36
UK	24.5	20	8	32.5	28
EU average	25.7	22.3	10.8	36.5	33.1
Japan	18	10**	15	33	25
USA	16.9***	0	10	26.9	10

* Average collectively agreed entitlement for EU countries, average paid holiday entitlement for Japan, average vacation days in medium and large private sector for USA.

** Basic entitlement after six months' service – increases with length of service.

*** After 10 years' service in medium and large private sector.

Sources: EIRO, JIL, BLS, TUC (*Banking on your holiday?* August 2001).

It seems clear that annual leave, both in law and in practice, is considerably higher in the EU than in either Japan and the USA, and constitutes a key factor in their different overall annual working time levels.

Finally, public holidays also have an impact on annual working time. According to research from the UK Trades Union Congress (TUC), the average number of public holidays in the EU stands at 10.8 days. This compares with 10 days in the USA and 15 in Japan (according to JIL figures). There is considerable variation within the EU, between 12-14 public holidays per year in Portugal and Spain and eight in the Netherlands and the UK.

5. Part-time and temporary work

The growth of 'atypical' forms of employment – such as temporary work (mainly fixed-term contracts and temporary agency work), part-time work, teleworking or on-call work - is a common trend across the EU, Japan and the USA. Table 10 below gives comparative figures for part-time and temporary work.

Table 9: Extent of part-time and temporary work in Europe, Japan and USA (% of employment)

	Part-time work	Temporary work
EU	18.0%	13.4%
EU candidate countries	9.8%	8.0%
Japan	15.4%	12.8%
USA	17.0%	4.9%

Notes: EU and candidate countries - figures from 2001 Eurostat Labour Force Survey, part-time work self-reported, temporary work refers to contracts of limited duration; Japan – figures for 2001 from JIL, part-time work is less than 35 hours per week, temporary work refers to non-agricultural employees classified as temporary or daily; USA – figures from BLS (December 2001 for part-time work, February 2001 for temporary work), part-time work is less than 35 hours per week, temporary work refers to 'contingent' work ('workers who do not expect their jobs to last') plus temporary agency workers.

Part-time work (despite differing definitions) is at around the same level in the EU, Japan and the USA, at approximately one-sixth of all employment (though the EU figure masks huge variations). It may be noted that the level in the candidate countries for EU membership is considerably lower, at something over half the EU figure. Another common issue is that part-time work is predominantly a female phenomenon – 33.8% of female employees are part-time in the EU (2001 Eurostat figure), nearly 40% in Japan (1999 JIL figure) and nearly 20% in the USA (1999, JIL). Some 80% of all part-timers are women in the EU (2001, Eurostat), compared with 68% in the USA and 67% in Japan (1999, JIL).

Temporary work is much more common in the EU and Japan than in the USA (though problems of definition are particularly acute in this form of employment).

6. The organisation and role of the social partners

Trade unions

Trade unionism in the EU is characterised by a high degree of unity and coherence at European level, and diversity and sometimes division at national level. The European Trade Union Confederation (ETUC) brings together almost all major confederations and centres in the EU member states and, increasingly, in other European countries (currently 76 organisations from 35 countries). The most notable exceptions are: a number of specific organisations for managerial and professional staff, which belong to the European Confederation of Executives and Managerial Staff (CEC); and a number of organisations (generally outside the trade union ‘mainstream’) affiliated to the European Confederation of Independent Trade Unions (CESI). Also affiliated to ETUC are 11 ‘European industry federations’, grouping most major EU trade unions in their respective sectors. ETUC claims a total affiliated membership of 60 million and continues to grow - for example it has recently admitted new member organisations from Belgium, Estonia, Lithuania and Norway.

The structure of trade unionism in the USA is relatively straightforward and similar to that in Ireland and the UK. There is a single main national centre, the American Federation of Labor and Congress of Industrial Organisations (AFL-CIO), made up of a relatively large number (currently 65) of industrial and occupational unions. Only a few unions lie outside the AFL-CIO umbrella.

In Japan, there are two confederations of significant size. By far the larger is the Japanese Trade Union Confederation (Rengo), which organises over 60% of unionised workers. Rengo's membership is based largely on enterprise-level unions, organised in sectoral federations (there are thus some similarities with a country like France, where the main union confederations are made up essentially of local unions organised in sectoral federations). The second confederation, the National Confederation of Trade Unions (Zenroren), represents only around 7% of all unionised workers.

A common trend across the EU (at both European and national levels), Japan and the USA is towards consolidation and merger of trade union organisations. The number of European industry federations affiliated to ETUC has been reduced by mergers in recent years (eg in the food and agricultural sectors, and in services), while the number of member unions of most national union confederations has declined (and there are plans for further rationalisation in future in some countries). A particularly notable recent merger was the creation in Germany in 2001 of the Unified Service Sector Union (Vereinigte Dienstleistungsgewerkschaft, ver.di), which is thought to be the largest union in the democratic world, with nearly 3 million members. Elsewhere in the EU, 2001 saw major mergers in Belgium, Finland, Norway and the UK and proposed in Austria and Finland (though a number of planned mergers were rejected by members in Denmark and Sweden). In the USA, the number of unions affiliated to AFL-CIO has fallen from 96 in 1985 to 65 today, with around 40 mergers occurring during the 1990s - a recent major merger was that of the Communication Workers of America (CWA) and International Union of Electronic Workers (IUE) in late 2000. A process of consolidation has been occurring among federations affiliated to Rengo, albeit a relatively slow one.

Overall, union membership has generally been falling across the industrialised market economies in recent decades – according to most commentators, this is due largely to a number of common trends such as a decline in employment in traditionally high-unionisation manufacturing industry and the growth of lower-unionisation services employment, and increasing levels of 'atypical' employment. This decline seems to be the case relatively uniformly across the EU (and, to a greater extent, most candidate countries) Japan and the USA - though some EU countries, such as Sweden, have only recently started to experience union membership loss. However, in some cases, membership losses have been slowed (as in Austria or Germany) or even slightly reversed in the most recent years.

In 2001, union membership declined by 2.8% in Japan and remained virtually stable in the USA. No overall figures are available for the EU, but decline or at best stability seems to be the overall picture.

Table 10: Trade union density, Europe, Japan and USA

Country	Union density (%)
Unweighted EU average	43.8
Unweighted average of 10 candidate countries	34.1
Weighted EU average	30.4
Weighted average of 10 candidate countries	21.9
Japan	20.7
USA	13.5

Source: EIRO and national figures.

As the table indicates, the average trade union density in the EU (unweighted for the different sizes of the 15 countries) is more than double that in Japan and more than three times that in the USA. Union membership is clearly an altogether more common phenomenon in Europe than the minority activity it is in Japan and the USA. However, the unweighted average for the EU does not represent the proportion of the total EU workforce who are union members. Density in the largest countries – France, Germany, Italy, Spain and the UK – is considerably lower than the unweighted average (very much so in the cases of France and Spain), so the true average is substantially less. An estimate based on comparing the above density figures with Eurostat *Labour Force Survey* figures for total employment gives a weighted EU average of 30.4%

Again it is worth noting that trade union density is generally lower in the candidate countries for EU membership than in the EU, with the unweighted average for 10 candidate countries just over a quarter lower than that for the EU. Weighting the averages gives an EU figure which is nearly half as high again as the candidate countries figure. This reflects the fact that union density is below average in the largest candidate countries – Poland, the Czech Republic and Hungary - though relatively high in countries such as

Cyprus and Malta. Expansion may therefore bring the overall EU density situation somewhat nearer to Japanese and US levels.

In gender terms, unionisation levels are higher among men than women in the USA and probably Japan (though no figures are available in the latter case).

Employers' organisations

As with trade unionism, the representation of employers' interests at EU level is relatively comprehensive and coherent. The Union of Industrial and Employers' Confederations of Europe (UNICE) represents almost all the main national intersectoral confederations of private sector employers and business in the EU member states (and elsewhere in Europe, including many candidate countries), with a current total of 34 national member organisations and five observers. It acts as both an employers' organisation (in that it engages in dialogue and, in specific circumstances, negotiations with ETUC) and as a trade/industry association (in that it is involved in promoting its members' interests in a range of areas, and in seeking to influence EU decision-making in areas of relevance). UNICE's coverage of organisations representing SMEs is arguably patchy, and a separate European-level body, the European Association of Craft and Small and Medium-sized Enterprises (UEAPME), seeks to represent this category of businesses. Since 1998, UEAPME and UNICE have cooperated closely in EU-level social dialogue and negotiations with ETUC. Furthermore, the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) represents enterprises and organisations with public participation or carrying out activities of general economic interest, whatever their legal or ownership status. It is treated as central social partner organisation alongside UNICE by the European Commission, and is involved in dialogue and negotiations with ETUC.

At European sectoral level, there are many hundreds of organisations representing business interests. However, very few of these are employers' organisations, in the sense that they represent their members with regard to employment issues or have relations with trade union organisations. The main exceptions are the organisations in those sectors where a 'sectoral social dialogue' has developed, either autonomously or on the instigation of the European Commission. There are currently 26 sectoral dialogue committees, bringing together European-level representatives of trade unions and employers for discussions on employment and social issues.

Thus, there are European-level bodies acting in some ways as employers' organisations in sectors such as agriculture, banking, civil aviation, cleaning, commerce, construction, electricity, footwear, hotels and catering; inland navigation, insurance, leather, maritime transport, personal services (hairstyling), postal services, private security, public services, railways, road transport, sea fishing, sugar, telecommunications, textiles and clothing, tobacco and woodworking.

Joint texts (opinions, declarations, codes of conduct etc) on a range of issues (eg training, employment, fundamental rights or health and safety) have been reached in most of these sectors, but the employers' bodies (and union organisations) do not have a genuine bargaining role over pay and conditions, except in exceptional circumstances.

At national level, the organisation of employers varies substantially between the member states. The trend, however, appears to be towards the unification of representation of employer and business/trade interests – see for example the 2001 merger of the Swedish Employers' Confederation (*Svenska Arbetsgivareföreningen*, SAF) and the Federation of Swedish Industries (*Industriförbundet*) to create the Confederation of Swedish Enterprise (*Svenskt Näringsliv*), or the 2002 merger of employers' and trade associations in the Danish services sector. Another difference at intersectoral level is that there may be a single central (private sector) body – as in the countries mentioned above – or there may be separate bodies for industry, services and in some cases agriculture – as in Finland, Greece and Portugal.

In terms of the role of employers' organisations, regular national intersectoral bargaining with trade unions over substantive pay and conditions issues is part of the remit of central employers' bodies in Belgium, Finland, Greece, Ireland and Portugal. Intersectoral bargaining over specific issues or procedural matters is part of the employers' confederations' role in Denmark, France, Italy, Spain and Sweden. While usually falling short of bargaining, employers' confederations have close cooperative relations with trade unions in various fora in Austria, Germany (the tripartite Alliance for Jobs) and the Netherlands (the bipartite Labour Foundation, *Stichting van de Arbeid*), which may lead to joint texts or approaches. It is perhaps in the UK that the main employers' body (the CBI) has the least 'bargaining-like' role in any area.

At industry level, sectoral employers' organisations with a collective bargaining role are key components of the industrial relations systems of most EU countries – Austria (where sectoral sections of the Chamber of the Economy [*Wirtschaftskammer Österreich*, WKÖ], play this role), Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal, Spain and Sweden. Only in Ireland, Luxembourg and the UK are there few sectoral employers' associations with a bargaining role, as collective bargaining occurs essentially at company level (though overlaid with intersectoral bargaining in Ireland).

Strong and representative employers' associations, especially at sectoral level, are relatively uncommon in most central and eastern European candidate countries for EU membership. At intersectoral level, employers' bodies in these countries rarely engage in bipartite bargaining with trade unions over pay and conditions, and in only few countries do sectoral employers' associations with a bargaining role-play an important part.

Until 2002, Japan was like a number of European countries in having a single central employers' body - the Japan Federation of Employers' Associations (*Nikkeiren*) - and a separate central organisation representing companies' trade/business interests - the Japan Federation of Economic Organisations (*Keidanren*). However, reflecting the trend noted above for Europe, *Nikkeiren* and *Keidanren* merged in 2002 to form the Japan Business Federation (*Nippon Keidanren*). *Nippon Keidanren* does not participate in collective bargaining with trade unions, but it is involved in formal tripartite dialogue with government and unions, and less formal bipartite dialogue with unions. Furthermore, *Nippon Keidanren* attempts to influence the annual 'spring offensive' (*Shunto*) bargaining round, by issuing guidelines to employers.

Nikkeiren is composed of 127 sectoral associations (both industry and employers' organisations), plus 47 regional employers' associations, which do not generally have any direct bargaining role (though it has been suggested that they play a 'behind the scenes' role in coordinating member companies). Almost all bargaining occurs at the level of the individual enterprise.

The USA is unlike Japan and all EU member states in that it has no identifiable national intersectoral employers' body with an industrial relations role. A special organisation has been created to allow US employers to be represented by a single intersectoral body in international

organisations and fora – the United States Council for International Business (USCIB). Major business organisations such as the National Association of Manufacturers (NAM) and the US Chamber of Commerce do not deal with trade unions, though they do have some role in labour issues. NAM, for example, has a human resources policy department and human resources committee and runs a Center for Workforce Success. There are few national sectoral employers' bodies with any bargaining role, and bargaining takes place predominantly at enterprise or local level (see above under 'Collective bargaining').

Jeff Bridgford

Towards a European methodology for trade union education

1. What is different about training in a European context?
2. ETUCO training objectives
3. ETUCO training process
4. European learners
5. Communicating in a multilingual context
6. Managing European cultural diversity
7. Working in a European team

Conclusion

The policy of the European Trade Union Confederation (ETUC) on education and training recognises the need to develop a European trade union cultural identity and to provide practical training for the leading actors of the European trade union movement¹. In concrete terms, the ETUC is endeavouring to implement this policy by:

- providing training on European issues and appropriate skills to trade union leaders, officers and representatives with European responsibilities
- offering advice and pedagogical support to national trade union education centres.

The European Trade Union College, the training organisation of the ETUC, has over the years coordinated hundreds of European courses for trade union officers and representatives that reflect key ETUC policy priorities, thereby providing a unique opportunity for developing a European trade union cultural identity.

These European courses are clearly different from national courses, and a European methodology for course design and delivery is needed. After the creation of ETUCO in 1990, it was quickly recognised that European trade union education required new training methods and a team of qualified European trainers to put them into practice, and in response the first *ETUCO Trainers' Manual* was published in 1993. Since then there have been many new developments in European trade union education, and ETUCO has produced a new *Eurotrainers' Manual* whose purpose is to describe the approach and methodology developed by ETUCO on the basis of this coordination experience. Whilst recognizing the wealth and diversity of training styles and cultures in the different trade union organizations across Europe, this new *Eurotrainers' Manual* describes an ETUCO model based on best practice for European trade union education.

1. What is different about training in a European context?

In attempting to distil best practice at European level, it is essential to take into account the different factors that influence the training experience at the European level and also the diverse traditions in trade union education throughout Europe.

¹ This contribution is based on the *Eurotrainers' Manual* that was produced by the European Trade Union College in 2002.

Eurotrainers will need to come to terms with at least six key issues when delivering training in a European context:

- ETUCO has its own specific overall training objectives
- these aims and objectives are part of a specific training process at the European level
- learners come from different cultures and traditions, and it is necessary to consider their needs within this context, both in a collective and individual sense
- language and communication are of central importance, requiring Eurotrainers to rethink their methodological approach
- ETUCO training takes place within a diverse cultural context
- Eurotrainers will be required to work in a European team and they will encounter different national approaches to trade union education issues and for example the preparation of appropriate training activities and resources.

2. ETUCO training objectives

ETUCO ensures that its European courses reflect the political priorities of the ETUC, whilst at the same time ensuring that they correspond to the training needs of ETUC affiliated organisations. All courses offered by ETUCO are European in nature, and provide unique opportunities for comparing the positions of different trade union organisations within a process of social dialogue. ETUCO aims to foster a training process, which enables such inter-cultural comparisons to lead to the initiation of collective transnational trade union responses, which in turn will contribute to the creation and consolidation of a distinctive European trade union culture.

Consequently ETUCO has three broad training objectives:

- improving European trade unionists' knowledge of industrial relations developments within Europe
- developing skills particularly in the areas of effective communication and organisation within a European context
- changing attitudes and breaking down national barriers, in order to create a European trade union culture

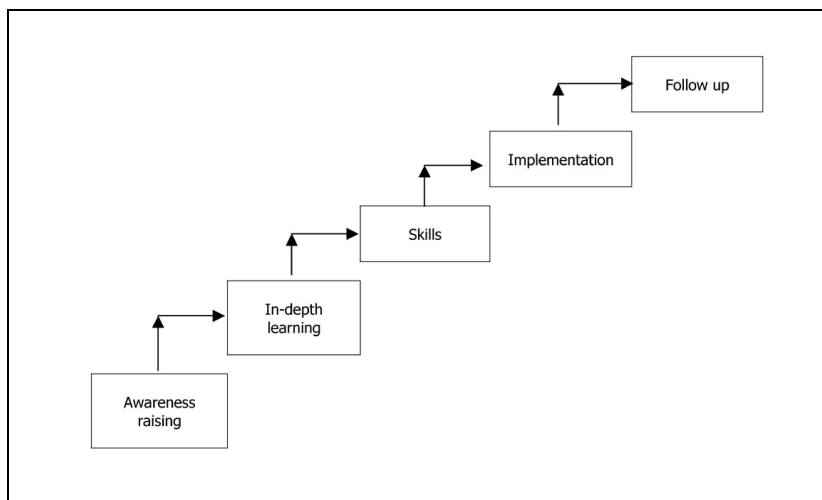
3. ETUCO training process

ETUCO seeks to develop these objectives by means of a particular training process. In order to understand this process it is helpful to view the learning initiated on European courses as taking place at a number of different levels.

Firstly, there is an awareness-raising stage, where learners are made aware of particular issues and encouraged to consider them from their own perspective. At this stage, the Eurotrainer tries to ensure that the course learners are working from a common knowledge base on the subjects in hand, or that they have the necessary information, resources and instruments to seek out what they need.

At the second stage, once the learners have understood their own system, and are able to present this information in a coherent way, more in-depth learning takes place. They are encouraged to look at relevant European issues and to gain a greater understanding of the issues from their own and other perspectives, based on a comparative analysis. This in turn provides the basis for the development of a European perspective on national issues.

Figure 1: The different stages of the ETUCO training process



This understanding leads to a recognition of the skills that need to be developed by trade union officers and representatives so that they are able to make a more effective contribution to the process of social dialogue. Some courses will be specifically aimed at such skills development, but during such courses learners are also encouraged to reflect on how these newly acquired or developed skills can be used more effectively in a variety of trade union contexts, (language and communication skills courses, IT courses, etc.).

These stages can be summarised in the following table:

Table1: The different stages of the ETUCO training process

Awareness raising	Understanding national industrial relations systems Understanding national trade union cultures Establishing a common knowledge basis Developing a European dimension
In-depth learning	Comparing different national industrial relations systems Comparing national trade union cultures Understanding the decision-making process of the European Union and EU policy initiatives Understanding European trade union policy positions
Improving skills	Learning to communicate Learning to use foreign languages Influencing the EU decision-making process Learning to work in European teams Learning to develop IT skills
Implementing	Finding European solutions to common national problems, which can be developed into joint European action plans
Follow-up action	Establishing European networks of trade union officers and/or representatives

The exchange of national experience and ideas in comparative analysis enables learners to proceed to the third level at which they are able to develop a European perspective which in turn can contribute to the

implementation of a collective European response and action plan on a particular trade union issue.

Having spent time together in a face-to-face course, the learners will then have a real reason and purpose for wanting to keep in touch with each other. In this way they will have a further incentive to develop their networking skills, which will be supported by opportunities for follow up activities.

4. European learners

ETUCO runs courses for three main target groups in the European trade union movement:

- trade union officers
- trade union representatives at workplace level, primarily members of European Works Councils
- trade union trainers

Given that learners may be drawn from up to 30 different European countries, Eurotrainers will be confronted with a group with different cultures and languages. Some may be fluent in a second European language, but others will not. They will come from different trade union organisations with different ideologies and bring with them their own traditions of trade unionism and trade union education methods. Collectively these learners will have a range of professional experience in their special area of work, as well as being active trade unionists. They will be men and women of different ages, with different levels of responsibility within their organisations. In the case of courses with trade union representatives at the workplace level, target groups may contain learners with widely differing levels of formal education, and different prior learning experiences. Learners will come with a range of different learning styles, and different types of motivation and expectations. As individuals trade union learners bring an enormous wealth of experience that deserves to be acknowledged and drawn on as an enriching learning resource.

In addition, learners will have quite different aims in respect of learning. Some may approach learning very much as activists keen to try out new initiatives and to put into practice what they have learned. Others will view the process much more as reflectors and will require time to think about these initiatives. Then there will be those who see themselves more as theorists and will want to know how the different elements relate to each

other. Finally there will be those who see themselves as pragmatists who are less interested in theory and are more concerned with doing what is realistic and achievable.

For example, recently members of a European Work Council might be more goal-oriented in their motivation. Their reason for attending a course might initially be to develop a communication network with their counterparts. Officers from a national trade union organization may on the other hand be more process-oriented i.e. interested in the collective learning experience of being in a group with other trade unionists. The same officers might be more learning-orientated i.e. enjoying learning for its own sake. They may be interested in gaining a better understanding of other European cultures because this will improve confidence, especially abroad, or when working with colleagues from other countries, and this learning experience will generally enhance quality of life.

Learners will thus embark on the process with different types of motivation. This will depend very much on their own individual learning style but also upon their specific trade union role and reasons for attending ETUCO courses.

In addition, learners may be used to different approaches/methods in trade union education. In certain countries trade union education is clearly seen as having first and foremost an ideological purpose. Elsewhere the main emphasis may be placed much more pragmatically on the skills and knowledge necessary to carry out trade union officers' and representatives' roles more effectively. Whilst some learners may be more comfortable in European courses than others, it is reasonable to assume that they will be initially quite disoriented, finding themselves in such a new and challenging learning environment, since for many they will be in a new cultural and linguistic environment. Most of the learners will find themselves in a foreign country, where the training practices will be a little different, and in a training centre a long way from their normal surroundings. Communication can be impaired by linguistic problems, and interpreters will usually only be available during the training sessions.

5. Communicating in a multilingual context

Language is arguably the most persistent obstacle that both Eurotrainers and learners need to overcome in a European learning context. The problems occur at three levels.

Firstly, there is the issue of how formal communication is to take place at a European training event. Most ETUCO courses and workshops have interpreting facilities on hand and teaching materials available in the working languages. This presents Eurotrainers with certain constraints, notably in the choice of training activities. Communication is slowed down on a multilingual course, particularly when interpreters have to 'relay' into a second language. Moreover the use of interpreting equipment automatically introduces an element of spatial inflexibility, which is not normally to be found at the national level. Active participatory methods will need to be reviewed to take into consideration the need for interpreters and interpreting equipment.

There is a need to remember that it is tiring for learners to be working in a language other than their own. For some, the informal, social interaction will also have to take place in a second or third language, while others will have the security of their own language. Eurotrainers need to be aware of those who may need a little extra support.

Secondly, in both the formal and informal oral communication that takes place the messages conveyed between the speakers are not limited to the actual words used. Cross-cultural communication can be problematic where body language leads to misunderstandings. Intense eye contact may be interpreted in some cultures as insolence or arrogance. Expressions of approval, such as the tapping of knuckles on the table – a practice common in Germany – may not be automatically understood as approval in other countries. The purely physical distance at which learners place themselves may convey an impression of coldness or indifference. Greeting rituals also vary from one culture to another; shaking hands may be a daily informal greeting for some but may only be used on formal occasions by others. Hence attention needs to be paid to the significance of both spoken and non-spoken language since cultural differences are embodied in both.

Thirdly, and perhaps most significantly for Eurotrainers, training methodology has to be considered from the general language viewpoint. The usefulness of traditional visualisation techniques, for example overhead projector transparencies, is restricted considerably by language constraints, and Eurotrainers may be required to resort to much more creative non-verbal visualisation methods to achieve their aims and objectives.

6. Managing European cultural diversity

European culture diversity can impact on a European course in a variety of ways:

- the course will be taking place in a location with its own cultural norms that learners will need to acknowledge
- ETUCO courses deal with concepts in industrial relations and trade unionism that differ from one country to another
- learners from different cultures are encouraged to relate to each other in various learning and social contexts during a course

In most cases ETUCO courses will be held in a national trade union education centre. From an organisational point of view certain factors need to be considered by Eurotrainers, and organisers and learners will need to be aware of the particular routines and expectations of these trade union education centres.

Cultural values articulate themselves in the types of institutions and processes chosen to deal with the employment relationship in each national environment. Terms and expressions can mean different things to different people (even when translated!). The list of potentially confusing expressions is long. One example will suffice. The French *comité d'entreprise*, for instance, denotes an information and consultation body (which may also have a social function) composed of workers' representatives and chaired by an employer; a worker's representative, on the other hand, does the chairing of the equivalent German *Betriebsrat*. The status, rights and tasks of trade union representatives vary from one country to another. The secretary who is elected at a meeting does not have exactly the same tasks in Nordic countries as in others. The corresponding Swedish term applies only to the person in charge of writing the report on the meeting, whilst it indicates an explicitly political role in other countries.

Some considerable assistance for Eurotrainers can be gained from the *European Employment & Industrial Relations Glossaries* produced by the European Foundation for the Improvement of Living and Working Conditions, but the use of these glossaries will require considerable forethought and planning. It is clearly necessary for Eurotrainers to check that there is a common understanding of key terms. In some cases it may be necessary to acknowledge the original term in its native language since there may be in the end no meaningful translation of it.

Similarly there are European terms or 'common European denominators' that will often need careful consideration, so as to avoid confusion. A European course examining 'atypical work' provides an interesting example. Learners may be asked to list the main forms of 'atypical work' in their respective countries. Learners from some countries may choose not only to mention some types of 'precarious' employment (time-limited contracts, sub-contracting, interim work, part-time work, 'black' labour, etc.) but also night work and the introduction of teamwork. Many trade union organisations in European countries do not regard those last two forms of work as examples of atypical employment. In those countries such forms of work may be introduced following negotiations with the works council or union organisation in return for wage-related compensation or reductions in working time. The proposal to regulate the introduction of night or teamwork through European-level legislation might, in such cases, be interpreted by some union representatives as an attempt to reduce the bargaining autonomy of the social partners. In such a case Eurotrainers would need to explain the concept of social partner bargaining autonomy and encourage learners to concentrate on those forms of work that can be defined as atypical by learners from all the countries represented on the course.

Eurotrainers will need to be aware of different cultures when dealing with learners, to avoid making assumptions based on their own cultural contexts. Similarly Eurotrainers will need to develop their own cultural awareness in relation to the following: body language; codes of dress; attitudes to age, status, gender; forms of address; attitudes to gifts; attitudes to humour; attitudes to appropriate levels of formality and informality in different situations; different perceptions about appropriate meal times; general punctuality; attitudes to alcohol and smoking.

7. Working in a European team

Working in a European team can present Eurotrainers with some of the same challenges as those experienced by learners: problems of language, communication and culture. Generally speaking, Eurotrainers are chosen for an ETUCO course because of their experience as trainers at the national level, because of their previous participation in the ETUCO course *Training Eurotrainers*, and because of their linguistic competence.

This common base should assist communication in the course team. However cultural differences may surface however when deciding upon the choice of training methods and materials, since Europe is rich in educational traditions, and this diversity is mirrored within trade union education. National trade union education methodologies were established, in part as a reaction to the methodologies to be found in the formal education systems. However, as has been noted in the first comparative European study on this subject, 'there has nevertheless been a long-term shift in national patterns of trade union education away from trainer-centred, expert-based delivery to participative, co-operative student-centred learning' (Bridgford and Stirling 2000: 22).

The Eurotrainers' role in providing a learner-centred environment is pivotal. Given that learners come with different languages, backgrounds, experiences and perspectives, a set of common resources and materials is essential to create a common basis for discussion, and Eurotrainers play an important role in preparing them. Materials will need to be adapted, selected and re-presented to meet the specific needs of the target group. They will need to be prepared well in advance, bearing in mind that time will be required to translate them into the working languages of the European course.

Generally speaking, the overall choice of training materials should be geared to enabling the learner to develop knowledge and skills in a structured and progressive way; to encouraging a participative approach to learning; to maintaining the learner's interest; and to providing opportunities for evaluating what has been learned. There are basically two forms of materials; activity sheets which structure individual and/or group training activities; and resources which provide back-up information on issues relevant to the European course.

Conclusions

These reflections do not pretend to establish a single template for a European methodology for trade union education. They aim to build on already existing national approaches and the experience gained from delivering hundreds of European courses, so as to put forward a model based on best practice for European trade union education. The *Eurotrainers' Manual*, on which these reflections are based, is intended to serve as a common instrument for all ETUCO European courses. It can be used as a guide for course planning, delivery and evaluation, and thus improve the overall quality of ETUCO courses. All Eurotrainers will be

provided with a copy of the manual at their first planning meeting, and it will be used as a basis for the ETUCO *Training Eurotrainers* courses.

Further reflection on a European methodology for trade union education takes place in the context of ETUCO ongoing training for Eurotrainers. In 2003 for example ETUCO will organise workshops on training for information and consultation; using information sources; training for distance learning; developing materials and courses on Europe and globalisation; training in the public sector; and also developing foreign language courses. The most immediate development within a training context is the use of the Internet and its potential for computer-mediated distance learning. The advantages are clear: courses that run over longer periods of time can link training more directly to professional experience; there is flexibility of access both in time and space; and more intensive dialogue can be linked to in-depth research. The disadvantages are equally clear: not all learners have access to computers; some learners are uncomfortable with the technology; there is an emphasis on written communication; it is difficult to build a group dynamic; there is a lack of dedicated training resources; and there are few qualified and experienced trainers. ETUCO has already started to reflect on some of these issues through the ETUEnet, ETUDE and DIALOG ON projects (notably how to train trainers; how to communicate online; how to set up distance learning courses; how to prepare online training resources; how to evaluate online). The experiences gained from these projects will be disseminated widely throughout the European trade union education community, and this will feed into the ongoing debate surrounding the development of a European methodology for trade union education.

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Johan van Rens

Cedefop's initiatives at European level on knowledge sharing and creation of vocational education and training

Introduction

Providing structured knowledge

Conclusion

Introduction

The year 2002 placed vocational training issues high on the political agenda. The Copenhagen Declaration of 29 November 2002, during the Danish Presidency of the European Union, built upon the report on *Concrete future objectives of education and training systems* that had been endorsed by the Stockholm Council of 2001. It stresses that ‘the adaptability and employability of young people and adults depend strongly on access to high quality initial education and training and the opportunity to acquire new skills throughout working life’.

This Declaration noted the activities already undertaken by agencies such as Cedefop and stressed the need for greater synergy and complementarity between them. It builds upon the resolution of the Education Council on 12 November 2002 taking up the same principles and priorities for increased cooperation, ensuring that candidate countries, EFTA and EEA States and the social partners are involved as full partners in the follow-up to this initiative. Commissioner for Education and Culture, Ms Viviane Reding, in her address at the Copenhagen meeting stressed that increased cooperation in vocational education and training at European level is essential, if our European education and training systems are to become a world quality reference by 2010.

Cedefop’s contribution to the political process

Cedefop’s activities in enhancing cooperation rest on the premise that it must be underpinned by the exchange of knowledge and ideas. In line with the priority actions agreed at the June 2002 policy conference in Brussels, Cedefop has made a start in creating a corpus of information and knowledge at European level. Through its networking and collating research, developments and good examples of practice, and its analysis and timely provision of information to stakeholders, Cedefop’s added value plays an important part in laying the foundations for effective and productive cooperation in meeting the many challenges ahead.

Without close institutional cooperation and exchange of information, the challenges listed in the Copenhagen Declaration will not be met. The Declaration clarifies the priority issues. There is a need for:

- developing a single tool to support the transparency of qualifications and to integrate existing mechanisms;

- a system of credit transfer in vocational education and training. Inspired by the European credit transfer system in higher education, the intention is to develop a similar mechanism at vocational level;
- progress in validating non-formal and informal learning. This requires a minimum level of compatibility of national and sector approaches;
- clarification of quality in VET;
- reviews of existing initiatives and developments in producing qualifications and competences at sector level.

These issues – and others such as guidance, mobility, and good examples of practice that will follow - show that to succeed we need reliable, fresh and comparative information at European level. Access to this is a prerequisite for policy formulation and development throughout the EU. Over past months Cedefop has taken important steps towards providing such a source of reference and by the summer of 2004 we will be in a position to provide a fully operational knowledge management system on VET to our stakeholders.

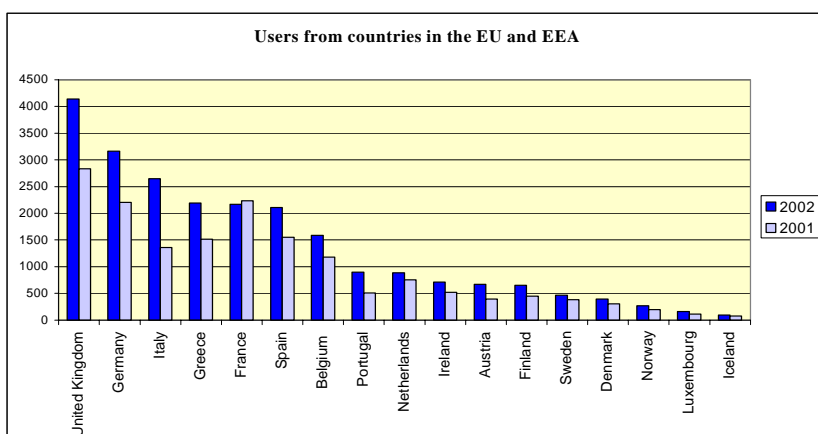
Cedefop has adopted a networking approach and a vision of how such an extensible system could feed the various working and technical groups now being put in place to tackle specific priority issues at European level.

Cedefop has always had the mandate to provide information on VET developments and to encourage the exchange of knowledge and expertise. A glance at our annual work programmes reveals that our activities cover the collection and analysis of information in research and training system developments. We promote the exchange of good practice or – as I prefer to say – exchange of good examples of practice. In the past, our work has to a major degree, resulted in viewing national perspectives from a European one. Our ambition today is to focus our efforts more sharply from a thematic point of view covering a comparative and cross-sectional European perspective rather than a national one. This approach follows the needs expressed by all EU member states and future entrants to strengthen the European dimension of VET in this and following decades.

In the second half of the 1990s, Cedefop made a major investment in providing electronic access to our services and products. The onslaught of the Internet and highly sophisticated tools in information and communication technology, and the dramatic increase in the use of what we make accessible electronically, encouraged us to proceed in this direction.

Our interactive website – the European training village – has currently over 30 000 registered users involved professionally in some capacity in VET issues. These numbers are currently increasing by 1000/1500 per month. A review of 2002 is given below.

Table 1: Number of ETV registrants: 29 620 at 13 December 2002



In 2002, approximately 14 000 new users registered with the ETV. These were distributed between all countries, more than a third of the new users (5 587) came from seven countries: the UK (1 306), Italy (1 290), Germany (961), Greece (677), Spain (555), Belgium (405) and Portugal (393).

The registered users from Italy nearly doubled between 2001 (1 359) and 2002 (2 649). Similar increases occurred in Portugal (from 506 in 2001 to 899 in 2002) and Austria (from 396 in 2001 to 670 in 2002).

In addition to using this site as a channel for accessing information including the European library and documentation on VET, we organise and host electronic surveys and virtual discussion platforms on many issues – e-learning, training of trainer forums, and groups of VET researchers. We provide Extranet facilities to many of these groups and through targeted access to the electronic resources available to us we feed discussion and debate (www.trainingvillage.gr).

Virtual communities

At the request of the European Commission and as part of our efforts to attain the ambitions set out in:

- the concrete objectives report and
- the lifelong learning follow-up process and
- the Copenhagen Declaration,

Cedefop has come up with practical means to support exchange of information and to fire debate on priority issues. Using collaborative tools over the Internet, members of technical working groups on the issues cited earlier have the opportunity to progress faster in coming to conclusions. Additionally, this work and discussion will be opened up and made accessible to a larger informed European public to receive input and guidance. Subsequently the knowledge shared through these communities will enrich the corpus of information and knowledge Cedefop is providing on these important issues.

As an organisation heavily dependent on national and international networking, we have many valuable instruments in place to allow information flow in both directions.

1. Providing structured knowledge

In the course of 2002 Cedefop set up a network of reference of expertise called ReferNet throughout all EU member states and associated countries Norway and Iceland. Supplementing the traditional work done by our documentary networks, this consortium of national bodies and organisations including highly reputed research institutes and networks were contacted to report electronically on themes and topics where Cedefop recognises information gaps and lags exist. Such an initiative has, of course, major implications for the way we work within Cedefop.

Our added value as a European agency must lie in analysis and review of thematically structured information; our expertise must be channelled into producing comparable and thematic data *and* analysis and conclusions for a solid factual foundation for policy formulation. Major work this year has gone into creating a robust and extensible thematic structure to cover all aspects of vocational education and training. Currently we have identified 11 major themes in the area of vocational education and training:

- (1) General policy context - framework for the knowledge society;
- (2) Policy development - objectives, frameworks, mechanisms, priorities;
- (3) Institutional framework - provision of learning opportunities;
- (4) Initial education and training - pathways and transition;
- (5) Continuing education and training for adults;
- (6) Developing learning facilitators;
- (7) Skills and competence development and innovative pedagogy;
- (8) Validation of learning - recognition and mobility;
- (9) Guidance and counselling for learning, career and employment;
- (10) Financing: investment in human resources;
- (11) European and international dimension: towards an open area of lifelong learning.

Expert staff have been working on sub-structuring these themes as the basis for how we ‘package’ our information resources in the future. Of course, we see the dangers of creating a custom-built thematic substructure in isolation. In the drafting process we consulted closely with the European Commission services, Eurydice and the European Training Foundation to see how to reach consensus on our classification of information. The advantages of combining forces in such an effort are both obvious and exponential. Now we are in the process of repackaging our available resources.

But information, to be useful, needs a context. We are all aware of the benefits – and shortcomings – of information retrieval on the Internet. We link to words not concepts.

Cedefop’s solution is both labour-intensive and intellectually demanding. The cross-linking of themes and structures in information is the real value provided. This places the information in a comparable context.

It is a semantic web where users are able to define the perspective and context in which they wish to view such information resources. This is what we are striving to achieve through our knowledge management system.

The advantages are:

- using ReferNet ensures input which reflects realities in the field;
- using modern ICT ensures information is accessible quickly, overcoming the traditional time-lag associated with hard copy publication;
- users can define their own context to view such information;
- ultimately technology will offer customised profiling of users, avoiding information overload through precision retrieval.

As the knowledge management system becomes operational we wish to harness the potential of the European training village (www.trainingvillage.gr).

The constantly updated thematic information can serve as a basis for discussion and knowledge creation. The first technical and working groups have been put in place to work on the issues outlined by the concrete future objectives report and the process of enhanced cooperation in vocational education and training.

In the area of VET research, Cedefop can look back on a lengthy history of networking researchers. CEDRA – the Cedefop research arena – focuses mainly on informal networks, providing small amounts of funding to start up a knowledge-sharing project. One such example is current support for three projects under ‘work-related learning’ covering the following topics:

- work experience in an educational setting,
- the learning organisation,
- work-process knowledge.

Additionally, the European research overview (ERO) is a semi-structured network steered by Cedefop. It disseminates information and shares resources on VET issues in Europe. It is also a web-based platform with the active and voluntary contribution of researchers in sharing resources. Currently, ERO mailing lists contain some 150 researchers. During 2003, CEDRA and ERO will be completely integrated into Cedefop’s knowledge management system and will therefore add research to policy, development and practice in knowledge sharing.

Conclusion

The aim to have all relevant information accessible through a single, user-friendly interface has also major technological implications. In a first phase, Cedefop will work to ensure the disparate structures of its internal legacy databases are mapped so their output corresponds to the overall thematic substructures. The technology being implemented, on account of its non-proprietary nature and interoperability, will also allow extending information sources to include external databases applying similar technology. Cedefop's aim in the medium term is to have a fully-fledged knowledge management system on vocational education and training up and running by the summer of 2004. This tool will offer access to up-to-date, analytical and comparative information from various perspectives. In the context of the Copenhagen Declaration and the need for increased cooperation in vocational education and training the system will ensure the ongoing exchange of information and ideas between national authorities, the social partners and all that have a stake in VET.

Cedefop, through combining forces with all stakeholders in the endeavour I have described, is and will be in the near future in an even stronger position to foster and enhance the cooperation vital to nurturing both social and economic progress in Europe in the coming years.

Laurent Vogel

The gender dimension in health and safety

Initial findings of a European survey

1. Knowledge production
2. Policies in focus
3. The gender dimension in the new Community strategy for health and safety at work

The TUTB survey

The TUTB carried out a survey on the gender dimension of workplace health and safety in association with two research centres at the Brussels Free University and with backing from the Belgian EU Presidency. The survey was mainly questionnaire-based, supplemented by desk research and a seminar attended by a hundred-plus participants on 16 November 2001 in Brussels.

150 individuals and institutions in all EU countries apart from Ireland replied to the questionnaire. The biggest share of responses came from Spain and Italy (31 each), followed by France and Germany (15 replies). Most respondents were trade union organizations (31%), research institutions (21%), agencies responsible for giving a lead to prevention policies (13%) and prevention services (9%). Institutions responsible for equality policies made a very poor showing, which probably reflects the little importance attached to occupational health and safety issues on the equal opportunities policy agenda.

The survey was coordinated by Laurent Vogel (lvogel@etuc.org) for the TUTB.

More details on the TUTB website:
<http://www.etuc.org/tutb/uk/survey.html>

The European survey on the gender dimension in health and safety unearthed a welter of initiatives in different EU countries. 240 activities addressing a wide array of health issues were reported, ranging from research (70% of cases) through prevention schemes to industrial action, etc. The information collected on issues ranging from musculoskeletal disorders to the organization of working time, and across traditionally male strongholds like the construction industry to female-dominated occupations like nursing and cleaning services, all points to the gender dimension gaining recognition as a material factor in workplace health and safety. Some sectors are clearly much further on than others in this area: 36% of the reported schemes related to a specific sector. More than one in four were in the health and social services sector (mostly hospital nurses), one in ten related to distribution and retail (chiefly supermarket check-out staff). Not

that many were in industry (under a quarter of identified sectors) and most of these were in the textile, footwear and clothing sectors.

The number and range of the schemes reported, however, cannot hide from view the fact that most occupational health and safety (OHS) policies and prevention practice are still framed on a gender-neutral model - for which, read the standard male worker. So there is a point to looking closely at the roadblocks to a gender perspective of workplace health and safety, which interact in the four key areas surveyed: knowledge production, the policies in place, workplace prevention practices, how workers fight back. To a large extent, these interactions operate as vicious circles: research is not done into areas where change is not wanted, policies are not changed if there are no indicators to raise alarm, practitioners are geared up to deal with traditional risks and do not see the gender dimension as a relevant category, etc. Workers fight back in very real and practical ways, revealed particularly through industrial discontent dating back over a century. But the far-reaching issues that they raise cannot easily be carried on from one generation to the next, or generalized into an overall strategy.

1. Knowledge production

Workplace health has never been taken as a field of scientific study in its own right, and occupies a fairly marginal place in the health sciences. Research into workplace health is very much dictated by the immediate demands of OHS policies. Often, the main workplace health research centres are national institutions which take a predominantly technico-medical approach to prevention and are run on a tripartite or joint basis. Those which depend on established compensation systems tend to have their agenda shaped by the visible cost of damaged health to these systems. Generally, OHS institutions have displayed very little gender awareness.

The only exception over the past decade has been those in Nordic countries. Elsewhere, the research input has come from institutions that are not mainstream OHS research bodies, or from collective initiatives by organizations and individuals involved in prevention policies but lacking significant institutional backing: trade unions, networks of occupational health doctors, ergonomists, etc.

Research itself suffers from policy compartmentalization. So, there is a large body of research on occupational segregation, but little of it deals with segregation-related OHS issues. Detailed 'time budget' surveys in many

countries have put a gender perspective on how time is divided between different activities, but few have linked this to working conditions to see how these can produce exclusion and/or ill-health by making the work/life balance harder to achieve.

The practical openings for gender-sensitive OHS research are quite limited, not least because they raise issues outside the traditional bounds of workplace preventive health policies. This situation is not set in stone, as the Quebec-based CINBIOSE project has shown (Messing 1999), but is still seriously holding back progress in Europe.

The gender kaleidoscope

The analysis of responses to our questionnaire shows that the gender dimension in workplace health research is interpreted in a wide range of ways.

For some, research focused on a largely female group addresses the gender dimension, so any research on nurses or textile workers is treated as gender-sensitive. For others, it involves at least a comparative analysis between men and women on the issue. At another level, there is the added insistence that it must be exclusively or mainly about issues relevant to women. So, a large number of responses reported research into reproductive health, sexual harassment and bullying, or the work-life balance.

Other research goes much further into the linkages between the organization of paid work and more general social determinants, in particular how paid work hinges on (and for women is often conditioned by) unpaid work. They also focus on social constructs of maleness (or masculinity) and femaleness both inside and outside the workplace, where research can perfectly well bring a gender perspective to the study of an exclusively male population (see Molinier 1997; Thébaud-Mony 1997; Kjellberg 1998).

It is not a case of putting up a prescriptive definition of the gender dimension with which to 'label' research, as it were. Different understandings of the gender dimension emerge according to the field of research and a range of political and methodological choices. The point is to get a debate going between these different approaches. None of the scientific fields of study usually involved in workplace health research (medicine, ergonomics, psychology, toxicology, etc.) offer guarantees that the gender dimension will get full recognition as such. There are two key requirements to overcome this obstacle.

Cross-cutting approaches

The issue in the round - the linkage between human health and work - is split up between different fields of study which each have their own individual approach, but also between the different themes addressed (working time, mental health and work, work-related illnesses, linkage between paid work and unpaid work, etc.). Taking a gender perspective means combining interdisciplinarity with a crosswise approach to the issues. This is what Eleonora Menicucci (1997) calls a 'cross-cutting approach' which goes beyond workplace risk analysis to focus on the interaction between life time and work time.

Who asks the questions?

The important thing when looking at workplace health research is to know who is asking the questions. Karen Messing (1998) points out how one-eyed science can be when researchers have ignored the impact of working conditions on menstruation, whereas a series of surveys of union stewards in female-dominated sectors show that this is a pressing issue for women workers. Little account is taken of subjective experience - i.e., the real lives of men and women workers as individuals and workforces in setting issues - in organized workplace health research. This raises a real issue about identifying what workers' want from it, which is partly bound up with what the big official sponsors want, which the employers try to control. The linkage between the relevance of the questions asked and workers' direct experiences is addressed very persuasively by Laura Corradi's (1991) remarkable book on night work in the Barilla Group's factories in Italy.

2. Policies in focus

The main hallmark of the policies pursued is how compartmentalized health at work, equality and public health policies are. Each is relatively impervious to issues in the others. Arguably, that makes each less effective in its own sphere.

Health at work policies

Health at work policies have tended to disregard the interaction between paid and unpaid work, developing mainly as correctives with a gender perspective at best tacked on to address certain specifically women's issues (labelled as a 'vulnerable group' on the same footing as young people or people with disabilities).

At first, they were predominantly protective/exclusionary, and vestiges of this approach still remain. This policy, which dates back to the 19th century and remained the dominant approach at least up to the middle of the 20th century, is marked by a wide array of gender-differential prohibitions and rules in different areas (especially the handling of loads, lead exposure, etc.). Outside of the legislative rules, practice tended to legitimize the gender divide in work. A wide range of activities were prohibited to women: night work in industry, all work in mines and underground works, etc. Looking at the reasons behind these, a varying collection of motives can be discerned, ranging from the protection of health through the protection of morality to an implicit reaffirmation of certain male prerogatives. In Spain, for instance, Francoist laws banned women under 21 from driving tractors, agricultural machinery or any other animal-drawn vehicle. They were also prohibited from metal-forging trades.

The protective approach was compounded by a recognition of women's difference in the purely biological sense. Hence the emergence of the phrase 'pregnant worker' in the specific context of maternity. Here again, 'biology' is used as a technique for domesticating what is a function of the work sphere. In a nutshell, it is both too specific and too unspecific an approach.

Too specific... in that most factors that threaten reproductive health endanger more than the health of just pregnant women. They affect the health of men and women generally at different levels. In many cases, the rules specifically relating to maternity have served to sidestep the substantive debate on eliminating at source a whole set of health-endangering agents. They have created the illusion of prevention by removing pregnant workers from particularly hazardous situations without tackling the problem at source by permanent collective prevention measures.

Too unspecific... in that this sudden concern for women's biological health is limited to maternity! Other issues linked to women's unique biology are rarely addressed. The literature on the linkages between working conditions and disruption of the menstrual cycle is all-but non-existent. Little study has been done on exposure to dangerous substances in relation to altered hormone regulation or the different composition of certain tissues. Only very recently have studies begun to be done on the possible connections between breast cancer and night work (Hansen 2001).

The protective approach has gradually given way to a 'gender-neutral' approach which addresses workplace health issues from the angle of an

abstract worker - implicitly, the standard male worker ('standard' being a construct which clearly fails to accommodate the wide differences between real-life male workers). This is the main hallmark of health at work policies currently pursued in the European Union and its member states, all the mainstreaming rhetoric notwithstanding.

The gender-neutral approach really falls down when tested against the only sector routinely excluded by health at work regulations in the European Union - domestic staff, who are (there is no getting away from the fact) predominantly female. Legislators see paid domestic work as a simple extension of the unpaid work which 'naturally' falls to women. This approach to the division of labour allows a blind eye to be turned to the risks of such work - both those inherent in all domestic work (paid or unpaid) and the specific risks created or exacerbated by the employment relationship. But the scant evidence available on domestic service points to its being a high-risk sector. So, Belgian work accident data show an overall severity rate well above the private sector average (12.10 per thousand against 2.18 in 1998). Other surveys also point to it as being a sector where the power relationship may be marked by extreme violence, especially towards women domestic workers from non-Community countries who lack the opportunity to find lawful alternative employment.

Public health policies

Although public health policies have become more gender-aware in recent years, the main focus has been on biological differences and individual behaviours or lifestyles (or a combination of the two, in the case of policies on breast cancer). Neither paid nor unpaid work features greatly in most studies on the gender dimension of health¹. What the factors highlighted have in common is to skate around gender differences in the workplace while recognizing (and this is their most positive contribution) that traditional approaches to health have paid little attention to women's 'specific issues'. The linkage between health and unpaid work has been considered in a handful of studies, but more to focus on women's lack of access to paid employment than to explore the linkage between 'dual-career lives' and health.

There is one methodological barrier which affects both men and women, but women more. Public health usually brings working conditions into the

¹ Among the rare exceptions are: Germany: see Ducki (2001).

equation only when there is an immediate and direct link between a particular factor and a medical condition. It is little inclined to include working conditions in the round in an analysis of the social determinants of health². This form of denial is directly connected to a political obstacle. Any incursion by public health into the sphere of waged employment has consistently been knocked back by the employers. The workplace is seen as a private domain and the management of firms is claimed as a prerogative of employers. Even in cases where there is a clearly-evidenced link between occupational exposure and an illness, the employer has always kept a stranglehold on assessing (in order to minimize) risks, and especially a monopoly on risk management decisions. This is easily exemplified by the health disasters of first silicosis, then asbestos-related diseases. Pursuing a public health policy on working conditions would explode the shaky compromise on the concept of 'occupational risks.' It would show that damaged health is not just the result of accidents or abnormal occurrences, but also the normal effect of waged employment, the wear and tear and steady undermining of health that are its daily consequence.

Equal opportunities policies

The brief of equal opportunities policy is not to upset the workplace division of labour nor throw male domination open to question, but rather to deliver equality of opportunity for all individuals on the labour market regardless of gender and assure them of equal pay and other working conditions for equal work. From this viewpoint, the factors of inequality are often seen as the legacy of the past. There is even a growing trend away from 'contextualizing' inequalities within workplace gender relations: so, positive actions would be confined to promoting the 'under-represented sex', while legal challenges under EU provisions have in some cases ended up blocking national measures intended to promote women's access to male-dominated jobs on the grounds that such measures would have constituted 'discrimination on the grounds of sex'³.

² Tuberculosis is a striking case in point. The epidemiology and policies on tuberculosis prevention almost entirely ducked the key issue of work-related wear-and-tear (Cottureau 1978). The way in which public health policies address cancer generally is also indicative of a strategy of sidestepping working conditions.

³ See Kalanke judgement, ECJ, 17 October 1995, ECR I., p. 3069.

There is no compulsion on employers to overhaul their work organization to improve gender balance in tasks and functions. This is the main reason why health at work policies are not joined up with equality policies. Workload defined in ways which systematically devalue women's jobs, heavily gender-biased job content which tends to exclude men or women from specific jobs based on role stereotyping, vast gender gaps in employment relationships (part-time, short-term contracts, etc.) - all these factors relate as much to health at work as to equality. In many countries, positive policies are pursued to promote gender balance at work. Most of the cases reported do not engage with changing working conditions for all workers, but generally stop short at vocational training, sometimes linked to psychological support.

Sexual harassment is also a telling case in point. The Community approach (broadly followed by national policies) is individually-focussed, addressing the issue as a matter of relations between harasser and harassee. But this is a blinkered view which fails to understand that sexual harassment can also be related to work organization and become instrumental in preserving male domination. It says much that this is such a widespread problem in occupations traditionally closed to women. It suggests that aside from the individual sexual purpose, there may be a collective purpose which is less sexual than symbolic and political: the intent to preserve a predominantly gender-based hierarchy. Notwithstanding the evidence that sexual harassment also constitutes a health risk, it has never been considered as a workplace health issue covered by the instruments put in place.

3. The gender dimension in the new Community strategy for health and safety at work

In March 2002 the Commission published a Communication on the new Community strategy for health at work (2002-2006) (European Commission 2002)⁴. That this new Community strategy tackles the gender aspect is certainly one of its most positive features. In the past, Community policy was, for the most part, 'gender-neutral', with all the limits and ambiguities entailed by such an approach. Acknowledgement of the gender dimension constitutes an innovation in the Commission's thinking in the field of

⁴ Trade union positions on this strategy can be consulted on the web page: <http://www.etuc.org/tutb/uk/community-strategy.html>

occupational health and safety and it is a change that is naturally most welcome.

However, the view adopted by the Communication is excessively defensive. Occupational health is seen, in too passive a manner, as needing to 'take account' of the division of labour between men and women. In our view, its role should be an active one and it should contribute to combating segregation in the workplace. Such a goal is mentioned in only once in the communication, in a paragraph on fisheries policy.

There is a lack of concrete proposals, except in connection with the development of research and one very general remark according to which prevention services should take account of the gender dimension.

In our opinion, the question of indicators should also have been tackled. The most common indicators (recognised occupational accidents and declared cases of recognised occupational disease) do not enable adequate perception of the occupational risks to which women are exposed. Only an upwards harmonisation of the systems for declaration and recognition of occupational diseases could put an end to the discriminatory practices currently observed. At present, in virtually all Community countries, the systems for the recognition of occupational disease give priority to sicknesses predominantly affecting male-dominated occupations. Different factors contribute to this situation. The traditional risks that have given rise to the most studies affect a majority of men (silicose, asbestos, noise, etc.). The restrictions introduced by some States to recognition of occupational disease frequently exclude more women than men. Women are more dependent than men on the proper functioning of what are known as mixed systems (i.e. systems which allow recognition of diseases in situations not considered by closed lists of occupational disease where there is a presumption of causality in favour of the worker), but the operation of these mixed systems is, generally speaking, subject to numerous shortcomings throughout Europe. In this area progress is likely to be extremely slow. The Commission seems to have given up the idea of a Directive on the declaration and recognition of occupational diseases in favour of recommendations that are rather ineffectual. How then is it possible to justify the proposal to coordinate national policies on the basis of a comparison ('benchmarking') between declarations of occupational diseases. Such an exercise is bound to entail major biases in the definition of priorities for prevention.

Taking account of the gender dimension should also have served to support clearer proposals in relation to harassment and violence in the workplace as well as musculoskeletal disorders. In these two fields the Commission is aware of the importance of the problems but hesitates to intervene via legislative harmonisation on account of the obstacles raised by employers and some governments. During the Presidency of the second half of 2002 the new Danish government (a right-wing coalition enjoying the parliamentary support of the far right) clearly stated that it would not support a Directive proposal on musculoskeletal disorders and preferred a 'non-binding' approach to the problem.

The gender dimension should be one of the criteria for evaluating implementation of the Community Directives. It will be remembered that the framework Directive adopted in 1989 came into force on 31 December 1992 and the Commission has not embarked on an evaluation exercise. We believe that, on several points, the gender dimension is of relevance for analysing the limitations of the Directives. Their scope excludes domestic workers who, on the basis of existing provisions, are not even entitled to maternity leave! In practice we see that a significant percentage of workers is still not covered by multidisciplinary prevention services or by health and safety representation systems. In some countries, the situation has deteriorated significantly (United Kingdom, as regards prevention services, Denmark as regards worker representation). It would be useful to embark on a more systematic study to ascertain whether or not women are more particularly affected by these phenomena on account of a combination of several factors. In some countries prevention services are compulsory only in sectors in relation to specific recognised risks. In other countries, both preventive systems and workers representation systems are put in place depending on the size of firm, which excludes a relatively greater number of women who are concentrated in small and very small businesses.

A relevant debate which sheds light on avoidance strategies

Analysing the gender dimension in health and safety is not about fine-tuning theories. It has far-reaching implications for policy-making and preventive strategies.

Changing patterns of work have redrawn the boundaries of inequality rather than leading to desegregation of work (both paid and unpaid). The lines of the division of labour have shifted, but its differential impact on the health of men and women has stayed the same.

Were the issue just about redistributing risks by occupations and sectors, that would pose no fundamental challenges for prevention policies. But the health impact analysis of working conditions shows that risk allocation is not simply gender-randomized. Put simply, one of the structural determinants of the gender division of labour itself is a normalization of male and female stereotyped risks.

According to a typology developed by Philippe Davezies (1999), health damage can be divided into three groups:

- direct physical injury generally due to physical agents (machinery, substances) or factors;
- overloading due to inappropriate or excessive wear on men and women. Here, it is the pace or repetitiveness of the work activity itself that is at issue;
- violation of dignity, in which respect there has been a notable increase in the types of psychological abuse (humiliation, victimization, bullying).

Obviously, these three categories are not mutually exclusive. There are interactions between the different types of health damage. For various reasons to do with the gender division of labour, women are today more at risk of category two and three abuses⁵. In particular, there is a clear increase in the Taylorization of a number of female industrial jobs, and a nascent Taylorization of some female-dominated service jobs (hospital work, distribution, call centres, etc.).

In this connection, some DARES surveys in France have pointed out that women manual workers are experiencing a persistence of the 'disadvantages of Taylorism with none of its benefits' (Gollac and Volkoff 2000 : 64). The table below is significant.

⁵ This is what emerges in particular from Annie Thébaud-Mony and Véronique Daubas-Letourneux's work on the data of the Dublin Foundation's surveys on working conditions in Europe. My thanks to them for having kindly shown me their findings before publication.

% reporting that	female manual workers	male manual workers
They work on a production line	24 %	7 %
They do repetitive work with cycle times of under a minute	27 %	10 %
Their superior dictates how to do the work	29 %	21 %
Their work pace is under at least daily surveillance control by their superior	43 %	37 %
Their work pace is set by standards or times of one hour or less to be met	41 %	34 %
Their work schedules are set by the firm and they cannot change them	84 %	87 %
They cannot choose when to take their breaks	22 %	13 %
They are not allowed to talk when working	10 %	2 %
They have no opportunity for group discussions of organizational problems or how the department is run	54 %	38 %
Their relationships with their superior are sometimes strained	25 %	31 %

Source: DARES 1998 survey in Gollac & Volkoff, 2000: 65.

Prevention practice has tended to prioritise the first class of health damage which to some extent could be separated from normal work routine and portrayed as ‘accidents’ or ‘failings’. In some instances, health damage has also meant disrupted production, so it could be considered that there was a common interest in implementing preventive measures.

The evidence from most surveys on working conditions is that women tend to be over-exposed to overloading and violations of dignity⁶, which can least be treated as failings in the organization of production but, to the contrary,

⁶ These findings must be approached with caution. The mechanics of women’s exposure to physical and chemical risks often results in their being underestimated. A German study on exposure to chemical risks shows that the mechanics of exposure and exposure control resulted in a marked underestimate of the dangers to women workers Kliemt (1995).

stem directly from work intensity (and its profitability from the resource owner's viewpoint) and the chain of command.

Furthermore, a gender perspective must also take the paid/unpaid work equation on board. Finally, the indissoluble link between working conditions and stereotyped roles must lead to a critical analysis of the constructs of maleness (or masculinity) and femaleness.

This means that prevention practices must challenge the central tenets of work organization and social reproduction. But by doing so, they cease to be simple prevention practices. They forfeit their hallmark technical neutrality and have no option but to become part of processes of political and social change rolling out over a very much wider field than the elimination of workplace risks alone. Arguably, that explains the potency of the mechanisms we have found for keeping women invisible.

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Chronology of events in 2002

January

11 January The ETUC welcomes the new EU Regulation for its Generalised System of Preferences (GSP, a trade policy instrument for assisting development). The GSP for 2002-2004 seeks to foster sustainable development and contains incentives for the protection of labour and environmental standards. While opening its market to developing countries, the European Union is prepared to grant additional advantages to those countries committed to respecting workers' rights. In particular, all eight Conventions covered by the 1998 ILO Declaration on Core Labour Standards are now taken into account. This decision responds to a longstanding ETUC demand and is especially important after the failure of the WTO Doha Conference on social standards.

22/23 January The Laeken European Council decided in December 2001 that the European social partners would participate as observers in the Convention on the Future of Europe. On behalf of the ETUC, General Secretary Emilio Gabaglio is to take part in the Convention's work. The ETUC permanent working group on The future of Europe meets for the first time on 22 and 23 January, fixing its priorities for the Convention and formulating its wish to incorporate the following points into the Treaty: the European social model; a framework for a European industrial relations system and related rights for social partner autonomy; the role and rights of the European social partners as co-regulators and their involvement in EU decision-making;

the EU Charter of Fundamental Rights and a monitoring procedure; principles of Services of General Interest; the social dimension of the Internal Market; strengthening of the Social Union vis-à-vis the Economic and Monetary Union; the EU's international role; a participative economy.

29 January For the first time, the Social Partners from the candidate countries are invited to participate in the Social Dialogue Committee (SDC). For a long time the ETUC had been asking for the trade unions from the candidate countries to be more closely involved in the activities of the European Union, and specifically in the social dialogue.

31 January At the World Social Forum in Porto Alegre, the ETUC, ICFTU and WCL organise a meeting for all trade unionists on 31 January 2002 prior to the opening of the Forum. The aim is to pursue a strategy for a new international trade unionism which more effectively addresses the new facts of globalising economic and financial systems. Trade unionists welcome the Forum in Porto Alegre as a possibility for unions and NGOs to discuss the ideas put forward by civil society groups in a bid to work out common or converging solutions.

February

14 February The European Federation of Public Services Unions (EPSU) launches a campaign to strengthen the EU's Working Time Directive. This will continue until early 2004 and is focusing on the health-care sector because it is at the forefront of working-time developments, setting precedents and providing a role model for other occupations and sectors. It represents, what is more, one of the worst examples of implementation of the Directive adopted in 1993. Due to the periods, negotiated by certain member states, for transposition of the EU law into national legislation, in many EU countries doctors-in-training are, for example, still working well in excess of the maximum 48 hours, and as much as 70 hours a week.

14 February In order to play a role as an interlocutor with the Convention Presidency and to promote the concerns of

civil society within the Convention's work, four civil society organisations - 'families' - and the ETUC set up a Civil Society Contact Group. Its members represent a wide range of environmental, social, developmental and human rights NGOs, together with the European trade union movement.

17 February

The headquarters of the Palestinian General Federation of Trade Unions (PGFTU) are heavily damaged in an Israeli air raid. The ETUC condemns this act against a civilian target, stating that these attacks are totally unacceptable and violate basic trade union rights and freedoms. In January, on the occasion of the General Secretary of the PGFTU's visit to Brussels, the ETUC had already stated its belief that a lasting peace will come about only through ongoing dialogue and recognition of both the Palestinian people's and Israel's rights to existence. During their joint visit to Israel and Palestine in April, the General Secretaries of the ETUC and the ICFTU, Emilio Gabaglio and Guy Ryder, will meet representatives of the PGFTU and the Israeli Histadrut, thereby underlining their support for the promotion of a just and peaceful solution to the conflict in the region.

28 February

After 14 months of discussion between the European social partners, the Social Dialogue Committee (SDC) adopts a 'Framework of actions for the lifelong development of competencies and qualifications'. Because of the refusal from the employers' delegation, the text does not become an agreement between European social partners, as the ETUC had wished.

March

1 / 2 March

The Turkish trade union coordination commission is launched in Istanbul at a meeting attended by Turkish trade union leaders, members of the Turkish government and the coordinators of the trade union integration commissions of candidate countries set up on the initiative of the ETUC since 1996. On the ETUC side it was stated that Turkey had made positive progress in preparation for enlargement,

but still had more work to do. It was also stressed that social dialogue was essential in the run-up to enlargement, and that the legislation on trade union freedoms and collective bargaining required amendment.

6 March

In the run-up to the Barcelona Spring Summit, the ETUC issues a note stressing that the Summit's strategic aim must be to judge whether the overall policy-mix is appropriate for making the EU dynamic, competitive, cohesive, ecologically progressive, and fully employed. Its own view on the macro-economic policy mix, for example, is that it is too restrictive. The deterioration in the economic situation will not allow the EU to meet the Sustainable Development Strategy's goals and targets in 2002 and probably not in 2003 either. The ECB should reduce interest rates further and, on budgetary policy, the EU as a whole should exploit the existing room for manoeuvre. Economic coordination must be improved. The ETUC underlines the importance of structural reforms to increase the potential for growth as well as the importance of growth and employment-friendly policies.

14 March

Over 40 000 participants take part in the European Trade Union Rally in Barcelona on the eve of the European Council. They call for full employment and social rights, for a stronger workers' voice in companies, for equality between men and women and for a globalisation which promotes social justice.

15 March

The conclusions of the European Council confirm the Lisbon objectives to achieve full employment by the end of the decade, recognising that these objectives can be achieved only by means of balanced and simultaneous efforts in the economic and social fields. But there are no coordinated initiatives at European level to support economic activity and hence employment. The Council's statements concerning labour market policies are very negatively received by the ETUC.

20 March

The European Commission adopts a draft Directive on temporary agency work. The social dialogue on this subject had broken down the previous year because of stonewalling

on the employer side.

27 March

Throughout Italy trade union demonstrations take place in protest at Government policy regarding workers' and trade union rights, and especially against terrorism. All three Italian trade unions - CGIL, CISL and UIL - had called for these demonstrations. On 20 March, the industrial relations expert and adviser to the Italian government Professor Marco Biagi had been murdered by Italian terrorists.

April

16 April

A general strike is organised in Italy to protest against the Italian government attempts to amend important aspects of labour legislation. Over 90 % of the workers are on strike, and over two million participants take part in the rallies organised throughout the country. In a number of European capitals, trade union leaders meet Italian ambassadors to express their solidarity with the Italian colleagues.

16/17 April

The Latin American regional trade union organisations, the ETUC and the ICFTU adopt a joint declaration at a common conference in Madrid, attended by over one hundred trade union leaders from both continents. The declaration will be submitted to the EU and Latin American Heads of State and Government, to the European Commission and to the Spanish EU presidency at their meeting in May. It aims at enhancing cooperation and democratic trade union rights, and asks for the social dimension to be integrated into all future cooperation agreements between the EU and Latin America.

18 April

A new Directive on equal treatment between men and women is reached in a conciliation process between the European Parliament and the Council. It recognises sexual harassment as discrimination and introduces new clear and straightforward definitions for sexual discrimination and harassment. The new Directive also provides for measures to strengthen the respect of equality in companies. It states that employers must take preventive measures against all forms of discrimination and specifically against sexual harassment and promote equal treatment in a structured and systematic

way. To this end, employers should be encouraged to regularly provide their employees with appropriate information on measures they have taken to guarantee equal treatment.

26 April

More than 20 000 workers demonstrate in Warsaw to demand a halt to the Government's anti-union reforms. A new bill which sets out to abolish collective agreements should be reconsidered, as should government plans for three other major reforms which would damage the condition of workers and weaken trade union bargaining power. The ETUC states that the proposed amendments to the Polish labour code are not in line with the principles of labour legislation in the European Union and that they run counter to the European social model.

May

10 May

On the occasion of the strike in the German metalworking industry, the 'Frankfurt Declaration' is adopted by European Metalworkers' Federation, and more than 20 Presidents and General Secretaries of European metalworkers' unions. They stress European support for the strike and establish a basis for preventing cross-border transfers of production and other strike-breaking tactics. The Frankfurt declaration sets out, in particular, arguments which refute the European Central Bank's accusation concerning the inflationary nature of 'excessive wage demands', claiming that 'Every wage agreement which fails to exhaust the available distributive margin (sum of productivity and inflation) will put a strain on the labour market and economic development.' Wishing to continue a wage policy that will foster stability, the trade unions see the need for a wage policy which, within the abovementioned margins, will strengthen purchasing power in the Euro area and promote growth.

23 May

The European Federation of Retired and Elderly Persons (FERPA) organises a European action day in all EU member states. In the context of the aim of incorporating fundamental social rights into the Treaties, FERPA

demands the right to a sufficient minimum income, the right of access to a high standard of health care, the right to housing, the right of access to services of general interest and the right to lifelong learning.

June

- 14/15 June* A huge conference on the Future of Europe is organised in Madrid by the ETUC, bringing together personalities from the trade unions, the world of politics, and academia. Topics include the European Union's role in a global context, economic governance and the strengthening of a social Union. Special attention is paid to the ETUC Youth group and their 'Contribution to the Youth Convention on the Future of Europe'.
- 17 June* The European Transport Workers' Federation (ETF) and dockers' unions in a number of European countries organise protests and strikes to underline their rejection of a European Commission proposal for a Directive on Market Access to Port Services. The actions in Belgium, Germany, Finland, Norway, Denmark, Iceland and Sweden include the following demands: removal of self-handling from the scope of the proposal; significant extension of the concession periods; assurances that the freedom to employ personnel of the provider's own choice will be subject to the compliance with the rules laid down by the member state in which the service provider is providing the services in question.
- 26 June* The European Commission adopts its Communication on 'The European social dialogue, a force for innovation and change'. It proposes better institutionalisation of social concertation at European level by the establishment of a tripartite Social Summit for growth and employment, to be held before each Spring European Council. This Social Summit is to replace the Standing Committee on Employment. With this proposition, the Commission reaffirms the importance of the social dialogue for European governance.

July

16 July

The European social partners ETUC – for the trade unions – and UNICE-UEAPME and CEEP – for the employers – sign the framework agreement on telework. The novelty of this agreement, concluded after eight months of negotiations, is that for the first time an EU framework agreement signed by the social partners will be implemented by their national members, rather than by European legislation in the form of a Directive. Its general spirit is that Europe must encourage the development of telework in such a way that flexibility and security go hand in hand and that the quality of jobs is enhanced. The importance of regulating this form of work becomes clear in the light of the fact that in 2002 some 4.5 million employees are teleworking in the EU and it is estimated that this number will have increased to more than 17 million by 2010.

23 July

The European Coal and Steel Treaty expires after 50 years. The European Metalworkers' Federation states that it has played a fundamental role in the development of the steel industry by providing the instruments for creating a genuine European industry policy. The Treaty also placed the dignity of workers, their families and their communities on the same level as the objectives of economic and technological process. It was particularly effective in managing the serious crises that have occurred in both the coal and the steel sectors. And the ECSC Treaty introduced the first example of sector-based dialogue at European level.

September

2 *September*

At the Johannesburg World Summit on Sustainable Development the ETUC calls for a world plan for the eradication of poverty, for environmental protection and respect for human, social and labour rights. This plan should be administered by the ILO and should recognise that fundamental social and labour rights, jobs and training are the keys to tackling poverty. The ETUC considers that

the first conclusions of the conference reveal an imbalance between the importance given to trade and the lack of recognition accorded to the social and environmental dimension.

16 September The Irish trade union ICTU launches a lobbying campaign for the ratification of the Nice Treaty by Irish voters, which will allow the enlargement process of the European Union to continue. The major conference in Dublin is attended by several hundred trade union representatives, including trade union delegates from accession countries.

October

10 October In a resolution on the European Convention, the ETUC's Executive Committee calls for a Constitutional Treaty for a Social and Citizens' Europe and underlines its main priorities: the integration of the Charter of Fundamental Rights into the Constitutional Treaty; strengthening of economic governance with the aim of full employment; guarantee of services of general interest; development of the social dialogue, and the role of Europe in the globalisation process.

11/12 October In Brussels, the ETUC holds a major conference on 'Fighting deregulation in Labour Law in Central and Eastern European countries.' A social 'unravelling' in several central and eastern European countries is described during the conference, and it is stated that the requirements of enlargement are frequently used as a pretext for social deregulation. To help reduce the gap between social policy legislation – however insufficient it may be in itself – and its application, the ETUC, in co-operation with the ETUI, wishes to better develop its network of lawyers with specialist knowledge of Labour Law in the trade unions of the applicant countries.

November

6 November In a reaction to the Commission's and the Parliament's stocktaking Communication and report on the European Employment Strategy (EES) after five years, the ETUC

sees the need to adapt this important instrument to meet the objectives of Lisbon by 2010. In order to achieve full employment, the EES must base itself on a strategy of macroeconomic 'policy mix' designed to regain the Lisbon growth path of 3% per annum. Measures are needed to counter the fact that the EES is insufficiently well known on the national and regional level. Since EU enlargement poses new challenges for the strategy, it is important to maintain one EES for the entire Union. A certain flexibility in deadlines for meeting guideline targets might be acceptable, but not flexibility in the content of such targets.

- 19/20 November* The ETUC Executive Committee votes a resolution to further improve collective bargaining coordination at European level in order to prevent wage dumping and support upwards harmonisation of living and working conditions.
- 21 November* The European Parliament adopts its position on the proposal for a Directive on temporary agency work. The principle of equal treatment in employment conditions for temporary agency workers is retained.
- 22 November* The Convention Presidency announces the creation of a new working group on Social Europe, which will start its work in early December. The motion for this working group, that had not been originally foreseen, gained support from numerous members of the Convention belonging to a range of political families.
- 28 November* High-level delegations of the European Social Partners meet near Brussels for the first time in five years for a Social Dialogue Summit to approve the Social Dialogue Programme negotiated between them for the next two years. The actions contained in the work programme are grouped around the three key priorities of employment, mobility and enlargement. Further topics discussed during the Social Dialogue Summit are the work of the Convention on the Future of Europe and the enlargement process. The summit is addressed by Commissioner Diamantopoulou and concluded by Commission President Romano Prodi.

December

2 December The European Commission starts the first phase of consultation of the European Social Partners on the effects of stress on health and safety at work.

16 December On the initiative of the Italian affiliates of the European Metalworkers' Federation and the Fiat European Works Council, a European action day 'Future for Fiat' takes place, with the support of the metalworkers' trade unions in Italy, Belgium, France, Germany, the UK, Spain, Portugal, Austria and Poland.

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Selection of relevant literature extracted from the database 'Labourline' (www.labourline.org)

This selection does not include widely distributed publications from European institutions and international organisations (EU, Council of Europe, ILO, OECD, UN).

However, most of the publications from these organisations which are of relevance for the Institute are generally available for consultation in the Documentation Centre.

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