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**COMMISSION STAFF WORKING DOCUMENT**

**Industrial Relations in Europe 2008**

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## Executive summary

*An increasing convergence in European industrial relations can be attributed to a combination of factors: the existence of a consensus around a set of common values and standards; the actions of the Union itself through the exercise of regulatory power and the outcomes of social dialogue at European level, but particularly to the existence of an EU-wide set of concrete objectives to which all stakeholders and actors can sign up to, in a mutually self-reinforcing mechanism.*

The European Union is unique among world economic groupings in combining a market building agenda with a social agenda that includes emerging transnational industrial relations arrangements. In other global regions this process has barely begun and the EU is sometimes seen as a model for the development of a regional social dialogue. The distinguishing factor is the capacity to promote minimum standards and common values to support the policies of Member States in this area. At the same time, implementation of EU rules and standards includes a high degree of flexibility, allowing for differences in national customs and practices (Chapter 1).

The contribution of the social partners to achieving the Lisbon agenda is particularly important for reaching the employment targets and implementing the flexicurity agenda. The involvement of social partners in policymaking and policy implementation varies widely across Member States, but generally there is a trend towards the use of a wider mix of instruments to pursue policy objectives. Nevertheless, the quality of the social and institutional support that social partners enjoy is probably the major determinant of the quality of the social partners' contribution to the Lisbon Strategy (Chapter 2).

Collective bargaining and wage determination are anchored in national customs and practices. Despite the increasing weakness of wage bargaining actors, with declines in trade union density in particular, wage bargaining institutions have remained relatively unchanged in recent years. There are wide disparities across the EU. However, the degree of employers' density seems to be the principal factor determining bargaining coverage. Wage bargaining institutions seem to have a small but positive effect on economic performance, but not on wage inequality, where it is trade union density which produces a statistically significant result. A rise in trade union density is associated with a fall in wage inequality. High trade union density also appears to lead to lower proportions of in-work poor, other things being equal (Chapter 3).

At European level, the social partners are delivering on their commitments. They concluded agreements on violence and harassment and on maritime labour standards, and made valuable contributions to employment and social policymaking. The sectoral coverage of European social dialogue continues to increase (Chapter 4). Social partners know the world of work best, and they contribute to better governance by following-up joint commitments and recommendations on the ground. First evidence of implementation of European social dialogue texts, in particular of the first cross-industry autonomous agreement on telework, shows that they make a difference (Chapter 5). Furthermore, there has been considerable activity in the field of European legislation in the period since the last *Industrial Relations in Europe* report, including labour law (Chapter 6).

The capacity of the social partners to deliver high-quality industrial relations, and thus their ability to play their role in achieving the EU's economic and social objectives varies widely across the EU, and particularly in the 12 Member States that joined the EU in 2004 and 2007 (EU-12) where the tradition of autonomous bipartite industrial relations is less developed. In

recognition of this, assistance is now available through the European Social Fund to help build the capacity of social partners in these countries, and there is evidence of increased participation of social partners in the implementation of the Structural Funds. European social partner organisations also continue to carry out a wide range of capacity building exercises themselves (Chapter 7).

## **Chapter 1 — Europe's industrial relations in a global perspective**

*Post-1945 industrial relations in western Europe have traditionally been based on four institutional pillars: union density; coordinated bargaining; employee representation in firms; and regular consultation on social and economic policies. Since the mid-1980s, a certain degree of convergence in national trends has been observed in all these areas.*

Industrial relations arrangements in post-1945 western Europe have rested on four institutional pillars: union organisation or density; coordination of bargaining; employee representation in firms; and social partners' involvement in consultation over social and economic policies on a regular basis. Developments in the four pillars, observed on the national level in the Member States of the EU throughout its history (from 6 to 27 Member States) indicate that, after the sharply divergent trends of the 1970s, some of the elements of these pillars have experienced a mildly convergent trend since the mid-1980s, in spite of the growing number of Member States. While the 2004 and 2007 enlargements have resulted in an immediate increased divergence between the industrial relations regimes within the EU, this has been accompanied by the strengthening of (or in some cases truly developing) social regulations in the national systems of Member States in central and eastern Europe that after 1989 tended to exclude them from political agenda and policies.

*Convergence is more apparent in areas where the EU's powers are stronger; non-existent where the EU has least influence*

These trends suggest an influence of (preparing for) EU membership, although other developments (similar pressures based on globalisation or domestic political, social or economic changes) may also have played a role. No convergence is observable in areas where the EU level is least influential: the organisation of trade unions and employers' associations, the organisation and coverage of collective bargaining and social pacts — these indicators still show large and growing divergence.

*The introduction of 'procedural innovations to complement the limited legislative possibilities in this field has helped bring about incremental developments in industrial relations arrangements at EU level, particularly since the mid-1980s*

Against these national trends, there have been incremental developments in industrial relations arrangements at EU level. While during the first decades of its existence the capacity of the Community to build supranational-level industrial relations remained limited, since the mid-1980s the economic focus of the European integration project has been paralleled by the development of the 'social dimension'. Policy making in the social area, including industrial relations, has intensified. The limited possibilities of applying Community legislation in the field of

industrial relations have been enhanced and qualified majority voting has been extended to a growing area of employment and industrial relations matters. The legislative method has been complemented by a number of ‘procedural innovations’.

*The emergence of EU-level industrial relations is evidenced by a (growing) set of common values and principles, and mutually reinforcing institutions, policies and processes.*

The emergence of EU-level industrial relations is evidenced by a (growing) number of common values and principles, and mutually reinforcing institutions, policies and processes, characterised by a mixture of hard (legally binding) and soft (non-legally binding) measures focusing on the social dimension of the market. They are institutionally anchored, and some of them have foundations in the Treaties.

*The four pillars supporting the core European industrial relations arrangements at national level appear to be developing at EU level as well, albeit slowly.*

The four pillars supporting the core European industrial relations arrangements at the national level appear to be developing also at the EU level, although the outcomes are still restricted in terms of the effectiveness of these transnational institutions. While the position of EU-level social partners has strengthened thanks to their gradual inclusion in the legislative process, the European Trade Union Confederation (ETUC) as well as BUSINESSEUROPE, UEAPME, and CEEP continue to be characterised by a very low degree of centralisation, i.e. their capacity to control member organisations is restricted. However, coordination on non-wage issues is increasing following the conclusion of European autonomous agreements. A transnational dimension to collective bargaining has been emerging over recent decades, fostered by EU-promoted processes and institutions. Also, the adoption of the 1994 European Works Councils and the 2001 European Company Directives has advanced the practice of informing and consulting the workforce in transnational contexts. Finally, the European Social Dialogue has become a defining characteristic of EU-level industrial relations, as it allows for the participation of social partners in supranational policy arrangements.

*The EU is ahead of other economic powers and regional integration organisations in the world in promoting a social agenda with emerging transnational industrial relations.*

In combining the market-building agenda with a social agenda that includes emerging transnational industrial relations arrangements, the EU is ahead of other economic powers and regional integration organisations. In other global regions this process has only just begun and the EU is sometimes seen as an example or model for the development of a regional social dialogue. In addition to a set of regional industrial relations institutions and policies, the EU has developed an embryonic supranational social policy in the fields of social redistribution, social regulation and social rights. The Structural Funds provide a mechanism whereby resources can be allocated to

*Besides regional industrial relations institutions and policies, the EU has put in place policies in the fields of social redistribution, social regulation*

*and social rights.*

address economic and social disparities in the EU or be put to the assistance of social partners and workers adversely affected by global trade. There are regulations in the fields of occupational health and safety, equal opportunities, labour law, and social security and pensions (including for migrant workers and their families), together with social dialogue mechanisms that apply to all countries. The Community Charter of Fundamental Social Rights of Workers defines a set of fundamental social rights which have been recognised by the Court of Justice of the European Communities (ECJ) as part of the general principles of Community law.

*The EU promotes social partnership and cooperation at supranational level, although collective bargaining and pay determination are still based on national customs and practices. In an interregional comparison, Mercosur appears to be closest to the EU model, but other regional organisations, especially in Africa, also seem to be following the EU example.*

In the industrial relations domain proper, the EU promotes social partnership and cooperation by setting minimum standards for employee representation in national and cross-border firms, and by recognising the social partners in a consulting and, in some domains, co-legislating role, through framework agreements. Yet collective bargaining and pay determination — core issues of industrial relations — remain nationally specific. In addition, the EU coordination regime allows the use of different implementation instruments, and variable implementation of actual standards, according to national preferences and capabilities. Comparing the other regions, Mercosur is probably nearest to the EU in its industrial set up and social policy ambitions. However, other regional organisations, especially in Africa and perhaps least NAFTA, seem to be moving in the same direction.

## **Chapter 2 — The quality of industrial relations and the Lisbon Strategy**

*In the context of the Lisbon Strategy, the social partners' contribution is crucial for achieving the employment targets and the 'flexicurity' agenda.*

At all levels — European, national, sectoral and local — the social partners (trade unions and employers) have become increasingly involved in the Lisbon Strategy. Steps taken by the social partners at the European level include the identification of a number of modernisation issues in their renewed work programme for 2006–08; their joint analysis of the 'Key challenges facing European labour markets', of October 2007; and, since 2002, several European framework agreements, joint opinions and frameworks of action, which require joint engagement and monitoring. At national, sectoral and local level, employers and unions are involved in modernising labour markets through lobbying the government and parliament, the negotiation of social pacts, collective agreements at various levels, and by participating in the administration and implementation of particular programmes and policies.

*The social partners'*

There are considerable variations among EU Member

*contributions can be developed through bipartite or tripartite agreements and activities. The latter foresee the direct involvement of the State.*

*The role and strength of the social partners and the mix between bipartite and tripartite activities and agreements varies significantly across the policy areas...*

*... some of these policies — training, working time, working conditions and, increasingly, work–life balance — have become the object of regular collective bargaining.*

*Industrial relations are shaped by the nature of the existing employment regime. Whether inclusive, dualist, or market-based, each involves a different role for trade unions and policy concertation ...*

*... these differences show up not only in employment levels and structures, but also in industrial*

States and across policy issues in the degree and nature of social partner involvement. In some Member States, particularly in northern Europe, their contribution is shaped through ‘autonomous’ agreements, collective bargaining and related activities, without direct involvement of supervision of the State. In other Member States, especially in southern and eastern Europe, there is a much stronger role of the State and tripartite agreements, advisory councils on social and economic policies, and administrative schemes in which the State is directly participating.

Six policy areas related to the Lisbon Strategy and the flexicurity agenda are being reviewed: (1) active labour market policies (ALMP) targeted at disadvantaged groups and social security reforms; (2) training and the entry of young people in the labour market; (3) lifelong learning and older workers; (4) working hours and time flexibility; (5) the reconciliation of work and family; and (6) working conditions. In each of these the social partners make their contributions through influencing government policy, agreements among themselves and participation in the administration of programmes. Their influence and role is not the same in each of these areas, however. In ALMP most Member States set the parameters of labour market policies by law and the role of the social partners is limited to influencing government policies and, sometimes, co-managing particular programmes defined by the government. In the area of working hours, work–family policies, working conditions, training and lifelong learning, the influence and autonomy of the social partners tends to be stronger, but in each of these policy areas there is some interaction with legislation and public policy.

The involvement of the social partners also differs among EU Member States. Industrial relations are shaped by different traditions, institutions and practices affecting the interaction between public policy, collective bargaining and social dialogue. The main distinction runs between inclusive, dualist and market employment regimes. In inclusive regimes, policies are designed to extend both employment participation and employment rights as widely as possible through the working population. Dualist regimes, in contrast, tend to be less concerned with the overall employment levels but guarantee strong rights to a core workforce of skilled long-term employees. In the market-based regime, the assumption is that employment levels and job rewards are self-regulated. This classification overlaps, partly, with that of Nordic, continental European, liberal and southern industrial relations regimes — but it is, as yet, unclear whether all or some of the new Member States from eastern Europe will



*arrangements, the strength of the unions, the role of the State, collective bargaining and social dialogue.*

*Social pacts continue to have an important function; non-wage issues covered include unemployment insurance, flexicurity, training and pensions.*

*To implement the Lisbon Strategy both the social partners and governments have tended to rely less and less on traditional instruments such as the law or collective agreements, resorting instead to a greater variety of instruments.*

*The active involvement of the social partners in the implementation of the Lisbon Strategy provides for additional flexibility and increased support for bottom-up solutions.*

assimilate to any of these. These industrial relations regimes differ in the strength of unions, the autonomy of the social partners, State intervention, and the place of social dialogue at the national level and in companies.

The typology of employment and industrial relations regimes helps to understand the differences in the response to the Lisbon agenda at the national or local level. They explain differences in the level of engagement and in the methods used. One particular form through which social partners have become involved in the reform agenda of the EU is the conclusion of a social pact or agreement with the government. Such tripartite pacts were concluded in Ireland, Spain, Italy, Portugal, Slovenia and Finland, as well as in Bulgaria and Romania. Social pacts address both wage and non-wage issues, in particular issues related to unemployment, flexicurity, pensions, ALMP and training. With regard to work–family reconciliation, working conditions and working hours and working time flexibility, the social partners’ role is more clearly shaped through collective bargaining, although in many southern and eastern Member States the law remains the main basis for regulation and provision, and social partner agreements add little additional flexibility.

Industrial relations and the Lisbon Strategy have become interwoven. Many issues have entered the agendas of the social partners at all levels. Various instruments, often based on an interaction between collective bargaining and the law, but also information exchange, consultation, best-practice diffusion, benchmarking or joint administration and fund management, are used. It is less frequently the case that one method — the law or classical collective agreements with binding effects — predominates.

Arguably, without the involvement of the social partners, at all levels, the reform agenda of the Lisbon Strategy cannot be carried out in the world of work. It is by adding flexibility to the implementation, and by raising support for bottom-up solutions, that social partners and industrial relations generally provide a key resource. Trade unions and employers must ‘buy into’ the Lisbon agenda and the social dialogue process, but will only do so when there is a chance for a meaningful cooperation and influencing the direction and outcome of policies. Lastly, the quality of the social partners’ contribution is related to the social and institutional support that they enjoy at the European, national and local levels. Social support is evidenced by membership, mobilising power and standing in public

opinion. Institutional support is based on the recognition of the social partners and of the rights of representation, consultation and codetermination by lawmakers, codified in legal norms or anchored in broad agreements, and supported by public policy and public opinion.

### **Chapter 3 — Wage setting, minimum wages and industrial relations**

*While wage bargaining institutions have remained relatively unchanged, wage bargaining actors have become weaker.*

Trade unions lost members both in absolute and in relative terms. Trade union density in particular has declined significantly over the last decade. At the same time, the wide disparity of union and employers' density rates within the EU persists. Employers' density is generally higher than trade union density rates. Trade union membership losses have prompted organisational restructuring in many countries. Increasing numbers of trade union mergers has contributed to a constant process of concentration of union organisations.

Wage bargaining institutions and industrial relations actors are highly interconnected. Employers' density rates correlate strongly with wage bargaining centralisation and bargaining coverage. Employers' density rather than trade union density determines the stability of wage bargaining institutions. As a result of weak employers' density wage bargaining institutions remain weaker in EU-12 than in the EU-15.

*Minimum wages are an increasingly important issue for wage setting institutions in the European Union*

Statutory and collectively agreed minimum wages are an increasingly important component of wage setting institutions in the European Union, particularly in the central and eastern European countries. Only countries with exceptionally strong wage bargaining institutions and strong bargaining actors have not introduced statutory minimum wages.

Minimum wage setting institutions interact with wage bargaining institutions. In countries where wage bargaining is institutionally strong (strong actors, coordinated processes and high coverage rates), statutory minimum wages are rare and the lowest wage floor is set by agreement. However, if statutory minimum wages exist, the presence of unions and centralised wage bargaining tends to increase the ratio of minimum wages to average wages.

Collective bargaining institutions are complementary to statutory minimum wages in such a way that statutory minimum wages in fact benefit from strong collective bargaining institutions. A decline in employers' density and thereby a decline in collective bargaining coverage

might thus not only increase the need for a minimum wage floor but also make the introduction of a minimum wage more likely.

*The effects of wage bargaining institutions on economic performance are comparatively small and tend to be positive.*

The analysis of the effects of wage setting institutions in Europe reconfirms existing research that institutionally strong labour relations have some moderating effects on nominal wage developments. The restraining effect of wage setting institutions on wages seems to have become weaker in recent years.

*Industrial relations institutions — in particular trade union density rates — have a positive effect on reducing wage inequality and the incidence of in-work poverty.*

Industrial relations institutions can reduce the gender pay gap. An EU country with higher bargaining coverage, holding everything else equal, generally tends to have a lower gender pay gap than EU countries with low bargaining coverage.

Wage bargaining institutions (bargaining centralisation, bargaining coverage and coordination) do not appear to have any significant effect on wage inequality. However, trade union density has a very significant and robust positive effect. Countries with higher trade union densities, holding all other variables constant, have higher wage equality. Our research indicates that a 10 % increase in the trade union density ratio would reduce the wage inequality measure, on average, by around 2 %.

Trade union density has a significant and robust negative effect on the proportion of workers disposing of less than 60 % of the median income, while wage bargaining centralisation, bargaining coverage and coordination do not appear to have any significant effect. This indicates that, holding all other variables constant, an increase in trade union membership by 10% is associated with a reduction of in-work poverty by around 3 %.

## **Chapter 4 — European social dialogue developments 2006–08**

*European social partners shape industrial relations in the EU through their contribution to policymaking (the common principles on flexicurity) or through autonomous action (framework agreement on harassment and violence).*

The last two years have confirmed that European social partners can deliver on their commitments and shape industrial relations in the EU. The joint analysis of key challenges facing European labour market drawn up by the cross-industry social partners (BUSINESSEUROPE, CEEP, UEAPME, ETUC) has helped to build the EU consensus on the common principles on flexicurity at the European Council in December 2007. Simultaneously, they continued their autonomous actions, most notably with the conclusion of an autonomous framework agreement on harassment

*Sectoral social partners are collaborating across sectors on, for example, third-party violence and socially responsible procurement.*

*The cross-industry European social partners are currently negotiating a revision of the Parental Leave Directive as well as a framework agreement on 'inclusive labour markets'.*

*Further agreements were concluded in 2008 in the sea transport sector (strengthening maritime labour standards) and in the tanning/leather sectors (improving social and environmental reporting).*

*Mobility, restructuring, health and safety, and gender equality continue to be important issues for European social partners*

and violence at work. Once implemented by the national member organisations and/or the Member States this agreement will help to prevent and manage problems of psychological and sexual harassment and physical violence at the workplace. The agreement obliges companies to adopt a zero tolerance policy and specify procedures (quick reaction to complaints, principles of dignity, impartiality and fair treatment, disciplinary actions, victim support, etc.). Consequently, EU-level representatives of management and labour of several sectors (commerce, local governments, hospitals and private security), which are characterised by contacts with clients, patients and others, have engaged in a multisector initiative on third-party violence in order to complement this cross-industry agreement. Other sectors (cleaning, private security, Horeca) have collaborated on raising awareness about socially responsible procurement.

The cross-industry European social partners are currently negotiating two framework agreements. The first relates to the revision of the Parental Leave Directive. For the first time ever, they will themselves revise one of their agreements implemented by way of EU directive back in 1995. The second will determine how the social partners can best contribute to an inclusive labour market and to maximise the potential of Europe's labour market and workforce. This will include 'provisions for facilitating access to and progression in the labour market for disadvantaged groups through a series of preventive and curative measures including lifelong learning'.

The year 2008 also saw the conclusion of the joint agreement on maritime labour standards that aims to incorporate the provisions of the ILO Maritime Labour Convention 2006 into Community law. Maritime labour standards will be strengthened at global level and this will help to combat substandard working conditions and social dumping in the long term. Another framework agreement was concluded on social and environmental reporting standards in the European leather/tanning industry. Furthermore, the social partners of the inland waterways sector are negotiating an agreement in order to adapt working-time rules to the specific circumstances in their sector.

Mobility has become one of the important issues in European social dialogue. Social partners in sectors that have a particularly mobile workforce or need to improve the skills level in their sector on the whole have been developing qualifications and skills passports (hospitality), working with the European Qualifications

Framework (inland waterways), exchange platforms (agriculture), or training programmes and certificates (commerce and hairdressers). The management of change, gender equality, and health and safety continue to attract much attention of social partners at European level. (In particular occupational health and safety practices in enterprises can benefit from recommendations and practical guides that address the specific situation in the sector.) On gender equality, some sectoral social partners have been innovative with guidelines for gender action plans (local and regional governments), ambitious policy orientations accompanied by a work plan (railway), or practical toolkits for human resource management (electricity and telecoms).

*Two new European sectoral social dialogue committees have been created since 2006: contract catering and professional football.*

Social partners in another two sectors have decided to engage in an EU-level dialogue in the last two years: contract catering and professional football. Public administrations launched a two-year test phase. Social dialogue in the sports sector is consolidating in Europe, and the European Commission encouraged this process in its White Paper on Sport of 2007.

## **Chapter 5 — The challenge of implementation in European social dialogue**

*European social partners negotiate agreements, which can be implemented through Council directives or by themselves in line with national industrial-relations traditions, or make recommendations to be followed up at national level.*

The implementation of European social dialogue joint texts attracts increasing attention from the social partners, academia and public authorities. European social partners negotiate agreements on non-wage issues, which can be implemented through Council directive or by themselves via their national affiliates (so-called autonomous framework agreements), and rather process-oriented texts, in which they undertake commitments or make recommendations to be followed-up at national level.

*The 2002 telework agreement and the multisector agreement on crystalline silica are good examples of how autonomous agreements can work in practice. They demonstrate that autonomous agreements are well suited as a means of regulating certain aspects of working conditions.*

With the autonomous agreement on telework of 2002 the social partners have, for the first time, taken the responsibility to implement an EU-level agreement in line with national industrial relations systems and traditions. Implementation has taken place in 21 Member States. The instruments chosen (recommendations, collective agreements or legislation) are in line with the industrial relations regimes identified in Chapter 2. However, Poland (legislation based on a national collective agreement) and the UK (guidelines agreed at national level) seem to have gone further. A lot has already been done following the second autonomous agreement on stress. These experiences also show that implementation is not a one-off action, but a process of learning and confidence

building. The multisector agreement on the protection of workers from crystalline silica dust is a remarkable innovation. It establishes good practices and reporting procedures that are directly binding in all companies represented by the signatory parties.

*But as those cannot guarantee that rules are consistently applied throughout the whole economy preference should be given to the implementation of a European social dialogue agreement through Council directive where this is considered necessary.*

European autonomous agreements have clearly had an impact on working conditions and they are well suited as a means of regulating certain aspects of it. But as they cannot guarantee full coverage and consistent application of rules preference should be given to the implementation of a European social dialogue agreement via Council directive in cases where this is considered necessary. But also in this case, the social partners have a special responsibility in implementation, monitoring and revision that the cross-industry social partners assume by re-visiting the Parental Leave Directive.

*It is more difficult to evaluate the implementation of process-oriented texts (for example, frameworks of action, recommendations and guidelines). The best results seem to be achieved by establishing clear priorities for action and ensuring a structured reporting procedure.*

Process-oriented texts are frameworks of action (e.g. on gender equality concluded in the cross-industry social dialogue, or musculoskeletal disorders in agriculture) recommendations and guidelines. As the implementation is more incremental and relies on voluntary action the impact remains difficult to evaluate. The available evidence suggests that the best results are delivered by establishing clear priorities for action and by facilitating learning through a structured reporting procedure. The duty to produce joint reports provides an opportunity for national social partners to discuss possible action, which sometimes influences the collective bargaining agenda. Although implementation seems to be patchy, in general research indicates that informal learning and the awareness raising effect of process-oriented texts should not be underestimated.

*Both the commitment and competence of the European and, in particular, the national social partners are of vital importance. Clear follow-up provisions are also essential. Member States and the European Commission can both help improve the implementation process.*

The implementation experience so far has improved understanding of the responsibilities of different actors and led to some important innovations. The commitment and capacity of the European and, in particular, the national social partners are fundamental. The EU-level organisations must assist, coordinate, monitor and report. The cross-industry social partners have also been refining the follow-up provisions of their autonomous agreements. Generally speaking, unclear follow-up provisions entail weak implementation. All actors must work together to make individual employers and trade union officials aware of the social partners' joint commitments. Member States can also support the efforts of social partners, for example through funding from the European Social Fund. In some Member States autonomous agreements were incorporated in national legislation. The European

Commission supports, monitors and assesses the implementation process. It has also taken steps to stress the regulatory nature of autonomous agreements by communicating them to the European Parliament and the Council, and publishing them in the Official Journal.

*European social dialogue can go a long way towards improving people's working conditions and modernising workplaces — social partners know best the realities of the workplace and can commit their members to specific action. The follow-up of commitments entered into at EU level shows first success stories and gradual improvement.*

European social dialogue contributes to better governance through consultation and the application of the subsidiarity principle. Social partners know best the realities of the workplace and can commit their constituencies to specific action, which distinguishes them from other organisations, like interest groups. Recent experience shows that if implementation at national or sectoral level is treated seriously European social dialogue results can go a long way in improving working conditions and modernising workplaces. It is still a recent process but first success stories and a gradual improvement can be observed.

## **Chapter 6 — Review of European legislation 2006–08**

*The Council's political agreement on the Working Time Directive and a directive on temporary agency work in June 2008 was a major achievement in the area of labour law.*

Following several years of negotiations the Council reached a political agreement on the revision of the Working Time Directive and a directive on temporary agency work. The first would introduce specific provisions for on-call time and maintain the use of the individual 'opt-out' from the normal 48 hours limit, subject to additional guarantees for the worker. The second would ensure that the principle of equal treatment, as regards basic working conditions, applies between temporary workers and the workers directly recruited by user companies from day one. Derogations are allowed if introduced by collective agreement or agreement between national social partners.

*As part of its renewed Social Agenda Package of July 2008 the Commission proposed a revision of the European Works Council Directive and put forward a discussion paper on transnational company agreements.*

As part of its renewed Social Agenda package of 2 July 2008 the Commission proposed to recast the European Works Council Directive. This revision is intended to ensure the effectiveness of employees' transnational information and consultation rights, increase the take-up of European works councils (EWCs), incorporate definitions and provisions contained in more recent directives and remedy the lack of legal certainty. The renewed Social Agenda package also included a staff working document on transnational company agreements that are increasingly negotiated between management and employees in transnational companies. It maps the importance of this phenomenon, emphasises the potential of transnational company agreements, discusses possible discrepancies between the transnational scope of the texts and national norms and

*The 2002 Directive on Information and Consultation of Employees is expected to have a significant impact on employee involvement at national level. The Commission has reviewed the application of the Directive, but concluded that it is too early to decide on a revision.*

*The Commission attaches great importance to the practical implementation and enforcement of labour law. Regarding the posting of workers, for example, it made a Recommendation for administrative cooperation between national administrations. It also studied in detail the overall application of EU labour law.*

*An extensive European discussion — initiated by the 2006 Green Paper on Labour Law — revealed a preference for finding solutions at national level. But also evident was a willingness for dialogue and exchange, which helped the Commission identify five areas for further discussion and investigation.*

*Several ECJ rulings have contributed to a clearer interpretation of a number of directives in the field of labour law.*

references.

Concerning employee involvement at national level, the Commission reviewed the application of the Information and Consultation Directive of 2002. It noted a significant impact, in particular in Member States that did not have a general, permanent and statutory system previously. It concluded, however, that it is too early to make a decision on a possible revision as the Directive has not yet developed its full impact. Efforts should be geared to awareness raising, exchange of best practices, research and capacity building of the concerned stakeholders.

The Commission continued to examine the problems raised by the application of the posting of workers directive and adopted a Recommendation to facilitate enhanced cooperation between national administrations in April 2008. It has also been reviewing the application of specific labour law Directives, such as the directive on transfers of undertakings, the directive on fixed-term work, and the directive on employer's insolvency (with a special reference to complementary pension regimes). In parallel, larger-scale horizontal studies were carried out on the application of the EU body of labour law. Where shortcomings had been identified the Commission worked with Member States to resolve them, but also launched infringement procedures.

An extensive European discussion was initiated by the Green Paper on the Modernisation of Labour Law in 2006. An emerging European labour market throws down challenges on the most appropriate way to combine flexibility and security at work. But overall, contributors expressed a preference for finding solutions primarily through action at national level — involving a variety of approaches reflecting national legal traditions, industrial relations and practice. However, they also showed that there is a strong willingness to test that experience through dialogue and an exchange of good practice at an EU level. While the Commission decided not to propose any new legislative initiatives it nonetheless identified a number of areas for further research and discussion: undeclared work, lifelong learning, interaction between labour law and social protection rules, the nature of the employment relation, and subcontracting chains.

Several ECJ rulings provided important contributions to a more clear interpretation of provisions laid out in a number of directives in the field of labour law, such as working time, employers' insolvency and fixed-term work. The series of rulings on the *Viking-Line*, *Laval* and *Rüffert* cases, in particular, dealt with the crucial



issue of how to balance the exercise of workers' rights and the respect of fundamental economic freedoms enshrined in the Treaty, as well as the interpretation of the obligations laid out in the Posting of Workers Directive, against a background of increasing labour mobility.

*The Commission set out the 2007–13 strategy on health and safety at work ...*

The Commission set out the 2007–13 strategy on health and safety at work that aims at effectively reducing the rate of accidents at work (25 % by 2012), occupational diseases and absenteeism. The reporting on implementation measures by the Member States was substantially simplified and rationalised.

*... and facilitated the implementation of the racial equality and the employment equality directives.*

The Commission also initiated infringement procedures against Member States that have not correctly transposed the Racial Equality Directive and the Employment Equality Directive of 2000. Two application reports have shown that the directives have helped to raise significantly the level of protection against discrimination across the EU. ECJ case-law is slowly developing.

## **Chapter 7 — Building capacity of social partners through the European Social Fund and European social dialogue**

Social dialogue contributes to good working conditions, competitiveness and social cohesion. But in some Member States, the social partners still do not have the organisational, financial and personnel capacities they need.

Social dialogue contributes to good working conditions, competitiveness, and social cohesion. Therefore, social partners play an important role in the European approach to economic and social governance. This is reflected in the European employment strategy and European social dialogue, which both build on a strong link between the European level and national social dialogue and the capacity of social partners in the Member States. Social partners must have the organisational, financial and personnel capacities to contribute to economic and social governance, be it through involvement in policymaking or through autonomous bipartite dialogue at national, sector or enterprise level.

*Therefore, as of 2007, the EU has been providing financial support for capacity building to social partners at national level through the European Social Fund (ESF). EU cohesion policy is itself a good example of how it is possible to solve complex problems through partnership.*

Therefore, since 2007, the EU has been providing financial support for capacity building to social partners at national level through the European Social Fund (ESF). EU cohesion policy itself, of which the ESF is a part, is a good example of good governance through partnership. Development issues and challenges have become too complex and interdependent and the financial and managerial resources for addressing them too scarce, for any one single institution to be able to respond effectively to all these socioeconomic challenges alone. Therefore, the Commission,

authorities at national, regional and local level in the Member States and other governmental and non-governmental organisations and bodies work together in all stages of the implementation cycle of the Structural Funds. In the case of the ESF, social partners have a special responsibility in this partnership, as they are closest to the workplace. In the preparation of the 2007–13 programming period the Commission has observed increased participation of social and economic partners in most Member States and an involvement of social partners outside ‘traditional’ activities.

*For the 2007–13 programming period, EUR 1.200 million has been allocated to social partners’ joint actions, networking activities and capacity building in Convergence Member States and regions.*

In the current programming period the ESF continues to support joint projects of social partners, e.g. in the area of lifelong learning, as well as the creation of networks for labour-market modernisation. But for the first time, social partners can now benefit from ESF support for projects that directly reinforce their own capacities. In fact, the new ESF Regulation stipulates that Member States shall allocate an ‘appropriate amount’ to capacity building and joint actions in Convergence Regions. The latest data available shows that some EUR 1.200 million have been allocated to such measures.

*The cross-industry social partners — and almost half of all sectoral European social partners — are working with their (potential) members in the EU-12 and candidate countries, through seminars, country visits, research, resource centres, etc., in order to help them participate more effectively in European social dialogue.*

The European social partners, with the financial support of the EU, have also undertaken capacity building efforts, in particular in order to further integrate the social partners in the EU-12 countries in the European social dialogue and the implementation of its results. The cross-industry social partners have been implementing ‘integrated programmes’ that consist of drawing up national action plans, a study and seminar cycle on restructuring, and resource centres for employers and workers. The last two elements are now being extended to all Member States.

Almost half of all sectoral European social partner organisations have undertaken capacity building activities over the last two years. Projects included round tables, country visits, training and others. Results range from awareness raising and networking to a more frequent and constructive participation in European social dialogue meetings or an immediate impact on bipartite sectoral social dialogue, including collective agreements in some Member States.

In the western Balkans, the Commission organised conferences on social dialogue and facilitated the Memorandum of Understanding on social issues in the context of the Energy Community.

## Chapter 1

# Europe's industrial relations in a global perspective

*From a global perspective, the European Union is a forerunner in combining a market-building agenda with a social agenda which includes emerging European industrial relations. In other global regions this process has barely begun and the EU is sometimes seen as a model for the development of a regional social dialogue. While industrial relations arrangements in EU Member States continue to differ in traditions and practices, a limited convergence between them can be observed and is partly related to the EU as a regulatory space. The emergence of EU-level industrial relations is evidenced by a growing number of mutually reinforcing institutions, policies and processes at EU level and focusing on the social dimension of the market.*

The chapter <sup>(1)</sup> begins with a survey of the key institutions of industrial relations in Europe, then describes the process and elements of Europeanisation, and finally compares Europe's approach to social dialogue and industrial relations to other economic powers and world regions.

## The institutional characteristics of European industrial relations

The industrial relations arrangements in Member States of the European Union differ among each other, as do their welfare state regimes and social models (Esping-Andersen, 1990; Crouch, 1993; Van Ruysseveldt and Visser, 1996; Ebbinghaus, 1999). However, they also share a number of elements, and these commonalities across the EU distinguish it from other regions in the world. Historically, the industrial relations arrangements and their achievements in contributing to growth and publicly secured social protection in post-1945 western Europe have rested on **four institutional pillars**: strong or reasonably established and publicly guaranteed trade unions; a degree of solidarity wage setting based on coordination at the sectoral level or above; a fairly generalised arrangement of information, consultation, and perhaps co-determination at the firm level based on the rights of workers and unions to be involved; and routine participation in tripartite policy arrangements (Streeck, 1992; Traxler, 2002; Visser, 2006a).

Each of these pillars will be briefly examined in the context of the various enlargements of the European Union, from the Community of six to the Union of 27 Member States. For each of these periods, the arithmetic mean (weighted by country size in the case of union density and coverage rates) will be shown, as a measure of developments or **trends** over time. Further, in order to explore **commonalities** across the EU at different times, the standard deviation, i.e. the dispersion or variance about the mean, will be used. Since the standard deviation is measured in the same units as the mean, it can easily be understood and compared. The data are from the 'Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) database (see Box 1.1).

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<sup>(1)</sup> This chapter is based on a draft by Jelle Visser and Monika Ewa Kaminska of the Amsterdam Institute for Advanced Labour Studies (AIAS).

### **Box 1.1: The ICTWSS database**

The ICTWSS database contains data on wage setting (bargaining coordination, state intervention, minimum wage regulation), social pacts and agreements (type, actors, wage and non-wage issues, and years of application), industrial relations institutions (bipartite and tripartite councils, routine involvement in policymaking, sectoral organisation, and employee representation in firms) and trade unions (gross and net membership, union density, bargaining coverage, organisational concentration, unity, authority of peak federations and national unions, bargaining centralisation). Currently, the database contains annual data for 34 countries, including all of the EU-27: Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden, Switzerland, the United Kingdom and the United States, from 1960 to 2006/07.

The data are mostly from national sources (books, journals and reports for the earlier years; government reports and documents from the social partners, excerpts from the European Industrial Relations Observatory (EIRO) and the *European Industrial Relations Review* (EIRR) for the 1990s and since). The union membership data are from national sources, preferably household or labour force surveys, or else administrative data provided by the trade unions to the national register or statistical office. Scrutiny of the data and procedures to enhance comparability follow the checks and rules explained in detail in Ebbinghaus and Visser (2000), Visser (2006b) or at the OECD website (statistics section, and *OECD at a glance*). Differences from the statistics reproduced in the *Industrial Relations in Europe* reports of 2004 and 2006 are due partly to new data becoming available and causing the revision of the older series, and partly — in the case of the 2006 report — to the use of different sources.

The ICTWSS database can be obtained and used for scientific purposes via the AIAS website (<http://www.uva-aias.net>) and should be cited as: Visser, J. (2008), 'Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS), an international database, Amsterdam Institute for Advanced Labour Studies (AIAS), Amsterdam.

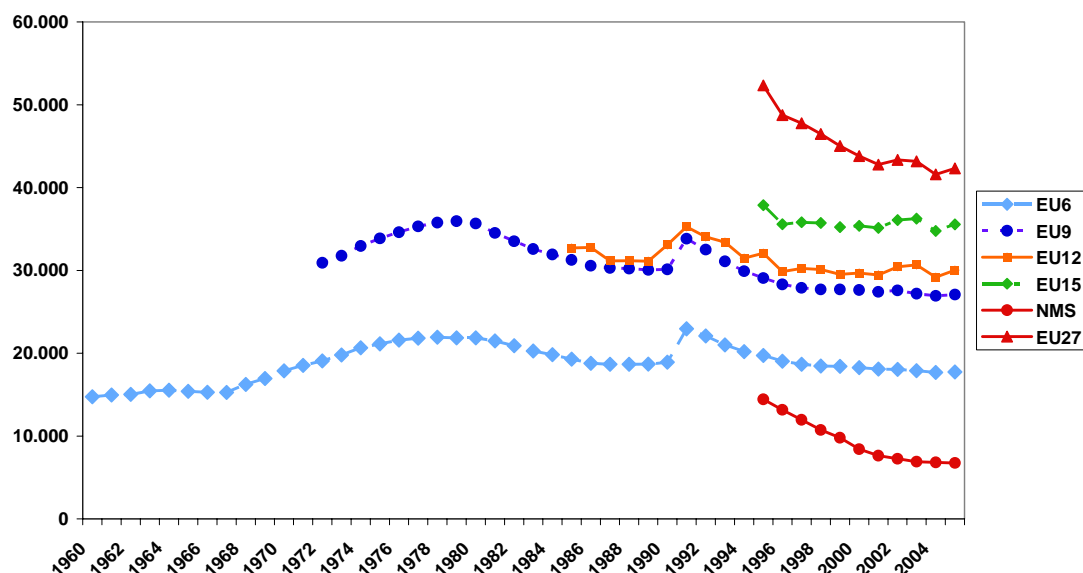
### ***Pillar I: Strong or reasonably established and publicly guaranteed trade unions***

The definition of a 'strong' trade union is not easy. A sufficient membership base, a capacity to begin and end a strike or other forms of protest if necessary, independent finances and staffing, the capability to enter negotiations with employers and government, and sign and implement agreements are all ingredients of such a definition. 'Strength' determines the capacity to influence social and economic developments, which goes beyond the mere recognition of the right to organise and bargain, as guaranteed under the relevant ILO conventions and the law of each and every EU Member State. In this section, two measures of union strength are discussed, aggregated at the level of Member States, for which comparative data are available: union membership (absolute and relative to the employed wage earning population); and union centralisation (combining the horizontal and vertical dimension of trade union unity and authority, and taking into account the level at which they bargain with employers, see box 1.2).

Current net union membership in the EU-27 stands at 42.3 million. This is the number of paid union members in employment, not counting the self-employed. Unemployed workers and members who have retired from the labour market based on a disability pre-retirement or

old-age pension are not included. With these members, gross EU-27 union membership is close to 60 million. Chart 1.1 shows the effect of the different enlargements. Obviously, each enlargement has increased the absolute number of union members, but within each group we find a stagnating or declining membership. Set against the growth of the employed wage earning population, this translates in falling density rates (Chart 1.2).

Chart 1.1: Net Union Membership in the EU in '000s



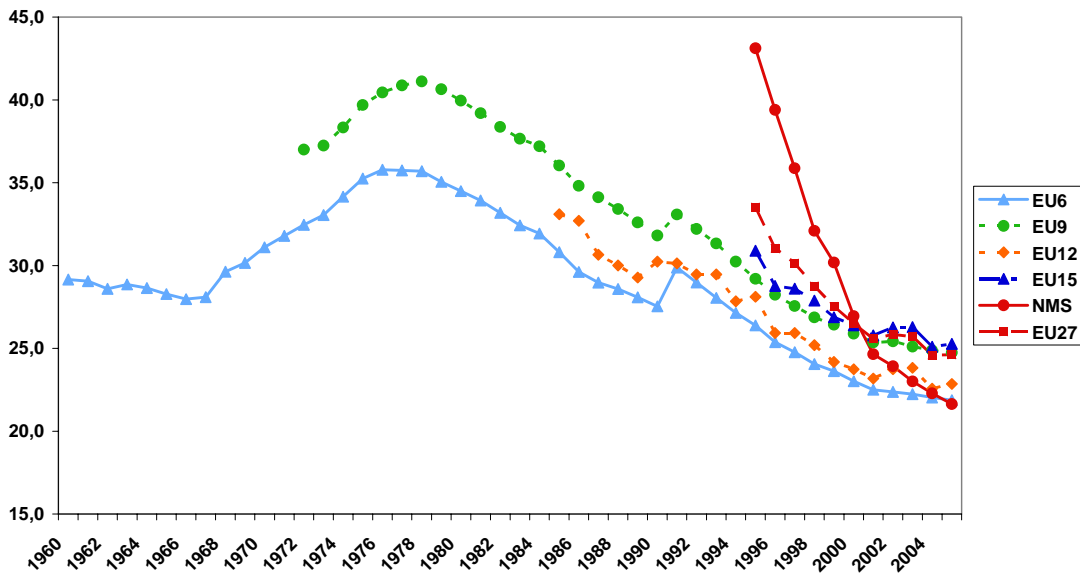
Source: ICTWSS database.

NB: EU-6 (Belgium, France, (Federal Republic of) Germany, Italy, Luxembourg, the Netherlands),  
 EU-9 (+ Denmark, Ireland, United Kingdom),  
 EU-12 (+ Greece, Spain, Portugal),  
 EU-15 (+ Austria, Finland, Sweden),  
 nMS (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, Slovakia),  
 EU-27 (all).

The **union density rate**, defined as the net union membership as a proportion of the wage earning population in employment, averages 25.1 <sup>(2)</sup> across the 27 Member States of the EU, meaning that one in four employees joins a trade union. Chart 1.2 shows that this average has been on a downward trend since the 1970s for all the different configurations of the EU, most spectacularly so in the Member States that joined the EU in 2004 and 2007. The more interesting statistic, for the purpose of exploring commonalities, is the standard deviation, shown in Chart 1.3.

<sup>(2)</sup> This is the weighted average; the unweighted average is 32.5.

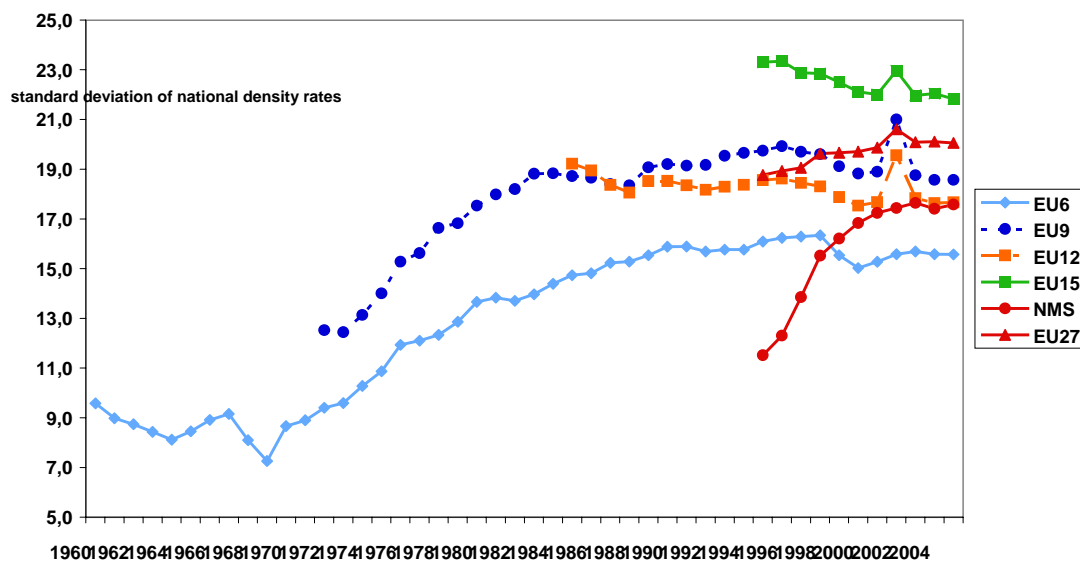
Chart 1.2: Union density rates in the EU



Source: ICTWSS database, weighted arithmetic means.

The divergence in unionisation rates across EU Member States is not only large but is larger than in the early days of the European Economic Community irrespective of the successive enlargements. Thus, the dispersion in union density rates has become larger **within** the EU6, EU-9 or EU-12. However, Chart 1.3 also reveals that the divergent pattern in unionisation observed during the 1970s and first half of the 1980s was halted and even turned into a mildly convergent trend during the 1990s. Similarly, the experience of trade unions in the 12 Member States which joined the EU in 2004 and 2007 (NMS in charts) suggests at first a sharply divergent development until around 2002. This ended, however, by the time of their accession to the EU or even earlier while preparing for accession. This end to further divergence — first among the EU-15 and later among the NMS and EU-27 — suggests that EU institutions and policies may serve as ‘anchors’ for Member State policies, for instance by enhancing union status or guaranteeing rights, or in any case exposing unions to a more similar set of pressures and conditions, for instance through the policies of the internal market, monetary union, the *acquis communautaire*, and the reform agenda of the Lisbon strategy (see Section 2).

Chart 1.3: Divergence in union density rates in the EU



Source: ICTWSS database.

The aggregate strength of the trade unions in a given country is determined by their unity and the capacity of the leadership to define, defend and implement common policies. This is reflected in union **centralisation**, which is a measure that combines the dimension of unity (number of and cooperation between federations and unions) and authority (capacity to make joint decisions and gain the compliance from lower-level units in the movement or organisation) (Box 1.2). The measure of union centralisation used here refers to union bargaining behaviour, taking into account the levels at which bargaining takes place, the vertical ordering of these levels, and the effective number of unions or bargaining agents at each of these levels (Iversen, 1999; *Industrial Relations in Europe 2004 report*). The arithmetic means and standard deviations are shown in Tables 1.1 and 1.2.

### Box 1.2: Union or bargaining centralisation

Centralisation is a composite indicator taking into account the authority of unions and union confederations, their unity and organisational concentration at multiple bargaining levels (see Iversen, 1999; Visser, 1990). The idea is that union bargaining decisions can become centralised in two ways, vertically and horizontally, i.e. by concentrating decisions in one rather than many actors (i.e. concentration or unity) and by allowing higher levels in the organisation (i.e. confederations relative to their affiliated national unions, and national unions relative to local, regional or company units) to control negotiations, strike decisions, funding and staffing. This is detailed in the ICTWSS database in a five-point scale for both (cross-sectoral and sectoral) levels above that of the company, in effect measuring the resources with which confederations and national unions can exert influence over bargaining decisions. (This approach is close to that of Traxler, Blaschke and Kittel (2001) and their emphasis on compliance.)

Formally, the centralisation index can be written as

$$\sqrt{[Cf_{authority} * \sum_i^n (pC_i^2) + (Aff_{authority} * \sum_i^n (pA_i^2))]}$$

where  $pC_i$  and  $pA_i$  denote the proportion of total membership organised by the  $i^{th}$  confederation C or affiliate A and  $n$  is the total number of confederations (affiliates). Taking the square root of the sum serves to magnify the differences at the low end of this scale (cf. Iversen, 1999:53). For an extensive definition see the Industrial Relations in Europe report 2004, p. 41. For data on union authority and concentration, see also table 2.3.

**Table 1.1: Arithmetic means for the diverse EU enlargements**

		EU-6	EU-9	EU-12	EU-15	EU-27
	Indicators	1960–71	1972–84	1985–94	1995–2003	2004–06
<b>Pillars</b>						
<b>I</b>	Union density (%) (*)	29.5	39.1	31.6	27.8	24.4
	Union centralisation (0–1)	0.483	0.445	0.409	0.471	0.369
<b>II</b>	Sectoral bargaining (0–2)	1.5	1.4	1.3	1.5	1.2
	Bargaining coverage (%) (*)	74.7	74.5	74.0	75.9	62.5
	Wage coordination (1–5)	3.1	3.3	3.1	3.4	2.8
<b>III</b>	Works councils (0–2)	1.4	1.6	1.5	1.6	1.5
<b>IV</b>	Consultation (0–2)	1.1	1.2	1.0	1.3	0.9
	Social pacts (**)	0.0	17.1	27.5	31.9	16.7

Source: ICTWSS database.

(\*) Weighted arithmetic means; the other arithmetic means are unweighted.

(\*\*) Percentage of Member States signing social pacts (averaged over multiple years).

**Table 1.2: Standard deviations for the diverse EU enlargements**

		EU-6	EU-9	EU-12	EU-15	EU-27
	Indicators	1960–71	1972–84	1985–94	1995–2003	2004–06
<b>Pillars</b>						
<b>I</b>	Union density	8.6	16.0	18.5	22.6	20.1
	Union centralisation	0.16	0.11	0.09	0.14	0.13
<b>II</b>	Sectoral bargaining	0.5	0.6	0.7	0.6	0.8
	Bargaining coverage	6.0	10.4	12.9	18.4	26.3
	Bargaining coordination	1.2	1.4	1.2	1.1	1.2
<b>III</b>	Works councils	0.7	1.0	0.8	0.7	0.8
<b>IV</b>	Consultation	0.9	0.8	0.8	0.6	0.5
	Social pacts	0.0	37.0	42.6	45.7	44.3

Source: ICTWSS database.

Overall, there is a slight decentralisation trend, only interrupted by the 1995 enlargement, with the addition of the rather highly concentrated and centralised unions of Austria, Finland and Sweden (Table 1.1). Across countries, trends appear to diverge after the mid-1990s. The general tendency of bargaining at lower levels (from national to sectoral and from sectoral to company bargaining), witnessed in many countries in recent decades, is in some Member States offset by the agreement of social pacts and framework agreements, often with soft targets and rules, in others by the increasing concentration of unions in a smaller number of bargaining agents, thus adding to horizontal coordination. Where these countertendencies are absent, decentralisation is more radical, explaining the increased divergence.



## *Pillar 2: Solidarity wage setting based on coordination at the sectoral level or above*

Union or bargaining coverage, together with the minimum wage (provided it is set at a level that is high enough) appears to decrease earnings inequality more than any other measure. Levels of earnings inequality tend to be significantly lower in countries with high levels of bargaining coverage, both in the 1980s and the 1990s (Visser and Checchi, 2009, and sources cited there). This is true even if agreements are less constraining and set minimum rather than standard rates, as appears to be the recent trend. Chapter 3 looks at the issue of wages, earnings inequality and pay gaps.

**Bargaining or union coverage rates**, i.e. the proportion of employees covered by collective agreements negotiated by trade unions, yield probably the best estimate of the presence and relevance of unions in the economy. Averaged across the 27 EU Member States, 60 % of employees are covered by collective agreements. Unlike union density rates, bargaining coverage rates tend to be rather stable over time. The main recent change in the average coverage rate (see Table 1.1) is the effect of the 2004 and 2007 enlargements, which added a group of countries where the institution of collective bargaining, in particular its sectoral format based on employer organisation, was much less established or had to be built up from scratch (Visser 2007a). However, over the years, with each enlargement the variation in bargaining coverage rates among single Member States did increase (see Table 1.2), suggesting divergent experiences. The high average was maintained because some Member States (Belgium, France and Austria) moved to an almost 100 % coverage rate, counterbalancing the fall in coverage rates in other Member States (the UK in particular and to a lesser degree Germany) <sup>(3)</sup>.

The main explanation of high coverage rates is the existence of sectoral (or multisectoral) employers' organisations with a mandate to conclude agreements with sectoral (or multisectoral) unions. Such organisations exist and have a bargaining mandate in most EU-15 states, though no longer in the UK, but are sparse in the new Member States (except in Slovenia and, to a lesser extent, in Slovakia). In addition to employer organisations there is also the effect of public policy. In many EU countries the social partners can ask the government to declare contracts generally binding, thus preventing competition to undercut the agreed wages, working hours or other conditions. This raises the coverage rate and in many sectors makes agreements viable, especially when union membership is low (though in many cases the requirement is that, before extension, the agreement must cover at least half of employees, meaning that either employers or unions must be well represented). Extension, however, is only possible where there is a sectoral agreement. Thus even where Member State laws provide for the possibility of extension but unions and employers cannot reach sectoral or multi-employer agreements, the effect will be nil. (France, where the law also allows the Minister to enlarge agreements to other sectors is exceptional in this regard.) Generally, most EU governments endorse collective bargaining. The same message comes from the European-level social dialogue.

The cornerstone of bargaining coverage and of the ability of unions to reduce the pay differentials between workers employed in different firms is the organisation of **bargaining at the level of sectors or above** (Teulings and Hartog, 1998; Streeck, 2005, Traxler et al., 2001). The figures in Tables 1.1 and 1.2 are based on a three-point scale. If bargaining in the market sector occurs at the sectoral level, or above the sector at the national level for the

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<sup>(3)</sup> For historical data going back to the 1950s and 1960s the reference is Ochel (2001) based on qualified guestimates from industrial relations experts. For the 1970s and 1980s the best source is Traxler (1994).

entire economy or private sector, a score of ‘2’ is given. If sectoral bargaining is shared or alternated with company bargaining, with limited authority of national unions over local bargainers, the score is ‘1’. If sectoral bargaining is absent or rare, the score is ‘0’. The average statistics calculated for the EU Member States indicate that the sectoral model is predominant in Europe, though weakening since the 2004–07 enlargements, as it has had difficulties establishing itself in most of the new Member States. On this account, the variation between Member States has increased.

Coordination of wage bargaining across the economy — between unions and employers, and within union or employers’ organisation, with or without the help of the government — provides another measure of ‘solidarity’ bargaining, for instance expressed through wage moderation in times of high or rising unemployment.

### **Box 1.3: Index of bargaining coordination**

- 5 = economy-wide bargaining: based on enforceable agreements between the central organisations of unions and employers affecting the entire economy or entire private sector, or by government imposition of a wage schedule, freeze, or ceiling.
- 4 = mixed sector and economy-wide bargaining: central organisations negotiate non-enforceable central agreements (guidelines) and/or key unions and employers associations set pattern for the entire economy.
- 3 = sector bargaining with no or irregular pattern setting: limited involvement of central organisations and limited freedoms for company bargaining.
- 2 = mixed sector- and firm-level bargaining: with weak enforceability of industry agreements
- 1 = none of the above: fragmented bargaining, mostly at company level.

This index is based on Kenworthy (2001) and applied with some small modifications. Traxler, Blaschke and Kittel. (2001) offer an alternative two-dimensional index, in which the level of bargaining, and coordination, is distinguished from the capacity of organisations to enforce, jointly or individually, their commitments. Important as this is, this element is picked up in the centralisation measure, discussed in Box 1.2.

Chart 1.4, based on the indicator described in Box 1.3, suggests there is considerable variation among EU Member States combined with stability over time within individual Member States. The major changes are observed in Ireland, where a period of uncoordinated bargaining in the 1980s was followed by a series of social pacts that fixed maximum ceilings on wage increases across the economy. Belgium and, in later years, Finland are other examples of such attempts at coordination in which the state takes an active role. In contrast, after a period of centralised wage agreements, both Sweden and Denmark moved to lower (sectoral) levels of coordination. Quite a number of Member States are now applying mixed sector and economy-wide bargaining or pattern setting (‘4’) and irregular sectoral bargaining (‘3’) or mixed sector and company bargaining (‘2’). Economy bargaining based on enforceable agreements or direct state imposition is rare, as is lack of coordination above the company level — currently found only in the UK and Malta. In central and eastern Europe and in France the state often attempts to use the statutory minimum wage and/or wage setting in the public sector as a ‘lighthouse’ for coordinating wages throughout the economy, but such attempts are easily thwarted by politically and electorally motivated decisions on minimum wages and specific labour market pressures in the public sector.

### ***Pillar 3: Generalised arrangement of information, consultation, and perhaps co-determination in the firm based on the rights of workers and unions to be involved***

The ability of workers, directly or through their unions, to set up and be represented by an elected works council or system of representation within the firm is the main institutional provision under pillar 3. Such a provision may be based on a general agreement, as tends to be the case in Scandinavia, on a company or sector agreement, as used to be the case in the UK, or it may be mandatory by law, as is the case now in most EU Member States. In March 2002 the European Council and Parliament adopted Directive 2002/14/EC establishing a general framework for informing and consulting employees. This directive applies to firms employing at least 50 employees.

Employee representation at the level of enterprises or firms is measured by a three-point scale constructed on the basis of two questions which, if both answered with 'yes', result in a score of '2'. If one is answered with 'yes' the score is '1' and if none is answered with 'yes' the score is '0'. The first question is whether there is a right to information and consultation based on public law and/or a general agreement with binding effect on firms; the second question asks whether all firms above the size of 50 employees are effectively covered. Due to European legislation, there appears to be a mildly convergent trend since the 1990s, after a divergent experience in the 1970s and early 1980s. Considerable change occurred between 2000 and 2006 as a result of Directive 2002/14/EC, though the transposition of the directive has not yet been fully completed in all Member States and effective coverage is yet unclear in many Member States (European Commission 2008, Eurofound, 2008a). Notwithstanding uncertainties due to the sample size of the survey data used, Chapter 3 of the *Industrial Relations in Europe 2006 report* provides data on coverage.

It should be added that the numbers shown in Tables 1.1 and 1.2 do not say much about the effectiveness of worker consultation and information in firms, let alone co-determination rights. For a discussion of the modalities of worker consultation and information in firms see also *Industrial Relations in Europe 2006 report*, Chapter 3.

### ***Pillar 4: Routine participation of unions in tripartite policy arrangements***

Routine involvement of the social partners, and of unions in particular, in consultation over social and economic policies, and in the implementation of these policies, is a core element of the social dialogue at all levels: in the firm (see pillar 3), in the Member States and at EU level (see next section), both in sectors and at the cross-sectoral level. This routine involvement can come in different forms: it may be guaranteed by state or EU law (as in Articles 136 to 139 of the Treaty), be embodied in councils or tripartite advisory bodies or Committees that regularly meet and discuss government policy which exist in many Member States and at EU level, or it may be more informal, although more than just an ad-hoc affair only convened in times of crisis and necessity. The Austrian social partnership based on informal yet regular participation of social partners in social and economic decision-making is a case in point (Guger, 1998). Routine participation requires a degree of institutionalisation, that is, the established and validated expectation and belief of all participants that they will be consulted over policy decisions and that their views will be taken into consideration. Such beliefs and expectations may be anchored in a law or formal agreement, but they may also be based on custom and practice. The point is that when beliefs are invalidated and expectations not honoured, for instance when governments take decisions without consulting the social partners, it stirs a major upheaval, as was the case when, for instance, the Austrian government decided in 2000 and again in 2003 to change the pension system without serious negotiations with the unions.

Where there is routine participation, a score of ‘2’ is assigned; where participation sometimes takes place, or is dependent on the government of the day or the stance of the social partners, score ‘1’ is attributed; where there is never consultation the score is ‘0’.

Consultation over social and economic policy through the routine involvement of the social partners — an essential part of the social dialogue — is practiced in nearly all EU Member States, though not always on a regular basis. The current exceptions, with only ad hoc consultations, are found in the UK and many of the new Member States. Since the mid-1990s and again after 2004 the variation between Member States has decreased.

The conclusion of a social pact between the social partners, or one of them, and the government, with reciprocal commitments and promises, is another more stringent measure of involvement. Social pacts tend to be specific responses to crises or emergency situations, or in any case historically specific attempts to ensure the cooperation of all relevant social actors for the purpose of attaining specific targets, like EU membership, participation in the EMU or the Lisbon Strategy objectives, though in some cases these pacts may institutionalise into a repeated pattern or experience and blend with routine involvement of governments in wage policy and the social partners in government decision-making over social and economic issues. The most prominent example is Ireland, where seven multiannual pacts have been signed since 1987.

Social pacting is an experience that began in the 1970s and has remained ever since, now applying to a quarter - in the previous period to one third - of the EU Member States (Table 1.1). However, variation across EU Member States was, and is, massive (Table 1.2). There are some Member States in which there are many social pacts; and many other Member States where there is just one or none. In this respect, there appears to be little convergence.

### ***First interim conclusion***

For some of the elements of importance for industrial relations and social dialogue — union organisation or density; coordination of bargaining; employee representation in firms or establishments; involvement in consultation over social and economic policies on a regular basis — the experience since the mid-1980s points to a mildly convergent development or, at any rate, a halting of the sharply divergent trends of the 1970s and early 1980s. This development is visible in spite of subsequent enlargements, although the latest and largest enlargements, in terms of Member States added, have tended to add to diversity. This conclusion suggests an influence from (preparing for) participation in the EU, although other developments (similar pressures based on globalisation or domestic political, social or economic changes) may also play a role. However, the comparison with the 1970s, when industrial relations responded with widely divergent policies to similar pressures, is striking. The fact that EU social policies gained more bite after the mid-1980s, as we show below, may also have enhanced the increased commonality. This development is, however, not visible in one area where the EU level is least influential: the organisation of trade unions and employers’ associations, and the organisation and coverage of collective bargaining. It is exactly in these indicators, and in the experiences of social pacts, that we see the largest and still widening divergence.

## **The Europeanisation of industrial relations**

The possibility of creating an EU-level industrial relations system has been described in various ways. Hyman (2001) groups these views into three approaches. One of them sees the EU as a ‘vehicle of social regulation of the internationalising labour market’ (Hyman,

2001:290; see Falkner, 1998). As supporters of this view argue, in recent years a European industrial relations system has been emerging, which is evidenced by existence of EU-level actors like the ETUC or BUSINESSEUROPE, who produce EU-level rules promoting high social standards. A second, contrasting view, argues that European integration has been, as a matter of fact, 'a process of economic liberalisation by international means' (Streeck, 1998:429). Its main goal has been to raise the competitiveness of European companies in the globalising world economy and to create a common market able to face the challenge of the American and later the Asian markets. Advocates of this interpretation of the European project claim that industrial relations at EU level is 'a matter of form rather than substance' (Hyman, 2001:290; see Streeck, 1998; Streeck and Schmitter, 1992). A third approach adopts a Euro-realist perspective which, on the one hand, does not downplay the obstacles to building a supranational industrial relations arrangement but, on the other hand, recognises the achievements of the EU in constructing the 'social dimension' of the European integration process and the potential for further development.

This chapter builds on the third approach and argues that Europeanisation is both a mechanism promoting market-building and a means to counter its negative effects by promoting social regulation. On the one hand, it is obvious that national systems have to strengthen their responses to new competitive conditions, often by reconfiguring national welfare and labour market institutions and policies, in order to face global competitive pressures but also to comply with the market-building agenda of the EU. Within a liberalising European market, 'established forms of national cross-company standardisation of which the sectoral collective agreement has been the principal instrument' are under pressure, perhaps even threatened (Hyman, 2001:288). More freedom for multinational companies in selecting locations for production based on comparative advantages in labour costs between Member States as well as free movement of labour have posed challenges to the traditional industrial relations institutions. On the other hand, Member States have to adopt the growing social *acquis* to ensure participation of social partners, information and consultation of employees, to conform to health and safety requirements and anti-discrimination law and policies. These contrasting effects of Europeanisation have been particularly visible during the recent (2004 and 2007) EU enlargements. Upon joining the European Union, the post-socialist central and eastern European countries (CEECs) had to adopt and implement the *acquis communautaire* including its social regulations. The challenge of reconciling market-building with social solidarity has had to be met in the context of an EU understanding of markets and social institutions that was relatively new in the central and eastern European region.

Since the 2000 launching of the Lisbon Strategy with a focus on 'boosting employment, economic reform and social cohesion within the framework of a knowledge-based economy' (Council, 2000) there has been an ongoing debate about the compatibility of its social and economic goals. However, as has been convincingly claimed by Traxler, 'there is no structural contradiction between the economic and socio-political dimensions of European integration' (2002:7). Indeed, it can be further argued that not only are the social and economic goals pursued within the European integration process compatible, but they may be mutually reinforcing: a particular selection of social policies can be helpful in achieving economic goals and good economic policy is necessary for reaching social goals. On the one hand, as shown by the example of Ireland (Wickham, 2002), implementing EU labour legislation (rights of representation and consultation, the regulation of working conditions, laws against discrimination, etc.) does not have to stand in the way of economic growth. On the other hand, the example of Nordic countries suggests that liberalising market reforms (aimed at raising a country's competitiveness within the globalising economy) can be successfully combined with a developed welfare state (Sapir, 2005). In the Nordic countries, ambitious labour market reforms drawing on the flexicurity approach have kept

unemployment down without triggering social exclusion or a major increase in poverty (OECD, 2006; see also Visser and Hemerijck, 1997, for the example of the Netherlands). They have been accompanied by family-friendly policies and decentralisation of education and healthcare systems (Giddens, 2007; see also Palme, 2005). Crucially, the quality of industrial relations has proved to be of major importance in achieving the two — economic and social — goals. Not only have the reforms in Nordic countries left space for involvement of social partners, but constructive cooperation of employees and unions has been fundamental for these positive outcomes.

In broader terms, the positive impact of cooperative industrial relations on labour market performance has been defended, *inter alia*, by Freeman and Medoff (1984). Empirical evidence supporting this argument has been discussed, for example, by Blanchard and Philippon (2004) who, based on a sample of industrial European countries, found that cooperative industrial relations played an important role in alleviating unemployment rates, while ‘countries with worse [conflictual] labour relations have experienced higher and longer-lasting unemployment’ (2004:2). This has been corroborated by Feldman on a larger sample of industrial, developing and transition countries (2008). Feldman’s conclusion is that cooperative industrial relations ‘have a noticeable pay-off in terms of lower unemployment’, both ‘among the total labour force, and among women and youths’ (Feldman, 2008:201).

### **The place of industrial relations in the EU economic and social governance**

For decades after the inception of the European integration project, the capacity of the Community to build an EU-level industrial relations arrangement remained limited. Among the reasons, Marginson and Sisson list ‘the economic focus of the political project which led to its creation and enlargement; the narrow scope of its competence in the field of industrial relations enshrined in the Treaty of Rome and subsequent revisions [...]; the requirement to secure unanimity in the Council of Ministers for matters other than health and safety and the working environment [...]; and the weakness of the social partners [...] in relation to their constituent national affiliates’ (1998:513). Nonetheless, industrial relations have occupied an increasingly important place within the EU approach to economic and social policies, and the obstacles mentioned above have been gradually reduced.

The importance of industrial relations across the common market was recognised already in the Treaty of Rome (1957). In Part One (‘Principles’), the Treaty expressed the Community’s commitments to, *inter alia*, maintaining a high level of social protection for workers. However, Part 3 of the Treaty (the Title on Social Policy) did not contain legal provisions for developing transnational industrial relations. Article 118 limited the Commission’s role to promoting ‘close collaboration’ between Member States in the fields of ‘employment; labour law and working conditions; vocational training; social security; prevention of occupational accidents and diseases; occupational hygiene; the right of association, and collective bargaining between employers and workers’. And while Article 119 was explicit in formulating the ‘equal pay for equal work for men and women’ principle, it was only implemented years later (the 1975 and 1976 gender equality directives). Other legislation adopted by the end of the 1970s, apart from measures facilitating the free movement of workers, had included directives on the procedures regarding collective redundancies, and the protection of workers’ acquired rights in case of a transfer of the undertaking to another owner (Threlfall, 2006).

The policymaking in the social area including industrial relations intensified in mid-1980s thanks to the vision of ‘a greater social dimension to the European integration project’

proposed by Commission President Jacques Delors (Threlfall, 2007). This approach 'legitimated and provided fresh impetus to the introduction of EU measures in the industrial relations field' in the following years (Marginson and Sisson, 1998:513; see Hall, 1994). As a result, EEC guiding social principles were embodied in the Community Charter of Fundamental Social Rights for Workers adopted in the form of declaration by all Member States in 1989 (with the exception of the United Kingdom).

In that period, the social dialogue between social partners on the Community level received recognition from the Commission, first in the White Paper on completing the internal market (1985) and later in a working paper entitled 'Social dimension of the internal market' (1988). The latter document stressed that 'dialogue between labour and management has an absolutely essential role to play in building Europe' (European Commission, 1988:32). Formal recognition of the European social dialogue, and of the Commission's role in promoting it, came with the 1986 Single European Act, through Article 118b.

In the discussions that accompanied the preparation of the 1989 Charter of Fundamental Social Rights and the Treaty of Maastricht (1991) 'social dialogue was considered important first as an institution-building process necessary as a precursor to any European industrial relations system, and second as a potential joint regulatory procedure alongside other more centralised and legalistic forms' (Gold et al., 2007:9). These functions were provided for by the Social Policy Agreement appended to the Social Protocol annexed to the Treaty of Maastricht. The Social Policy Protocol extended the use of qualified majority voting to cover a broader area of employment and industrial relations issues. Further, it provided for agreements concluded between the social partners to acquire the force of legislation. This was a 'procedural breakthrough' (Leibfried, 2005) in terms of an alternative means of introducing EU-level regulation by allowing the European social partners to act independently of the Council and the European Parliament.

In the mid-1990s, a piece of legislation contributing to an emergence of transnational industrial relations in the EU was the 1994 European Works Council Directive. The 2002 Information and Consultation Directive has further extended this procedure into national forums by establishing a general framework for informing and consulting employees in firms employing at least 50 employees <sup>(4)</sup>.

The 1997 Intergovernmental Conference and the Treaty of Amsterdam brought into the focus the issue of the failing European labour market. The Treaty specified, in Articles 125-130, that the Member States and the Community were required to work towards developing 'a coordinated strategy for employment'. Later that year, the European Employment Strategy was inaugurated, based on an agreement of Member States to coordinate their employment policies through relying on common guidelines, indicators, decentralisation, evaluation and mutual learning. This procedure for implementing the European Employment Strategy is known as the Open Method of Coordination.

The 1997 Intergovernmental Conference resulted in an agreement to include the Charter of Fundamental Social Rights into the Treaty of Amsterdam. The Social Policy Agreement was incorporated into the Treaty as the current Articles 136 to 139, which enhanced the role of European social partners (the European federations of trade unions and employers) as 'potential co-legislators in the social policy domain' (Visser, 2007b:62). These changes have given the 'social dimension' a 'much needed treaty-based legitimacy' (Marginson and Sisson, 1998:514).

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<sup>(4)</sup> Article 17 of the Community Charter of Fundamental Social Rights of Workers provided for a right of information, consultation and participation of workers 'taking account of the practices in force in different Member States', but this clause was non-binding.

The historical account of the incremental developments in industrial relations at the EU level suggests that the constraints to building a supranational set of industrial relations arrangements listed at the beginning of the section have been gradually softening. The economic focus of the European integration project has been, especially since the mid-1980s, paralleled by the development of the ‘social dimension’; qualified majority voting has been extended to cover a growing area of employment and industrial relations matters; the position of the social partners at the EU level has been enhanced thanks to their gradual inclusion in the legislative process; finally, while the Member States remain unwilling to compromise their sovereignty over social policy areas (Borrás and Jacobsson, 2004), the unspecified resistance and specific blocking powers (Wallace, 2005:61, cited in Threlfall, 2007:281) have been partially overcome.

This has been possible thanks to a specific approach: as the use of Community legislation in the field of industrial relations has been limited, it has been complemented by other methods and routes which after Threlfall (2006; 2007) can be called ‘procedural innovations’, like stipulating charters on principles and values; annexing agreements to treaties; enabling social partners to influence and take decisions on social policy at the EU level; fostering benchmarking, learning and cooperation between Member States.

This approach has resulted in a mixture of hard (legally binding) and soft (non-legally binding) measures that add up to emerging EU-level industrial relations. As a result, during the five decades of the existence of the Communities, unique features of EU-level industrial relations arrangements have been constructed, consisting of common values and principles; institutions; procedures and policies. Below, we enumerate and briefly discuss the most important characteristics of European industrial relations.

### ***Charter of Fundamental Rights of the European Union***

After 20 years, the Charter of Fundamental Rights has received recognition with a legally binding reference included in the body of the Treaty of Lisbon, which is currently awaiting ratification by the Member States <sup>(5)</sup>. The charter has been recognised by the Court of Justice of the European Communities as part of the general principles of Community law. The seven chapters of the Charter, covering fundamental rights relating to dignity, liberty, equality, solidarity, citizenship and justice, are an expression of principles and values endorsed by the EU Member States. In the charter, social and economic rights receive the same status as civil and political rights, which arguably is a groundbreaking development in terms of defining fundamental rights, not only within the EU but worldwide. Also, based on the charter’s provisions, the EU institutions are expected to promote a European social model. Of particular importance in promoting EU-level industrial relations are the provisions on the protection of personal data (Article 8), freedom of association (Article 12), freedom to choose an occupation and right to engage in work (Article 15), non-discrimination (Article 21), equality between women and men (Article 23), workers’ right to information and consultation within the undertaking (Article 27), right of collective bargaining and collective action (Article 28), protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), prohibition of child labour and protection of young people at work (Article 32) and reconciliation of family and professional life (Article 33).

### ***European social dialogue and European social partners***

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<sup>(5)</sup> Poland and the UK demanded and obtained the assurance that this reference would not affect national labour laws.



In 2002, the Barcelona European Council stated that the European social model is about good economic performance, a high level of social protection, and social dialogue. Collective bargaining between unions and employers, information and consultation of employees in firms and employing organisations, consultation of unions and employers on social and economic policies or negotiations between them and with the public authorities are all manifestations of the social dialogue. Social dialogue can then be defined as societal and institutional (legal and political) support for the routine consultation of employers (organisations) and trade unions on matters of social and economic policy, combined with structured contractual and non-contractual relations between employers (organisations) and trade unions. As mentioned before, social dialogue appears to be a distinctive feature of industrial relations in the European Union; in the Commission's words, it is 'rooted in the history of the European continent' (European Commission, 2002a:7) (for a contrasting view, see Schroeder and Weinert, 2004). The European social dialogue, as provided for under Articles 138 and 139, can then be seen as a unique feature of EU-level industrial relations, distinguishing it from weaker arrangements in other regional integration endeavours (*infra*).

The European social dialogue contributes to enhancement of social goals at the EU level and to the convergence of Member States' industrial relations regimes with different modes of social regulation. The impact of the European social dialogue is visible in the form of regulation produced on the basis of agreements (at cross-industry or sectoral level) establishing minimum standards. Article 139(2) provides for two implementation routes of agreements signed by the European social partners: implementation 'according to the procedures and practices specific to management and labour and the Member States and ratification by a decision of the Council of Ministers (directives). Intersectoral framework agreements implemented by means of directives cover the issues of parental leave (1995), part-time work (1997), working time in sea transport (1998), fixed-term contracts (1999), mobile workers in civil aviation (2000), and working conditions of mobile workers in cross-border services (2004). The outcomes of the 'autonomous agreements' include the European framework agreement on telework of 2002, one on work-related stress of 2004, and another on violence and harassment in the workplace of 2007 (see Chapter 4).

Crucially, the intensifying interaction of European social partners and social partners from Member States within the European social dialogue fosters their socialisation (defined as 'a process of inducting actors into the norms and rules of a given community; its outcome is sustained compliance based on the internalisation of these new norms', Checkel, 2005:804). This process is of particular importance for the social partners from the EU-12. Lessons drawn from such cooperation enhance their position in the national setting (see Visser and Ramos Martín, 2008). European social dialogue seems then to be also a means for 'horizontal' Europeanisation both for policies and mechanics of change (European Commission, 2004).

The very existence of European social partners, an obvious *sine qua non* for the European social dialogue to take place, is also a unique feature of EU level industrial relations. In its communication of 1993, the Commission specified the criteria (later formalised in a Decision of 1998) according to which European social partners are recognised. Organisations of management and labour should 'be cross-industry or relate to specific sectors or categories and be organised at European level; consist of organisations, which are themselves an integral and recognised part of Member State social partner structures [...]; have adequate structures to ensure their effective participation in the consultation process' (European Commission, 1993:5). Eighty-one such organisations have been recognised. The cross-industry European social partners are BUSINESSEUROPE (formerly UNICE) representing European employers in the private sector, the European organisation of employers in the public sector (CEEP), the European Association of Craft, Small and

Medium-sized Enterprises (UEAPME) and the European Trade Union Confederation (ETUC). They are involved in tripartite concertation at the EU level and have signed European cross-industry agreements (see Box 1.6).

### ***European Works Councils***

The existence of a workplace employee representation and participation structure (based on law or collective agreements) is a distinctive feature of European industrial relations (Eurofound, 2005). European Works Councils (EWCs) are a specifically EU-level development deriving from a regulatory initiative of the Commission, but also from pressures by European multinational companies in the context of ‘increasingly integrated production systems across Europe’ (Marginson, 2000:10), as well as counter-pressures from trade unions across Member States. While formally designed as employee information and consultation structures, the EWCs appear to have offered trade unions in EU Member States ‘a new platform for cross-border information exchange and cooperation’ (Arrowsmith and Marginson, 2006:246, see also Box 1.4 ‘Transnational collective bargaining in Europe’). The EWCs have also offered opportunities to trade unions representatives in new Member States to enhance their practical experience in exchanging cross-country information and negotiating with management (Eurofound, 2006).

EWCs can be seen as extensions of national systems of workplace representation (Streeck, 1997). However, other authors — based on empirical analysis of the provisions establishing EWCs and their functioning — find that while ‘traces of the national systems in which a given multinational corporation is headquartered are undeniable’, EWCs ‘represent an intersection of country-specific and transnational influences’ and are evolving into organisms whose behaviour and practice are ‘transnational or European in nature’ (Marginson, 2000:29–30).

### ***Transnational coordination of collective bargaining***

In recent decades, the internationalisation of the global economy in general and, in particular, the ‘ever closer integration of markets for products and services, capital (including the “market” for production locations) and — especially since the EU’s 2004 and 2007 eastern enlargements — labour’ (Marginson, 2008) have considerably changed the conditions for collective bargaining in Europe. Increasingly, the so-far nationally bounded context has been acquiring transnational interdependencies.

Since the early 1990s, institutional developments within the EU industrial relations arrangement have enhanced intra-European transnational coordination of collective bargaining. The agreements stipulated through the European social dialogue ‘have paved the way for further negotiations on matters of social and employment policy at multisector level’; further, the establishment of the European works councils ‘has given a direct impetus to collective negotiation between management and labour’ in European multinationals (Marginson and Sisson, 1998:505–506). It is too early to give a definitive judgment on the influence of EWCs on actual outcomes. Some contend that EWCs as a means of coordinating union positions in different countries have been ineffective (Hancké, 2000). Others, however (Lecher et al., 2001; Marginson et al., 2004; Arrowsmith and Marginson, 2006), have presented evidence that EWCs may facilitate transnational bargaining (see Box 1.4).

#### **Box 1.4: Transnational collective bargaining in Europe**

Two forms of transnational collective bargaining have progressively emerged over recent years. Both forms implicate European works councils (EWCs), in a manner which de facto extends their remit beyond the provision of transnational employee information and consultation as specified in the 1994 EWCs Directive.

The first form is implicit and takes the form of cross-border exchange of data relevant to national and local bargaining, by either employers or trade unions, with the aim of setting the context for negotiations. Such activity may result in coordination of bargaining agenda and outcomes across different national and local negotiations.

There is a striking asymmetry in the predominant level of employer and trade union ‘context setting’ and coordination activity, respectively. Amongst employers, the primary focus of activity is the company level, through management systems in multinational companies (MNCs) which systematically monitor workforce costs, flexibility and performance in local operations, enabling management to compare these across borders and deploy the results in local and national negotiations. The use of such ‘coercive comparisons’ to secure common outcomes in a linked series of local negotiations within an MNC is well documented. Recent evidence from the automotive sector indicates that some EWCs have been mobilised by either management or trade union and employee representatives for context-setting activity purposes in local negotiations. For trade unions, the primary focus of activity is at sector level, through cross-border bargaining cooperation initiatives. These have been instigated by a number of European industry federations (EIFs), notably the European Metalworkers Federation, and also under bilateral and multilateral arrangements between national unions in some cross-national regions within the EU. They aim to share bargaining information across borders, coordinate bargaining objectives and monitor outcomes, although in practice coordination of key outcomes such as wage increases is yet to be realised.

The second is ‘explicit’ and involves transnational negotiations between the management of MNCs and workforce representatives, either international trade union federations and/or EWCs, which result in the adoption of joint texts and non-binding framework agreements of varying degrees of regulatory ‘hardness’ or ‘softness’. Such agreements have been concluded in a small, but growing, number of MNCs, and involve two main developments. Those concluded by EWCs are specifically European in scope. By late 2007 these were estimated at over 70 concluded with 40 MNCs, figures which have increased from 17 agreements in just nine MNCs in 2001. These EWC agreements address a range of topics, amongst which four themes are prominent: corporate social responsibility, including core labour standards; elaboration of key principles underpinning company employment policies; business restructuring and its effects; and specific aspects of company policy, such as health and safety or data protection.

‘International framework agreements’ (IFAs) are global in scope, concluded with MNCs by international trade union organisations, most commonly global union federations (GUFs), sometimes in conjunction with national trade unions from the ‘parent’ country. IFAs address core labour standards, and tend also to cover the supply chain as well as the MNC’s operations. Some 65 had been concluded by mid-2007, almost all since 2000. Although global in their reach, the great majority have been concluded with European-based multinationals, possibly signifying greater familiarity with company-based social dialogue and therefore greater preparedness to engage in social dialogue at a global level.

The main negotiating agent on the employee-side differs between these two main types of transnational agreement. Yet, the two forms, and therefore their employee-side signatories, intersect. One in four IFAs have been co-signed by EWCs, and in several others EWCs are accorded a role in their implementation. Conversely some, but not all, EWC agreements are co-signed by EIFs and/or national trade unions: recent prominent examples include those at Schneider Electric (EMF) and Suez (EPSU and relevant French trade unions).

Whether EWC agreements are intended to be mandatory in their implementation for the signatory parties, and for management and employee representatives within company operations across Europe, varies considerably. At the softest end of the possible regulatory spectrum are agreements which elaborate general principles of a company's personnel policy, but which do not envisage or require any specific actions. Examples include the charters adopted at Suez and Vivendi. Somewhat harder in their regulatory nature are agreements which commit the signatory parties to specific actions, such as the establishment of a health and safety observatory at ENI, but do not invoke action by local management and employee representatives. A degree harder also are framework agreements which establish a set of general principles on a specific issue, and incite — but do not require — follow-up action by management and employee representatives at lower levels of the MNC. Examples include Danone's agreement on training. Harder still in their regulatory nature, and coming closest to the status of the provisions laid down in national and local company agreements, are obligatory frameworks which require actions by the parties at lower levels within the company, but where national and local-level practice in implementation can vary. The principal instances are the agreements on specific restructuring decisions at major automotive manufacturers such as Ford Europe and GM Europe.

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### ***Macroeconomic Dialogue***

Established during the German Presidency in 1999, the Macroeconomic Dialogue provides a high level forum for the exchange of views between the representatives of the Council (or more precisely: the troika of the current, subsequent and previous presidencies), the Commission, the European Central Bank and the European social partners. The dialogue is based on the principle that key macroeconomic policy stakeholders and decision-makers and those responsible for wage formation (management and labour organisations) should have a proper understanding of each other's positions and constraints in carrying out their respective responsibilities. Against that background, its purpose is to improve the interaction between wage developments and monetary and fiscal policies. In the Council's view, it is 'an effective way to approach implementing the growth- and stability-oriented macroeconomic policy forming part of the broad economic policy guidelines as pursued by the Member States and the Community' (Council, 1999). Like the European social dialogue, it is a unique structure, specific to the EU industrial relations arrangement. Unlike the European social dialogue, however, the Macroeconomic Dialogue produces no binding results, no binding conclusions and no joint 'target-setting'.

While the ETUC has proposed to strengthen the Macroeconomic Dialogue and to create 'a European framework formula for collective bargaining' (Eurofound, 2007c), the European Central Bank's interpretation of the Macroeconomic Dialogue role is that of 'a forum within which the various policy actors could be kept informed of developments in other relevant policy areas' (ECB, 2000:90) and not a coordination institution. In theory, the Macroeconomic Dialogue could provide a forum for synchronising wage policy with monetary policy (the European social dialogue cannot play this role, as the Social Protocol

annexed to the Treaty of Maastricht explicitly excluded wages from its dealings). The views of the ETUC and BUSINESSEUROPE on the Macroeconomic Dialogue, are set out in the article on p. 133.

### ***European Employment Strategy***

The European Employment Strategy (EES), launched in 1997 and reformed a number of times since, is one of the key elements of the Lisbon strategy. The Employment Chapter of the Treaty of Amsterdam which institutionalises the EES is based on the idea of shared responsibility of national governments and EU institutions in obtaining particular results in the EU labour market (Kilpatrick, 2006). To facilitate the implementation of this idea, the EU ‘employment policy toolkit’ has been expanded to include the Open Method of Coordination, aiming ‘to unleash the EU’s social dimension from the constraints of the Community method’ (Borrás and Jacobsson, 2004:186). Indeed, some see the OMC as the most significant innovation in labour market governance on the EU level (Zeitlin, 2003).

The European Employment Strategy stipulates the involvement of social partners. Here, there is still need for enhancement of the social partners’ role, as stressed both by the Commission and the Council, because experience suggests that consultation rather than participation through partnership is the rule in almost all Member States (European Commission, 2002b; Council, 2005). (On the involvement of social partners in OMC see also Gold et al., 2007). Chapter 2 of this report analyses further the contribution of the social partners to the Lisbon agenda.

### **Second interim conclusion**

The above list of institutions and processes is a testimony to the emergence of an EU-level industrial relations arrangement, although the outcomes are still modest in terms of the effectiveness of the transnational institutions. In terms of the four pillars supporting the core European industrial relations arrangements at the national level, as discussed in the first section of this chapter, they appear to be developing also on the EU level. As for the first pillar, it is true that the ETUC’s strength is limited as the federation continues to be characterised by a very low degree of centralisation, with very limited resources and power to direct or control its affiliated national and sectoral member organisations. The same is true for BUSINESSEUROPE, UEAPME, and CEEP as their capacity to direct member organisations is even more restricted and sectoral organisations at the European level are not integrated (Streeck and Visser, 2006). Secondly, a transnational dimension to collective bargaining has been emerging over recent decades, fostered by EU-promoted processes and institutions. Thirdly, since the adoption of the 1994 EWCs directive, the practice of informing and consulting the workforce in transnational contexts has been steadily advancing, involving a growing number of European multinational companies. Finally, the European social dialogue — despite its shortcomings — has become a defining characteristic of EU-level industrial relations, as it allows for the participation of social partners in supranational tripartite policy arrangements.

### **The European Union compared to other regions in the world**

When it comes to its social model, labour rights and industrial relations arrangements, the European Union (EU) is usually compared with other major industrialised countries. For example, since 2000 the European Foundation for the Improvement of Living and Working Conditions (Eurofound) has published annual surveys of industrial relations in the EU, Japan

and the USA, with recently some references to developments in China and India<sup>(6)</sup>. The most common comparative perspective on the European social model or models confronts the EU and the USA. In these accounts the EU usually compares positively with the USA from the point of view of employee rights and social cohesion (Wickham, 2002)<sup>(7)</sup>, and rather negatively from the point of view of economic growth, flexibility and innovation (Alesina and Gavazzi, 2006). Other accounts stress the EU internal diversity and admit that there are combinations of social and economic policies and institutions within Europe that do as well as or better than the USA on efficiency and equity (OECD, 2006; Sapir, 2005).

There is something incorrect, however, in comparing the EU with Japan, the USA, or other states in the global economy. These are different units of analysis. Japan is a unitary state, like France; the USA is a federal state, like Germany or Belgium. The EU, in contrast, is neither a state nor a federation, but a regional organisation based on intergovernmental cooperation combined with state-like features as well as a common social foundation ('union'). A more proper comparison, therefore, would be between the EU and other regional organisations, like those between trading partners in North America or South America (NAFTA and Mercosur respectively), in western Africa (Ecowas) or southern Africa (SADC) or in south-east Asia (ASEAN).

Apart from methodological considerations, interregional comparison is also justified by the increasing relevance of the interregional dimension in the global economy. Most international trade in goods and services, and the largest flows in labour migration, happen within world regions. Within international organisations like the WTO or ILO the position of regional groups has been gaining importance. Interregional negotiations represent the most distinctive features of the EU external trade policy. (The EU common commercial policy entitles the Commission to negotiate on behalf of the 27 Member States.) Apart from the framework of the WTO (of which the EU has been member and one of the key players since its creation in 1995), the EU conducts trade negotiations with other regional groups like NAFTA, Mercosur or SADC. Usually, the goal of these negotiations is to strengthen interregional arrangements through association, cooperation and partnership agreements, in which promotion of social policies and labour rights features as an important element of the EU policy, as specified in the 2004 Commission communication on the 'Social dimension of globalisation'. First the main features of industrial relations arrangements and social dialogue in three of the main global players — the EU, Japan and the USA — will be compared following the traditional approach. Subsequently, the EU industrial relations and social policy institutions will be compared with those in other global regions (see Box 1.5 for methodological remarks).

### **Box 1.5: Traditional vs interregional approach**

There are methodological problems with both approaches presented in this chapter. For the traditional approach, comparing the main features of industrial relations arrangements and social dialogue in the EU, Japan and the USA, it would have been desirable to include China, India or Brazil, but comparable information is missing on nearly all indicators. The data shown here relate to (the average of) 2004–06 and consider the EU before (EU-15) and after (EU-27) the two recent enlargements. It is based on the ICTWSS database, completed with information from the annual surveys of Eurofound, which offer a very useful comparison between these three global actors on key economic, political and legislative developments; social partner developments; the main collective bargaining issues, coverage

<sup>(6)</sup> Published online as part of the European Industrial Relations Observatory (<http://www.eurofound.eu>). In July 2008 the European Foundation published its seventh report in the series, comparing developments in the EU with Brazil, China, Japan and the USA (European Foundation, 2008b).

<sup>(7)</sup> The simplest difference between the USA and Europe is that we have welfare states and they don't, J. Wickham (2002).

and coordination, as well as major events and trends in industrial conflict (Eurofound, 2008b). On most aspects these surveys actually illustrate developments in the EU by referring to what happens in Member States, clearly demonstrating how difficult it is to speak of **European** industrial relations proper.

Secondly, when comparing the EU industrial relations and social policy institutions with those in other global regions, the main problem is the lack of complete data. Data on labour market institutions are typically collected and aggregated at the national level. For the purpose of aggregation of these data to the level of world regions or regional organisations, the relevant statistics should not only be comparable but also reasonably complete. This is now the case in the EU (albeit with many missing values and doubts about the reliability of data for some of the recently acceded Member States) and in the OECD (including its non-EU members, though sometimes with missing values for Mexico and Turkey). There are efforts on the part of the ILO and World Bank to establish similar data collections on ‘decent work indicators’ and industrial relations in other world regions, but the results are far from complete. On trade unions and collective bargaining, for instance, the information is scattered (ILO, 1997; Visser, 2003). Because of these limitations, the interregional comparison presented here is based on qualitative information on a small number of key features of industrial relations and social policy.

### *Industrial relations and social dialogue in the EU, Japan and the USA*

Workers in the EU are on average twice as likely to be a member of a trade union compared with US workers, and about 1.5 times as likely as Japanese workers. They are, moreover, represented by unions and federations which, on average, tend to be more centralised than their Japanese and American counterparts.

Table 1.3 compares the industrial relations features of the EU, Japan and the USA for three ‘aggregations’ of the European Union: the current size of 27 Member States (EU-27), the pre-2004 size of 15 Member States (EU-15) and the 12 Member States that acceded in 2004 and 2007 (NMS)<sup>(8)</sup>. All arithmetic means are weighted by the size of the wage earning population in employment.

**Table 1.3 Weighted arithmetic means EU, Japan and the USA, 2004–06**

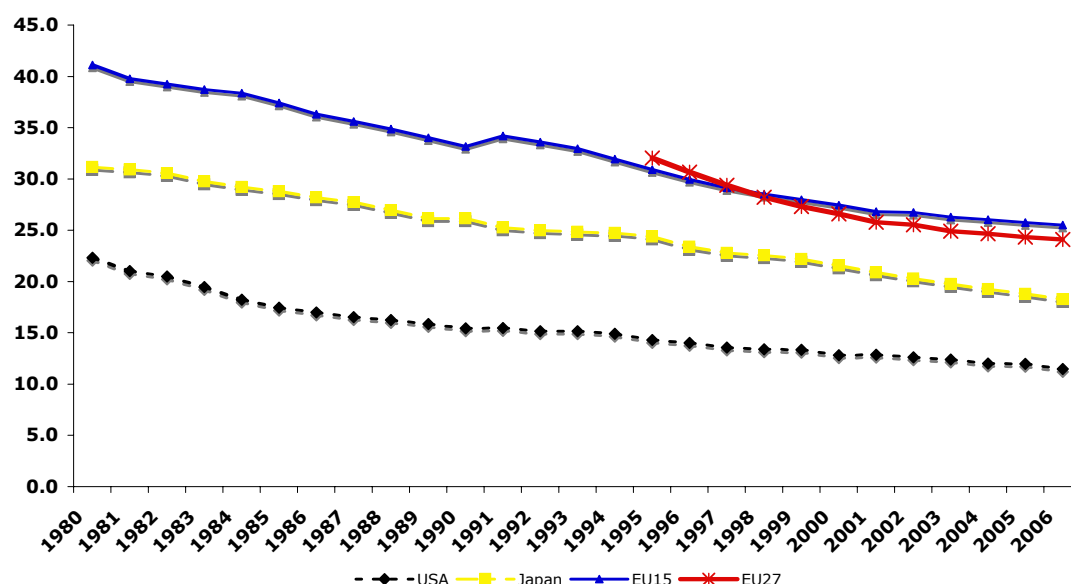
	Indicators	EU-15	NMS	EU-27	Japan	USA
<b>Pillars</b>						
<b>I</b>	Union density (%)	25.8	22.0	24.4	18.8	11.8
	Union centralisation (0–1)	0.414	0.303	0.369	0.226	0.305
<b>II</b>	Sectoral bargaining (0–2)	1.3	0.9	1.2	0.0	0.0
	Bargaining coverage (%)	68.8	42.5	62.5	16.8	13.8
	Wage coordination (1–5)	3.1	2.3	2.8	3.0	1.0
<b>III</b>	Works councils (0–2)	1.7	0.8	1.5	0.0	0.0
<b>IV</b>	Consultation (0–2)	1.0	0.7	0.9	0.0	0.0
	Social pacts (% share MS)	19.6	11.0	16.7	0.0	0.0

Source: ICTWSS database.

<sup>(8)</sup> Although Bulgaria and Romania acceded in 2007, their data is included in the averages for the EU-27 and EU-12 calculated over the years 2004–06.

Within the EU, union organisations tend to be more fragmented and less centralised in the new Member States, with most unions in the 10 former Communist countries making a sharp break with the monopolistic and centralised situation in their recent past <sup>(9)</sup>. After more than a decade of sharply falling density rates in the post-Communist countries, union membership rates have tended to stabilise just below the EU-15 average (see Chart 1.5).

**Chart 1.5: Union density in the EU, the USA and Japan**



Source: ICTWSS database.

Comparing unionisation trends in the EU, USA and Japan, one observes rather similar downward trends. Worldwide, trade unions tend to face similar pressures and challenges of industrial and occupational change, unstable employment patterns and contracts, globalisation and restructuring. In the developing countries unions have yet to find an organising response to, and make themselves relevant for, the increasing number of workers in the informal economy (see ILO, 1997; Visser, 2003). In the developed economies of the EU, Japan and the USA, the comparable challenge is to make unions relevant outside the traditional sectors of manufacturing and public administration and services.

#### **Box 1.6: Unions and employers' organisations in the EU, Japan and the USA**

The main union organisation in the USA is the **AFL-CIO**, whose 59 affiliates had a combined membership of 12.5 million in 2005, which at that time equalled 82 % of total union membership in the USA. However, in 2005 the American federation suffered a serious weakening with the formation of a rival organisation. Following disagreement on how to organise non-unionised workplaces and sectors, two of its largest affiliates — the **Service Employees' International Union** and the **International Brotherhood of Teamsters** — broke away. Together with five other unions they founded a new organisation called **Change to Win**, claiming some 6 million members. On its website, AFL-CIO claims a total membership of more than 10 million organised in 56 unions.

<sup>(9)</sup> The union movements in the other two new Member States, Cyprus and Malta, inherited many industrial relations features from British rule, with additional splits on political and ideological grounds. Union density rates have held up well and are far above the EU average.



In Japan the dominant union confederation **RENGO** claimed as of December 2007 6.8 million members organised in 52 federations, though the real unit of organisation in Japan is the enterprise union, of which there are some 60 000. There are two smaller confederations or peak federations and a considerable number of local unions are unaffiliated. RENG0's combined membership accounts for about two-thirds of total union membership in Japan.

The **European Trade Union Confederation** has been successful in uniting nearly all relevant union federations in Europe, even beyond the European Union in its current size. The ETUC represents more than 90 % of all organised employees in the EU. In total, the ETUC claims 60 million members organised in 82 national federations from 36 European countries. These include, beyond the EU-27, Andorra, Croatia, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and Turkey. In addition, national union federations from Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia have been given observer status. The ETUC also heads 12 European industry federations organised on a transnational basis and incorporates a special European federation for professional and managerial staff (Eurocadres) and one for retired and elderly persons (EFREP).

In the USA there are many powerful business lobbies but no overarching employers' organisations that could act as a social partner to the unions. Thus the **Business Roundtable**, the **American Chamber of Commerce** and **National Association of Manufacturers** are very active in lobbying Congress and also operate internationally, but they do not coordinate firms or sectors across the USA in matters of wages and employment. This is different in Japan. **Nippon Keidanren**, which can be translated as Japan Business Federation, is a comprehensive organisation representing employers and has a track record in coordinating wage setting across the private sector. The present organisation results from a merger, in 2002, between the Japanese Federation of Economic Organisations (**Keidanren**) and the Japanese Federation of Employers' Associations (**Nikkeiren**). It claims the membership of 1 343 companies, 130 industrial associations and 47 regional economic organisations (as at 22 June 2007).

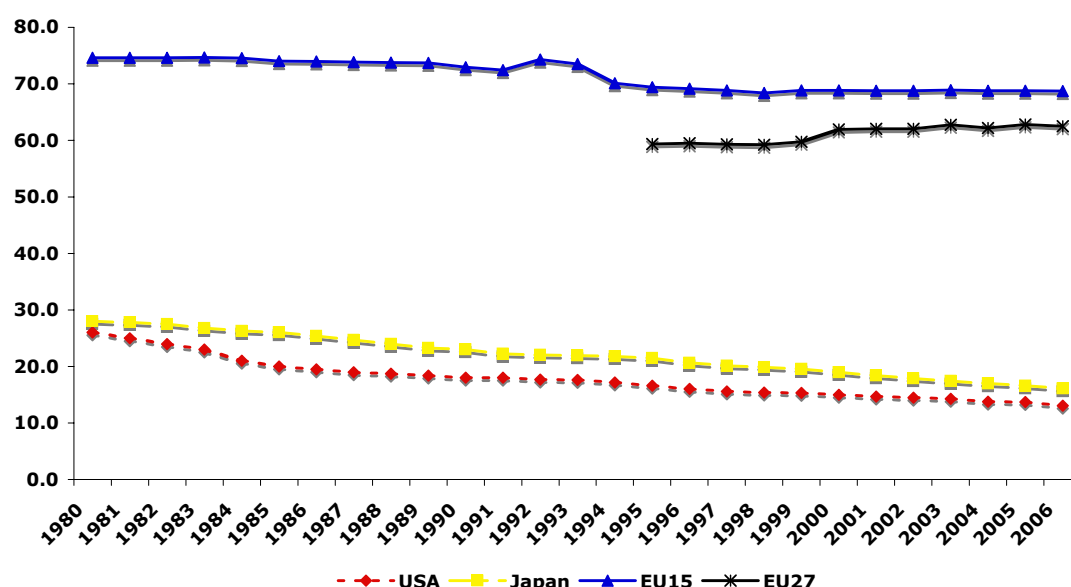
In the EU the main employers' and business organisation is **BUSINESSEUROPE**, previously the **Union of Business and Employers' Confederations of Europe** (UNICE). It combines 36 member organisations from 31 countries, including Croatia, Montenegro, Iceland, Norway and San Marino (but no members from EU Member States Slovenia and Slovakia). Unlike its Japanese counterpart, or the ETUC on the side of labour, BUSINESSEUROPE has no sectoral affiliates and does not attempt to coordinate wage setting by its member organisations. It does, however, engage in coordinating and monitoring member behaviour on other, non-wage issues (Visser and Ramos Martin, 2008). Two smaller European confederations represent small and medium-sized businesses (**UEAPME**) and businesses of general interest and operating in the public sector (CEEP).

The key difference between the EU, Japan and the USA, however, resides in collective bargaining or union coverage. On average, nearly two out of three workers in the EU are covered by a collective agreement <sup>(10)</sup>, compared to nearly one in five in Japan and one in

<sup>(10)</sup> The variation, by country, sector or company, in the content of these agreements defies a meaningful way of aggregation and comparison across regions, even within the EU. Compared to the USA, collective agreements in Europe are probably less specific on health plans and related issues covered by national and occupational schemes in most European welfare states, but in many sectors and countries in the EU agreements do guarantee sickness pay, provisions for paid leave, pension benefits, dismissal protection or unemployment insurance above the levels guaranteed under universal or occupational schemes guaranteed by the state. In addition, there has been an increase in special provisions ('social plans') guaranteeing workers' job training, placement services or additional insurance, and in some case early retirement, in the case of company restructuring and lay-offs. Furthermore, not all agreements include a pay clause, and many only fix minimum and entry wage rates, leaving other rates to be decided in the company or workplace, individually by management or through joint consultation and bargaining. Finally, the legal effects of agreements and the provisions for including non-union members differ widely across EU Member States. (For an overview of collective labour law in

eight in the USA. The average coverage rate in the EU Member States of central and eastern Europe is significantly lower than the EU average and reaches less than half of all employees. The exception is Slovenia where practically all employees are covered by multi-employer agreements negotiated with the unions. The main problems here are the weak organisation of employers, the lack of a mandate to reach multi-employer agreements with unions, and the prevalence of company bargaining, with many (small) firms, areas and sectors left uncovered. (A rather similar situation has prevailed in the UK since the 1990s.).

**Chart 1.6: Bargaining coverage rates EU, USA and Japan**



Source: ICTWSS database.

The difference in trends between unionisation and bargaining coverage is apparent only in the European Union (see Chart 1.6). In Japan and the USA the fall in trade union membership (see Chart 1.5) is tracked by a fall in union coverage; in the EU this is not the case. The main reason is that unions and employers in Europe negotiate above the level of the firm, usually on a sectoral, sometimes on a national (cross-sectoral) basis. This allows for the inclusion of a far greater number of employees, for instance those working in small and medium-sized firms who would otherwise be unrepresented.

While powerful business organisations exist in the USA, they do not act as employer organisations, with a mandate to negotiate collective employment agreements for their members (firms) with the unions. All bargaining in the USA happens within companies. Pattern setting disappeared long ago, around the early 1980s, when it took the form of ‘concession bargaining’ (Capelli, 1990). In Japan, too, bargaining is conducted at the enterprise level with enterprise unions, and the powerful business federation Nippon Keidanren has no formal role in it. But unlike the USA, pattern bargaining is common in Japan with a strong coordinating role of Nippon Keidanren, but with weakening influence of trade unions and their annual spring offensive on the results (Nakamura, 2007). BUSINESSEUROPE, the main EU-level organisation for business, does represent its affiliates in negotiations with the unions and signs ‘multi-employer’ agreements on non-wage issues.

EU-level employers’ organisations do not engage, nor do they have the ambition to engage, in pattern setting with regard to wages (as some of their affiliates do within Member States,

for instance in Germany). The union side, represented by the European Trade Union Confederation (ETUC) and its transnational sectoral affiliates, does express this ambition, in order to counter tendencies towards wage competition and stagnating real wages. However, even on a small scale, within a particular sector like metal engineering or between neighbouring states like Germany and Austria, this turns out to be extremely difficult (Traxler et al., 2008). Thus, when comparing the statistics for wage bargaining coordination and the sectoral organisation of bargaining in Table 1.3, we should be aware that these are averages based on the situation in Member States. They tell us that in most EU-15 Member States the sector is the basis for collective bargaining and that unions and/or employers engage in coordination; and that this is much less so in the new Member States, and not at all the case in the USA.

With the implementation of the 2002 Directive on Consultation and Information of Employees almost all EU Member States now have structures in place that guarantee employees, including non-union members, representation within the firm. This is different in Japan and the USA, where there is no law or general agreement guaranteeing employees the right of information and consultation in the firm where they work. Consultation, if it happens at all, is entirely internal to the enterprise union and covers very few firms and employees throughout the economy.

It is impossible to make generalising statements with regard to the strength of works councils and employee representation in EU companies. Empirical research shows great variation, depending on union strength, union–council cooperation, formal rights, management behaviour, etc. In terms of formal rights, guaranteed under legal statute or by collective agreement, EU employees tend to have a stronger position than their American or Japanese colleagues if it comes to influencing decisions of management, though whether this warrants the crude opposition between ‘stakeholder’ and ‘shareholder’ models is dubious.

Finally, most EU Member States do involve the social partners, and trade unions in particular, in consultations over social-economic policies and reforms. In some Member States this is legally anchored in statutes and embodied in tripartite councils with representatives of unions, employers, the government and, in some cases, other interests groups (farmers, social groups, women). The effectiveness of these bodies and of the social dialogue approach in terms of actual influence is a matter of dispute, but clearly the ambition is there, and appears lacking in Japan and the USA (but not in other parts of the world; see the next section).

It is impossible to relate these differences in industrial relations and social dialogue to differences in economic and social performance (see Chapters 2 and 3). Cross-national comparisons including the USA and Japan (and other non-EU OECD countries) tend to show that high coverage rates and coordinated bargaining are associated with lower earnings dispersion and lower poverty rates, that coordinated bargaining is associated with lower unemployment and inflation, and offsets the possible negative influence of union power, that works councils help in adjusting to change and reduce industrial conflict, and that social pacts have helped to adjust to EMU and to overcome resistance to social policy and pension reforms. Whilst such findings may give some confidence to the EU approach to social dialogue, they do relate to industrial relations in Member States rather than at the EU level.

### ***The interregional comparison***

The interregional comparison focuses on social rights and labour regulation, as stepping stones to a ‘fairer’ globalisation, as suggested by the World Commission on the Social

Dimension of Globalisation in its report *A fair globalisation: creating opportunities for all* (ILO, 2004a). Of all the examples of regional integration, the EU is unique in that in addition to an internal market for goods and services it also guarantees the ‘free movement of labour’, and has numerous supranational institutions, like the Court of Justice of the European Communities and the European Parliament, although many of these features do also exist, at least on paper, in the Economic Community of West African States (Ecowas). Migration of workers, for instance, has been a very important feature in West Africa (Robert, 2004) (see Box 1.7).

#### **Box 1.7: Some global interregional economic organisations and trade zones**

The **North American Free Trade Association** (NAFTA) was ratified in 1993 and implements a free trade zone between Canada, Mexico and the USA, without provisions for labour mobility across borders. The third-largest trading bloc after the EU and NAFTA, the **Mercado Común del Sur** (Mercosur) was founded in 1991 by Argentina, Brazil, Paraguay and Uruguay; Venezuela acceded in 2006; Bolivia, Chile, Mexico and Peru are associated members. Since 2004 efforts to become a ‘community of states’ have been stepped up and in May 2008, on the initiative of Brazil, 12 countries — Argentina, Bolivia, Brazil, Chile, Columbia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela — signed the treaty for the creation of the **Union of South-American Nations** (Unasur), which is explicitly modelled on the example of the European Union <sup>(1)</sup>.

The **Economic Community of West African States** (Ecowas) was founded in 1975 in Lagos (Nigeria) and combines 15 states, i.e. Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The **Southern African Development Community** (SADC) includes Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The **Association of Southeast Asian Nations** (ASEAN) began as a political association between Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam, and later expanded to 10 with Cambodia, Laos and Burma/Myanmar. In 1992 ASEAN members decided to implement a free trade area — the ASEAN Free Trade Agreement (AFTA) — in the space of 15 years.

Social policies across global regions may differ on three dimensions: redistribution, regulation and rights (Deacon 2001). From the point of view of industrial relations, there is a fourth: the institutional pillars of social dialogue, discussed in this chapter.

**Redistributive policies** require funds to re-allocate resources or come to the rescue of depressed areas or groups. Of the regional organisations, the EU is the only one where a common budget is used for these aims: the EU Structural Funds and the recently launched Globalisation Adjustment Fund for the assistance and retraining of workers adversely hit by global trade. Although modest in size, these funds may be directly relevant for industrial relations, as they may assist workers and firms in disadvantaged areas and support the capacity building of unions and employers (see Chapter 6). Ecowas and the SADC seek the use of development aid funds for this purpose, though nearly all money is channelled through bilateral agreements and programmes with donor countries. The parties to NAFTA explicitly excluded redistributive policies. ASEAN had, and has, no ambitions in this direction, whereas Mercosur has expressed ambitions in this regard.

<sup>(1)</sup> ‘À Brasília, les pays sud-américains font un pas vers l’intégration régionale’, *Le Monde*, 25 May 2008.

Social and labour **regulation** in regional trading blocs is always a contentious issue. Typically, within any regional trading bloc, the countries with more advanced economies and social arrangements, and the labour movements within them, want some harmonisation of employment standards so as to allay fears of 'social dumping' and protect the working and living conditions of their own populations and membership (Burgoon, 2004; Gitterman, 2003). The less advanced countries, with lower productivity and wage levels, tend to fight off such attempts since this would limit their competitive advantage. Alternatively, they ask for compensating redistributive policies. Given these contrasting interests different compromises have been struck, reflecting the different strength and policies of dominating coalitions. Thus, in the EU since the mid-1980s progress with social regulations and common minimum labour standards has taken place alongside the expansion of the Structural Funds.

NAFTA does not provide for harmonised minimum labour and employment standards, but has somewhat strengthened the monitoring and enforcement of existing domestic standards in the three participating countries. The agreement contains one formal clause on regulatory standards, discouraging trade partners from reducing environmental standards or health and safety rules, and one side agreement on labour issues, the North American Agreement on Labour Cooperation (NAALC), in which the three countries promise to improve oversight and enforcement of domestic labour and employment standards, and to participate in a dispute regulation process. NAALC resulted from pressure in the US Congress and from the unions. They advocated minimum standards applied to Mexico, but this was opposed by business and by the Mexican government, which feared that such standards would undermine its competitive cost advantages. Mexican labour pushed instead for a kind of structural fund, the North American Development Fund, but US Congress opposed any redistributive policy. The final result was the creation of a regional body, the Commission for Labour Cooperation (CLC), charged with the task of promoting enforcement of each nation's labour and employment laws. However, each country retains full control to establish, change or increase or, if it so chooses, to lower domestic labour standards; this is different from the EU where lowering standards requires a decision of the Council of Ministers. Furthermore, the CLC, unlike the European Court of Justice, is an informal body and has no jurisdiction in the three partner states.

Under pressure from the trade unions, which cooperate for this purpose, Ministers in Mercosur agreed to promote 'core' labour principles according to national legislation, through collective bargaining and legal statutes. Employers oppose any move towards harmonised minimum standards and no firm conclusion has been reached yet. There is a Social-Labour Commission charged with the task of monitoring standards but its position is weak and it has no authority. Within Mercosur, countries have made a beginning with the recognition of social security entitlements of migrant workers, after the example of the EU Regulation (EC) No 2004/88 (previously (EEC) No 1408/71) regarding the coordination of social security regimes. A start has been made with reciprocal joint health and safety inspections. Agreements have been signed, moreover, to recognise education credentials, degrees and diplomas across member countries. There are proposals for a regional social fund, and a few regionally funded projects exist in border areas. Technical cooperation has occurred in most social areas.

In Ecowas, some progress has been made in the area of migrant workers, with the adoption of the ILO protocol on the right of residence and establishment for migrant workers. However, in spite of its stated objective of seeking legislative harmonisation, little progress has been made even with regard to creating common minimum standards. The weakness of monitoring structures and of the trade unions, combined with the large size of the informal sector, stand in the way of progress. As a result, migrant workers are often excluded from

social security and work-related benefits (Robert, 2004). In the SADC there is an Employment and Labour Sector with the objective of harmonising policies in support of the labour market, regulating labour mobility, and introducing and harmonising social mobility systems (Nauertz, 2002).

The 10 ASEAN Member States have been unwilling to part with any authority in matters of social and labour regulation (Chavez, 2006). Unlike other free trade agreements, the ASEAN Free Trade Agreement does not include any reference to labour regulation, not even as a side agreement. The exclusive focus on intergovernmental decision-making, the choice of consensus and unanimous decisions, non-intervention, sensitivity to political needs of others, personal contacts and preference for minimum institutions, are sometimes stylised as the ASEAN Way (see Serrano et al., 2004). There are no pledges for central monitoring or third-party enforcement mechanisms, and thus far ministers have only agreed to share information and exchange best practice, mainly on training, manpower and human capital issues. In 2006 ASEAN labour ministers added occupational health and safety; in 2007 they declared the issue of migrant workers a priority area.

When it comes to social and labour **rights**, the Community Charter of Fundamental Social Rights of Workers has served as an important example for other regions, together with the 'Decent Work' programme of the International Labour Organisation (ILO, 2004b). In NAFTA there is a firm commitment to the core labour rights of the ILO but no common charter. The original treaty establishing Mercosur did not address labour rights issues, but starting in 1994 unions have been advocating the adoption of a binding charter of social and employment rights, modelled on the EU. In recent times there is a stronger adhesion to the 'Decent Work' programme of the ILO as well as a commitment by some leaders to social policies and policies combating poverty.

The revision of the Ecowas treaty in 1993 marked the shift from a bureaucratic to a more 'people-centred organisation' and included for the first time a provision for the sharing of information among business men and women, workers and trade unions. A new reference to the African Charter on Human and People's Rights was added together with a commitment to social justice. However, no specific institutional mechanism was created for monitoring these rights and the Court of Justice that does exist cannot hear cases brought to it by individuals and is therefore entirely dependent on states. Probably as a consequence, the Court has seen very little activity (Robert, 2004). In October 2006 the Ministers of Social Affairs met for the first time to establish a 'sustainable social dimension for Ecowas regional integration programme'. The SADC has a social charter protecting fundamental rights, freedom of association and collective bargaining, health and safety, as well as equality for women, persons with disabilities and older persons. Governments of the SADC have also recently endorsed a first draft of a regional social policy.

The ASEAN+3 summit of 1999, including China, Japan and South Korea, which followed the Asian crisis of 1997, for the first time declared the importance of 'social and human development resources for sustained growth of east Asia by alleviating economic disparities between and within nations'. As a follow-up to the declaration, a Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was established in July 2007, but concrete policy measures have yet to be decided.

**Industrial relations institutions** have similar elements to those found in the EU. Based on the position of Brazilian and South African unions, the position of trade unions in Mercosur and SADC is stronger than in NAFTA, Ecowas or ASEAN. Collective bargaining coverage is also higher in southern Africa and South America, at least in the formal economy and in

urban areas (ILO, 1997; Visser, 2003). In South America and in eastern and southern Africa there are regional organisations of trade unions, similar to the ETUC, and there are also attempts to involve them in tripartite social dialogue (Nauertz, 2002). However, these regional social partners' organisations are extremely fragile, often lacking even the funding to meet. Such structures and attempts are missing in North America and south-east Asia.

Employers organisations are everywhere even more poorly organised on a regional basis and have even less of a mandate than the unions. Social partnership structures with Labour Ministers are frequently sidelined by colleagues from other, more powerful ministries, a problem that was also apparent in central and eastern Europe during the transition. Another weakness shared by most regional organisations is the absence of strong supranational governmental institutions, like the Commission or the Parliament in the EU. In South and south-east Asia the dominant industrial relations model is based on enterprise unionism and enterprise bargaining, with limited coverage, as is the case in Canada and the USA (Mexican unions used to be highly integrated in the state and in politics, but reliable information on their actual importance is hard to come by). Union fortunes in western and southern Africa have been extremely volatile depending on politics and civil warfare. Tripartite councils and policy forums with advisory status do exist in Mercosur at the regional level, somewhat similar to the EU. South Africa has since the overturn of apartheid experimented with tripartism, while some countries in Asia, for instance South Korea, have tried to address the aftermath of the Asian crisis with a 'social pact' approach, albeit with limited success (Baccaro and Lin, 2007).

#### **Box 1.8: International social partner organisations**

At the global level, a significant trade union merger occurred in November 2006 when the International Confederation of Free Trade Unions (IFCTU) and the World Confederation of Labour (WCL), along with eight other national organisations that formerly had no international affiliation, merged to form the International Trade Union Confederation (ITUC). It represents 168 million workers and 311 affiliated organisations from 155 countries. Staying away from the ITUC is the Communist-affiliated World Federation of Trade Unions (WFTU). Social partners also play a role in global governance, in particular in the tripartite International Labour Organisation, which is, however, not the topic of this report. Employers are represented by the International Organisation of Employers (IOE) that consists of 146 national organisations from 139 countries.

#### **Third interim conclusion**

Undoubtedly, the EU represents the most advanced form of regional social and economic integration. In terms of supranational social policy it can be said that the EU has an embryonic social policy in all the three fields of social redistribution, social regulation and social rights, as well as a relevant set of regional industrial relations institutions and policies. The Structural Funds provide a mechanism whereby resources can be allocated to address economic and social disparities in the EU or be put to the assistance of social partners and workers adversely affected by global trade. There are regulations in the fields of occupational health and safety, health services, equal opportunities, labour law, and social security and pensions schemes, together with social dialogue mechanisms that apply to all countries. In terms of regional social rights the Community Charter of Fundamental Social Rights of Workers was established at an earlier stage.

In the industrial relations domain proper, the EU promotes social partnership and cooperation by setting minimum standards for employee representation in national and border-crossing firms, and by recognising the social partners in a consulting and, in some domains, co-legislating role, even through autonomous agreements. Yet collective bargaining and pay determination — core issues of industrial relations — remain nationally specific. In addition, it should be recognised, as was explained in the first part of this chapter, that the EU coordination regime allows the use of different implementation instruments, and variable implementation of actual standards, according to national preferences and capabilities (as has been shown in the implementation studies on the six ‘labour’ directives by Falkner et al., 2005; 2008). Comparing the other regions, Mercosur is probably nearest to the EU in its industrial set up and social policy ambitions. However, other regional organisations, perhaps least NAFTA, seem to be moving in the same direction.

## **General conclusions**

First, the EU is ahead of other world regions in combining the market-building agenda with a social agenda which includes emerging European industrial relations. In other global regions this process has only just begun and the EU is sometimes seen as an example or model for the development of a regional social dialogue.

Second, the emergence of EU-level industrial relations is evidenced by a (growing) number of mutually reinforcing institutions, policies and processes being established at the EU level and focusing on the social dimension of the market. They are institutionally anchored, and some of them have foundations in the Treaties. These institutions, processes and policies have a special role to play in supporting and supplementing reforms (see Chapter 2) and they have been developing with a growing intensity in the last two decades, together with the process of market building.

Third, while Member States’ industrial relations regimes continue to differ in traditions and practices, a limited convergence among EU Member States can be observed. This is particularly true in areas where the EU has been able to advance its regulatory power. The EU adds value by setting minimum social standards at the workplace and beyond, and by providing political and technical ‘backup’ for national efforts to reform work and welfare.

Fourth, the 2004 and 2007 enlargements have increased the diversity of EU industrial relations. This has been seen as a major threat to the quality of social standards, with social dumping as one of the potential results (Woolfson and Sommers, 2006). However, the recent enlargements may also be seen as a further stimulus for convergence towards a European social model. While the immediate result of the recent enlargements is an increased divergence between the industrial relations regimes within the EU, this is accompanied by strengthening of (or in some cases truly developing) the social regulations in the national systems of EU-12 countries that after 1989 tended to exclude them from the political agenda and policies, and upon enlargement had weak labour and employers organisations (Mailand and Due, 2004). The conditionality principle introduced in the accession negotiations (Schimmelfenning, 2007) has also affected fundamental rights and the quality of industrial relations regimes in these countries. The Europeanisation process thus offers prospects for an expansion of social rights and convergence of labour standards across Member States, not for purely economic reasons but for the purpose of making continued market integration politically feasible among states at vastly different stages of development (Visser, 2007b).



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## Chapter 2

# The quality of industrial relations and the Lisbon Strategy

*Industrial relations and the Lisbon reform agenda are interwoven. The Lisbon Strategy has entered the agenda of the social partners at all levels: European, national, in sectors and in companies. The use of instruments — law, collective agreements with and without binding effects, guidelines and benchmarking — varies and generally there is a tendency to combine hard and soft instruments, and less binding regulation, allowing more flexibility in implementation under diverse conditions. Differences in industrial relation regimes across Member States are visible in employment outcomes, the capacities of industrial relations actors and the contribution of the social dialogue process. In addition to differences in capacities, however, the willingness of unions and employers' association to 'buy into' the dialogue process and the Lisbon agenda may be the overriding factor explaining a successful contribution.*

## Introduction

This chapter<sup>(12)</sup> evaluates how recent developments in industrial relations, social dialogue and social partnership, have contributed to achieving Lisbon Strategy objectives since its launch in 2000. It presents an overview of how trade unions and employers (the social partners) have responded to the Lisbon agenda and contributed to the achievement of the Lisbon objectives. The chapter describes how the Lisbon Strategy defined new objectives for modernising employment relations and social policy in six policy areas: (i) active labour market policies targeted at disadvantaged groups; (ii) training and the entry of young people into the labour market; (iii) lifelong learning and the position of older workers; (iv) working hours and working-time flexibility; (v) the reconciliation of work and family; and (vi) working conditions. One key policy domain, i.e. bargaining over wages, is not discussed in this chapter, which deals exclusively with non-wage issues. Issues related to wages, unemployment, inequality and poverty are addressed in Chapter 3. In the second section the three key roles of the social partners — political influence and negotiators of reform; collective bargainers producing joint regulation; and co-managers of policy programmes — are spelled out. The third section relates the variation in production, employment and industrial relations regimes across the EU to a small number of industrial relations characteristics. The fourth section is devoted to the discussion of social pacts, and the fifth section is a qualitative review of the various social partner initiatives in the six policy areas. The chapter concludes with some observations on the quality of industrial relations in the European Union.

## The Lisbon strategy and social partnership

At the Lisbon Summit of March 2000 three new goals were added to the European Employment Strategy (EES). Firstly, achieving full employment by implementing a comprehensive policy approach was introduced to incorporate demand and supply side measures and thus to raise employment rates on the whole, as well as for women and people

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<sup>(12)</sup> This chapter is based on a draft by Jelle Visser, with research input of AIAS researchers Marieke Beentjes, Minna van Gerven and Valentina Di Stasio

aged 55 to 64 years, towards the Lisbon and Stockholm targets set in 2000 and 2001. Secondly, improvement of quality and productivity at work was set as an objective. Thirdly, Member States should strengthen social cohesion and inclusion by promoting access to quality employment for all women and men who are capable of working, combating discrimination in the labour market, and preventing the exclusion of people from work. As a response to these new goals, the guidelines were streamlined in 2003, and again in 2005.

Between 2005 and 2008, the integrated guidelines were regrouped under three priorities identified in the 2003 task force report:

- (i) attract and retain more people in employment and increase labour supply and modernise social protection systems;
- (ii) improve adaptability of workers and enterprises;
- (iii) increase investment in human capital through better education and skills.

The contribution of unions and employers (the social partners) is considered important. According to the Council, in a statement of March 2005, 'their support will be crucial in areas such as active labour market policies, lifelong learning or anticipating restructuring in industrial sectors'. In its 2004 communication, specifically directed at the social dialogue at the European level, the social partners are 'invited to develop a joint Lisbon action programme [...] identifying their contribution to the Lisbon goals'. Under the heading of 'Delivering reforms', the Commission 'calls on the European and national social partners to take part in genuine partnership for change by stepping up their efforts to address the themes identified above and ensuring that their contributions are as concrete and effective as possible' (EC, 2004b).

The High-Level Group on Industrial Relations and Change in the European Union proposed a new agenda for industrial relations in response to the challenges of globalisation, enlargement, EMU, the transition to a knowledge economy, demographic change, changing employment and family patterns. It suggested that this agenda should comprise the traditional issues of wage responsiveness, productivity and competitiveness as well as social inclusion, training and lifelong learning, working conditions and work organisation, new forms of employment, working-time flexibility and reconciliation of work and family life (EC, 2002b). These issues will be given a central place in this review. In order to strengthen the contribution of the social partners in the European reform agenda, the high-level group advised to create more space for the bipartite ('autonomous') social dialogue at the European level, to explore the possibility of 'soft law' instruments, including benchmarking, and to work towards better integration of the activities at various levels (European, national, sectoral and local).

Steps taken by the social partners at the European level include: the identification of a number of modernisation issues in their renewed work programme for 2006–08; their joint analysis of the 'Key challenges facing European labour markets', published in October 2007; the three 'autonomous' framework agreements on telework (2002), work-related stress (2004) and harassment and violence at work (2007), and the current negotiations on a fourth one on inclusive labour markets; as well as agreements at the sectoral level and cross-industry frameworks of action on training and gender equality (see Chapter 4). This chapter will refer to some of these EU-level agreements and frameworks of action, in particular where they influence activities and policies in Member States, which is the main focus of this chapter.

## The different roles of the social partners

With regard to the role of social partners in labour market and social policy reform, one can distinguish between three broad lines of influence.

Firstly, trade unions and employers (organisations) can act, alone or jointly, as special interest groups and condition the course of reform through lobbying activities, political influence or entering into negotiations with the government. This line assumes the existence and use of some veto power; agreements typically require some concessions ('quid pro quo') over the speed and nature of policy reforms. One specific form in which this may happen is the conclusion of a social pact, here defined as a **tripartite** agreement between the government and the social partners on one or more issues of socioeconomic policy.

Secondly, unions and employers (organisations) can negotiate between themselves. Such **bipartite** agreements, without direct involvement of the state and the public authorities, are common in the domain of wages, working hours and working conditions, but may expand to include other issues, including employment protection, social insurance, pension provision, vocational training, conflict resolution or innovation of employment practices and employment contracts. The interaction between collective bargaining and state policy foresees three possibilities: (a) **autonomous agreements** implemented without interference of third parties (public agencies, courts, etc.); (b) **sponsored agreements** the implementation of which depend on the support and intervention of the government or legislator; and (c) **dependent agreements** which depend on, and implement, a particular law, reform or government policy. These possibilities are also available in a weaker form as **joint guidelines** rather than binding agreements.

Thirdly, trade unions and employers (organisations) can be involved, alone or jointly, in the co-management and implementation of public policies and reforms, for instance by joining labour market boards, training councils or insurance funds under public supervision. This involvement may also take a purely advisory character, without assuming the responsibility for the adopted policy and its execution.

These different lines of involvement can occur both at the European and national (or sub-national) levels. Table 2.1 offers a summary and some examples.

**Table 2.1: The different roles of the social partners**

		<b>Member States</b>	<b>EU</b>
<b>1. Veto power</b>	(a) Lobbying	Pressure of main employers organisation VNO-NCW to change existing Employment Protection Legislation (EPL) in the Netherlands	ETUC campaign to change draft service directive
	(b) Social pacts	For example in Ireland, Slovenia or Finland	
<b>2. Collective bargaining</b>  (and as a weaker form: joint guidelines/benchmarking)	(a) Autonomous	Danish collective agreements, including 'social plans' and EPL elements; Dutch collective agreements over flexicurity and agency work	Framework Agreements on Telework; Work-related Stress; Violence and Harassment
	(b) Sponsored	2003 agreement on vocational training and individual training rights in France	Framework agreements on parental leave, part-time and fixed-term
	(c) Dependent	Belgian biennial agreements since 1997; national agreements to	(Union guidelines for coordinated bargaining



		<b>Member States</b>	<b>EU</b>
		implement the EU framework agreement on telework	agenda's in the context of EMU)
<b>3. Implementation</b>	(a) Co-management	Swedish Labour Market Board	
	(b) Advise	Consultation over setting of minimum wages in most Member States	Social partner advisory role in EU social security coordination for migrants

Source: J. Visser.

This scheme will be used to analyse the involvement of the social partners in six policy areas: (i) active labour market policies targeted at disadvantaged groups; (ii) training and the entry of young people in the labour market; (iii) lifelong learning and older workers; (iv) working hours and time flexibility; (v) the reconciliation of work and family; and (vi) working conditions.

The six areas differ with regard to the role of public policy and the involvement of unions and employers. In active labour market policies and social security, for instance, in most Member States the parameters of labour market policies are set by law and the role of the social partners is reduced to influencing the policies of the government, through lobbying, using political channels and via regular or ad hoc consultation. In some Member States the social partners use the opportunity to make or change the law through sponsored agreements and social pacts; in other Member States they influence the execution of the law, through a dependent implementation agreement or by assuming a role as co-managers of public policies or public-private partnerships. In a few Member States, there has been a genuine tripartite selection of both the goals and instruments of policy, but that is rather untypical in the area of ALMP. In the area of working hours, work-family policies, working conditions, training and lifelong learning, the influence of the social partners tends to be stronger, but in each of these policy areas there is some interaction with legislation and public policy.

The relevance of EU policies and regulations differs across these six policy areas too. EU directives in the area of working hours, working conditions and reconciliation of work and family are sometimes prepared by EU-level agreements negotiated between the European social partners. In the domains of ALMP and training, the EU has no competence and EU level policies are shaped through the open method of coordination process, based on guidelines, targets, policy review, recommendations, mutual learning and benchmarking. In the OMC process the social partners, at the European and national levels, are informed and consulted. They do not negotiate or condition the selection of EU objectives in these areas. At the national level, within firms and sectors, their contribution is often much more pronounced, in particular when such policies are shaped through collective bargaining and when employers and unions have assumed a co-management role in the implementation of policies, for instance in the field of training.

### **Variations in concertation, collective bargaining and social dialogue across the Member States**

The involvement of the social partners not only differs from one policy area to the next but also across EU Member States. Industrial relations are shaped by different traditions, institutions and practices affecting the interaction between public policy, collective bargaining and social dialogue. As was argued in the previous chapter, the EU may have created some commonality, but by no means did this create similarity. This diversity can be described through different typologies. They can be helpful insofar as they help direct our

expectations concerning the relationship between the contribution to the Lisbon agenda on the one hand and institutions of industrial relations or, more broadly, social and economic governance on the other. The analysis in the following section will draw on three typologies: production regimes, employment regimes and industrial relations regimes.

There are different ways to approach this diversity. The ‘Varieties of capitalism’ literature distinguishes between **production regimes** on the basis of the interaction between financial markets, company investment strategies, production of skills, social protection and wage policies. Employers and coordination of employer behaviour play a key role. The main distinction is between coordinated market economies, like Germany or Sweden, and liberal or uncoordinated market economies like the United Kingdom (Hall and Soskice, 2001). There is some dispute as to how to classify France or the Mediterranean countries. Given the prominent role of the state, especially in prompting or standing in for employer coordination, Schmidt (2002) has proposed to classify the production regimes in these countries as ‘state-centred’. The new Member States from central and eastern Europe also cannot be classified unambiguously, though most seem to oscillate between liberal and state-centred, perhaps with the exception of Slovenia, which is closer to a coordinated economy. In the transition economies, generally, the state has continued to be a central and dominant actor in the governance of the economy; first, by virtue of its position in creating the legal basis for the transition into a market economy and, subsequently, by the need to transpose the *acquis communautaire* (Kohl and Platzer, 2007:615). The outcome is in most cases close to the liberal market regime, also because of the weakness of societal actors, such as employers’ organisations and trade unions.

Gallie (2007) has proposed a classification of **employment regimes**, in which unions and employment strategies are the key variables. There is a strong connection with Esping-Andersen’s classification of welfare state regimes (Esping-Andersen, 1990). The main distinction runs between inclusive, dualist and market employment regimes. Inclusive employment regimes ‘are those where policies are designed to extend both employment and common employment rights as widely as possible through the population of working age’ (Gallie, 2007:17). In inclusive regimes, ‘organised labour has a strongly institutionalised participation in decision-making, both in its own right and through its influence over the party in government’ (*idem*, 18). High employment levels, common employment rights and a strong safety net help to minimise differentials between different employment statuses and contain or prevent polarising tendencies in the labour market. Dualist regimes, in contrast, ‘will be characterised by a consultative involvement of labour in the decision-making system, reflecting its weaker organisational strength’ (*idem*, 19). Labour’s influence on policies — Gallie infers — will be contingent on the political orientation of the government and the strength of unions will mostly depend on ‘a more easily mobilisable core workforce of employees in large firms’ (*ibid.*). This tends to be reflected in larger differences between insiders and outsiders as ‘dualist regimes are less concerned with the overall employment levels but guarantee strong rights to a core workforce of skilled long-term employees, at the expense of poor working conditions and low security at the periphery’ (*idem*, p 18). The third employment regime is called a market-based regime: ‘the assumption is that employment levels and job rewards are self-regulated by a well-functioning market and that institutional controls by organised labour are negative rigidities’. As a consequence, labour is excluded from a significant role in decision-making. The distinction between insiders and outsiders based on employment rights should be less pronounced, since market employment regimes emphasise minimal employment regulation, but polarising tendencies based on skill, rewards and job quality might be large without the countervailing power of unions, collective bargaining or social protection.

For the purpose of this chapter, classification by production regimes can be helpful for understanding the different approaches to education, company training and lifelong learning. Coordinated regimes, based on cooperation among employers, are expected to invest more in vocational education and training, and to produce higher rates of participation in company-based vocational training. The classification by employment regimes is important for understanding the social partner contribution to ALMP, the integration of young people and those furthest from the labour market, and the reconciliation of work and family interests. The expectation is that the differences between skilled and unskilled, older and younger, male and female groups are smallest in inclusive regimes, and that the social partners in these regimes are most active, through collective bargaining and otherwise, to further an agenda of integration and equal opportunity. Working conditions should be less polarised. Finally, for understanding the methods used by the social partners, and also their role in dealing with the issue of modernisation of employment relations, including working-time flexibility and working conditions, a third classification is needed.

This third classification is based on **industrial relations** arrangements proper, such as union and employer organisations, the power relations between them, levels and styles of bargaining, the space for social partner intervention in public policy and for state intervention in union–employer relations. On that basis it is possible to distinguish four arrangements or regimes (see Table 2.3): Nordic corporatism; social partnership, mostly developed in continental (western) Europe; liberal pluralism originating in the British Isles; and a polarised or state-centred regime found in southern Europe (Ebbinghaus and Visser, 1997; also Crouch, 1993, 1996). In ‘Democracy in Europe’, Schmidt (2006) produces a rather similar distinction based on the position of the state and the role of societal and economic interests in policymaking.

Of the four countries she discusses, France is classified as state centred: policies are designed without the systematic input from societal actors, but actors are subsequently accommodated in a rather flexible implementation process, often based on derogation from the law. If this flexibility is not offered, actors will seek confrontation. In the United Kingdom, too, the state is rather powerful and may formulate policies without significant societal input. But because the state acts in a much more restricted sphere, far more is left to society or to the market. Rather than derogation from the law, there is simply less law in the socioeconomic domain and more self-organisation. In Germany, like in other corporatist economies, the state tends to formulate and implement policies in tandem with certain ‘privileged’ societal actors, mainly business and labour. Rather than acting through open policy networks, and exerting their influence through lobbying, as is the case in the liberal-pluralist model, these interests are organised in peak associations. Compared to other ‘corporatist’ countries, but with unitary states like Sweden or the Netherlands, the state in federal Germany is weaker and less effective in its bargaining with societal interests (see also Streeck, 2003). This weakness is partly compensated through a stronger legalism, especially in labour relations.

**Table 2.2: Industrial relations regimes or arrangements**

	North	Centre-west	South	West	Centre-east
<b>Production regime</b>	Coordinated market economy		statist market economy	Liberal market economy	Statist or liberal?
<b>Welfare regime</b>	Universalistic	Segmented (status-oriented, corporatist)		Residual	Segmented or residual?
<b>Employment regime</b>	Inclusive	Dualistic		Liberal	
<b>Industrial</b>	Organised	Social	Polarised/state-	Liberal	Fragmented/state-

	North	Centre-west	South	West	Centre-east
<b>relations regime</b>	corporatism	partnership	centred	pluralism	centred
<b>Power balance</b>	Labour-oriented	Balanced	Alternating	Employer-oriented	
<b>Principal level of bargaining</b>	Sector		Variable/unstable	Company	
<b>Bargaining style</b>	Integrating		Conflict oriented		Acquiescent
<b>Role of SP in public policy</b>	Institutionalised		Irregular/politicised	Rare/event-driven	Irregular/politicised
<b>Role of the state in IR</b>	Limited (mediator)	‘Shadow of hierarchy’	Frequent intervention	Non-intervention	Organiser of transition
<b>Employee representation</b>	Union based/high coverage	dual system/high coverage	Variable (*)	Union based/small coverage	Union based/small coverage
<b>Countries</b>	Denmark Finland Norway Sweden	Belgium Germany (Ireland) Luxembourg Netherlands Austria Slovenia (Finland)	Greece Spain France Italy (Hungary) Portugal	Ireland Malta Cyprus UK	Bulgaria Czech Republic Estonia Latvia Lithuania Hungary Poland Romania Slovakia

Source: J. Visser, extended on the basis of Ebbinghaus and Visser (1997); Crouch 1993; 1996; Esping-Andersen (1990); Schmidt (2002; 2006); and Platzer and Kohl (2007).

(\*) In France employee representation in firms incorporates both principles, in Spain and Portugal it is dualist, in Italy and Greece it is merged with the unions but based on statutory rights.

The final case is Italy, which is halfway between the state-centred and corporatist model. In Italy, state and society do try to act together, but they tend to be weak on both sides and the state operates in a clientelistic rather than a corporatist manner. The corporatist approach in industrial relations was strengthened in the 1990s, for instance with the 1993 pact on collective bargaining, which in itself could be seen as a preparation for EMU membership (Ferrera and Gualmini, 2004). But the corporatism in Italy is still weaker even than in Germany, ‘since the cooperative orientation of societal actors is of recent vintage, not backed up by public law, and much more dependent on action by a state that remains quite weak, despite changes for the better in the 1990s’ (Schmidt, 2006:147).

Whether the transition economies of central and east European countries (CEECs) form a separate regime or must be classified according to one of these arrangements is a matter of debate. They tend to mix several elements. In a recent contribution, Kohl and Platzer (2007:617) argue that ‘based on the typology proposed by Ebbinghaus and Visser (1997), no national CEE system of industrial relations can be unambiguously assigned to one of the western European models [...]. Only Slovenia exhibits reasonably close parallels with one of the Western European models — the continental social partnership model, with a strong Austro-German flavour.’ Absence of sectoral collective bargaining and low bargaining coverage rates tend to orient the CEE economies towards the liberal or uncoordinated model. But the state and collective labour law play a much stronger role and this makes them more like the state-centred models of southern Europe. However, in contrast to the latter, the interaction between unions and management, and between unions and the state, tends to be less confrontational and more determined by the weakness of the union actor. With the exception of Slovenia and perhaps Slovakia, the transition economies do share the absence of sector level and unstable structures of workplace representation.

Obviously, as with any classification, the real world is messier than these typologies and the application to single countries is an approximation at best. Ireland, for instance, after the experience of two decades of social pacts, has developed features of social partnership or

‘roundtable corporatism’<sup>(13)</sup>. There are distinctions between Finland and the Scandinavian countries in matters of labour law, the role of the state and wage bargaining, or between Germany and its western neighbours in the autonomy of wage bargaining from state interference and the institutionalisation of the social dialogue. Italy (and Spain) do not share all the features of French industrial relations, especially as Italian trade unions have a much stronger social support and the state is less present in collective bargaining. Further distinctions can even be made between sectors and regions within states, for instance in Italy or Belgium.

These typologies can be helpful, however, insofar as they help direct our expectations concerning the relationship between employment policies or the contribution to the Lisbon agenda on the one hand and institutions of industrial relations or, more broadly, social and economic governance on the other. Moreover, rather than a continuum along one dimension, industrial relations regimes differ qualitatively along different dimensions. The **quality** of industrial relations, therefore, is not measurable along one dimension or in one simple statistic, like high or low union membership, bargaining coverage, the rule of law, sectoral organisation or policy concertation. There are, as it were, different qualities, each with different effects on the regulation of the economy and the labour market

For example, in Nordic (‘corporatist’) and continental (‘social partnership’) industrial relations systems one expects to find a greater use of autonomous agreements and collective bargaining; in statist and transitional systems, more sponsored agreements and legal standards rather than those produced through collective bargaining; in liberal-pluralist systems there will be less standard setting by either the law or collective bargaining, since agreements will be less binding (or benchmarking and guidelines will be used instead) and cover fewer companies and employees.

A test of these predictions, and of the value of the classification by industrial relations regimes, can be obtained by studying the implementation of the first ‘autonomous’ framework agreement on telework, concluded between the European social partners in July 2002 (Visser and Ramos Martin, 2008; EC, 2008a). With this agreement, the social partners made first use of their right, to follow the implementation route of Article 139(2) of the EC Treaty and implement the agreement ‘in accordance with the procedures and practices specific to management and labour and the Member States’. It turned out that a great variety of procedures and practices were in fact used.

The variation in the use of these instruments (guidelines, collective agreements, legislation etc.) across Member States, as shown in Chapter 5, is interesting and offers few surprises. With regard to the role of the state, there is a cluster of Member States, including, as one would expect, those in Scandinavia, the British Isles, the Netherlands, Germany and Austria, but also Italy and Spain, where guidelines and agreements have been the main instrument for implementing the European Framework Agreement on Telework, and where there was often much activity prior to the 2002 agreement. There is a second cluster where the legislation, usually based on or preceded by a national agreement or by consultations with the social partners, has seemed the preferred instrument. If we include the extension technique, which makes (‘sponsored’) national agreements binding, then this cluster includes Belgium, the Czech Republic, Greece, France, Luxembourg, Hungary, Poland, Portugal and Slovakia. There is however some overlap between the two clusters, as the legal and collective bargaining instruments do not exclude one another. This overlap is clearly present in Belgium, Greece and France, and in the public sectors of Spain and Italy.

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<sup>(13)</sup> The expression is of Walter Münchau, *Financial Times*, 23 June 2008.

A more profound test of the classification is obtained by verifying how it matches the variation according to the four pillars — union organisation, union–employer relations and collective bargaining, employee workplace representation, and national-level concertation — proposed in Chapter 1 of this report. Table 2.3 presents the averages for each regime calculated for the years 2000–06.

**Table 2.3: Models or clusters of industrial relations**

		Years	North Organised Corporatism	Centre Social partnership	South State- centred	West Liberal	Transit Mixed
<b>1</b>	<b>Union density</b>	2000–06	74.7	35.4	20.2	33.9 (*)	22.8
	<b>Union authority</b>	2000–06	0.500	0.474	0.357	0.243	0.251
	<b>Union concentration</b>	2000–06	0.375	0.344	0.217	0.413	0.276
	<b>Centralisation</b>	2000–06	0.476	0.538	0.378	0.370	0.318
<b>2</b>	<b>Bargaining coverage</b>	2000–06	86.8	82.8	75.4	35.3 (**)	34.5
	<b>Employer density</b>	2001–02	58.0	72.7	65.8	47.5 (*)	28.4
	<b>Sectoral organisation</b>	2000–07	2.0	1.8	1.2	0.5	0.7
<b>3</b>	<b>Employee representation</b>	1999–2001	2.00	2.00	1.60	0	0.48
		2005–07	2.00	2.00	1.60	0.83	0.93
<b>4</b>	<b>Concertation</b>	2000–07	1.33	1.44	1.00	0.50	0.81
	Averages of:		Denmark Finland Sweden	Belgium Germany Luxembourg Netherlands Austria Slovenia	Greece Spain France Italy Portugal	Ireland Cyprus Malta United Kingdom	Bulgaria Czech Republic Estonia Latvia Lithuania Hungary Poland Romania Slovakia

Source: Averages calculated from ICTWSS database.

(\*) Without Cyprus and Malta.

(\*\*) UK only (coverage rate in Ireland is unknown).

For measurement and data issues, see Chapter 1. Union authority and concentration are the main determinants of centralisation (see box 1.2)

These data confirm by and large the qualitative portrait based on industrial relations systems in Europe, presented in Table 2.2. As expected, union density is significantly higher in the north and union authority and centralisation is highest under conditions of northern corporatism and social partnership. Union fragmentation — the opposite of concentration or ‘unity’ — mostly affects the unions in southern and eastern Europe. Bargaining coverage does not differ much between the industrial relations systems based on organised or labour-led corporatism, social partnership or state-centred systems, though the mechanisms through which this is achieved differ. In the north the unionisation rate of workers is higher than the organisation rate of employers <sup>(14)</sup> and high levels of coverage are the product of high rates of unionisation. In continental western and southern Europe, coverage rates are two to three times higher than the union density rate and much more driven by high rates of employer

<sup>(14)</sup> The organisation rate of employers is calculated by taking the size of the firms that affiliate with employers’ into account. This makes this statistic comparable with the way in which the union density rate is calculated (see *Industrial relations in Europe 2004* report).

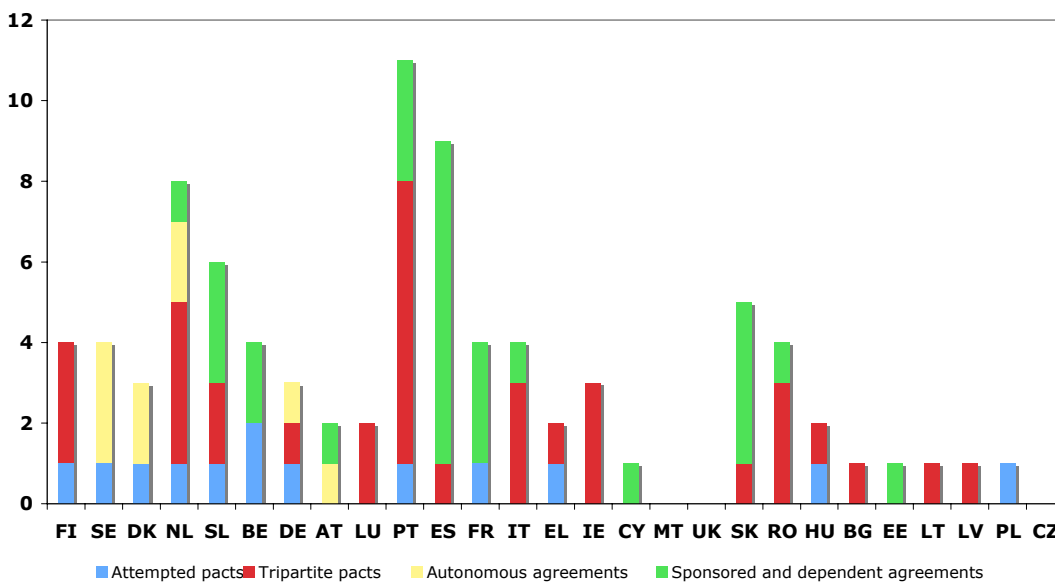
organisation and the legal extension of collective agreements to non-organised firms by the state. Coverage rates are much lower in the UK and in the CEECs (with the exception of Slovenia, here grouped together with the other social partnership countries). This is the result of much lower levels of employer organisations and the absence of sectoral agreements. Thus, even where the law does provide for the possibility to extend agreements to non-organised firms, usually on condition that the original agreement has the support of at least half the firms, weighted by size, the absence of sectoral agreements or the small minority of firms covered by any multi-employer agreement makes such provisions ineffective. The sectoral organisation of collective bargaining and the corresponding sectoral organisation of the social partners is clearly most developed in northern and continental western Europe, and mostly absent in the UK and Ireland (as well as Cyprus and Malta) and ill-developed in the other transition economies (with the exception of Slovenia and, partly, Slovakia).

Employee representation in the firm reaches its highest levels under conditions of corporatism and social partnership, though on this dimension the differences with southern Europe are small, thanks to highly institutionalised forms of employee representation in Spain, France and Italy in particular. The main differences were with the 'voluntarist' regime in the UK and Ireland and many of the new Member States, with limited employee representation, especially in non-union firms (with Slovenia and Hungary as the main exceptions). As a result of Directive 2000/14/EC establishing a framework for informing and consulting employees, adopted in March 2002, there was considerable change between 2000 and 2006, and the differences across Member States have narrowed, but the transposition has not yet been fully completed in all Member States and effective coverage is often unclear (Eurofound, 2008; EC, 2008b). Finally, the scores for national concertation or the institutionalised involvement of the social partners in social and economic policymaking also show the expected variation across these five industrial relations clusters. In this case the score of '2' is reached when there is an institutionalised practice of such consultation extending over many years and over issues of social and economic policymaking, including macroeconomic policy, social security and social protection, and work-family policies.

## **Social pacts**

One particular form through which social partners have become involved in the reform agenda of the EU is the conclusion of a social pact or agreement with the government. Such tripartite pacts were concluded in a number of EU-15 countries in the 1990s, in many cases related to the preparation of entry into the Economic and Monetary Union in 1999. Examples of such pacts, including wage and non-wage issues, were found in for instance Ireland, Spain, Italy Portugal and Finland. In recent years there have been attempts at social pacts in the EU-12, with some success, for instance in Bulgaria, Slovenia and Romania. Chart 2.1 presents an overview, by Member State, of the different instruments — pacts, sponsored (and dependent) agreements, and autonomous agreements.

**Chart 2.1: Social pact activities, 1997-2007**



Source: ICTWSS database.

Once again, we observe considerable variation across EU Member States, with most activities apparent in Portugal and Spain, followed by the Netherlands, Slovenia and Slovakia. These differences are in part a consequence of the different types of pacts or agreement. In Portugal and Spain the idea of broad pacts valid for a number of years and covering many (wage and non-wage) issues seems to have been abandoned. Instead, social pacts and agreements tend to focus on one single issue (training, wage coordination or minimum wage) and need re-affirmation each year. Ireland presents a contrasting case; here a practice of pluriannual social pacts has developed since 1987, covering a broadening range of policies and reforms — in 2006 the seventh such pact was signed. In Finland, too, the tripartite incomes policy agreements that have been signed since 1995 cover two years or more and various policies, including taxation, social insurance and training. In the Netherlands and in Slovenia, too, social pacts tend to cover many issues and more than one year.

In many countries there were attempts to conclude single issue pacts, such as wages or conflict resolution for instance in Sweden, or on unemployment insurance and active labour market policies in Denmark or, indeed, broad pacts covering many wage and non-wage issues, for instance in Belgium (1997 and 2005), Germany (1998–2002), Greece (2000) France (1997) or Poland (2003). Including such (unsuccessful) attempts and agreements sponsored by the state or those that implement legislation, social pacts are a rather widespread phenomenon that excludes only a few countries (the Czech Republic, Malta and the United Kingdom, where the unions have proposed a social pact). Social pact activities tend to run across all types of industrial relations, employment and production regimes. This is consistent with the interpretation that social pacts, and sponsored or dependent agreements, are not just an expression of social partnership but also attempt to renegotiate once established social policies and patterns of decision-making in the social and economic domain, or in industrial relations proper. Thus, we find attempts at social pacts, and renegotiation of established patterns, even in the Nordic corporatist regime, which are usually characterised by highly institutionalised patterns of consultation and little intervention of the state in industrial relations like Sweden and Denmark.



The cross-national variation in social pacts and agreements is not related to union density or bargaining coverage. Perhaps the relationship is curvilinear and unions in the middle range — not too strong and not too weak either — are most attractive as partners for the government. If they are very strong, they may demand too many concessions or feel that they can realise their objectives through normal collective bargaining in sectors and firms. If they are very weak they may be unattractive for opposite reasons, for instance because they cannot deliver consensus on behalf of employees. Of greater relevance for the conclusion of social pacts is the extent to which they can take decisions that bind their affiliates and members, and their capacity to coordinate activities with employers.

The authority of union confederations does increase the likelihood of a social pact and of concertation generally ( $r = 0.521$ )<sup>(15)</sup>. Confederal authority is associated not only with concertation and social pacts, but also with higher bargaining coverage ( $r = 0.559$ ) and higher levels of coordination between the social partners ( $r = 0.612$ ). No claims of causality are made however; it may be that the participation in national consultation proceedings causes confederations to demand and receive more power and resources from their affiliates. It seems plausible, however, that, once established, confederal authority is itself a source of policy coordination and contributes to achieving higher levels of coverage through national or sectoral agreements. This is confirmed in a forthcoming analysis, based on a pooled regression over 21 countries and 35 years, using the ICTWSS database, by Tirelli et al. (2008). They show that the probability of social pacts and agreements increases with the ‘problem load’ of the national economy (instability, high unemployment and inflation), political instability and the need for governments to seek re-election.

**Table 2.4: Social pacts and agreements by issue area**

	Social security	ALMP subsidies jobs	Taxes / budget	Training (youth + older workers)	Pensions, early retirement	Employment protection legislation	Time flexibility working hours
2000	4	3	3	3	3	3	3
2001	3	3	1	6	3	2	2
2002	5	3	2	3	1	3	0
2003	5	3	3	3	2	3	0
2004	6	5	4	2	2	0	2
2005	2	3	2	1	2	0	0
2006	5	3	4	2	3	2	0
2007	4	4	2	1	3	1	0
<i>Total</i>	<i>34</i>	<i>27</i>	<i>21</i>	<i>21</i>	<i>19</i>	<i>14</i>	<i>7</i>

Source: ICTWSS database.

Social pacts may relate to wage moderation, the targeting of the expected inflation rate, the articulation of sectoral and company bargaining, or conflict resolution procedures, issues that are beyond the scope of this chapter. The non-wage issues included in these social pacts, or subject to specific ‘single issue’ social pacts and agreements, are listed in Table 2.4. It turns out that social security issues (the level and duration of unemployment, sickness and disability benefits, eligibility rules) are most frequently negotiated, followed by active labour market policies and job subsidy schemes. This is to be expected, as these are issues that require negotiations with the state and can almost never be dealt with by the social partners themselves. Training, early retirement and, especially, working hours and time flexibility are much closer to the issues that are the subject matter of collective bargaining and autonomous

<sup>(15)</sup> Confederal authority is measured as the sum-score of five elements: whether the confederation has a mandate to represent its affiliates in joint bodies and councils with the employers and/or the government or independent experts; whether they have the apparatus to, and do regularly participate in central negotiations with employers or governments; whether they have central strike or resistance funds; whether they can influence the appointment of union officials of affiliates; and whether they can veto agreements signed by affiliates.

agreements. Taxes and budgets, of course, are not, neither are subsidies and mandatory social security contributions and benefits<sup>(16)</sup>. Employment protection legislation issues have a relatively low profile in social pacts (Boeri, 2005; Elmeskov and Duval, 2006) which is usually explained by the resistance of trade unions to renegotiate the rights of their core membership. One of the major positive examples of a reform initiated and supported by the social partners is the reform of the statutory severance pay system in Austria in 2001. The reform extended the system beyond the small majority of employees which had been entitled to severance pay, reduced the length-of-service increment, and removed obstacles to mobility by making payments portable in individualised accounts.

#### **Box 2.1: Europe's pathways to flexicurity and the role of social partners**

One of the main challenges the European Union is currently facing is how, in the era of globalisation and ageing, to live up to European citizens' expectation of providing a distinct European social model. Can a strong social Europe also be a strong economic Europe? Can Europe indeed have its own way compared to the rest of the world? This is what the flexicurity debate is about.

Flexicurity strategies aim to combine employment and income security with flexibility in labour markets, work organisation and labour relations. This approach should transcend the simple trade-off between flexibility and security, where the former is seen to be in the exclusive interest of the employer and the latter in the interest of the employee. In a flexicurity strategy, flexibility and security should not be seen as opposites, but as mutually supportive labour market components.

In today's labour markets, traditional kinds of job security are not always sustainable and do not always constitute the right solution; people change jobs more often, sometimes because they want to and sometimes because they have to. In this context, new kinds of security are needed, so that workers can change from one job to another job in a safe and successful way and acquire new skills. Active labour market policies, motivating lifelong learning and training, improving customised support to jobseekers, supporting equal opportunities for all and equity between women and men contribute to such transition security. Similarly, flexible contractual arrangements should ensure that companies can adapt to changing market circumstances. Internal (within the enterprise) as well as external flexicurity are equally important. Therefore, high-quality and productive workplaces, good work organisation, and continuous upgrading of skills are essential.

Considering the wide differences in practices and challenges between Member States, a one-size-fits-all approach is not appropriate. Second, it has to respect Member States' autonomy regarding labour market and social policies. The solution has been to propose a set of flexicurity pathways, based on the work of the European Expert Group on Flexicurity. The word 'pathways' suggests that Member States can take different roads forward, based on different challenges, priorities and possibilities.

Flexicurity pathways can be designed and implemented across four policy components:

- (i) flexible and reliable contractual arrangements;
- (ii) effective active labour market policies to strengthen transition security;
- (iii) comprehensive lifelong learning (LLL) strategies;
- (iv) modern social security provisions that provide adequate income support, encourage employment and facilitate labour market mobility.

Moreover, a supportive and productive social dialogue and trust-based industrial relations system are a general precondition for flexicurity to work.

The main elements of the typical flexicurity pathways, which could inspire Member States in setting their own flexicurity agenda, are the following.

#### **Pathway 1: Tackling contractual segmentation**

<sup>(16)</sup> Although some recent agreements and pacts do mention issues related to work–family reconciliation (for instance, leave rights for parents and childcare facilities), these issues could not be sufficiently separated and are here covered under time flexibility (leave and flexible working hours) and taxation (subsidies and provision of childcare).

This pathway addresses the issue of flexibility at the margin of the labour market. It suggests reducing asymmetries between standard and non-standard work by promoting upward transitions in the labour market and by integrating non-standard contracts fully into labour law, collective agreements, social security and lifelong learning systems. Non-standard contracts are then treated as equal to standard contracts, following the principle of *pro rata temporis*. Alternatively, standard contracts could be made more attractive for companies by introducing an open-ended contract in which specific elements of protection are built up progressively with time, until 'full' protection is achieved. Such a contract guarantees basic but adequate protection from the start and automatically builds up 'full' protection as the working relationship continues. Social partners and governments should negotiate the terms of these arrangements and make the benefits of changes visible to their constituents.

#### **Pathway 2: Developing flexicurity within the enterprise and offering transition security**

The second pathway emphasises safe and successful job-to-job transitions. Built-in contractual guarantees and human resource management policies should ensure timely progress into new jobs either within the company or outside the company once the necessity arises. Furthermore, it may be feasible to introduce individualised transition guarantees to redundant workers, to be borne jointly by employers, social partners and public employment services in order to prevent unemployment. A strong system of lifelong learning and vocational training may form the basis for productive labour market transitions both inside and outside companies. Such a system should allow for quick access to effective training funds and facilities at branch level. Within this pathway, strengthening internal flexicurity is also relevant, especially to enhance the employability and skills of workers.

#### **Pathway 3: Tackling skills and opportunity gaps among the workforce**

This pathway recommends strengthening, on the basis of existing levels of labour market dynamism, investment in skills and R & D. The employment and security opportunities and options of specific groups in the labour market can thereby be enhanced and productivity growth boosted. A broad-ranging approach is needed to keep the labour market accessible to the low-skilled and other groups at risk, such as minorities, older workers, women and the early school leavers, of becoming long-term unemployed or excluded in other ways. Employability and skills enhancement is an important task for public employment services, but flexicurity will also benefit from the possibility to conclude binding collective agreements at branch or regional level that combine provisions on how to address the flexibility needs of both employers and workers by investment in innovation and training. Where the institutional structures for such agreements are not yet in place, support from the social partners and government is needed.

#### **Pathway 4: Improving opportunities for benefit recipients and informally employed workers**

This pathway starts from the urgent need to increase the employment opportunities of persons who are currently on social security benefits or working in the informal sector. ALMP and social security should offer sufficient opportunities and incentives, in terms of increased conditionality of benefits, for return to work and to facilitate this transition. Long-term welfare dependence could thus be prevented. Informal work can be regularised by offering flexi-secure contracts, lower payroll taxes and a skills perspective for these sectors. By formalising informal economic activities, increased financial resources can be raised for building up a more comprehensive social security system. Stronger institutional capacity can be developed by stimulating the social partners to negotiate key elements of working conditions and by better cooperation between labour market and benefit institutions. Social dialogue can be further developed at sector and regional levels.

*This text box is based on a contribution by Ton Wilthagen, professor at Tilburg University, the Netherlands and rapporteur of the European Expert Group on Flexicurity. For an extensive presentation of the flexicurity pathways see European Commission communication 'Towards common principles of flexicurity: More and better jobs through flexibility and security', COM(2007) 359 final of 27 June 2007, Brussels. For information on the contribution of European social partners, see Chapter 4.*

## The industrial relations contribution to the Lisbon Strategy

The *Joint Employment Report 2007/08* (Council 2008) finds that Member States have increased their efforts to integrate people at the margins of the labour market and to create an active approach towards higher employment levels and social inclusion. To this end, Member States have used different means, like active ageing strategies through restricting eligibility conditions and increasing incentives to work longer for employees, enhancing work opportunities for older and particularly disabled workers, improving working conditions and providing opportunities for skills upgrading and retraining, and providing conditions for working-time flexibility and reconciliation of work and family life. In each of these areas the social partners' and collective bargaining agendas are important. This section reviews the state of play in six related policy domains: active labour market policies and social security reforms; training and integration of youth; improving the employment prospects of older workers and lifelong learning; working-time flexibility; reconciliation of work and family life; and working conditions. An additional text box looks at flexicurity, the pathways towards flexicurity, and the role social dialogue could play (Box 2.1).

**Table 2.5: Employment inclusion by regime type in 2006**

Indicators for 2006	Nordic corporatism	Social partnership	Liberal pluralism	Polarised pluralism	Transition economies
<b>Employment rates</b>					
Total	73.3	67.3	70.1	63.0	61.3
F/M gap	– 5.5 (*)	– 13.9	– 14.9	– 19.4	– 10.7
Youth (total)	49.0	42.9	51.6	30.9	26.4
F/M gap	– 0.6	– 4.7	– 4.7	– 9.6	– 7.9
Older workers (total)	61.6	39.4	55.3	41.3	42.5
F/M gap	– 6.2	– 16.9	– 22.4	– 21.2	– 16.2
<b>Unemployment rates</b>					
Total	6.2	6.4	4.9	8.2	8.5
F/M gap	0.7 (*)	1.3	0.7	4.2	0.5
Youth (total)	16.0	13.2	11.4	20.7	18.7
F/M gap	0	0.3	– 2.4	7.4	1.6
Older workers (total)	5.0	6.1	2.7	4.9	6.1
F/M gap	– 0.2	1.3	– 0.7	0.4	– 0.5

Source: Calculated from the European labour force survey, 2006, Eurostat.

(\*) F/M gap, meaning that the female employment rate is 5.5 percentage points below the male employment rate, and the female unemployment rate 0.7 percentage points higher, etc.

Table 2.5 offers a baseline for the discussion in this section. For each of the five industrial relations regimes, the mean employment and unemployment rates by age group and the mean male–female gaps have been calculated. The data largely confirm Gallie's analysis of these regimes in terms of employment inclusion or exclusion. Thus, the highest employment levels and lowest male–female gaps are found in the inclusive employment regimes of Nordic corporatism. The liberal pluralist (or market-based) regime comes second best. Of the two dualist employment regimes, the polarised pluralist regimes of southern Europe have worse outcomes — in particular the low employment rate and high unemployment rate for young people, and the large disadvantage for women, is striking. The dualist employment

regimes of continental western Europe, operating under conditions of social partnership, perform poorly when it comes to older workers, partly because of the extensive provisions for early retirement that seem hard to reverse. There are also low employment rates of young people, and high youth unemployment rates in the transition economies.

**Table 2.6: Main reasons for not seeking employment in 2006**

EU-27 total	15–24	25–49	50–59
In education or training	87.4	10.9	0.3
Looking after children or incapacitated adults	2.0	25.0	3.9
Other family or personal responsibilities	1.8	19.5	13.9
Retired	0.3	2.8	31.5
Discourages workers or belief that no work is available	1.6	7.7	6.4

Source: Calculated from European labour force survey 2006, Eurostat.

Unsurprisingly, for the inactive population, the decision not to seek employment varies with age (Table 2.6). For those between 15 and 24 years, the main reason is (full-time) participation in education and training, whereas later in life this motive becomes negligible. For the group between 25 and 49 years of age the responsibility for children or other caring duties is the most important self-declared reason, in particular (but not only) among women. For older workers, between 50 and 59 years, such responsibilities still play a role, though to a lesser extent. One third of those in this age group have retired but there are many others who do not believe that there is a job for them. From this simple analysis, it is apparent that large gains, in terms of employment inclusion, can come from policies that reconcile work with care responsibilities, for instance through: provision of childcare, improved leave arrangement or flexible working arrangements; policies that make work more and retirement less attractive for older workers; lifelong learning and training policies that make older workers more competitive in the job market; policies that reverse age (as well as sex) discrimination and increase the transparency of the labour market; and policies that improve working (and health) conditions for all, but in particular older workers. These are issues for collective bargaining and public policy, and often the combination of the two — providing general incentives and ensuring delivery in the company or workplace — is crucial.

### ***Active labour market policies and social security reforms***

In the past five years, EU Member States have increased spending on active labour market policies (ALMP), with a tendency to increase the conditionality of unemployment insurance, tighten the eligibility conditions for unemployment benefits, raise the effectiveness of job-search assistance, emphasise the individual responsibility of jobseekers and monitor job searching activities. Additionally, in many Member States financial incentives are being created to increase the readiness of people with a disability to take up work, while subsidies are given to employers to hire disabled people and to adapt their workplace to their needs. There is, however, still a way to go; the *Joint Employment Report* notes that the current average exit age from the labour market (at the age of 60.9 years on average) is still much below the 2010 target of 65 years of age. This is one of the hardest areas of reform and it is clearly related to many other issues (dismissal protection, lifelong learning, better employment opportunities for older workers, part-time retirement and flexible time use, and working conditions). For migrant workers and their families, activation measures vary from training and language courses, wage subsidy schemes to employers, attempts to integrate children of immigrants into the educational system and the launching of special programmes in geographic areas where migrants are concentrated.

In most Member States, unions and employers are in some way or another involved in the political process of preparation and establishment of these policies. In a majority of countries, this participation is institutionalised through the participation of the social partners in tripartite bodies or via political and administrative channels. In the Nordic countries, governments have a long tradition of including both employer's organisations and trade unions in decision-making over ALMP, partly because trade unions have retained a role in the provision and administration of unemployment insurance. In Belgium, too, policies are mostly set through tripartite consultations, even though the state retains final responsibility. In the Netherlands, as in Germany and Austria, the role of the social partners in ALMP has been weakened. In France the social partners have retained a strong role through bipartite funds and there have been attempts to carve out a more autonomous bargaining role for the social partners.

Austria presents an example of social partner involvement in ALMP in early 2007, when unions and employers offered a joint programme aimed at improving employment opportunities for unskilled, unemployed and young people. Something similar happened in Denmark with regard to young people with low levels of formal initial education. The recent social pacts signed in Ireland (2000–03, 2003–05 and 2006–11) include a wide range of labour market measures. In order to tackle the labour market and demographic problems, the Finnish government and the social partners adopted in 2003, after lengthy negotiations, legislation to reform the private sector pension system with a view to discouraging early retirement. Furthermore, in late autumn 2002, the Central Organisation of Finnish Trade Unions presented proposals including a substantial increase in the resources for active labour market policy so that the 'activation rate' for unemployed people can be lifted from the present 20 % to 40 %, which is more in line with the activation rates usually seen in other Nordic countries.

After almost a year of negotiations, the Dutch social partners concluded a social pact with the government in November 2004, including measures to phase out early retirement. In the tripartite Social and Economic Council their representatives agreed to set the target for the employment rate at 80 % in 2020. A specific participation summit between the government, the social partners and the municipalities was supposed to agree on specific job measures for the 200 000 people with the largest distance to the labour market. However, it turned out to be impossible to reach a new pact on this occasion. Employers had linked the issue to a reform of the dismissal protection system for workers under open-ended contracts, a move which the trade unions vetoed.

In Spain, a tripartite agreement containing measures related to pension reform was signed in July 2006 by the government and the social partners. Many of these measures were already included in the agreement relating to improvement and development of the social security system ('Acuerdo para la mejora y el desarrollo del Sistema de Protección Social') for 2001–04. Also, an agreement was reached between the government and social partners in early 2006 on merging the occupational training schemes for the unemployed with the continuous training systems for active workers.

In July 2007, the Italian government signed a social pact with the trade unions concerning pension reform, social security, flexible employment contracts, competitiveness, young workers and women. In Slovenia, the social agreement for the period 2003–05 established plans for a sustainable social security system for all citizens<sup>(17)</sup>. After a difficult period, with social dialogue at a low, another three-year social pact was signed in July 2007, though its effects are unclear and its most tangible result appears to be that the tripartite system of concertation was rescued for the time being. In the Czech Republic the government accepted

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<sup>(17)</sup> <http://www.eurofound.europa.eu/eiro/2007/08/articles/si0708029i.htm>

the proposals agreed between the social partners, submitted through the Social and Economic Council, aimed at broadening the inclusion of long-term unemployed in retraining programmes and to improve active measures to enhance youth employability.

There were also failed attempts at reform pacts. The most spectacular case is probably the end of the 'Alliance for jobs, competitiveness and training' in Germany. Initiated in September 1998, the social partners had agreed with the government to join forces on a number of issues, including a permanent reduction of non-wage labour costs and structural reform of the social security system; employment-promoting work-sharing; better use of early and partial retirement; the development of new fields of employment for low-skilled workers; and labour market policy to fight youth and long-term unemployment. No agreement could be reached on concrete solutions and by 2002 it was dead. Following the re-election of the government the government moved alone and introduced a series of reforms ('Agenda 2010') on pension, social assistance and unemployment insurance, against the opposition of the trade unions.

In Belgium the government tried in 2006 to reach a so-called 'generation pact' with the social partners, intended to make early retirement less attractive and introduce measures to tackle youth unemployment and welfare poverty. But it proved impossible to secure the cooperation of the trade unions and the government moved on its own with a weaker version of its original plans. However, in the next general round of central bargaining between the social partners, for 2007–08, many of the measures to increase the active participation of older worker were included in the agreement and recommended to the sectoral and company negotiators. These negotiations take place under a strong 'shadow of hierarchy' of the state, since the state has tied the maximum wage increases by law to the developments in France, Germany and the Netherlands. The Italian centre-right government that was in power from May 2001 to 2006 was less inclined to acknowledge the role of the social partners in policy concertation. Yet, the government did start negotiations with the unions and manage to secure the support of two of the three main union confederations in the 2002 'Pact for Italy', which included various measures, including benefits and services for workers when they (re)enter the labour market and experimental measures to lift dismissal protection in companies employing less than 15 employees)<sup>(18)</sup>. The pact was highly contested and large parts of the pact were never implemented.

In most European countries, issues relating to the unemployment benefit system are not included in the (bipartite) negotiations of collective agreements. An exception is Belgium, where most sectors have set up welfare funds that grant additional advantages in the case of illness, unemployment and recently, retirement. In Greece, the social partners have signed agreements on the issue of insuring workers against unemployment. Danish and Swedish agreements also contain provisions for the re-employment and training of workers made redundant and these issues have in both countries been subject to general agreements for the private sector, preceding the negotiations in sectors. Since 2000, the Dutch social partners include provisions for re-integration of people with weak attachments to the labour market in their collective agreements.

Finally, in several Member States, the trade unions play a role in the administration of the system, by managing either payment bodies (Belgium) or unemployment funds that collect contributions and pay the benefits (Denmark, Finland, Sweden). These institutions have come under considerable pressure for change, however. The current trend is towards a diminishing role of the unions in the administration of unemployment benefits (Schaapman and Van het Kaar, 2005). Such reforms, creating a single entry point for all types of (insured and uninsured) jobseekers, have taken place in many countries, including the Netherlands,

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<sup>(18)</sup> [http://www.ilo.org/public/english/dialogue/ifpdial/sd/social\\_pacts/italy.htm](http://www.ilo.org/public/english/dialogue/ifpdial/sd/social_pacts/italy.htm)

Finland, Sweden and Norway. In the Netherlands this meant that the social partners were sidelined and they no longer have managerial control over labour market offices or the administration of unemployment insurance. In the Nordic systems, as in Austria and Belgium, unions have retained more control, but in Denmark, trade unions feel that their position in this domain has weakened.

In Finland, the introduction of an independent unemployment insurance fund in 1992 has allegedly undermined the strong position of the trade unions in the management of unemployment benefits. Before, trade unions administered all unemployment insurance funds in Finland <sup>(19)</sup>, but since the reform they must now compete with an independent (and cheaper) fund. Böckerman and Uusitalo (2005) argue that its success has eroded the link between unions and the entitlement to earnings-related unemployment benefits, and thus contributed to the decline in unionisation in Finland. In Sweden, the government has introduced similar legal changes in 2007, altering the connection between union membership and membership of an unemployment insurance fund.

### ***Youth employment and the school to work transition***

The successful integration of young people in the labour market has become a priority goal of European policymakers. The size of the youth population, aged 15 to 24 years, is predicted to shrink from 12.6 % to 9.7 % of the total population between 2005 and 2050, yet, the training of young people and the organisation of the transition from school to jobs remains a matter of great concern.

Youth unemployment has fallen between 2000 and 2006, but in some regions (southern and eastern Europe) unemployment still affects one in five or six young people. Employment rates also vary a great deal. The highest employment rates of young people are reached in Denmark, the Netherlands, Austria, the UK and Ireland; the lowest are in Greece, Italy, Luxembourg, Hungary, Poland, Bulgaria and Romania. Generally, low employment rates go together with high unemployment rates, and in fact many young people may stay longer in (full-time) education. Obviously, enrolment rates in (tertiary) education and the division between part-time and full-time education and work have a major influence on employment rates. It is for this reason that the OECD has tried to draw attention to those young people who are not in employment, education or training (NEET) (Quintini et al., 2007). Better than inactivity rates, they capture the problem of inadequate training and education, and the difficulty of organising the transition from education to work. The EU average of young people not in employment, education or training stands at 18 % of the population aged 15 to 24 years, but this hides considerable variation across Member States, with the lowest NEET rates in Denmark and Netherlands and the highest in France, Italy, Poland, Romania and Slovakia. Although NEET rates are usually higher among young adults, with teenagers more likely to be enrolled in education, Spain, Italy, Malta, the UK, Romania and Bulgaria also exhibit high percentages of NEET rates among teenagers, indicating problems of school dropout, lack of training and joblessness (EC 2007a, pp. 36ff).

Policy measures to improve youth employment include improved vocational education and training, specific guidance and pathways for at-risk school-leavers, intensified and personalised guidance and job search support, reduction of employers' social security contributions, tax promotion for apprenticeship places, wage support for recruitment of long-

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<sup>(19)</sup> Like Denmark and Sweden, Finland operated a so-called Ghent system, where membership of an unemployment insurance fund is required to access earnings-related unemployment benefits, which are paid at much higher level than the state guaranteed benefits. Theoretically it was possible in Finland to be a member of a union-administered fund without joining the trade union, but in practice the two memberships have been inseparable. YTK has been providing since 1992 earnings-related benefit coverage for a price considerably below the level of union membership fees.



term unemployed youth and even reduced taxation of students' jobs. The availability and acceptance of part-time jobs, and the combination with part-time education, is another major factor.

The major contribution of the social partners lies in the area of wage policies (youth entry rates), working time (part-time jobs) and training. The first area lies outside the scope of this chapter, part-time employment will be discussed in a later section. Training and organising the transition to work is especially important for those with weak or low educational credentials. Both unemployment and employment rates are strongly related to educational attainment.

Table 2.7 shows the gap in employment ratios between those with tertiary (ISCED 5–6) and primary schooling (ISCED 1–2). Unsurprisingly, young people with tertiary education reach much higher levels of employment, and are less likely to be unemployed, than those with the lowest levels of education. The main exception is southern Europe, where a majority of higher educated young people are not in employment and one fifth is unemployed. The education gap is particularly large in the transition economies, but the problems for young people with little education are visible from these data in all employment and industrial relations regimes. Here, there is clearly a huge task for governments and social partners.

Strategies aimed at tackling youth unemployment are, in most cases, part of a broader policy design addressed at unemployment in general. Only rarely do youth employment programmes enter social dialogue or collective bargaining as the only or key issue. Moreover, a comparison across countries suggests that the priority given by social partners to this topic is not very strong and not correlated with the extent of youth unemployment.

**Table 2.7: Youth employment and unemployment rates by level of educational attainment**

	<b>Nordic corporatism</b>	<b>Social partnership</b>	<b>Liberal pluralism</b>	<b>Polarised pluralism</b>	<b>Transition economies</b>
Youth employment rate					
ISCED 0–2	37.6	30.1	33.7	25.9	8.9
ISCED 5–6	71.5	72.0	79.0	48.0	65.4
Education gap	– 33.9	– 41.9	– 45.3	– 22.1	– 56.5
Youth unemployment rate					
ISCED 0–2	23.0	19.0	20.6	22.6	37.9
ISCED 5–6	12.9	16.1	7.2	22.9	19.5
Education gap	10.1	2.9	13.4	– 0.3	18.6

*Source:* Calculated from the European labour force survey 2006, Eurostat.

Austria, Belgium and Denmark are among the Member States where the involvement of social partners is highly institutionalised. In 2007 the Austrian social partners presented joint proposals aimed at reforming the current, generalised system of apprenticeships with individualised qualification programmes for young and unemployed workers and to introduce a special programme for unemployed older workers. The government welcomed the initiative and adopted a youth employment pact in April 2008 that had been agreed with the social partners. It relates to training arrangements outside the workplace as well as incentives for quality or gender mainstreaming measures in vocational training. In Belgium the generation pact foundered, but in the bargaining round of 2007–08 some proposals for training and easing the employment prospects for young people were incorporated. In the autumn of 2004 an ambitious tripartite cooperation project was launched in Denmark, involving the government and the social partners, with a view to analysing the levels of

access to vocational training of Danish workers, especially those with only a short period of formal education <sup>(20)</sup>. In February 2005, the government followed with an action plan for the development of competences for this group of (future) workers.

Another Member State showing considerable involvement of social partners is Spain, which set up the 2005–08 youth plan based on discussions in the Tripartite Commission on Youth Employment. Slovenia has also moved in this area, based on tripartite discussions in its Economic and Social Committee. In the other CEECs with tripartite bodies for consultation, social partners, when at all consulted, tend to have only a vaguely advisory role with little leverage on actual policies. In Bulgaria, for instance, unions and employers agree on the inadequacy of the national action plan in fostering the provision of a skilled workforce matching the labour demand (lack of professional skills).

The regulation of youth employment programmes via collective agreements varies a great deal across EU Member States. The main topics are minimum entry wages (Netherlands), apprenticeship programmes (Germany, Belgium) and the organisation of vocational training. Sectoral agreements and coordination among employers play a key role in job classification systems, training requirements and apprenticeship schemes in the coordinated production regimes of northern and continental Europe. This implies usually joint responsibilities for the management of vocational training schemes, sometimes even for the recruitment of young people. Elsewhere in Europe, there are many attempts to do the same.

In France, for instance, unions and employers draw up job classification schemes and training requirements in sector-level collective bargaining. Under the 2007 pact, Italian sectoral bargainers are encouraged to do the same for apprenticeship training. In Spain the 2005 multisector agreement regulates the establishment of training contracts. Collective agreements on training at the sectoral level are also negotiated in Romania and Slovakia. In Poland some sectoral collective agreements define the rules according to which employees can develop their occupational skills. In the Czech Republic, social partners at the sectoral level monitor enterprise-level collective agreements, seeking to incorporate into collective agreements more adequate training arrangements. In Hungary tripartite regional councils produce the list of the vocational qualifications most demanded in the labour market. In Slovenia and Malta the role of employers is much more pronounced than that of the unions. In Portugal governments have tried to interest employers in designing sectoral training programmes together with the unions. In the UK union officials are involved in the development of the occupational and qualifications standards, but remain outside the framework of any systematic social partnership arrangement.

### ***Lifelong learning and the position of older workers***

The changing occupational structure of employment and the transition into a knowledge economy is arguably one of the most important trends in current and future labour markets. Rapid economic growth goes together with occupational and sectoral change and the reallocation of labour across firms, sectors and occupations. It requires workers to constantly update their skill and engage in a process of up-skilling. Social dialogue at various levels has addressed the issue of enabling enterprises to provide continuous vocational training or lifelong learning and offer employees adequate training opportunities. Given the expansion of highly skilled occupations and the rising educational attainment of the labour force, older workers are under pressure to remain competitive compared with younger workers with higher educational qualifications.

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<sup>(20)</sup> <http://www.eurofound.europa.eu/eiro/2005/02/tfeature/dk0502101t.htm>

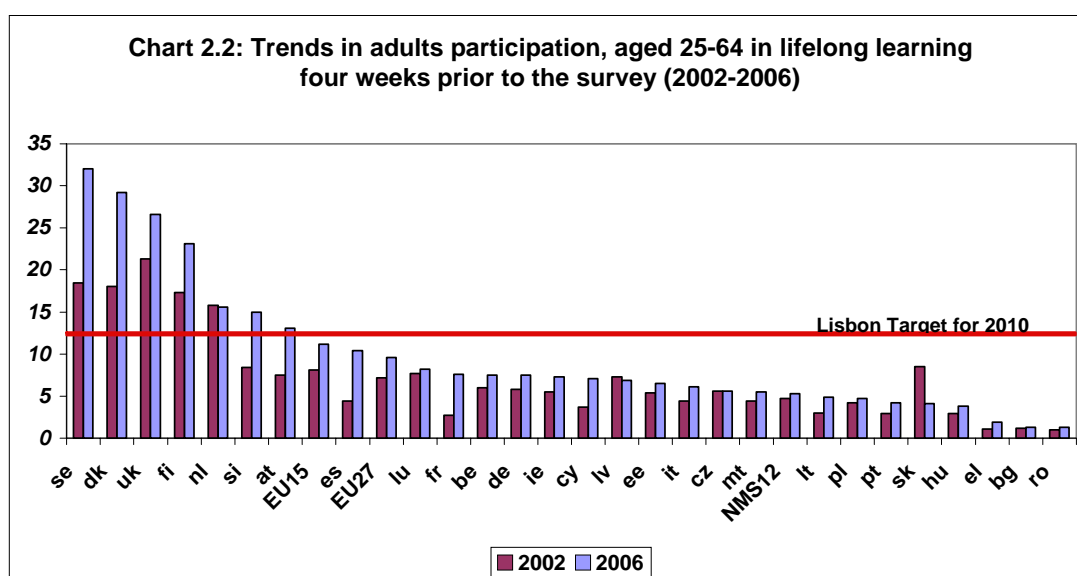
Employment rates of the population aged 55 to 64 years are still below 50 % in most Member States, the target rate of the Lisbon Strategy for 2010. Only the inclusive Nordic regimes achieve rates as high as 60 %. As one might expect, employment rates of older workers, between 55 and 64 years of age, are highly correlated with educational attainment (see Table 2.8), as for the younger age groups (Table 2.7). People with less than upper secondary education are more disadvantaged, especially in Italy, Hungary, Malta, Poland and Slovakia. In some Member States (Portugal, Finland, the United Kingdom and Sweden), however, the employment rate of low-educated older workers is very high, though mostly in low-wage jobs. This is directly related to the high employment rates of older women in these countries. In view of the gap in employment rates across educational attainment levels, and the generally lower level of employment among workers with only primary education, the need for additional training on a continuous basis is particularly large among older workers with low levels of education. This is an area where the social partners, in particular, can play an important role.

**Table 2.8: Employment rates of population aged 55-64, by educational attainment**

	<b>Nordic corporatism</b>	<b>Social partnership</b>	<b>Liberal pluralism</b>	<b>Polarised pluralism</b>	<b>Transition economies</b>
ISCED 0–2	48.7	29.0	52.1	36.5	27.7
ISCED 5–6	74.0	59.0	72.4	61.1	62.8
Gap	– 25.3	– 30.0	– 20.3	– 24.6	34.1

Source: Calculated from the European labour force survey 2006, Eurostat.

On average, participation in lifelong learning has been on the rise in the majority of the EU Member States, but most Member States are still far off the target of a 12.5 % participation rate set for 2010 in the Lisbon Strategy, and more common effort, including social partner action, is called for (see Chart 2.2). There is a massive variation across Member States with only Sweden, Denmark, the United Kingdom, Finland, the Netherlands, Slovenia and Austria reaching the 2010 Lisbon target for lifelong learning. Italy, Portugal and most of the EU-12, including Ireland and Germany, are still far off target. In the past five years, the strongest improvements were made in the Nordic corporatist countries, which already had the highest level of lifelong learning (Table 2.9).



Source: calculated from the European labour force surveys 2002 and 2006, Eurostat.

Post-initial learning provided or consumed after formal schooling works cumulatively rather than as compensation for the lack of formal education (Table 2.9). Participation rates in such learning increase with educational levels. Employers find it more rewarding to provide training to higher skilled workers, since the returns to investment are supposed to be higher. A similar argument explains the lower access of older workers to training, given the shorter time span over which training costs can be recouped. The decline in training intensity over the life cycle is one of the main hurdles to be addressed by a lifelong learning approach to education and training <sup>(21)</sup>.

Levels of training are lower and the educational gap in lifelong learning is larger in pluralist, polarised and transition industrial relations systems (Table 2.9). This is related to the much lower rates of company-provided training, especially by smaller firms. The SME sector is also poorly covered by unions and collective agreements, especially where company bargaining prevails. Only when they are covered under sectoral arrangements, with the help of common funding, will small firms have the capacity and incentives to offer training to a significant number of employees. These conditions are poorly fulfilled in southern and in eastern Europe (see Table 2.9).

**Table 2.9: Participation rates of adult workers (25 to 64 years) in post-initial education activities and enterprises offering vocational training**

	<b>Nordic corporatism</b>	<b>Social partnership</b>	<b>Liberal pluralism</b>	<b>Polarised pluralism</b>	<b>Transition economies</b>
Lifelong learning					
2002	17.9	8.6	13.4	3.1	4.3
2006	26.2	10.4	17.1	5.9	4.4
	+ 8.3	+ 1.8	+ 3.7	+ 2.8	+ 0.1
Any learning activity in 2006					
ISCED 0–2	57.1	43.3	23.4	23.4	12.7
ISCED 5–6	90.4	77.8	63.6	66.2	56.3
<i>Gap</i>	– 33.3	– 34.5	– 40.2	– 42.8	– 43.4
Formal education	10.1	3.8	6.9	3.1	2.6
Non-formal education	45.5	16.9	24.3	9.9	9.6
Informal education	62.6	53.7	45.0	33.0	25.4
% of enterprises offering training					
10–49 employees	70.0	55.2	63.0	32.8	29.3
50–249 employees	88.3	78.4	75.0	61.4	55.6
250+ employees	94.7	92.2	83.0	85.2	78.2

*Source:* Eurostat, calculated from European labour force survey, and refers to 2006. Participation rates of adults in formal, non-formal and informal education are calculated from provisional Eurostat data for 2005. **Formal education** is defined as education and training in schools, universities and colleges; **non-formal education and training** includes all activities outside a formal education programme, in particular vocational training at the initiative of the enterprise; **informal learning** corresponds to self-learning (using printed material, libraries, video and audio material, or computer-based and online Internet-based web education), which is not part of either formal education or company training.

A considerable share of adult learning is concentrated in non-formal and informal activities (Table 2.9), for which the assessment, validation and recognition has become a matter of particular concern for unions and employers. From the point of view of employability, the

<sup>(21)</sup> Study on access to education in Europe — Final report, 2005:76; see also Chapter 2 in *Employment in Europe 2007*.

effectiveness of skill enhancement achieved through vocational training is correlated with the external recognition of the skills acquired and the transferability across firms. Hence, needs assessment and validation of training are two aspects relevant for the social dialogue. In their Framework of Actions on Lifelong Development of Competencies and Qualifications of 2002, the European social partners identified four areas for action: (i) identification and anticipation of competences and qualifications needed; (ii) recognition and validation of competences and qualifications; (iii) information, support and provision of guidance; and (iv) mobilisation of the necessary resources.

At the national level, the involvement of social partners in planning training activities and lifelong learning patterns is subject to considerable cross-country variation. The extent to which well-established practices of consultation of interests are extended to cover adult education as a central issue of the social dialogue is contingent, to a certain degree, on path-dependent trajectories. Hence, longstanding commitments to social partner involvement in policymaking in labour market reforms, common in the Nordic countries but also found in Germany, Belgium, Luxembourg, Austria and the Netherlands, are reflected in a more encompassing approach towards lifelong learning. In contrast, in Member States that have traditionally relied on voluntary bargaining, like the UK, or in Member States without a tradition of concertation, the influence and involvement of social partners is more haphazard and the role of the state usually larger. In the EU-12, provisions and regulations tend to be directly dependent on the positions taken by the government. Public agencies and administrative structures have a leading role, as is also the case in Ireland, Portugal and Greece. Whereas in the first group of countries continuing vocational training has been part of the industrial relations and collective bargaining agenda for some time, elsewhere the issue seems to have entered the social dialogue agenda more recently and is not always integrated into collective bargaining. Recurrent attempts to negotiate sponsored agreements, for instance in Portugal and Spain, indicate both the importance of the issue and the difficulty of implementing such agreements.

There are three key issues addressed in collective agreements that include clauses on training, common in many EU-15 Member States: funding; programme management and selection; and the extent of individual training rights of employees. The introduction of the so-called 'Individual learning account' is a matter of discussion especially in Sweden and United Kingdom, and a trend likely to spread to other countries in the foreseeable future. In France, the social partners agreed on an individualised training right in 2003 (see Box 2.2). The recognition of a right to training and the availability of paid leave for educational purposes are also common in the Netherlands, Finland, Austria, Spain, Malta, Slovakia and Ireland (limited to the public sector).

#### **Box. 2.2: Individual right to training in France**

Reform of continuing vocational training was one of the issues considered under the industrial relations reform initiative launched by French employers association MEDEF in 2000. On 20 September 2003 a national cross-industry agreement on employees' lifelong access to training was concluded, signed by all five principal union confederations.

The agreement makes room for a customisation of training trajectories based on professional assessment by employers and the creation of an individual training right for employees. A new tool is created, the so-called training passport, drawn up at the behest of the employee and lists the knowledge, skills and occupational aptitude acquired either in initial and continuing training or through professional experience. Existing training leave schemes remain unchanged and employees can save training credits up to a period of six years, but they must seek agreement with employers about actual training and financing. There is a limited transferability of training rights, thus making the entitlement personal rather than company based.

The agreement was given the force of law in May 2004, with some modifications. The law encourages sectoral negotiations to detail arrangements, and some 130 sectoral agreements on professional training were concluded between October 2004 and April 2005. These agreements seek to guarantee equal access and improve conditions for training in SMEs and for older workers, as well as transferability of training rights, but they do less well in defining training needs, probably because the sector is less and less an organising unit and large firms tend to opt-out from sectoral arrangements. Another obstacle is that during economic downturns, when firms or sectors face difficulties, training rights tend to be sacrificed. An evaluation study commissioned by the Ministry also notes that the means for joint action and social dialogue are often lacking (Rivier and Seiler, 2006).

*Source: Jelle Visser and Birgit Bentzen, 'Better governance and delivery of reform through partnership', Thematic Review Seminar of the EES, 24 April 2006, Brussels.*

Local representation appears to matter greatly for the access to training. In some countries an increasing role is assigned to the works councils, especially in Denmark, Germany and Finland. The case of United Kingdom stands out, as trade unions function to some extent as brokers favouring access to training through the presence of Union Learning Representatives at the company level. A recent study, using data from the workplace employment relations survey of 2004 found that trade union recognition has a consistently positive effect not only on the extent to which employees receive training opportunities, but also on the amount of training they receive (Stuart and Robinson, 2007). The research also showed that enterprises are more likely to offer higher levels of employee training — defined as 10 or more days' training a year — when they recognise trade unions, have some form of representative structure and where trade unions directly negotiate with management with regard to training. A similar result comes from research on Germany. A study based on matched pair analysis of IAB establishment panel data for 1996–2005 found that participation in training was consistently higher in establishments with works councils, compared with those without works councils (Bellmann and Ellguth, 2006). Moreover, the participation rate increased in establishments with works councils after the reform of the Works Constitution Act in 2001, whereas it stagnated in companies without worker representation. The European Foundation for the Improvement of Living and Working Conditions (Eurofound) (2008) refers to another example from Lithuania, where a survey conducted in 2005 under the EU EQUAL initiative examined the issues of training and skills development for employees. Looking at enterprises with collective agreements and trade union representation, the survey found that a majority of respondents reported that improvement in qualification levels and reskilling of employees were ensured by collective agreements. The agreements covered issues such as the skills development of older workers in particular.

There are widespread attempts across Member States to involve all social actors in financing the training effort <sup>(22)</sup>. One way is to create sectoral training funds administered by bipartite bodies based on compulsory training levies and/or payroll contributions, possibly in combination with government and ESF subsidies or tax exemptions. Such collective training funds can be found in the Netherlands, Belgium, Denmark, Finland, the United Kingdom (only construction), Spain, Cyprus, Greece and Italy (Cedefop, 2008). Finland is a particular case insofar as training schemes providing funding for continuous vocational training can be set up at the initiative of employees.

A shift towards demand-led instruments seems to be the principal trend, in the framework of proactive policies aiming at eliminating skill shortages in national labour markets. In Finland, social partners are involved in government-forecasting approaches for future skills

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<sup>(22)</sup> 'Sharing costs and responsibilities for lifelong learning', Thematic Review Seminar, Brussels, 28 September 2005.



and qualifications. In the UK, employers in each sector lead the identification of training needs and the design of programmes; trade union officials are involved in this process depending on the union density in the sector and their degree of coverage. Employer-led sector skills bodies are also common in the Czech Republic. In Sweden social partners have started projects on validation of sector skills in a tripartite governmental body; at the company level, validation relies on the employers' separate dialogue with employees directed to the identification of specific training needs. Other examples come from Denmark and Ireland (Box 2.3).

### **Box 2.3: Advanced vocational training (Sweden, Denmark) and Skillnets (Ireland)**

In 2002, Sweden included advanced vocational education in its regular educational system. Already in 1994, trade unions and employers' association had put forward a proposal for a system of tertiary non-academic education with strong links to working life. In response, a pilot project was carried out between 1996 and 2001. When the pilot scheme was extended to the whole country and to other target groups, it was brought under the newly formed **Swedish Agency for Advanced Vocational Education**. The key factor in the success of the programme is that it is demand-led and flexible. The scheme is locally grounded, based on bottom-up initiatives of trade unions and employers' associations in response to needs they identify through their members. Flexibility is built into the implementation structure, which means that new challenges and labour market demands can be met continuously. Stakeholders learn by monitoring as knowledge and experiences with implementing the programme find a feedback into the supply of courses.

A range of similar lessons can be drawn from the reform on adult and educational training in Denmark. A new **Labour Market Institution for Financing Education and Training** (AUF) with social partners' representatives was set up with similar aims to the Swedish Commission in 1996.

**Skillnets** is an example of experimenting partnerships in Ireland. Companies contribute on average one third of the costs of training. The scheme is demand-led insofar as the companies and their employees direct and control what training is offered and by whom. Skillnets has initiated an enthusiasm for training and enabled companies to undertake cost effective and flexible training of high quality with more focus. There are still some difficulties, however, related to the predominance of the sectoral approach to the formation and development of training networks promoted by Skillnets. Sharing sensitive information and knowledge with competitors within sectors has limitations, especially in a context where sectoral employer organisation is weak (Irish employers do not negotiate sectoral wage agreements, unlike many continental European countries).

*Source: Jelle Visser and Birgit Bentzen, 'Better governance and delivery of reform through partnership', Thematic Review Seminar of the EES, Brussels, 24 April 2006.*

### ***Working hours and working-time flexibility***

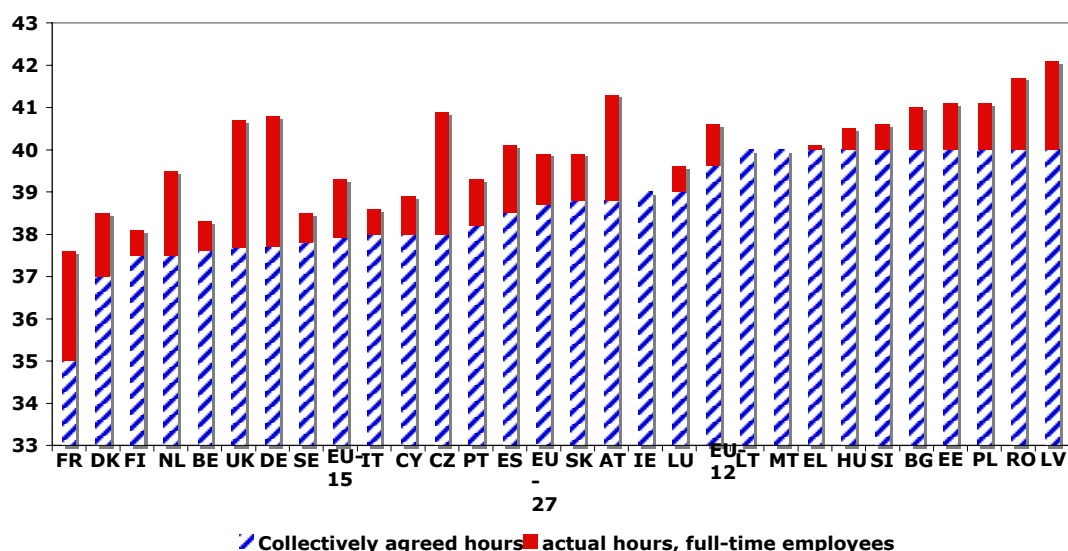
Working hours and working-time flexibility (when and how long to work, the possibilities to take leave, or change schedules) are important not only for productivity, teamwork and job satisfaction, but also for the inclusion of women, older workers, students, disabled persons and those with commitments outside work in employment. In most EU-15 countries working hours became an increasingly important issue for collective bargainers in the early 1980s in response to unemployment and the growing intensity of work, but the issue has now shifted from the length of the working week to working-time flexibility, focusing on the annualisation of working hours, the possibilities for part-time work, the reconciliation of work and family life, and the organisation of 'time savings accounts' or 'working time banks'. In contrast, in most EU-12 countries collective bargaining plays a relatively small

role in setting weekly working hours. Collective agreements either do not deviate from the statutory 40-hours norm or do not deal with the issue at all.

While the average number of working hours per person has declined over the last two decades, the length of the **full-time** working week has changed very little, indicating a significant **part-time** effect in the decline of working hours. According to the European labour force survey, the average number of usual weekly working hours in the main paid job for full-time employees has remained close to 40 hours; it was 40.3 hours in 1995 and 39.9 hours in 2006. There are however pronounced differences across the EU-27; currently, full-time employees work on average the largest number of hours in Latvia, Romania and Austria, the smallest number in France, Finland and Belgium (Chart 2.3).

Actual weekly hours are almost always longer than contractual working hours, due to overtime. Collectively agreed weekly working hours have also remained quite stable over recent years, after the campaigns for further reductions came to a standstill in the late 1990s. Over the eight-year period from the beginning of 1999 to the end of 2006 the EU-15 average of the number of working hours set by collective agreement decreased slightly from 38.6 to 37.9 hours per week. The issue of working-time cuts has not fully disappeared from the agenda. It is still an issue in Belgium in response to employer pressure to lengthen the working week, in Greece, Portugal and Spain, reflecting union pressure to catch up with a trend to shorter working hours which they later joined, and in France, where recent new legislation seeks to mitigate earlier legislation on the 35-hour working week. The tendency is now for employers to press for longer working hours. The lack of real wage growth is likely to have lowered the appetite for working-time reduction among workers and unions.

**Chart 2.3: Actually worked and collectively agreed weekly working hours in 2006, full-time employees**



Source: Calculated from European labour force survey 2006, Eurostat.

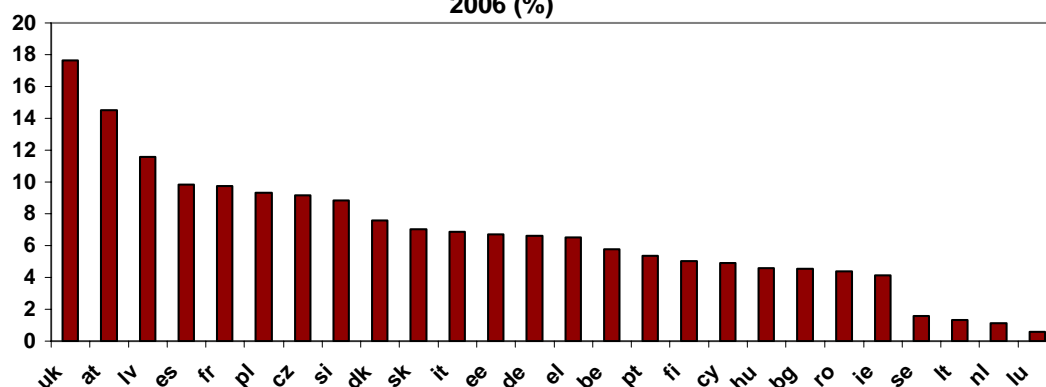
One issue that clearly attracts the attention of trade unions and legislators is that of long working hours, exceeding the European norm of 48 hours per week. That was the maximum laid down in the EU Working Time Directive (93/104/EC) of 1993 (see Chapter 6). The 1993 directive allowed Member States to derogate and set another reference period for calculating average working hours if so decided by collective agreement. In Article 18(1)(b) it also allowed Member States to make use of a so-called individual 'opt-out' from the obligation to limit the maximum working week to 48 hours, if individual workers are willing



to sign. The United Kingdom availed itself of this possibility when, in 1998, it ended the opt-out of the social agreement annexed to the Maastricht Treaty and decided to implement the directive.

Research in the UK has shown that Article 18(1)(b) has been used widely, its application driven by employers' perceived need of flexibility and workers' desire to top up earnings (Barnard et al., 2003). Dickens and Hall (2005:15) conclude that the 'reliance on the individual opt-out has been the key route to flexibility'. They speculate that the absence of employee representation and collective bargaining in many UK firms 'may well have inhibited the flexible application of the statutory rules' and have created a handicap for making full use of European law. The Working Time Directive, and national legislation in many Member States, allows derogation from the law by collective agreement, thus creating a framework as well as incentive for negotiating the annualisation of working hours, longer reference periods, and limiting the use and cost of overtime. These possibilities have been widely used, for instance in Denmark, Germany, the Netherlands and Austria.

**Chart 2.4: Share of employees working more than 48 hours in 2006 (%)**



Source: Calculated from European labour force survey 2006, Eurostat.

In the EU as a whole, the share of employees working more than 48 hours has risen slightly from 8.5 % in 2000 to 8.8 % in 2006. The largest incidence of long hours, above the norm of 48 hours, is found in the UK (17.7 %), Austria (14.5 %) and Latvia (11.6 %). In most Member States the share of employees working more than 48 hours lies between 4 % and 10 %; long working hours are rare in Sweden (1.6 %), Lithuania (1.3 %), Netherlands (1.1 %) and Luxembourg (0.6 %).

These differences are in part explained by the different interpretation, use and sometimes derogation of the 1993 directive. The individual opt-out clearly explains the case of the United Kingdom. In 2004, the Confederation of British Industry reported that nearly one third of the employees in their member firms had signed the individual opt-out. The Austrian case is almost opposite. Here, workers in many sectors are contractually allowed to work 50 weekly hours while maintaining an average of 40 hours a week over a year. For almost half of all Austrians who work long hours, 50 hours per week is the norm. In 2007, the maximum changed to 60 hours, with a shorter reference period of 24 weeks. In the summer of 2007, the Austrian parliament passed an amendment to the 1969 Working-Time Act, which provides for a number of new regulations, in particular with regard to working-time flexibility and part-time work. This amendment was drafted in close cooperation with the social partners and obliges employers, including very small firms, to provide accurate information on the exact hours and time schedules actually worked by employees.

In Latvia, long hours reflect the fact that employees, pushed by low wages, seem willing to agree to work long hours. However, since Latvia joined the EU with the added possibility to find work outside Latvia, workers have become more demanding towards their employers and are less willing to accept very long working hours and/or low wages. In fact, from 2005 to 2006 the share of employees working long hours fell by 1.2 percentage points. In countries with the lowest share of employees working long hours, reference periods for deviating from the weekly norm are usually shorter and the law and collective agreements offer less room for expanding maximum working hours.

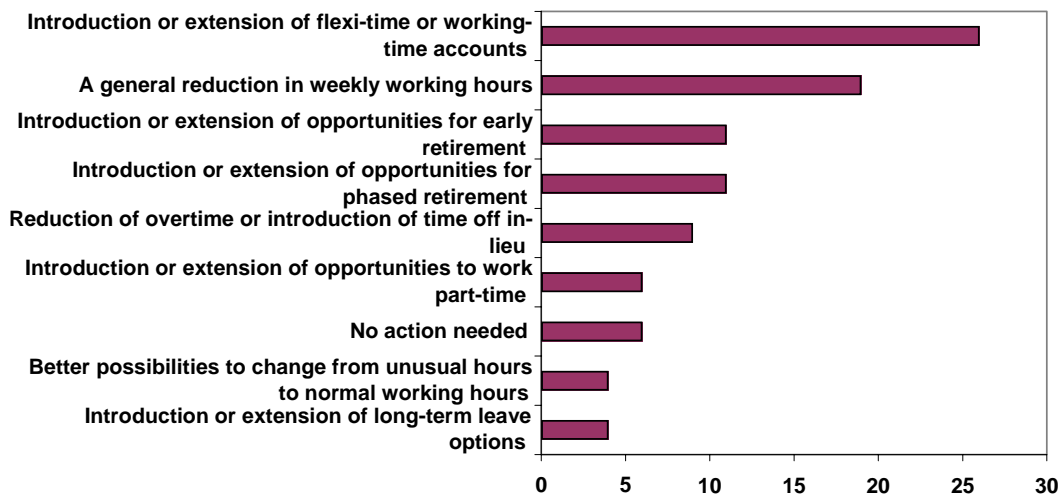
Part-time work is another form of individual working-time flexibility which has been influenced by European social dialogue, with the directive of 1997 based on an agreement between the European social partners (see Chapter 5). The incidence of part-time employment is still rising in the EU, from a share of 16.3 % in 2001 to 18.1 % in 2006. The dispersion across Member States is very large. In all new Member States part-time work remains uncommon. This may be explained by the low level of wages, and with more labour demand one may expect workers to increase hours and the share of part-time employment to decrease, as in fact has happened. It appears that, in comparing countries, there is a significant negative association between involuntary part-time work and the incidence of part-time work — the higher the share of involuntary part-time work, the lower the incidence of part-time in total employment ( $r = 0.507$ ).

The opposite situation appears to prevail in the Netherlands, which is the first part-time economy in the world (Visser, 2002). The high and still increasing share of part-time work (more than two out of five employees work in a part-time job) goes together with a very low share of part-time workers looking for a full time job, despite government and employer campaigns to promote longer working hours. This tends to indicate a ‘normalisation’ of part-time employment, at least among women, as part-time employment has remained mainly a working-time pattern for women even in the Netherlands. A dimension of that normalising process is the application of standard rights and working conditions, including access to pension schemes and fringe benefits, to part-time employees, as foreseen under several national social partner agreements and the European part-time work agreement.

### ***Reconciliation of work and family life***

Due to the feminisation of the labour force and changes in demography and family structure, as well as the further intensification of work, the reconciliation of work and family life has become increasingly important on the agenda of public policymakers, human resource managers and social partners. The most desirable initiatives mentioned by employee representatives in European companies, according to the European working-time survey, are displayed in the chart 2.5 below.

**Chart 2.5: Most desirable work-life balance initiatives**



*Source:* European working time survey, European Foundation for the Improvement of Living and Working Conditions.

The introduction or extension of flexitime or working-time accounts tops the list. One in four employee representatives named this as the only or most important measure for further improvement of employees' work-life balance; 6 out of 10 said that they worked in establishments that already practised some form of flexitime or used working-time accounts. A general reduction of the weekly working hours was mentioned by 19 % and ranks second. In the United Kingdom, Cyprus, Hungary, Portugal and Spain, and more remarkably in Sweden, employee representatives more often preferred a general reduction of working hours than the extension of flexible working-time arrangements. This can be understood against the background of long working hours in these countries, and perhaps the already satisfactory extent of time flexibility in Sweden. Eleven percent mentioned either early retirement or phased-in retirement, switching to part-time jobs towards the end of career. More opportunities for part-time employment was mentioned by only 6 % of these employee representatives. Remarkably, those that did mention this option were more likely to work in establishments that already offered opportunities to work part-time.

Broken down by country, the fit between working hours and family life varies considerably. The worst fit, according to those interviewed in the European working conditions survey, exists in Greece (44.1 %) and Latvia (29.8 %). An explanation for Latvia may be the relatively large share of employees working more than 48 hours; for Greece it is more likely to be the low incidence of time flexibility. In the new Member States and in southern Europe, employee representatives express relatively high levels of dissatisfaction with work and family balance. At the other end, with the highest level of satisfaction about the work-family life fit (89 %), there is Denmark, which happens to be the country with the highest level of female labour market participation.

The disparity in satisfaction of work-family life balance among EU countries reflects the pattern of provision of family friendly measures and flexible forms of working-time arrangements. In the 12 new Member States (EU-12), legislation is the main tool for introducing family-friendly provisions, and collective agreements have added little as this has hardly been an issue and bargaining coverage is fairly limited. Those family friendly provisions that exist are set by law, usually as part of the social *acquis* and the directives of the 1990s: paternity leave or other forms of leave (Latvia, Lithuania, Poland and Slovakia); protection of pregnant women (Latvia, Romania); family friendly measures (Malta); gender equality (Poland and Slovakia); childcare provisions (Latvia, Romania and Slovakia). Only

in the Czech Republic (regarding leave), Slovenia (gender equality) and Bulgaria (maternity leave and benefits) are there signs that these issues have been subject to collective bargaining in some cases.

In the EU-15, the influence of EU directives and also of the EES employment guidelines is picked up both in collective bargaining and in legislation. As far as leave and career breaks are concerned, agreements have been concluded at the national level in Belgium, Ireland, Greece and Finland; at the sectoral level in Belgium, Denmark, Germany, Greece, Italy, Luxembourg, the Netherlands, Austria, Portugal and Sweden; and in companies in Greece, Italy and Portugal. Agreements are rare on the protection of pregnant workers, childcare and elder care, however — they seem to belong to a more exclusive zone of state regulation. Examples do exist, however, for instance in the recent Irish social pacts which advocate the increase of childcare places and out-of-school-hours childcare services, in various recommendations to sectoral and company bargainers by the Dutch social partners at central level and in a number of agreements at sectoral and company levels. Legislative measures were introduced in Belgium, Portugal (equality), Italy (childcare provisions) and the Netherlands (pregnant workers, childcare provisions, paternity leave and other leave).

### ***Working conditions, autonomy, work intensity and health***

For most of the 20th century the Tayloristic model of work organisation was predominant in many parts of industry and services. The traditional or Tayloristic model is characterised by standardised productivity processes and a top-down or prescribed organisation of work, with limited autonomy, little flexibility and rigid hierarchies. In the 1980s and 1990s new forms of work organisation evolved and it was generally believed that in most industries and also in many services the Tayloristic model was counterproductive, associated with poor quality and inflexible in its response to changing consumer taste and market shifts and worker dissatisfaction. With the new organisational forms, work organisations were supposed to change towards flatter hierarchical structures with greater workers' autonomy.

Data from the European working conditions survey suggests that in the first half of the 1990s EU-15 employees, on average, did gain more control over the speed of work and over the order in which to fulfil tasks. However, this trend did not continue after the mid-1990s and the tendency to decreased autonomy of employees appears to have continued after 2000. This is also the prevailing trend in the EU-12. A similar finding is reported for the United States (Osterman, 1999). The diffusion of new organisational models associated with greater worker autonomy seems to have stalled in the 1990s.

Across Member States there is considerable variation. Employees in the Nordic countries, the Netherlands, Belgium and Luxemburg, and in Malta, report the highest levels of autonomy on all three indicators (Table 2.10, upper panel). In the transition economies and in southern Europe employees report much lower levels of autonomy with regard to the speed of work, but not on the other two dimensions, especially with regard to the order in which tasks must be fulfilled, suggesting stronger hierarchical controls. Liberal pluralist (Ireland and the UK) and social partnership countries (Germany, Austria, etc.) fall in between on this indicator.

**Table 2.10: Work autonomy and work intensity**

	<b>Nordic corporatism</b>	<b>Social partnership</b>	<b>Liberal pluralism</b>	<b>Polarised pluralism</b>	<b>Transition economies</b>
<b>Work autonomy</b>					
Speed of work	72.4	69.3	69.3	64.2	67.8
Methods of work	80.1	68.5	62.8	58.1	58.8
Task order	83.5	65.9	64.8	53.4	54.7
<b>Work intensity</b>					
Enough time	67.3	63.4	69.2	71.6	75.1
Tight deadlines	71.7	63.9	61.0	58.5	58.4
High speed	79.7	64.7	45.3	60.1	52.3

*Source:* Calculated from the European working conditions survey 2005, European Foundation for the Improvement of Living and Working Conditions.

The lower panel of Table 2.10 reports the outcomes on work intensity. Employees in the Nordic countries report the highest levels of work intensity — fewer respond that they have ‘enough time’ and more that they work at high speed and under tight deadlines. Perhaps surprisingly, employees in the transition economies report less work intensity. The significantly lower proportion of employees reporting work at high speed in the United Kingdom and Ireland is also to be noted. The idea that longer working weeks are correlated with less work intensity, in particular speed of work, is not borne out by the facts. There appears to be no significant relation, across countries, between actual working hours and speed of work. More likely, the higher intensity of work in northern Europe is associated with more rationalised production methods and technological developments, both in industry and services.

High work intensity tends to have a negative influence on workers’ health. This is especially the case when high work intensity goes together with low work autonomy. According to Karasek and Theorell (1990) demanding jobs need not be bad for health if they allow employee control. If, however, work intensity is experienced together with little control over the job, a stressful situation emerges with negative consequences for health.

Table 2.11, based on the scores averaged over the EU-27, supports this idea. The negative consequences for health and the perceived levels of stress are highest — at 43.5 % and 76.3 % respectively — when employees experience a combination of high work intensity and low levels of autonomy. Higher job autonomy can partly offset negative impacts of high work intensity; the perceived negative consequences for health and work-related stress decrease significantly to 38.0 % and 69.4 %. This is still higher than what is felt to be the case in situations of low work intensity, even where autonomy is lacking. In other words, it seems desirable to address both the issue of workload — work speed and intensity — and the degree to which employees have control over their work.

**Table 2.11: Interaction between work intensity and work autonomy in its negative effects on health and stress**

<i>‘Work affects health negatively’</i>		Work autonomy	
		Low	High
Work intensity	Low	27.7	23.9
	High	43.5	38.0
<i>‘Work leads to stress’</i>			
Work intensity	Low	56.3	63.2
	High	76.3	69.4

Source: Calculated from the European working conditions survey 2005, European Foundation for the Improvement of Living and Working Conditions.

The EU health and safety directive (89/391/EC) of June 1989 addresses some of these issues. In Belgium, Denmark, Germany, the Netherlands and Sweden legal provisions and those based on collective bargaining (Denmark) go further than the EU health and safety directive by relating health at work to detailed aspects of work organisation. Employees in these countries report high levels of work intensity but also the highest levels of work autonomy. In many Member States, however, collective bargaining has yet to detail and develop the legislative provisions and often regulations lag behind the legal framework because it establishes only a weak relationship between work organisation and health, and monitoring instruments are weak. This can have potentially negative consequences, not only for productivity but also for absenteeism and continuous participation in the labour market, especially for older workers.

In October 2004 the European social partners formally signed an autonomous European framework agreement on work-related stress. According to that agreement the workload and degree of autonomy should be analysed in identifying stress and concurrent health risks. If stress and health problems are identified, the employer must take action to prevent, eliminate or reduce it, with the participation and collaboration of workers and/or their representatives. Learning from their framework agreement on telework, the social partners developed a monitoring procedure for the implementation of the agreement at the national level (see Chapter 5; Visser and Ramos Martin, 2008).

The European Foundation for the Improvement of Living and Working Conditions published in 2008 a study entitled ‘Working conditions and social dialogue’ (Eurofound, 2008). Directive 89/391/EC is a key reference in the study, in particular its clause that ‘employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work’. In the study, reference is made to a number of national surveys and reports, for instance in Belgium, Bulgaria, Germany, Estonia, Sweden, Finland and the United Kingdom, showing the positive impact of the presence of union workplace representation and works councils on occupational health and safety. For example, a Belgian trade union survey covering some 3 000 employees working in small and medium-sized enterprises found a correlation between the presence of trade unions and the extent of the influence that employees reported having on managerial decisions relating to occupational health and safety in their company, although the main determinant was occupational status (De Weerd et al, 2005). Furthermore, the study found that the information flow on occupational health and safety matters to workers was better if a trade union was present. Similarly, a study of trade union representatives in Bulgaria, commissioned by the International Labour Organisation, revealed a positive impact of social dialogue in the area of occupational health and safety, more specifically regarding issues such as good access to occupational health and safety training, trade union participation in the development of occupational health and safety policies, and improvements in

occupational health and safety as a result of monitoring (Rice and Repo, 2000). Finnish and Swedish studies reported the positive effect of safety representatives and systematic cooperation between management and employee representatives (Gellerstedt, 2007).

Qualitative studies and administrative reports from labour inspectorates are another relevant source (Eurofound, 2008). In the United Kingdom, a report of the Health and Safety Executive (HSE) on stress management reviewed organisations, mainly in the public sector, that had adopted successful approaches to stress management at work. Social dialogue and ‘round table’ meetings were identified as highly effective tools in aiding the rehabilitation of employees with stress problems and in preventing or minimising sickness absence; at the same time, they helped to highlight shortfalls in management skills. (Jordon et al, 2003). The most notable example from Ireland concerned the establishment of the Construction Safety Partnership of 2000, following a safety crisis in the industry in the late 1990s. Among the objectives were the appointment of safety representatives on all sites with more than 20 workers; greater consultation; and the mandatory introduction of training provisions. A similar sectoral initiative, highlighting the importance of local and regional safety representatives participating in planning and follow-up activities, took place in Sweden. During the project, the number of fall-related accidents within the house building, road and construction sectors decreased by almost 3 000, after having increased during 1998 and 1999.

Unfortunately, reports by labour inspectorates or health and safety authorities that comment on the deficiencies of social dialogue in this area are rare. In one such report, the General Inspectorate of Social Affairs in France criticised the role of the social partners, stating that many bodies in which the social partners participate fail to take initiative in the definition of priorities for a preventive approach (Zeggar et al, 2003). Shortcomings in the election and duties of employee representatives in occupational health and safety have also been observed by the Estonian Labour Inspectorate (Eurofound, 2008). Labour inspectorates can play an important role in encouraging social dialogue. In Portugal, for example, the General Labour Inspectorate has been involved in organising seminars and other meetings for social partners in the construction sector. In Romania, the Labour Inspection Office works to support the development and expansion of social dialogue structures, aiming to increase the social partners’ involvement at decision-making level and in implementation activities. The Office also organises awareness campaigns and exchanges of good practice. In Italy, local-level occupational health services and the National Workplace Accident Insurance Institute play a prominent role both in advising organisations and providing information on occupational health and safety matters. Labour inspectorates in the Czech Republic are by law authorised to inspect compliance with legal regulations that establish rights and obligations in labour relations for employers, employees, the appropriate trade union body or works council, as well as occupational health and safety representatives. In Luxembourg, the Mines and Labour Inspectorate plays an important role in terms of information and informal mediation for social partners in the mining sector; it also provides advice to employer representatives, as well as information and guidance to employee representatives. Finally, in Austria, the labour inspectorate has been actively involved in trying to encourage social dialogue on a sectoral basis, through so-called ‘focus activities’ (Eurofound, 2008).

## **Conclusion: the quality of industrial relations**

Industrial relations and the Lisbon reform agenda have become interwoven. Many issues have entered the agendas of the social partners at all levels. Various instruments, often based on an interaction between collective bargaining and the law, but also information exchange, consultation, best-practice diffusion, benchmarking or joint administration and fund

management, are used and it is less frequent for one method — the law or classical collective agreements with binding effects — to predominate. Industrial relations adds a certain element of flexibility to the governance toolkit of the European Union and it might be argued that without the involvement of the social partners at all levels in the Lisbon Strategy its reform agenda cannot be carried out in the world of work. It is exactly by adding flexibility in the implementation, and by raising the support for bottom-up solutions, that industrial relations provide a key resource.

For social dialogue to be successful, particularly in relation to potentially contentious areas, both parties need to be able to put forward their case coherently; at the same time, they need to have the mutual trust and respect necessary to work together to resolve differences. Sometimes, trust between the social partners can be built by working together on issues that are generally less controversial — such as telework or training and development (Eurofound, 2008) — before moving on to more potentially contentious topics. But social dialogue is not always a matter of choice. Employers in many areas (such as company restructuring, and health and safety) are bound by law or agreement, and employee representatives and unions are under pressure to respond quickly when fears over job security arise due to restructuring or increased competition as a result of globalisation.

The Eurofound study on working conditions and social dialogue (Eurofound, 2008) ends with some important lessons that can be extended on the basis of the examples in this chapter. Firstly, it is crucial that both employer and employee representatives ‘buy into’ the social dialogue process. If one or both parties are not firmly committed to making the process work, it is unlikely to succeed or get off the ground. In some cases, the social dialogue process may fail due to irreconcilable differences between the parties. Obviously, it is difficult to bring together parties that have opposing views and expectations of the social dialogue process. However, this can sometimes be achieved by introducing the appropriate mediation arrangements. Mandatory statutes can help by raising the costs of non-dialogue and they usually help to protect the weaker party in the process.

Difficulties in the social dialogue process and the inability to come to meaningful proposals or agreements may also be related to internal disagreement and a lack of unity within one of the social dialogue parties. This can happen among both employers’ and employee organisations and is responsible for many failures in social pact negotiations. One of the deeper causes is related to decline in membership support, especially on the union side, which usually makes leaders uncertain and hesitant towards agreements that involve deep and lasting commitments.

Sectors that are dominated by small companies, which are often not unionised, present problems in terms of the implementation and effectiveness of social dialogue, even if the dialogue process itself runs smoothly. Building and construction, and retailing, hotel and restaurants, are sectors dominated by SMEs with low levels of unionisation (and employer organisation in some cases); these present considerable problems with regard to making and implementing agreements, especially in the vital areas of working-time, working conditions, and health and safety. There is a need for both legal and extra-legal strategies to ensure that smaller companies have the necessary means and support to implement desirable policies.

Finally, some of the social partners expressed frustration at the fact that, although consulted by the government, their views were not always been taken into account in the drafting of new laws. The OPTeM (2007) study, commissioned by the Commission, showed that in particular the trade unions, more than the employers, were divided about the benefits of the European Employment Strategy and that their ambivalence was related to the perception that they had less influence than employers over the general direction of the strategy. Several respondents regretted that they had only a consulting role and that governments were not



always forthcoming with information<sup>(23)</sup>. Where such perceptions are held they clearly lower the commitment to be involved in the implementation of the Lisbon Strategy. Ensuring meaningful consultation in the selection of policies at the EU and national level is crucial for the mutually reinforcing contribution of social dialogue and open method of coordination process.

There is a wide variety in industrial relations across the European Union. The ‘quality’ of the actors, in terms of power, representation, support, technical competence, democratic capacity for information exchange, and trustworthiness differs massively and these differences tend to be embedded in long-established patterns of relationships between employers, unions, political parties and states. The ‘quality of industrial relations’ is a key issue for the regulatory space that industrial relations can claim against the rival claims, or forces, of politics and markets.

Starting with the seminal contribution of Freeman and Medoff (1984), higher quality in terms of performance, productivity or worker satisfaction has been attributed to the ‘voice’ of unions in the workplace. At the macrolevel, Blanchard and Philippon (2004) report that cooperative industrial relations played an important role in alleviating unemployment rates, while ‘countries with worse [conflictual] labour relations have experienced higher and longer-lasting unemployment’ (2004:2). This has been corroborated by Feldman on a larger sample of industrial, developing and transition countries (2008). Feldman’s conclusion is that cooperative industrial relations ‘have a noticeable pay-off in terms of lower unemployment’, both ‘among the total labour force, and among women and youths’ (Feldman, 2008:201). The ‘quality’ of industrial relations is directly related to the social and institutional support that the industrial relations actors enjoy in a particular political context, but which they must also earn (Visser and Hemerijck, 1997). Social support is evidenced by membership, mobilising power and standing in public opinion. Institutional support is based on the recognition of the social partners by lawmakers, codified in legal norms and supported by public policy, of the rights of representation, consultation and codetermination in particular domains of social and economic policy. In this chapter the emphasis has been placed on the second — institutional — dimension, though in the variation across country groups or industrial relations regimes the differences in both dimensions were brought out clearly<sup>(24)</sup>. The extent to which industrial relations are embedded in the wider production and employment regime — generally the complementarity of institutions — is important (see on this also the survey of studies in the *Industrial Relations in Europe 2006* report (EC, 2006b)).

Data are missing for comparing systematically, and quantitatively, the contribution of industrial relations, exploring differences across Member States and regimes, sectors, instruments and issue areas, and using a multivariate approach. It is tempting to relate the ‘better’ outcomes in for instance the Nordic countries in terms of employment inclusion, reconciliation of work and family life, and work autonomy, to the more encompassing organisation of the social partners and the ways in which they negotiate over a wide range of issues including social protection and labour legislation, but the influences of unspecified factors, like a more advanced economy and position in the international division of labour, or a long tradition of learning to do things in a particular way, cannot be ruled out. Yet, if used

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(<sup>23</sup>) ‘The European employment strategy — Attitudes of the main actors in employment policy in 28 European countries’, a qualitative study conducted by OPTEM and its European partners, on behalf of the Directorate-General for Employment, Social Affairs and Equal Opportunity, Brussels, July 2007.

(<sup>24</sup>) A study conducted by the European Foundation for the Improvement of Living and Working Conditions (European Foundation, 2004) proposed a concrete set of comparative indicators for measuring the quality of industrial relations. Among these indicators, also used in this chapter, are those that measure the ‘capacity’ of unions and employers’ associations to represent their constituencies and negotiate binding agreements (organisational densities, coverage of agreement, organisational concentration, authority and centralisation) and those that measure the degree of coordination between them (bargaining coordination and engagement in social pact).

with wisdom, the comparison of achievements and successes, or failures, across countries or regimes remains a useful learning device both for academics and practitioners, from which inspiration can be drawn.

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## Chapter 3

### Wage setting, minimum wages and industrial relations

*While Europe's industrial relations have traditionally been characterised by the strength of social partners in comparison to other world regions wage bargaining institutions have remained relatively unchanged despite an increasing weakness of wage bargaining actors. Trade union density in particular has declined significantly over the last decade. Wage bargaining institutions remain weaker in the 12 new Member States (EU-12) than in the EU-15.*

*Minimum wages are increasing in importance across the EU. Only countries with exceptionally strong wage bargaining institutions and strong bargaining actors have not introduced statutory minimum wages. In countries with statutory minimum wages, strong bargaining institutions tend to drive up the relative level of the minimum wage.*

*The effects of wage bargaining institutions on economic performance are comparatively small and tend to be positive. High bargaining coverage rates are associated with lower nominal wage growth, lower wage inequality and the gender pay gap. There is a strong effect of trade union density on wage inequality and the in-work poor.*

*This chapter is complemented by a short article based on the findings of an ILO minimum wage project which argues that the importance of minimum wages is increasing in the EU because of the rise of labour mobility and non-standard work contracts, and the weakness of collective bargaining actors.*

#### Development of actors and institutions 2000–06<sup>25</sup>

The conduct of industrial relations in Europe is primarily defined by the organisational strength of the social partners and the degree of centralisation and coordination of collective bargaining. In comparison to other world regions, Europe's industrial relations have traditionally been highly organised, centralised and encompassing; collectively agreed regulation of wages and working conditions have usually covered the majority of employees in the economy.

Major changes have occurred over the last decade. First, there is a marked difference in the degree of organisation and centralisation between the EU-15 and the EU-12. The majority of the EU-12 countries are characterised by a lower degree of social partner membership density as well as a lower level of collective bargaining coverage. Second, a general decline in the membership level of trade unions can be observed everywhere. In the EU-15 countries, unionisation peaked with more than 50 % union membership in 1978 and has been declining ever since (Visser, 2003). In EU-12, the average unionisation rate has been steadily declining since the early 1990s and was below 30 % in 2005.

At the same time, wage bargaining institutions and coverage rates of collective agreements tended to be stable over time. Wage bargaining institutions and industrial relations actors are highly interconnected. Employers' density rates correlate strongly with wage bargaining

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<sup>25</sup> This chapter is based on research and a draft by Anke Hassel, Hertie School of Governance Berlin, Alison Johnston, London School of Economics and Bettina Wagner, Hertie School of Governance Berlin.

centralisation and bargaining coverage. Employers' density rather than trade union density has stabilised wage bargaining institutions.

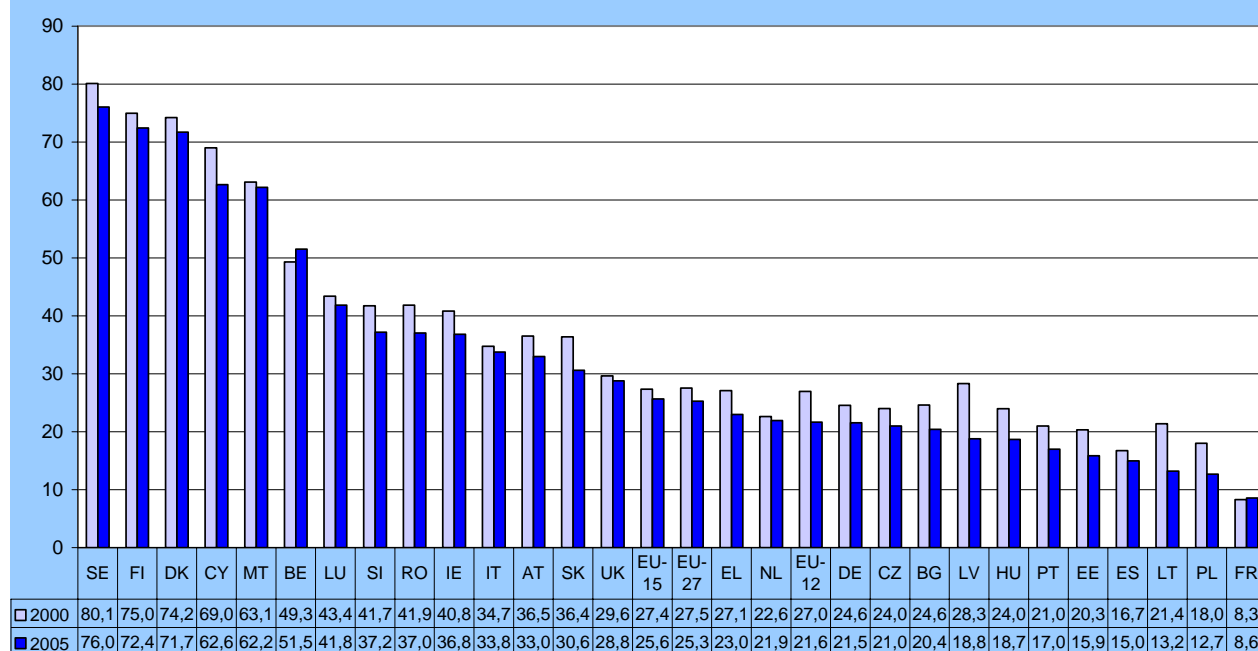
### Trade union density

Trade unions have been losing members in both absolute and relative terms. Apart from a few exceptional cases where small increases have been reported since 2000, this has been significant. Only in Italy and France has union membership remained stable, while in Belgium and Estonia union density has increased.

Trade union density varies widely across the EU, from very high density rates in the Scandinavian countries and extremely low densities in France and the Mediterranean countries, as well as in the majority of the EU-12.

Countries can be classed into three types with regard to unionisation. The first group has union density rates lower than 25 %. This group consists of Bulgaria, the Czech Republic, Germany, Estonia, Greece, Spain, France, Lithuania, Latvia, Hungary, the Netherlands, Poland and Portugal. The second group and consists of countries with a union density rate between 25 % and 50 %, Belgium, Ireland, Italy, Luxembourg, Austria, Romania, Slovenia, Slovakia and the United Kingdom. The third group consists of countries with a density above 50 %, Denmark, Cyprus, Malta, Finland and Sweden (<sup>26</sup>).

**3.1 Trade union density 2000/05 (%)**



Source: ICTWSS Database 2007.

Note: The indicator measuring trade union density refers to the ratio of actual to potential membership and is the result of the total figure of gainfully employed members divided by the number of wage earners in the country.

In particular, trade union density in central and eastern European Member States has been falling dramatically. With the exception of Romania, Slovenia and Slovakia, the former Communist countries are in the third group with the lowest trade union density rates. The

(<sup>26</sup>) This comparison refers to the density rates in the EU after 2003.

remarkable decline in union density in these Member States can partially be explained by the role of the trade unions during the era of socialism and later political upheaval, combined with massive changes on the labour market. Moreover, attitudes towards unionisation differ in these countries. Employees in transition countries fear that unions could harm their own interests. While in the traditional western sense, employees would expect that social progress has to be eked out in dispute with enterprises, employees in central and eastern Europe assumed that their welfare depended upon the welfare of the company. Fighting against one's employer would mean cutting off one's nose to spite one's face (Ost, 2000).

### **Box 3.1: Trade unions in Romania**

While Romania is the post-Communist Member State with the highest trade union density rate today, the comparison with the density rate in the early 1990s (80 %) shows a decline by more than 50 %. The comparatively high density rate can be traced back to the industrial structure of the country and the fact that industry still contributes considerably to GDP. These are also the industries with active trade union representation. Moreover, trade union organisation is present at various levels including sectoral, national and company level. In industry, the predominant level of collective bargaining is the national level. Trade unions in Romania are moreover active in political debates and often associated with a political party (Chivu 2005). At the same time, the highly privatised and foreign-owned sectors are characterised by little or no union representation.

### **Trade union centralisation**

Trade union membership losses have prompted a response through organisational restructuring in many countries. Increasing numbers of trade union mergers have contributed to a constant process of concentration of union organisations.

The trend towards merging smaller unions into big trade unions can be observed in various countries, such as Germany, where the United Services Union (Vereinte Dienstleistungsgesellschaft (ver.di)) was founded in 2001. In Austria, the 13 big trade unions representing blue-collar as well as white-collar trade unions have merged into four major trade unions during the last two years (see also European Commission, 2006, pp. 19–32).

In the United Kingdom, the merger of Amicus and the Transport and General Workers' Union, which was initially planned to include other unions, created UNITE, the biggest trade union in the United Kingdom with almost 2 million members. The main goal of this merger was an increase of the role and involvement of labour in economic and social issues as well as an increased influence on the Labour Party. The merger was completed by May 2007 (Hall, 2007).

There is, however, no general trend towards centralisation at the level of peak confederations. In Germany, Ireland, Latvia, Austria, Slovakia and UK one major confederation unites the trade unions at the national level. Greece, Spain and Portugal each have two major unions. The remaining Member States have three or more confederations representing the trade unions depending on occupational, public–private, political or regional divisions.

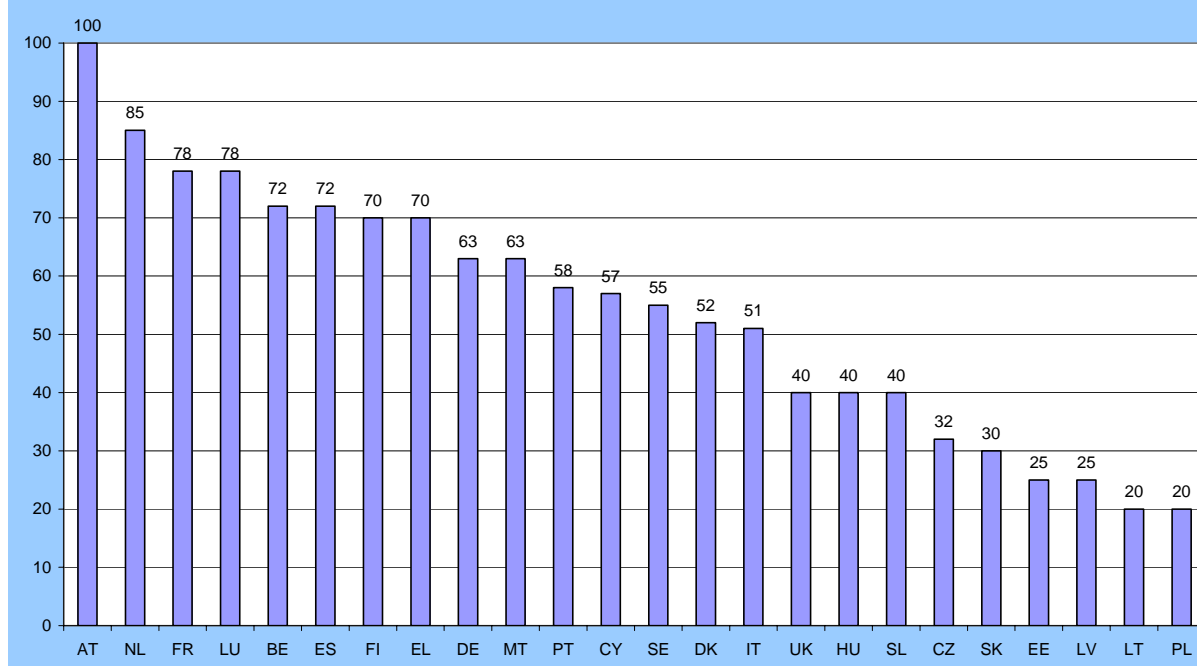


## Employers' organisation density

Data on employers' organisations is scarce and comparisons over time are generally not available. However, based on the available data, countries can be divided into three groups. The first group, with a low employers' organisation density rate below 30 %, consists of Estonia, Latvia, Lithuania, Poland and Slovakia. The second group, with a density rate between 30 % and 60 %, consists of the Czech Republic, Denmark, Hungary, Italy, Cyprus, Portugal, Slovenia, Sweden and the United Kingdom. The third group, with a density above 60 %, consists of Belgium, Germany, Greece, Spain, France, Luxembourg, Malta, the Netherlands, Austria and Finland.

As these data show, employers' organisation density is generally higher than trade union density. The only exceptions are the Nordic countries, where trade union density is higher. There is no clear correlation between union and employers' density rates. For instance, French unionisation rates are exceptionally low, but employers' density levels are above average. Similarly, despite very high union membership rates in the Scandinavian countries, their employers' density levels are not equally high. In the EU-12, with the exception of Malta, employers' organisation density is below average in all countries.

**Chart 3.2: Employers' organisation density 2006 (%)**



Source: ICTWSS database. No data are available for Bulgaria, Ireland and Romania.

### Box 3.2: Employers' organisation in Austria

The highest employers' organisation density can be found in Austria. The Austrian Federal Chamber of Commerce, Wirtschaftskammer Österreich (WKÖ), is based on the principle of statutory membership of firms. All firms in the private sector are therefore legally required to become a member. Apart from some specific professions and government services, all branches are organised in economic chambers under the WKÖ. The WKÖ is also responsible for collective bargaining with the effect that multi-employer bargaining is privileged and thus membership in the employers' organisation as well as the coverage of collective agreements at the sectoral and industry level are high. In the EU, only Slovenia has a similar

organisational structure of employers' organisations. In other countries, membership in employers' organisations is voluntary and chambers of commerce act solely as trade associations.

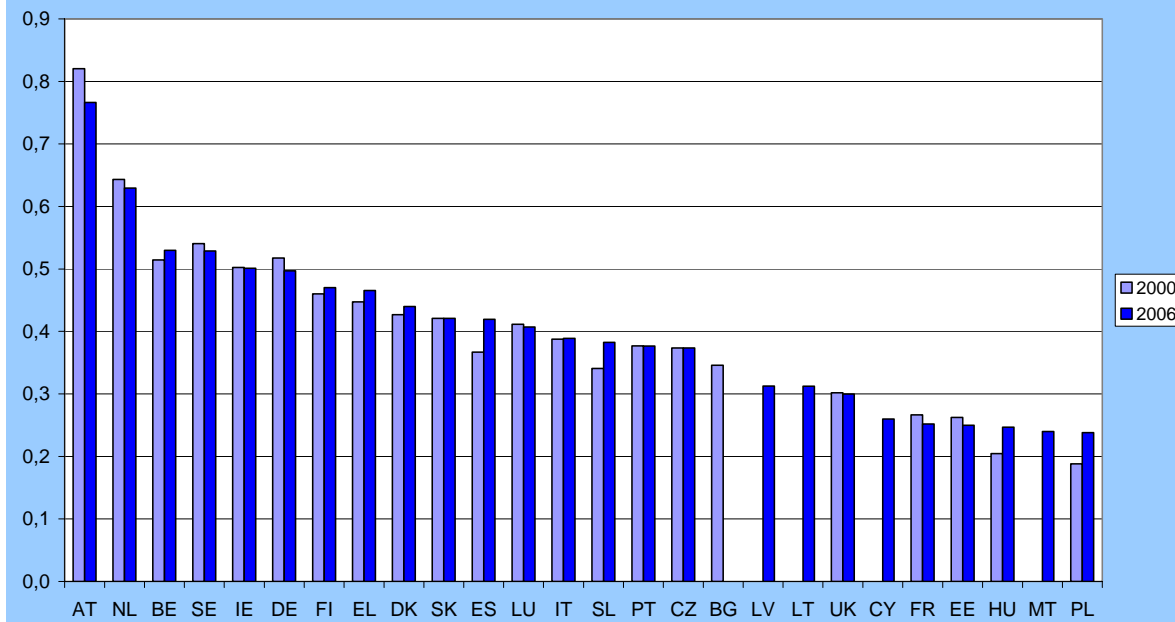
## **Collective bargaining**

The conduct of collective bargaining is a major influence on the economic performance of the industrialised world. It can be measured in various ways. The most important of these is the degree of coordination of wage bargaining. Coordination denotes the degree of interconnectedness between different collective bargaining units.

Coordination can be specified by focusing on one particular case of coordination, such as collective bargaining centralisation. While both concepts aim to define and capture the degree to which decisions on wages and working conditions are determined collectively rather than in a decentralised individualised form, in this section both concepts will be presented separately, keeping in mind that centralisation is only one aspect of collective bargaining coordination.

The wage bargaining centralisation index combines a measure of trade union concentration and the prevalent level of collective bargaining, taking into account both union authority and union concentration at multiple levels. It is derived from the Iversen centralisation index and varies between 0 and 1. While taking account of the multiple levels at which bargaining can take place, the index weights the degree of authority or vertical coordination within the union movement with the degree of concentration or horizontal coordination of the union (Iversen, 1998). Therefore, countries can score higher on the centralisation index if unions and employers are highly concentrated even though collective bargaining itself is decentralised. Within this concept, the most centralised wage bargaining can be found in Austria, where the peak trade union confederation has a monopoly over all trade union members, wage bargaining takes place at the industry level and decisions made by the trade union confederation and the employers affect all employees. Decentralised wage setting is characterised by trade union pluralism, plant-level bargaining and low control by unions and employers over wage developments. There are cases where actors can be highly concentrated but collective bargaining is decentralised, such as in Denmark (Eurofound, 2007a). Processes of decentralisation can therefore take two routes: a decline in trade union concentration or a move of bargaining to a lower level. The former process has been labelled as 'controlled decentralisation' (Traxler, 1994). (For further information on this composite index see Box 1.2 in Chapter 1.)

**Chart 3.3: Collective bargaining centralisation 2000/06**



Source: ICTWSS database.

NB: Data on Cyprus, Estonia, Latvia, Lithuania, Luxembourg and Malta refer to 2005 rather than 2006.

Collective bargaining centralisation is higher in the EU-15 than in the EU-12. Centralisation in all the EU-12 is below 0.4 and in the cases of Hungary, Poland, Latvia, and Malta 0.2 (there is no recent reliable information available on Bulgaria and Romania). With the exception of Slovenia, the decentralised bargaining structures are combined with low density rates of trade unions as well as employers' organisations.

Further centralisation of collective bargaining can be observed in Greece and Slovenia. In Luxembourg, centralisation has decreased since 2000. Interestingly, both cases of increases in centralisation since 2000 have been followed by policies aiming at decentralisation since 2006.

In France, decentralised bargaining has been explicitly promoted by the state through changes in the legislation on working time and collective bargaining. In contrast, the Spanish government has tried to counteract the growing tendency towards decentralisation by introducing new legislation such as the royal decree on the extension of collective agreements (Albarracín, 2005).

In the case of Luxembourg, decentralisation of collective bargaining towards the company level in 2006 was accompanied by a first cross-industry agreement signed by the central social partner organisations on telework (Wlodarski, 2006). In Greece, the increase in centralisation refers to the introduction of social dialogue in the national government in 2000 as well as to several laws and regulations with regard to industrial relations and working conditions that have been implemented since 2000. A recent example is the national collective agreement for the private sector that was signed in 2006 for salary as well as non-salary issues for all employees in the private sector for the period 2006/07 (Stamati, 2006).

Slovenia has seen an increase in centralisation which is also correlated with the high degree of unionisation and employers organisation in the country. Recent developments show however, that an attempt towards decentralisation has been under way since 2006. The new

three-tier structure (central, sectoral, company level), particularly designed for wage bargaining, allows for greater flexibility of wage setting as well as non-wage issues according to specific sectoral or company needs (Skledar, 2007).

However, as the case of Luxembourg has shown, despite the increasing focus towards decentralisation, cross-industry bargaining at the national level can still play an important role in wage determination but also more frequently regarding conditions of work and employment. In Belgium, Greece, Ireland, Spain, the Netherlands, as well as Slovenia and Romania, cross-industry agreements have been signed on issues of a more general and national concern (Eurofound, 2007b) such as minimum wages. There are also countries, such as Belgium, Estonia, France, Italy and Luxembourg, in which cross-industry agreements are signed on more specific issues, such as aspects linked to the implementation of European social dialogue outcomes (telework or work-related stress) (Wlodarski, 2008).

Moreover, current agreements concerning EU-legislation and outcomes of European social dialogue show that in the majority of those Member States where agreements between the social partners play a role in the implementation process they are fixed at a central level. A possible reason for this contrary tendency is that government interest in implementation and involvement in these (non-wage) issues is high. These cross-industry agreements are based on the prospect of legislative implementation in national law or implementation by the industrial relations actors directly, and therefore a centralised agreement is also justifiable for all parties.

### **Collective bargaining coordination**

Collective bargaining coordination refers to the level of bargaining combined with the range of companies/sectors that are bound by the collective agreement that follows the negotiations <sup>(27)</sup> (see Box 1.3 in Chapter 1). The least coordinated collective bargaining takes place in the United Kingdom, which has a fragmented bargaining structure at the company level. The most coordinated collective bargaining takes place in Belgium and Ireland. In Ireland, centralised wage agreements are negotiated in social pacts and apply to the economy as a whole.

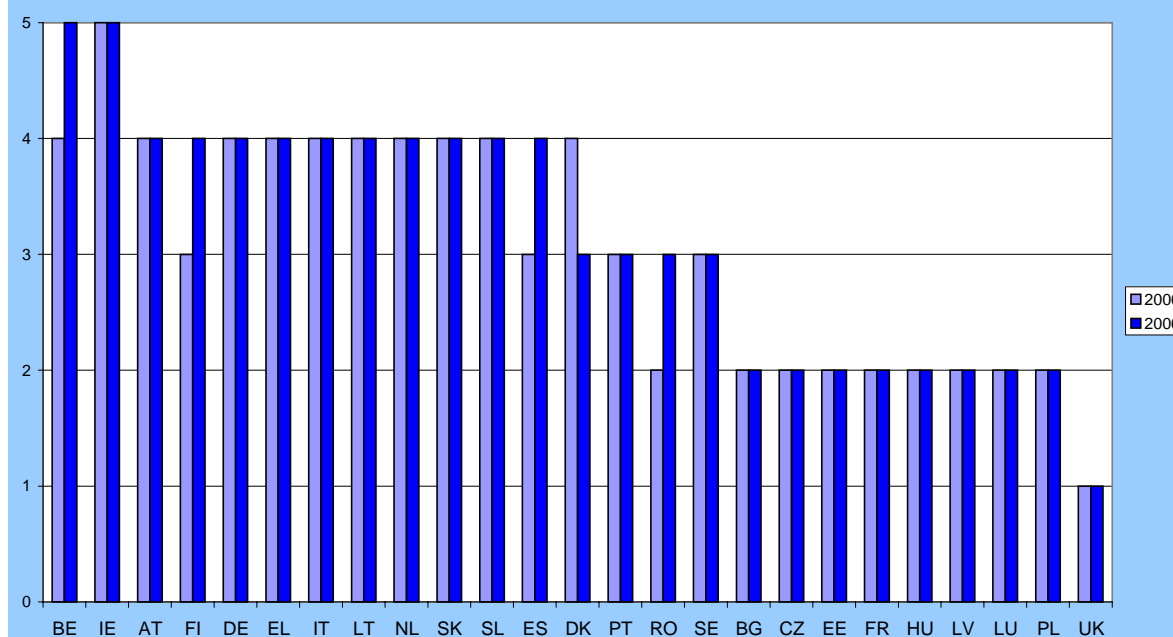
In the majority of the EU-12 <sup>(28)</sup> collective bargaining is characterised by mixed industry and firm-level bargaining as well as a weak enforceability of industry agreements. The average score for the EU-12 is 2.7 compared with 3.3 for the EU-15.

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<sup>(27)</sup> The measure was initially been developed by Kenworthy and was supplemented by Visser.

<sup>(28)</sup> No reliable data exist for Cyprus and Malta.

**Chart 3.4: Collective bargaining coordination**



Source: ICTWSS database; no data available for Cyprus and Malta

Romania is an exception among these countries, whose coordination of collective bargaining changed in 2001 towards a stronger involvement of central organisations and a revitalisation of industrial-level bargaining. This is strongly correlated with the adoption of the new Labour Code in late 2000 (SEER, 2004). In Lithuania, Slovenia and Slovakia the coordination of wage bargaining is similar to that in Germany, Greece, Italy, the Netherlands and Austria. Changes towards a higher coordination of wage bargaining can be found in Spain and Finland, where the coordination has moved from 3 to 4, and in Belgium, where coordination has moved from 4 to 5.

Belgium has been constantly moving between these two levels for the past 25 years. The degree of coordination of Belgian collective bargaining depends crucially on the involvement of the government (see Box 3.3).

### Box 3.3: Belgium

In Belgium, two different types of agreements can be reached at the macro level. Whereas the National Labour Council (CNT/NAR) reaches agreements which are cross-industry and are extended to all branches of the respective activity within the country, the effective implementation assumes the agreement is recognised at lower levels and is thus difficult to achieve. The second possibility refers to negotiations which take place every second year outside the bipartite cross-sectoral agreements and cover all companies in the private sector. These agreements are predominantly political and moral agreements but are nevertheless considered to be very influential given the fact that framework agreements are decided at this level (Eurofound, 2007c).

## **Collective bargaining coverage**

Collective bargaining coverage is an important indicator for the actual influence of industrial relations. Irrespective of the density rate of unions and employers, the coverage of collectively bargained contracts provides an insight into the scope of collective agreements and thereby determines the power of the social partners aside from their membership levels.

Collective bargaining coverage indicates the number of workers covered by a collective agreement divided by the dependent labour force (all wage and salary earners in employment). Based on this indicator the relevance and scope of collective bargaining in the countries can be evaluated.

The contrast between EU-15 and EU-12 is particularly strong with regard to collective bargaining coverage. The average coverage among EU-12 stands at 78 %, compared to 58 % for the EU-15. With the exception of Slovenia, the majority of the post-Communist EU10 have a coverage rate below 50 % and thus also below the EU average of 65 %. Among EU-15 only the UK has a coverage rate of below 50 %. Coverage rates have been largely stable since 2000 in the whole EU, and have even increased in Spain, France and Finland.

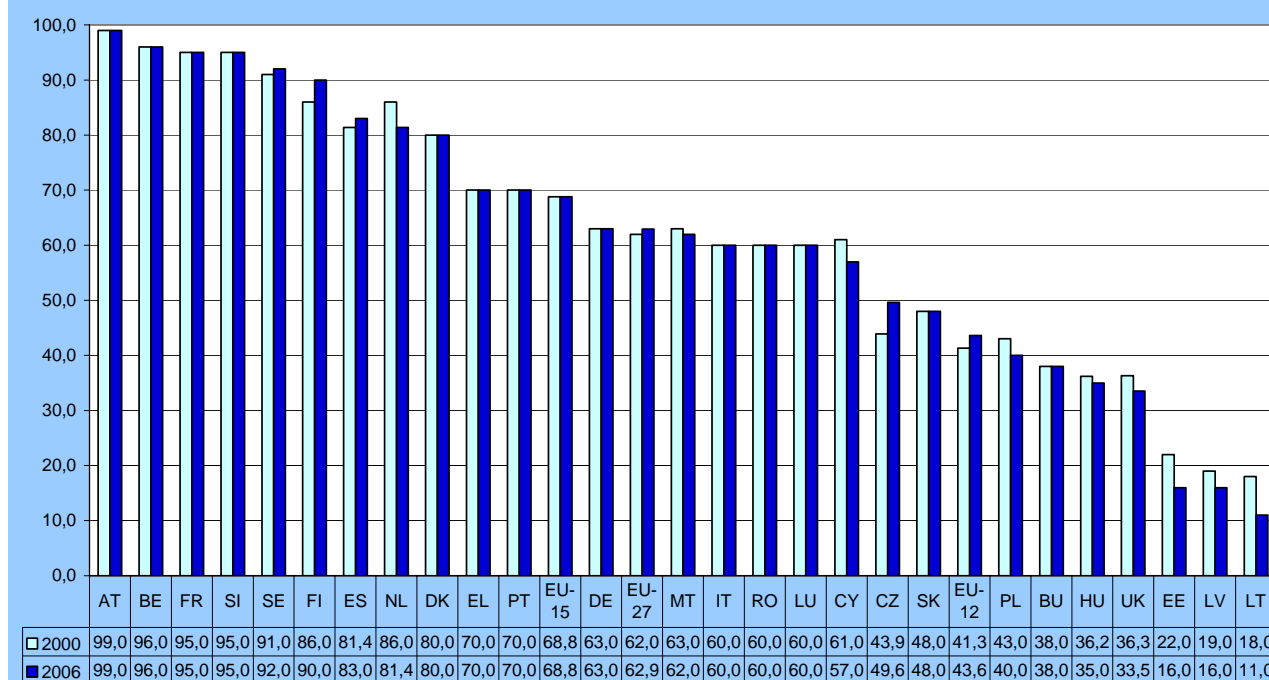
Coverage rates are highly correlated with employers' density rates. In some cases, they are the same thing (for instance in Germany, Greece and the Netherlands). In these countries, employers who are member of employers' organisation are generally bound by collective agreements. In other cases, coverage rates go beyond employers' density rates due to statutory extension procedures which are supported and legislated by governments. This is the case in France, where statutory extension compensates for low trade union membership levels (Carley, 2002).

Thus, while the density rates of the social partners, especially in the case of trade unions, are tending to decrease, the coverage rates might remain stable or even slightly increase.

Comparing the coverage rates and the degrees of coordination in the Nordic states, one can argue that high collective bargaining coverage rates are positively correlated with a high degree of centralisation. This is also the case for Belgium and Austria. Moreover, the positive correlation also holds for the United Kingdom, where conversely both rates are the lowest within the EU-15. In the case of collective bargaining coverage, the low levels in the EU-12 are strongly linked to the lack of extension procedures and the low priority governments give to supporting these procedures. The weak presence of sectoral agreements and the predominance of company-level agreements go along with low degrees of coordination and centralisation of collective bargaining in these Member States.

According to the results of a questionnaire conducted by the Labour Market Working Group of the European Commission, countries with an intermediate level of bargaining are characterised by a higher level of collective bargaining coverage (European Commission 2007a). In countries with coverage rates above 70 %, sectoral bargaining dominates, while in countries where company bargaining prevails coverage rates stand at 40 % or below. However, examples of multiple bargaining levels such as in Belgium, Austria and France, which rank highest in collective bargaining coverage, show that bargaining levels in almost all cases are composed of sector, industry and company level (ibid p.52). This leads to the conclusion that although the majority of the Member States are characterised by sectoral-level bargaining, the combination of sectoral- and company-level bargaining leads to the highest coverage scores (ibid. p.52).

**Chart 3.5: Collective bargaining coverage 2000/06 (%)**



Source: ICTWSS Database. No data are available for Ireland. Data on Estonia, Latvia, Lithuania Malta, Slovenia and Romania refer to 2005 instead of 2006.

## Institutional linkages

The strengths and structures of collective bargaining actors and institutions are interrelated. Strong actors go hand in hand with centralised and coordinated institutions and high coverage rates. Weak actors correspond to decentralised and lowly coordinated institutions. In some Member States the comparatively low density rates of employers and trade unions are accompanied by weak collective bargaining institutions. Whereas the weakness seems to be particularly prevalent in the Baltic States, industrial relations in the Czech Republic, Hungary, Poland, Slovakia and especially in Slovenia are more comparable to western continental European countries like Germany. Cyprus and Malta are characterised by actors' densities and coverage rates around the EU average.

Neither collective bargaining centralisation, nor bargaining coordination, or coverage rates seem to be strongly correlated with trade union density. But collective bargaining centralisation and coverage rates are correlated with employers' density rates. How do institutional linkages occur? One explanation is that in the absence of statutory extension of bargaining agreements, coverage rates depend on high levels of membership of firms in employers' associations. Moreover, collective bargaining centralisation depends on strong employers' associations which can enforce collective agreements in a given sector. Far reaching coordination can be based on an important role for national employers' peak federations (e.g. Austria, Belgium or Ireland) as well as on pattern setting by key sectors, as in Germany.

If employers' density rates decline below a certain threshold, centralised bargaining will lose its positive effect of setting a going wage rate and tend to become increasingly irrelevant for firms. High levels of trade union membership do not have these institutional effects on collective bargaining. As the case of France shows, centralised industrial relations

institutions do not depend on strong trade unions. As a consequence, trade union weakness does not automatically contribute to a weakening of collective bargaining institutions, while a weakening of employers' density is more likely to undermine collective bargaining institutions.

**Table 3.1: Institutional linkages**

Correlations						
		Collective bargaining coordination	Collective bargaining centralisation	Union density	Employers' density	Collective bargaining coverage
Collective bargaining coordination	Correlation coefficient N	1.000 450	.541 (**) 361	.234 (**) 354	.439 20	.542 (**) 320
Collective bargaining centralisation	Correlation coefficient N		1.000 361	.168 (**) 352	.851 (**) 17	.560 (**) 320
Union density	Correlation coefficient N			1.000 368	.135 15	.270 (**) 316
Employers' density	Correlation coefficient N				1.000 21	.797 (**) 15
Collective bargaining coverage	Correlation coefficient N					1.000 320

(\*\*) Correlation is significant at the 0.01 level (two-tailed).

## Minimum wages and collective bargaining institutions

Statutory and collectively agreed minimum wages are an increasingly important component of wage setting institutions in the European Union, particularly in the central and east European countries. Minimum wage setting institutions interact with wage bargaining institutions. In countries where wage bargaining is institutionally strong – meaning strong actors, coordinated processes and high coverage rates – statutory minimum wages are rare and the lowest wage floor is set by the agreement. However, if statutory minimum wages exist, the presence of unions and centralised wage bargaining tends to increase the ratio of minimum wages to average wages.



## The spread of minimum wage regulations

The majority of EU Member States have some form of regulation regarding the establishment of a minimum wage. The forms and regulations of minimum wages vary between statutory minimum wages and minimum wages that are set by collective agreements. While in the former case the national minimum wage is defined either by national legislation or by an inter-sectoral agreement at the national level, in the latter case the minimum wage is negotiated and defined by the social partners at the sectoral level. However, there are also combinations of these two possibilities.

The Member States with statutory minimum wages are: Belgium, Bulgaria, Czech Republic, Estonia, Ireland, Greece, Spain, France, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia and the United Kingdom. Cyprus has a statutory minimum wage only for a few specific occupations in which unionisation and collective bargaining coverage are low and employees have a weak bargaining power. Within this group of countries several distinctions can be made with regard to the level of the minimum wage, the ratio to the average wage level within the country, the minimum wage coverage and level and female/male employees receiving the minimum wage.

In January 2008 the statutory minimum wage varied from € 92 to € 1 570. While minimum wages are lowest in countries like Romania, Slovakia and Estonia, these countries do show a significant increase of the minimum wage level during the last 10 years (Funk and Lesch 2005). The Kaitz-Index (see Box 3.4) shows that minimum wages in industry and services vary from 33 % to 51 % <sup>(29)</sup>.

### Box 3.4 The Kaitz-Index

The Kaitz-Index measures monthly minimum wages as a share of average monthly gross earnings in industry and services. It is a commonly used measure for the comparison of minimum wage levels. (Funk and Lesch, 2005)

Countries with relatively high minimum wages (approximately 50 % of the average wage level) are Bulgaria, Ireland, France, Luxembourg and Malta <sup>(30)</sup>. The countries with an average percentage below 40 % are Estonia, Latvia, Lithuania, Poland, Romania, Slovakia and the United Kingdom (Eurostat, 2007).

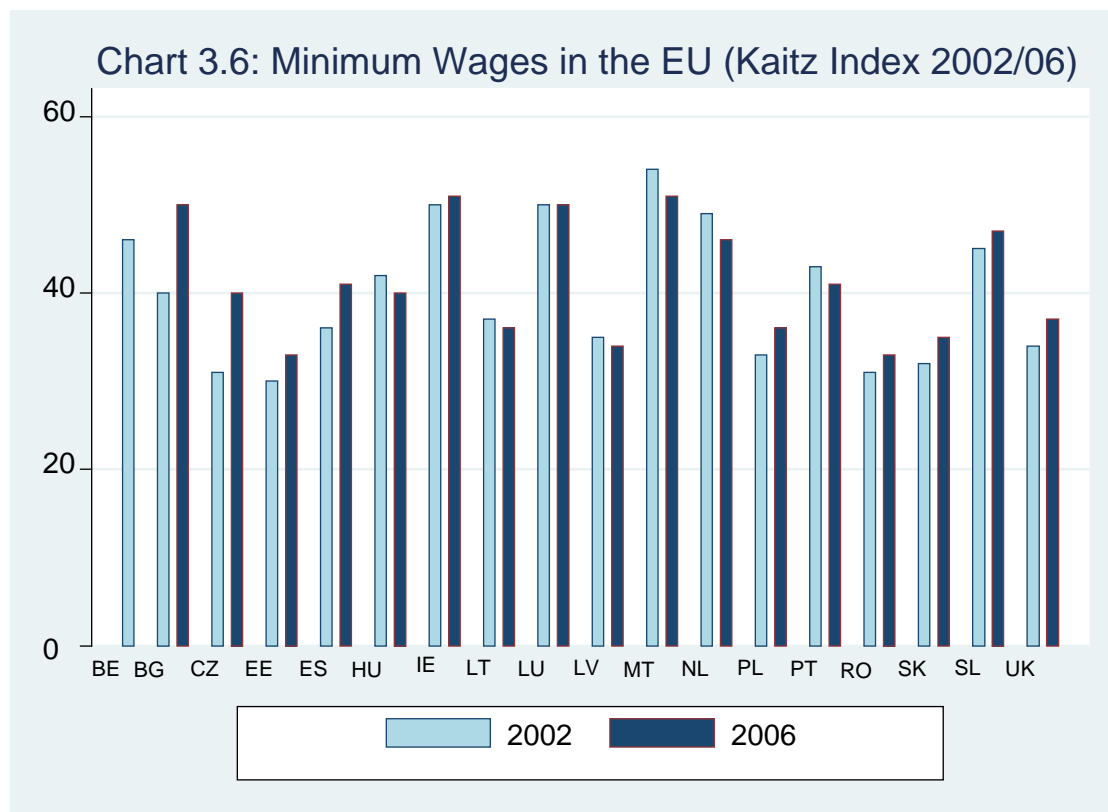
Statutory minimum wages are set and regularly adjusted by governments. The time span varies from semi-annually as in Spain to irregularly as in Latvia. The adjustment of the minimum wage usually follows consultations of the social partners, with their involvement ranging from recommendation to intensive consultations. In the special case of the United Kingdom, the adjustment follows a recommendation of the Low Pay Commission (Gilman, 1997). The Low Pay Commission was granted permanent status in October 2001 and consists of members from the business community, trade unions as well as academics who make a recommendation on the minimum wage level based on the evaluation of its economic and social consequences for the country (Funk and Lesch, 2005).

It can be observed that since the beginning of the decade there has been an overall increase of the minimum wage level as a share of average wages (Kaitz-Index). Substantive increases can be observed especially in some EU-12 countries. While time series data from the past

<sup>(29)</sup> Eurostat: public administration is excluded

<sup>(30)</sup> Eurostat, EIRO; in the Eurostat database on minimum wage no recent data are available for Belgium, Greece or France.

8 years show that the majority of the EU-12 have a minimum wage level below 40 % compared to an average level of 44 % in the EU-15, the upwards trend has been stronger (growing from 31 % in 2000 to 40 % in 2006 <sup>(31)</sup>). This indicates that there is a tendency towards convergence between all Member States in terms of the relative minimum wage level.

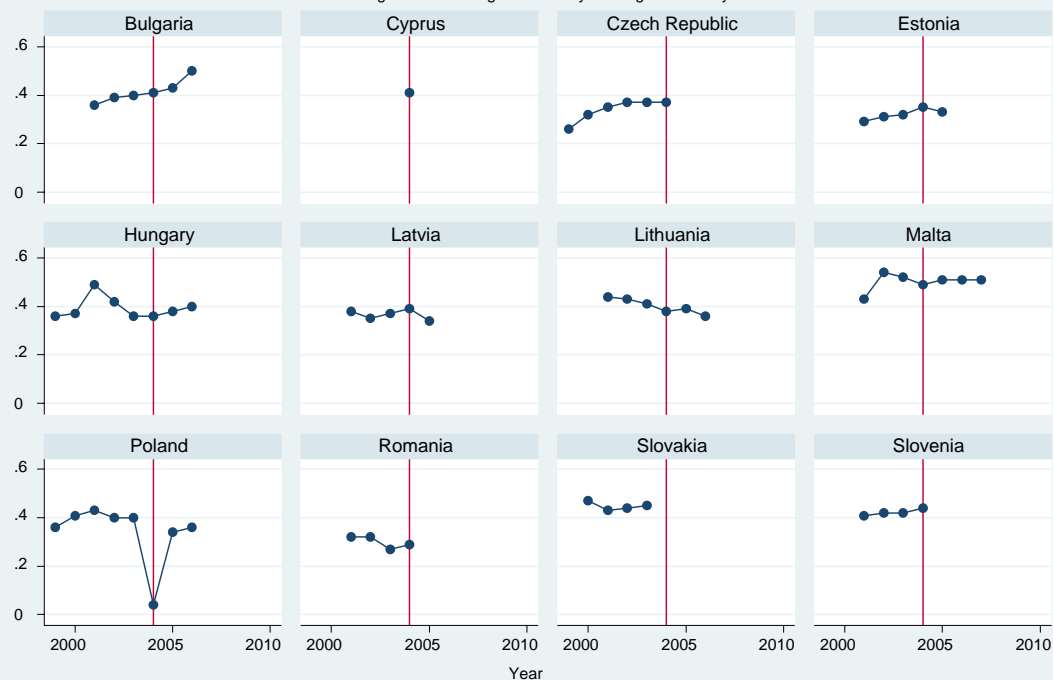


*Source:* Eurostat. No data are available on minimum wage levels for Greece and France. For the new Member States data are only available after 2000.

<sup>(31)</sup> Own calculations based on the time series data available from Eurostat

### Chart 3.7: Minimum wage developments in the EU-12

Minimum Wage as a ratio of gross monthly earnings in industry and services



Graphs by Country

Source: Eurostat.

The level of minimum wages has a complex impact on undeclared work, which the Commission pointed out in a recent communication (see Box 3.5).

#### Box 3.5: Minimum wages and undeclared work

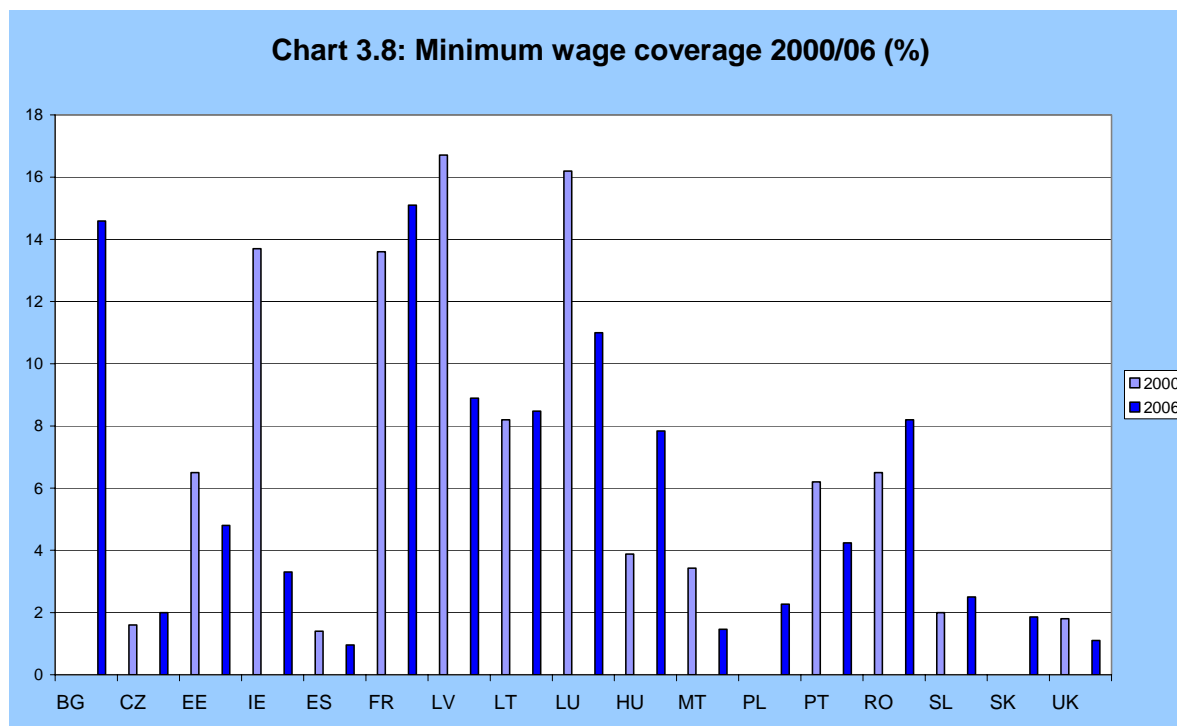
Minimum wages have a complex impact on undeclared work. A special Eurobarometer survey on undeclared work from the second quarter 2007 revealed the importance of envelope wages (the share of total wages which is paid cash-in-hand and undeclared) in Europe, especially in the construction sector. The Commission noted that significant increases in minimum wages have been introduced, especially in the EU-12. These were usually set in a cautious way (at less than half of the average wage) so as to avoid the destruction of regular jobs and substitution by undeclared work. Moreover, in many new Member States where the practice of envelope wages is widespread, higher minimum wages reduce the margin for negotiating such ‘envelopes’. Hence the Commission pointed out that one point to watch in policy design is the respect of minimum wages or wages set by collective agreements and their possible role as levels of reference for envelope wages.

European Commission (2007), ‘Stepping up the fight against undeclared work’ communication of the Commission, COM(2007) 628 final of 24 October 2007, Brussels.

In 2005 the average minimum wage level in countries with statutory minimum wages was less than 50% of the average gross monthly earnings (Funk and Lesch, 2005). Minimum wages which are determined by collective agreements tend to be higher than statutory minimum wages although data is hard to establish and often sector-specific.

The number of employees receiving minimum wages — the coverage rate — varies considerably across countries. In the European Union the ratio of employees receiving

minimum wages is lowest in Spain, Slovakia and the United Kingdom and highest in Bulgaria, Luxembourg and Latvia. However, Latvia has at the same time a relatively low Kaitz index which implies that a large proportion of the working population is paid at a comparatively low minimum wage level. In contrast, there has been a recent increase in the minimum wage in Bulgaria, leading to higher coverage rates. However, the level and coverage rate of minimum wages are only weakly correlated (.24\*). While in a comparison of all 27 EU Member States the lowest absolute minimum wage level is to be found in Bulgaria (EUR 92), the Kaitz level indicates that simultaneously Bulgaria has the highest proportion of workers paid at a minimum wage level.



Source: Eurostat. Ratio of employees receiving minimum wage to all employed in countries with statutory minimum wages

Note: no data available for Belgium, Cyprus, Greece and the Netherlands; no data available for Poland and Slovakia for 2000; for Estonia and Latvia 2005 instead of 2006; for Ireland 1999 instead of 2000. Countries that do not have a statutory minimum wage (Denmark, Germany, Italy, Austria, Finland and Sweden) score 0 and are therefore excluded from the graph.

### Minimum-wage setting mechanisms

Minimum-wage setting mechanisms can be measured by the degree of government involvement vis-à-vis the social partners. The minimum wage setting index differentiates between eight different levels with regard to the involved actors and their power when the minimum wage is bargained and set. The figure shows that in all EU Member States, there is some form of minimum wage established in at least some sectors, meaning that even in countries in which no statutory minimum wages exist, wage levels are set by collective bargaining for some sectors. The different levels for minimum wage setting are the following (Visser 2007).

- 0 = No national (cross-sectoral or inter-occupational) minimum wage.
- 1 = Minimum wages are set by collective agreement in (some) sectors.
- 2 = Minimum wages are set by national (cross-sectoral or inter-occupational) agreement ('autonomous agreement') between unions and employers.
- 3 = Minimum wage is set by agreement (as in 2) but extended and made binding by law or ministerial decree.

- 4 = Minimum wage is set through tripartite negotiations.
- 5 = Minimum wage is set by government after (non-binding) tripartite consultations.
- 6 = Minimum wage is set by judges or expert committee, as in an award system.
- 7 = Minimum wage is set by government but government is bound by fixed rule (index-based minimum wage).
- 8 = Minimum wage is set by government, without fixed rule.



### Statutory minimum wages and collective bargaining

Statutory minimum wages tend to be found in countries with weak collective bargaining institutions and weak social partner organisations. Countries with strong collective bargaining regimes tend not to have statutory minimum wages. It is however, not clear how both aspects are causally related. While some authors claim that statutory minimum wages lead to trade union membership decline because employees no longer have a reason to join (Aghion et al. 2007), there is also empirical evidence that the weakness of collective bargaining might have led to the introduction of minimum wages, in the UK, for instance. The debate about the minimum wage in Germany (see Box 3.6) can also point in this direction. An explanation for this trend could be that labour markets where bargaining is highly coordinated do not require a wage floor for the least skilled workers, because these workers are represented or accounted for in collective bargaining on the sectoral or national level.

**Table 3.2: Average level of strength of collective bargaining institutions and social partners by the existence of a statutory minimum wage**

Statutory minimum wage	Collective bargaining coordination	Collective bargaining centralisation	Collective bargaining coverage	Union density	Employers' density
No	3.55	.48	80.31	54.31	65.16
Yes	2.96	.38	68.69	34.00	49.66
Average	3.14	.41	72.94	41.01	54.09

In countries without a statutory minimum wage (Denmark, Germany, Italy, Austria, Finland and Sweden), the social partners agree on minimum levels of wages in sector-based collective agreements. The collective bargaining coverage within these countries is generally the highest within the European Union, leading to the conclusion that the majority of employees in these countries are also covered by some form of minimum wage. The highest coverage rate is reached in Austria, where all employers are members of the national employers' organisation and collective bargaining coverage rate reaches approximately 98 %. The latest developments in Austria show that the government has proposed a statutory minimum wage of EUR 1 000 for full-time employees. This has been accepted by most of the trade unions and will be implemented in 2009 (Adam, 2007).

#### **Box 3.6: The minimum wage debate in Germany**

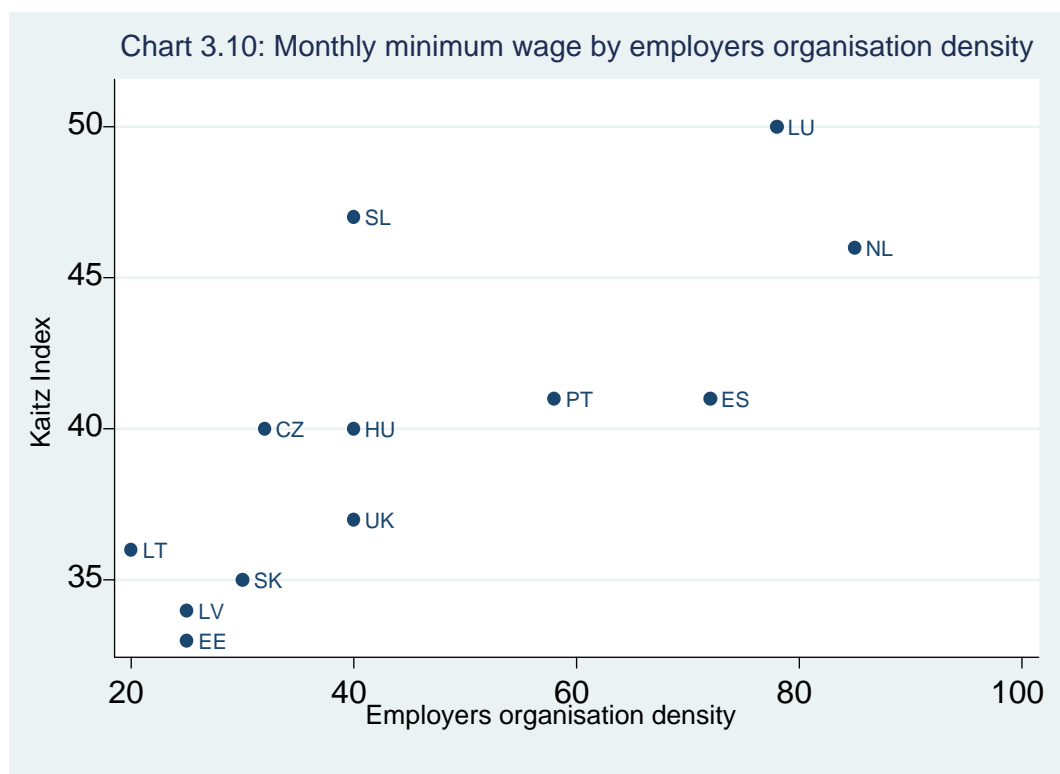
Among the countries without a statutory minimum wage, Germany has the lowest coverage rate of collective agreements. Therefore, the share of employees who are covered neither by a statutory minimum wage nor by a collective agreement is higher than in any other EU Member State. Minimum wages in collective agreements can be extended to all employees in a sector via a ministerial decree based on the consultation with the social partners. In some branches, statutory minimum wages have been established as a result of the implementation of the Posted Workers Act. Currently minimum wages have been extended up to six sectors in 2007 covering approximately 1.4 million workers (Dribbusch, 2007). As from January 2008, the collective agreement between the trade union and the Postal Services Employers' Association, which represents in particular the market leader Deutsche Post AG and other companies which belonged in the past to the former Federal Postal Service, has been declared binding, leading to a minimum wage in the postal services sector (Dribbusch, 2008). After the introduction of a minimum wage for the postal sector, the private competitors of the Deutsche Post have successfully challenged the decision in court (EurActiv, 2008). In July 2008, the Cabinet decided to introduce a statutory minimum wage in some branches by extending the existing regulations.

#### **The level of minimum wages and collective bargaining institutions**

Where statutory minimum wages are in place, empirical correlations suggest that strong collective bargaining institutions tend to push up the level of the minimum wage.

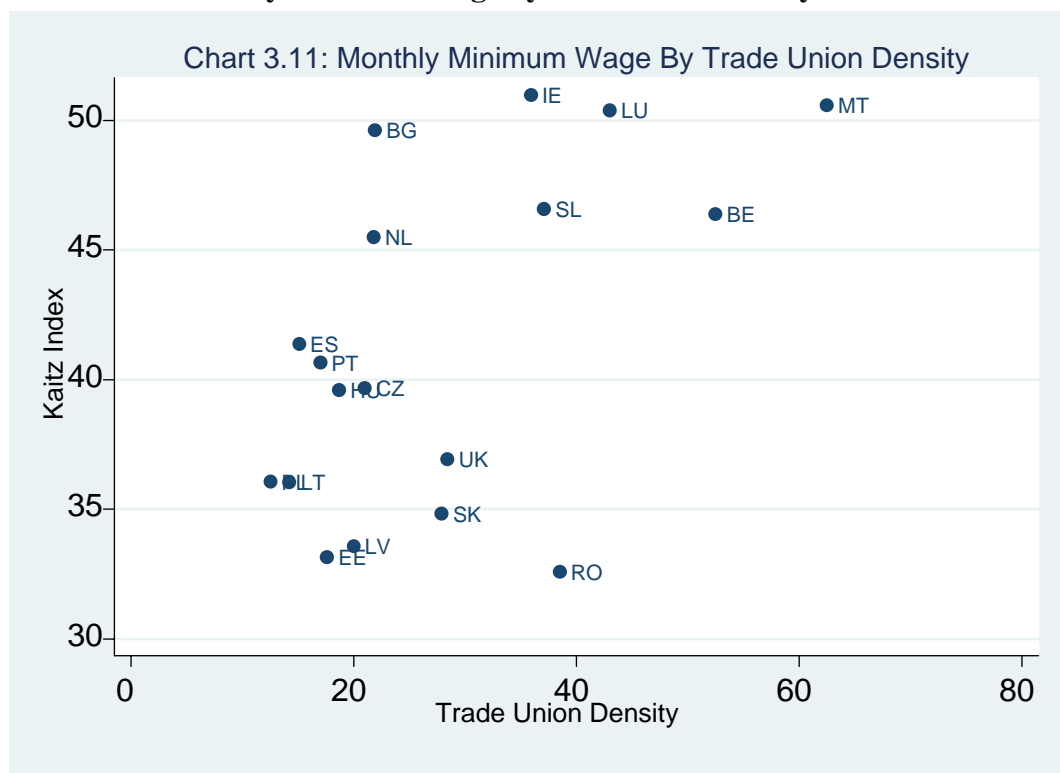
The reason for a positive interaction between the strength of bargaining institutions and the minimum wage level could be that with strong collective bargaining institutions wages tend to be more compressed and low wages are generally higher than in labour markets with weak labour market institutions. This could apply to the setting of minimum wages as well. Also strong social partners might push for higher minimum wages in order to avoid low wage

competition which might undermine centralised and all-embracing collective agreements. It is interesting to note that the correlation of the Kaitz-Index and employers' density is very strong (.741\*\*) and higher than the correlation with union density (.600\*\*) and bargaining centralisation (.581\*\*).



Source: Eurostat/ICTWSS database, 2007.

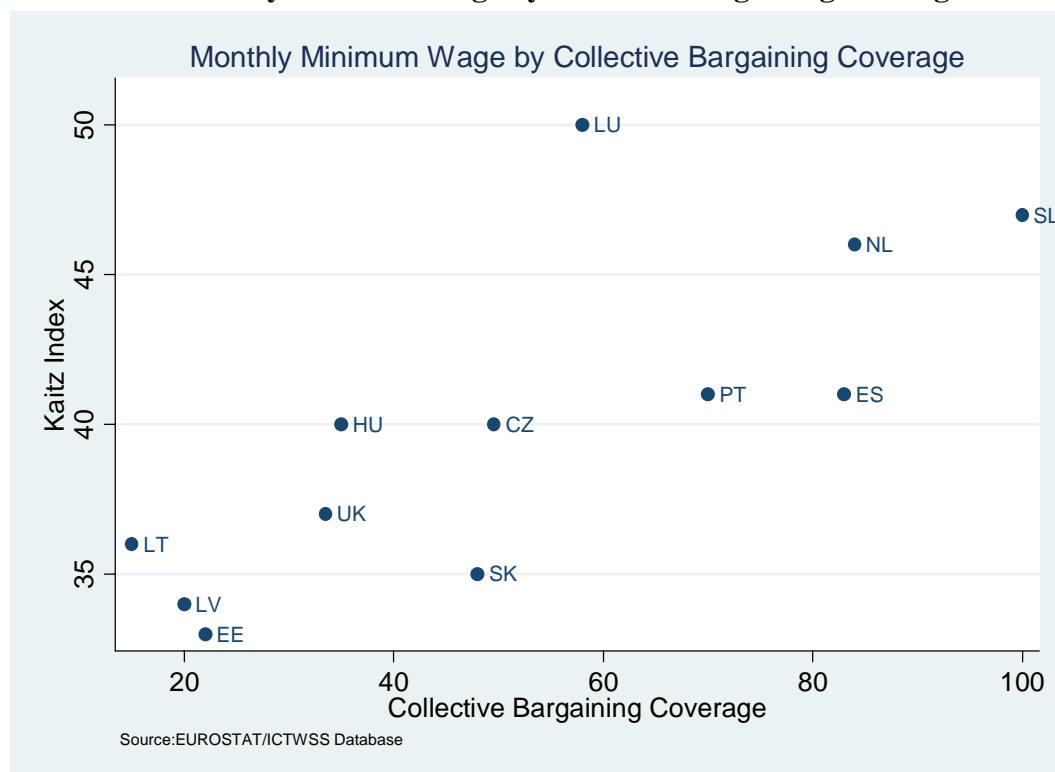
**Chart 3.11: Monthly minimum wage by trade union density**



Source: Eurostat/ICTWSS database, 2007. For the Kaitz Index Belgium, Estonia, Latvia, the Netherlands and Romania = 2005. Trade union density for Belgium, Ireland and Luxembourg = 2005, Latvia and Lithuania = 2004; Belgium and Malta - 2003, Estonia and Romania = 2002.

NB: Countries that do not have a statutory minimum wage (Denmark, Germany, Italy, Austria, Finland and Sweden) score 0 and are therefore excluded from the graph.

**Chart 3.12: Monthly minimum wage by collective bargaining coverage**



In conclusion it seems that collective bargaining institutions are complementary to statutory minimum wages in such a way that statutory minimum wages in fact benefit from strong collective bargaining institutions. A decline in employers' density and thereby a decline in collective bargaining coverage might thus not only increase the need for a minimum wage floor but also make the introduction of a minimum wage more likely. On the other hand, as long as bargaining coverage remains the guiding framework for wage setting in general, statutory minimum wages might become a challenge for successful collective bargaining. As the prolonged discussion on the introduction of the minimum wage in Germany shows, it is a long decision-making process for countries with traditionally strong bargaining institutions to cede wage setting to the government.

### **The effects of wage setting institutions on economic performance, wages and wage equality**

Industrial relations institutions play an important role in labour market outcomes. Wage structures and wage increases differ according to the type of wage bargaining institutions that exist in a given country. So far, however, little is known about the effects of industrial relations institutions in the EU-12. Since transition countries have undergone a major restructuring of labour market institutions and trade unions in particular have assumed new roles, the question of their contribution to the European social model remains.

#### **Box 3.7: Major findings**

**Bargaining coverage:** While no effect of bargaining centralisation or coordination was found for performance measures, higher bargaining coverage rates were associated with



lower nominal wage growth and with a lower gender pay gap.

**Institutional level at which minimum wages are set:** *Ceteris paribus*, countries in which the amount of the minimum wage is set at higher institutional levels have higher proportions of in-work poor.

**Trade union density:** Trade union density has a significant, robust inverse relationship with wage inequality — thus, higher trade union density is associated with lower wage inequality, holding other variables constant. High trade union density countries have higher p10/p90 and p50/p90 values (indicating higher wage equality) and lower proportions of in-work poor.

Our analysis of the effects of **wage setting institutions** in Europe reconfirms existing research results stating that institutionally strong labour relations, characterised by strong actors, coordinated processes and high coverage rates, have some moderating effects on nominal wage developments. It shows that stronger labour relations contribute to positive economic outcomes on the labour market and have a robust dampening effect on wage inequality, poverty and gender pay inequality. While the former effect of facilitating wage restraint seems to have become weaker in recent years, the latter effect of providing equality could become of increasing importance given the importance of egalitarian outcomes for the European social model and the recent challenges of widening income and wealth gaps.

## Effects of industrial relations on wages and employment

The effects of wage setting institutions on economic performance can be measured in different ways, depending on the context, and consists of indicators such as unemployment, employment growth, productivity, inflation, nominal wage growth, etc. This section focuses on wages and employment.

In general terms, the theoretical literature makes assumptions about how institutions shape the bargaining behaviour of trade unions when facing the trade-off situation of choosing between pay and employment. Depending on the bargaining strategy of the union, wages are more or less oriented towards promoting employment growth. Industrial relations institutions thereby facilitate to a greater or lesser extent nominal wage restraint, while at the same time making wages less flexible and generally more compressed.

Economy-wide coordination mechanisms have been accepted as the most important factor influencing wage bargaining behaviour. As has been pointed out by several authors (Soskice, 1990; Traxler and Blaschke, 2000) the coordination of wage bargaining can take place even in organisationally decentralised wage bargaining institutions. If decentralised wage bargaining is organised around a pattern-setting mechanism or replaced by other mechanisms such as government intervention, the lack of formal centralisation can be compensated.

If there is no coordination in the wage bargaining behaviour, local wage bargaining will reflect the local conditions on the labour market and will not be sensitive to wider economic constraints. Moreover, local bargaining encourages leap-frogging with highly profitable companies influencing the expectations of workers in other companies. Local trade unions that are not embedded in a national bargaining system tend to exploit their bargaining power since they do not have any reason not to do so (Soskice, 1990; Flanagan, 1999).

The coordination argument has been countered by the bargaining power argument. As union bargaining power increases, wage settlements should become less responsive to economic constraints. Decentralised bargaining structures tend to face highly elastic demand curves, since customers can easily shift their purchases to other companies if a collective bargaining settlement raises wages at one company (Flanagan, 2003). As a result, in the economic literature, economists such as Calmfors and Driffil have hypothesised a hump-shaped relationship, where highly centralised and highly decentralised wage bargaining institutions outperform intermediate levels of centralisation (Calmfors and Driffil, 1988).

The arguments which link wage bargaining institutions to nominal wage growth are the same as those which are used in the literature on economic performance. Wage bargaining actors embedded in institutionally strong labour relations are more likely to take the negative effects of high wage settlements into account and thereby internalise negative externalities. On the whole, when controlling for macroeconomic variables such as productivity, inflation and unemployment a higher degree of coordination and centralisation should have a dampening effect on nominal wage increases.

Our regression analysis for all Member States using data for the period 1996 to 2000 tested this proposition. There was little significance in the results for wage bargaining centralisation, coordination or minimum wage institutions. The only institutional variable which proved robust and significant for all of the models where it was included was collective bargaining coverage (see table 1 in annex). Bargaining coverage consistently came out with a highly significant beta coefficient of about  $-0.33$ . This result implies that holding all other variables constant, the higher bargaining coverage a country had in this period, the lower its nominal wage growth, compared with a country with lower bargaining coverage.

This result can point to the difficulties of measuring centralisation and coordination, in particular in the EU-12, as the OECD pointed out. Here, wage bargaining coverage (which is closely related to employers' association density) might be a better indicator for a greater capacity for internalisation of inflationary wage effects through wage bargaining institutions. But it can also be seen as an indication that the role of wage setting institutions is indeed changing with degrees of centralisation and coordination losing in importance and being increasingly replaced by the question of whether workplaces are covered by collective agreements at all. Non-covered workplaces would therefore not be more flexible as the OECD assumed in its 'Jobs Study' but rather the opposite. They would face higher nominal wage increases which were not accounted for by productivity increases.

Empirically, there is no consensus in the literature about the effects of wage bargaining institutions on performance, and in particular employment. Many studies covering OECD countries between the 1960s and today find that labour market rigidities are related to institutional variables. For instance, in a recent comprehensive empirical study, labour market institutions were seen as a major explanation for differences in economic performance accounting for 55 % of the variation in unemployment, the generosity of the unemployment benefit system being the most important factor, followed by taxes and union density (Nickel et al, 2005).

### **Box 3.8 The OECD's perspective**

The OECD *Employment Outlook* concluded in 2006 that: 'Overall, recent empirical research ... suggest that high corporatism bargaining systems tend to achieve lower unemployment than do other institutional set-ups. Nevertheless, the evidence concerning the impact of

collective bargaining structures on aggregate employment and unemployment continues to be somewhat inconclusive. The overall non-robustness of results across studies probably reflects, at least in part, the difficulty of measuring bargaining structures and practices, as well as the fact that the same institutional set-up may perform differently in different economic and political contexts. One exception to this pattern is the robust association between higher centralisation/coordination of bargaining and lower wage dispersion. Evidence is mixed, however, about whether the compressed wage structures associated with corporatist bargaining reduce employment by pricing low-skilled workers — or those residing in economically disadvantage regions — out of work’ (OECD, 2006, p. 86).

In its 1994 ‘Jobs Study, the OECD had been particularly critical of statutory provisions that extended bargaining coverage beyond union members. This criticism was considerably rephrased in 2006 when the OECD conceded that industrial relations structures and practices are part of the social and political fabric, implying that bargaining structures are not easily changed by government action. The report added that ‘Recent experience also suggests that greater allowance be made for the potential contribution of centrally coordinated bargaining to achieving aggregate wage restraint, at least in those countries whose histories and institutional structures are compatible with such an approach.’

However, studies generally disagree as to which institution is responsible for rigidities and to what extent these institutions matter. A recent article including a comparison of findings from 11 econometric studies between 1997 and 2005 focused on a number of institutional variables such as employment protection, unemployment benefit replacement rates, union density, a bargaining coordination index, the magnitude of the tax wedge, unemployment benefit duration, collective bargaining coverage, and expenditures on active labour market policies. The review shows that so far no single institutional variable is consistently found to be significantly different from zero across all studies (Baker et al, 2006).

Another recent study focusing on the same set of variables and data came to the conclusion that there is no robust evidence of labour market institutions’ effects on the unemployment rate. They did not find evidence that the within-country variation of bargaining coordination is associated with lower unemployment nor that bargaining coordination moderates the impact of other institutions. The analysis did, however, show that higher union density is related to higher unemployment rates, as did previous studies. This effect declines with growing coordination, i.e. a more coordinated bargaining system partially internalises the externalities caused by wage pressure (Baccaro and Rei, 2007).

**Table 3.3 Unemployment rates by degrees of bargaining coordination**

	1990s		2000s	
	High level of coordination	Low level of coordination	High level of coordination	Low level of coordination
EU-12	8.2	10.2	11.4	10.2
EU-15	8.0	8.7	7.0	6.0

NB: High bargaining coordination is above 3.

**Table 3.4 Unemployment rates by unionisation levels**

	1990s		2000s	
	High level of unionisation	Low level of unionisation	High level of unionisation	Low level of unionisation
EU-12	8.8	10.3	6.9	11.9
EU-15	7.9	8.9	6.2	7.0

NB: High union density countries are countries with union density levels above 40 %.

A first glance at the data used in this analysis, which covers all current EU Member States between 1990 and 2006, reveals only partial support for a positive effect of bargaining institutions on the unemployment rate. While for the 1990s, unemployment rates were lower in countries where bargaining coordination rates were higher, this pattern reversed during the first five years of the 2000s. Here, lower levels of coordination in wage bargaining were correlated with better employment performance.

However, this pattern cannot be observed vis-à-vis union density rates, which are quite often assumed to be related to higher unemployment levels. Higher unionisation tends to be associated with lower unemployment rates in all Member States. In the EU-12 this relationship is quite considerable, as unemployment rates in countries with low unionisation rates were double the unemployment rate in countries with high unionisation. However, this effect is driven by relatively few cases.

Overall, the discussion about the role of wage bargaining institutions is still evolving and there is not enough evidence to make a clear policy judgment. Neither a significant negative effect by wage setting institutions on unemployment nor the traditional assumption of a positive effect of coordinated wage bargaining institutions on unemployment can be proven. It seems premature and unjustified to base policy recommendations on the evidence given in the literature (Baccaro and Rei 2007).

### **Wage bargaining institution effects on measures of equality**

Throughout Europe, solidarity and cohesion are important shared values that economic and social policies are built on. The relationship between employment, work, poverty and social exclusion is an integral part of the Lisbon Strategy. In the Employment Guidelines EU Member States agree to work towards substantially reducing segmentation, gender pay gaps and in-work poverty. The link between quality and quantity of employment thereby becomes increasingly important given the atypical and precarious work patterns augmenting the risk of polarisation within society. Social partnership and wage bargaining institutions can play an important role in achieving greater degrees of equality and therefore social cohesion in Europe as the analysis shows.

In research on the effects of wage bargaining institutions on labour market outcomes, a consistent finding is the effect of strong bargaining institutions leading to a more compressed and therefore more egalitarian wage structure. Numerous studies have shown a negative relationship between the level of collective bargaining centralisation and the degree of wage inequality.

There are two basic explanations for the observation that more centralised wage bargaining systems tend to have flatter wage structures. The first refers to the role of regulation in general: trade unions have an interest to curtail subjective decisions by management and therefore tend to standardise wage systems. The less market-driven wage setting takes place, the lower the level of wage dispersion will be. The second explanation assumes a median voter perspective of trade union decision-making: within trade unions there is a wage-push from below as long as the mean wage is above the median wage. In other words: in big trade union organisations with a majority share of unskilled members, the lower wage group will try to catch up in wage bargaining (Freeman, 1980; Pontusson, 1996).

In the following, the effects of comprehensive wage bargaining institutions on equality will be tested using a number of different equality measures, particularly wage inequality, the gender pay gap and in-work poverty.

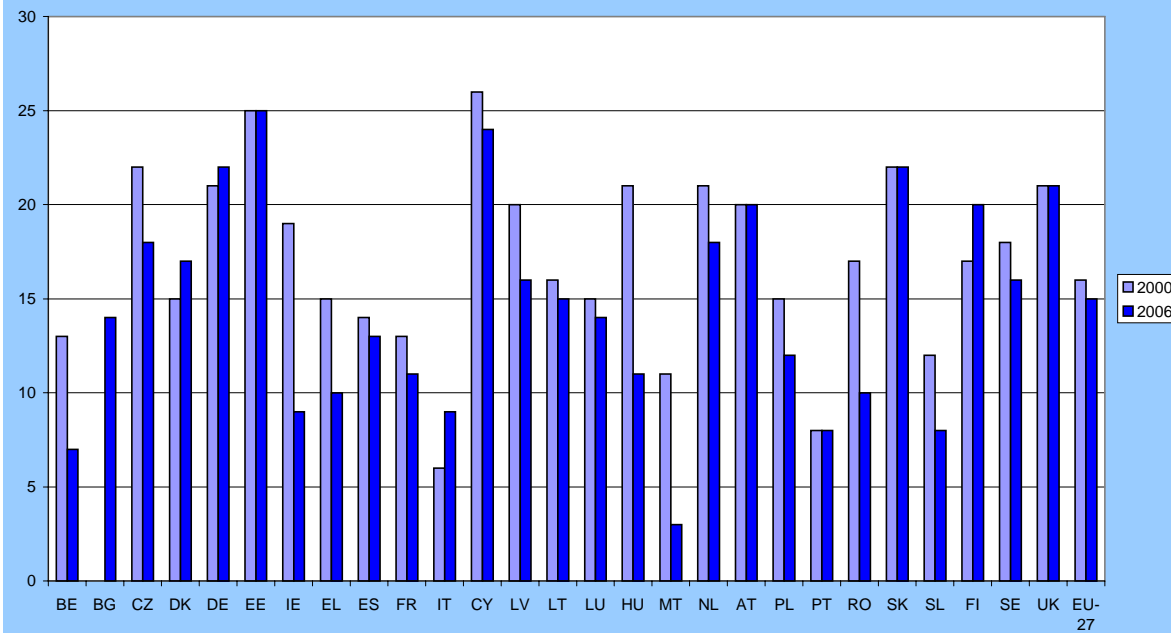
### **Gender pay gap**

While the promotion of gender equality has been an integral part of the Treaties of the European Union since 1957, in 1998 the Council of Europe defined ‘Gender mainstreaming’ as the ‘(re)organisation, improvement, development, and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies, at all levels and at all stages, by the actors normally involved in policymaking’. Since then, various policy papers have been completed on gender equality and equal treatment and gender mainstreaming was also introduced into the European Employment Strategy in 1999.

The importance of gender equality and the reduction of structural imbalances in the labour market were set as necessary preconditions for the overall objectives of the Lisbon agenda in 2002. The Employment Guidelines of 2003 ask all Member States ‘through an integrated approach combining gender mainstreaming and specific policy actions, [to] encourage female labour market participation and achieve a substantial reduction in gender gaps in employment rates, unemployment rates, and pay by 2010’. With regard to the gender pay gap, Member States are asked to pursue policies which, ‘with a view to its elimination, [...] will aim to achieve by 2010 a substantial reduction in the gender pay gap in each Member State, through a multifaceted approach addressing the underlying factors of the gender pay gap, including sectoral and occupational segregation, education and training, job classifications and pay systems, awareness raising and transparency’ (European Commission, 2003).

Recent studies of the European Foundation for the Improvement of Living and Working Conditions and the Commission show that gender segregation and pay gaps are a prevalent problem at workplaces throughout the European Union. Both sector specific as well as occupational segregation exists in the Member States and impede initiatives for equal treatment of female and male employees. At the same time, female-dominated work is often the lowest-paid work occurring in sectors with little or no collective bargaining coverage and little opportunities for training and promotion (Eurofound, 2007d). However, recent studies such as the Gender Equality Report of the Commission of 2005 show that with regard to labour market participation, the gender gaps are continuously closing and countries with high employment rates also provide high part-time and full-time female employment rates. However, while the structure of the welfare state is transforming in many countries, gender segregation with regard to pay and career development remains an important problem (European Commission, 2007b).

**Chart 3.13: Gender pay gap 2000/06 (%)**



Source: Eurostat (ECHP, EU-SILC and national sources)

The graph compares developments in the gender pay gap in 2000 with 2006 and shows the difference in average gross hourly earnings between men and women across the whole economy and all establishments (European Commission, 2003). It shows that on average the gender pay gap decreased in the majority of the Member States. The only exceptions are Germany, Denmark, Italy and Finland, where the gender pay gap increased. In Estonia, Austria, Portugal, Slovakia and the United Kingdom the gender pay gap stayed the same. The gender pay gap in 2006 varied from some 4 % in Malta to 25 % in Estonia.

In general, Member States can be divided into three different groups. The first group, with a gender pay gap below 10 % in 2006, consists of Belgium, Greece, Ireland, Italy, Malta, Portugal, Romania and Slovenia. The second group, with a gender pay gap between 11 % and 20 % consists of Bulgaria, the Czech Republic, Denmark, Spain, France, Lithuania, Luxembourg, Latvia, Hungary, the Netherlands, Austria, Poland, Finland and Sweden. The third group, containing all countries with a gender pay gap above 20 %, consists of Germany, Estonia, Cyprus, Slovakia and the United Kingdom. Another interesting finding is the strong reduction of the gender pay gap since 2000 in a majority of Member States.

Can collective bargaining institutions and the social partners contribute to closing the gender pay gap? In order to analyse and evaluate the interaction between the data on gender pay gap in the European Union and the bargaining institutions, a cross-sectional analysis has been used.

In this analysis (see table 2 in annex for details), collective bargaining coverage emerges as a crucial determinant for closing the gender pay gap. While the interaction with most of the indices for collective bargaining institutions is rather small or difficult to measure given the lack of data, the correlation with collective bargaining coverage provides some interesting results. Collective bargaining coverage has a robust, negative effect on the gender pay gap, indicating that the greater the proportion of the labour force that are subject to collective bargaining agreements, the lower the gender pay gap, *ceteris paribus*. This holds true when controlling for secondary education, which has a significantly robust, negative effect

indicating higher rates of proportion of women completing secondary education compared to men also works towards closing the gender pay gap.

This effect also holds given a relatively small sample size (EU-27). This is comforting, as it also conforms to what previous literature has said on the effects of collective bargaining on the gender wage gap (Felgueroso et al. 2007; Blau and Kahn, 2003). If coverage is higher, this would indicate that more employees in the workforce — including women — would fall under terms and conditions determined by collective agreements which not only include pay terms but also equal opportunities policies. Interestingly, macroeconomic indicators (unemployment and GDP per capita) do not demonstrate a high significance, indicating that unemployment performances as well as country wealth do not appear to influence the gender gap.

Therefore, in the light of the aggregate data, it appears that an EU country with higher bargaining coverage, holding everything else equal, generally tends to have a lower gender pay gap than EU countries with low bargaining coverage. In this sense, collective bargaining institutions can have a narrowing effect on the gender gap.

With regard to part-time employment, first calculations with the available data indicate that the greater proportion of women in part-time employment compared to men would correlate with a higher gender pay gap. However, the lack of significant results should not lead one to conclude that part-time employment has little significant effect as the sample size is quite small.

However, collective bargaining coordination shows a significant positive correlation with the gender pay gap. This would indicate that, holding all other variables constant, an increase in wage bargaining coordination would prompt a slight increase (around 0.02 % for every 1 unit increase in the index) in the gender pay gap. While the increase is not of substantial magnitude, holding everything else equal, a country with a coordination index of 5 would have a 0.1 % higher gender pay gap compared to a country with a coordination index of 0.

In conclusion, more data is needed in order to be able to define the causes of the gender pay gap and their interrelations with institutional settings. Moreover, as a recent study by Rubery et al. (2005) has shown, the traditional or mainstream approach to the gender pay gap has focused primarily on gender pay gaps and in particular women's deficiencies relative to the attributes of men. This approach which has also been followed in this section provides only a general overview of the gender pay gap as women have for example closed the gaps in education and experience and other factors have become more important in explaining the gender gap.

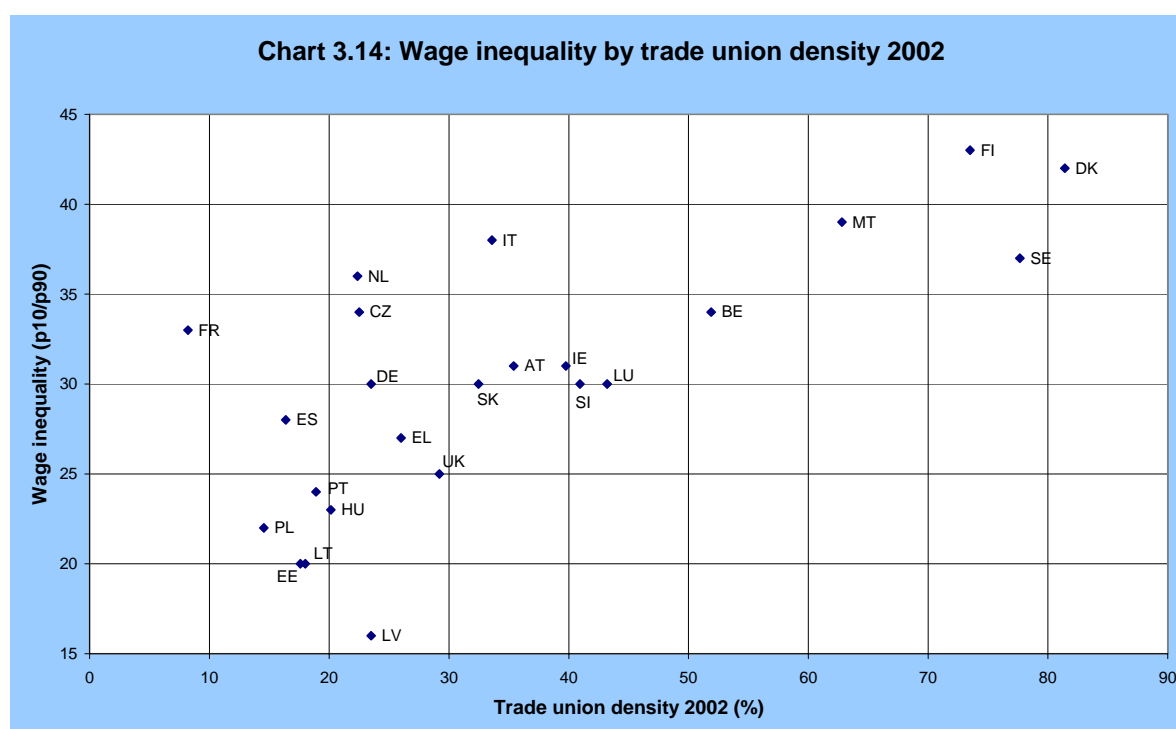
## **Wage inequality**

The existing literature on the relationship between wage inequality and industrial relations institutions shows that in some Member States such as the United Kingdom there is a clear relationship between the decline in union membership and the rise in wage inequality (Machin, 1997). This finding has been confirmed by other authors who in a comparative study came to the same result that there is a significant negative impact of trade union density and bargaining coverage on wage inequality in 16 countries. Union density can be defined as the single most important factor influencing wage inequality across institutional contexts; its effects are consistently egalitarian and they are greater than those of any other institutional factors (Rueda, Pontusson, 2000). A third factor which has been identified to

have a significant effect on the (un-)equal distribution of wages seems to be the wage setting level i.e. the degree of collective bargaining centralisation (Wallerstein, 1999). According to some authors, a higher level of centralisation leads to lower degrees of wage dispersion. These primary findings for the enlarged EU were tested with regard to their interrelation with the wage bargaining institutions described above.

Two prominent measures of wage inequality were used (p10/p90 and p50/p90), which reflect the relative share of the highest 10 % or 50 % to the lowest 10 % of wages.

The regressions (see table 3 in annex) on the minimum wage setting level did not show any significance, even when trade union density was excluded from the models. Thus, there does not appear to be sufficient evidence that minimum wage institutions (at least the data we have) explain the wage distribution of the lowest 10<sup>th</sup> percentile compared to the highest 10<sup>th</sup> percentile amongst EU countries.



Source: Eurostat Structure of Earnings Survey/ICTWSS Database.

Also, wage bargaining centralisation, bargaining coverage and wage bargaining coordination did not appear to have any significant effect on p10/p90. However, trade union density had a very significant and robust positive effect on p10/p90. This would mean, as with the above analysis, that countries with higher trade union densities, holding all other variables constant, have higher p10/p90 values and thus higher wage equality. A 10% increase in the trade union density ratio would increase the p10/p90 ratio, on average, by around 2%, *ceteris paribus*.

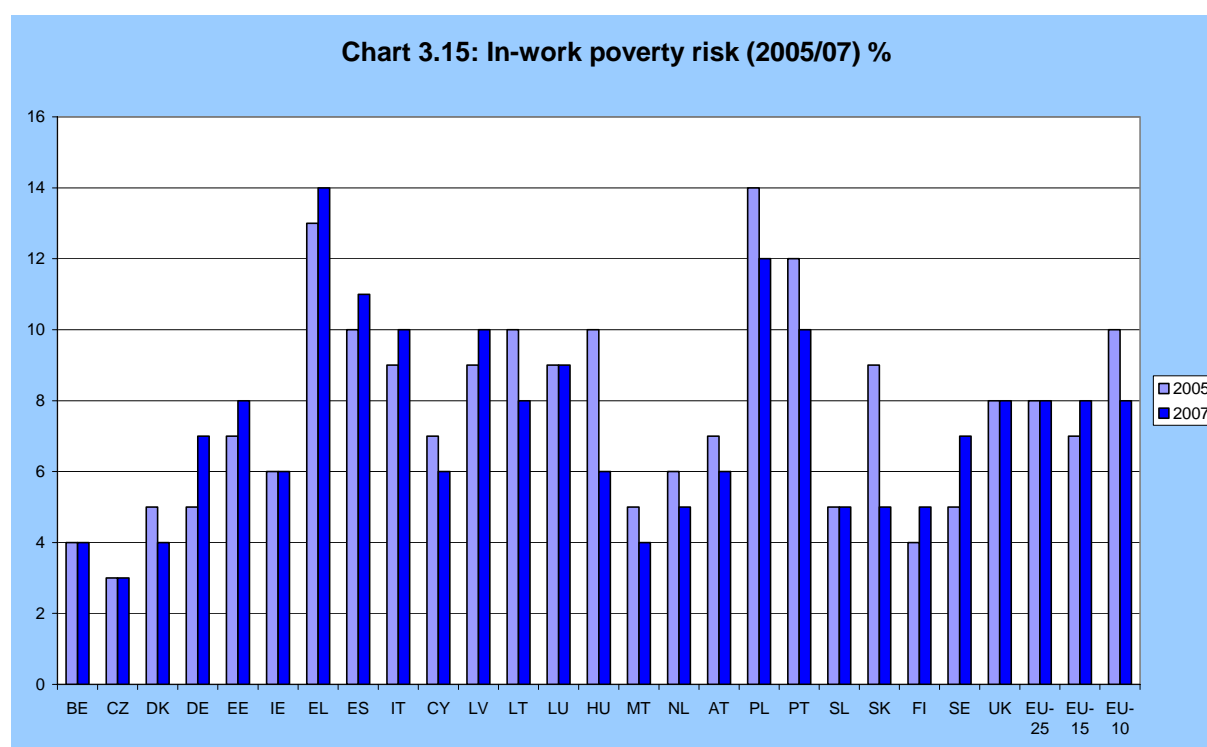
## The in-work poor

The rise of a knowledge-based society with constantly improving information and communication technologies can also be a pattern for exclusion widening the gap in quality of life between skilled and low skilled. This phenomenon creates a new category of those affected by poverty: the in-work poor. The Eurostat indicator combines various aspects of work and the poverty threshold. Work is defined as at least 15 hours of employment as well



as the most frequent activity status in the last year. The poverty threshold refers to relative monetary poverty being less than 60 % of the median equalised household income. The latter is of particular importance, as the entire household and not only the working individual are considered within the definition.

This distinction is justified by the fact that the incidence of poverty is strongly influenced by household structures and household employment patterns. Therefore, in-work poverty must be analysed not only through individual characteristics linked to the particular person and their occupation but also through household characteristics (Eurostat 2005).



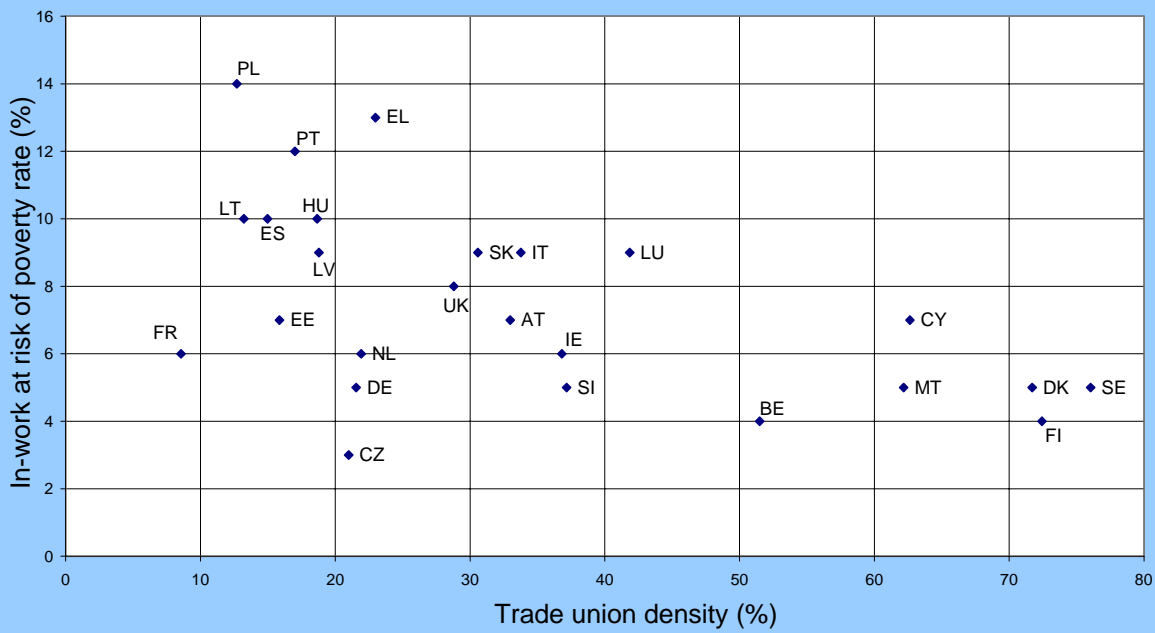
Source: Eurostat. Earlier data incomplete. No data available for Bulgaria and Romania.

Regression analysis (see table 4 in annex) controlling for GDP per capita and in-work poverty shows that countries with a higher GDP average per capita have a lower proportion of their labour force disposing of less than 60 % of the national median income than poorer countries. Testing the influence of minimum wage setting institutions on the rate of in-work poverty shows that a country with a minimum wage setting level as high as 8 will, on average, have a percentage of in-work poor that is 14 % higher than a country with a minimum wage setting level of 1.<sup>32</sup>

Wage bargaining centralisation, bargaining coverage and coordination do not appear to have any significant effect on the proportion of workers receiving below 60 % of the average wage. However, trade union density has a significant and robust negative effect on this variable. This would indicate that, holding all other variables constant, an increase in the trade union density rate by 10 % is associated with a reduction of in work poverty by around 3 %. While these findings might not seem surprising given the highly egalitarian wage levels in the Nordic countries, the strong negative correlation remains even if these countries are excluded from the calculation.

<sup>32</sup> The results of this regression exclude trade union density. When trade union density is excluded the beta coefficient on the minimum wage setting level is at approximately 0.02.

**Chart 3.16: In-work at risk of poverty by trade union density 2005**



Source: Eurostat/ICTWSS Database, no data available for Bulgaria and Romania.

*In addition to this chapter, text box 3.9 gives the first findings of an ongoing ILO project on minimum wages.*

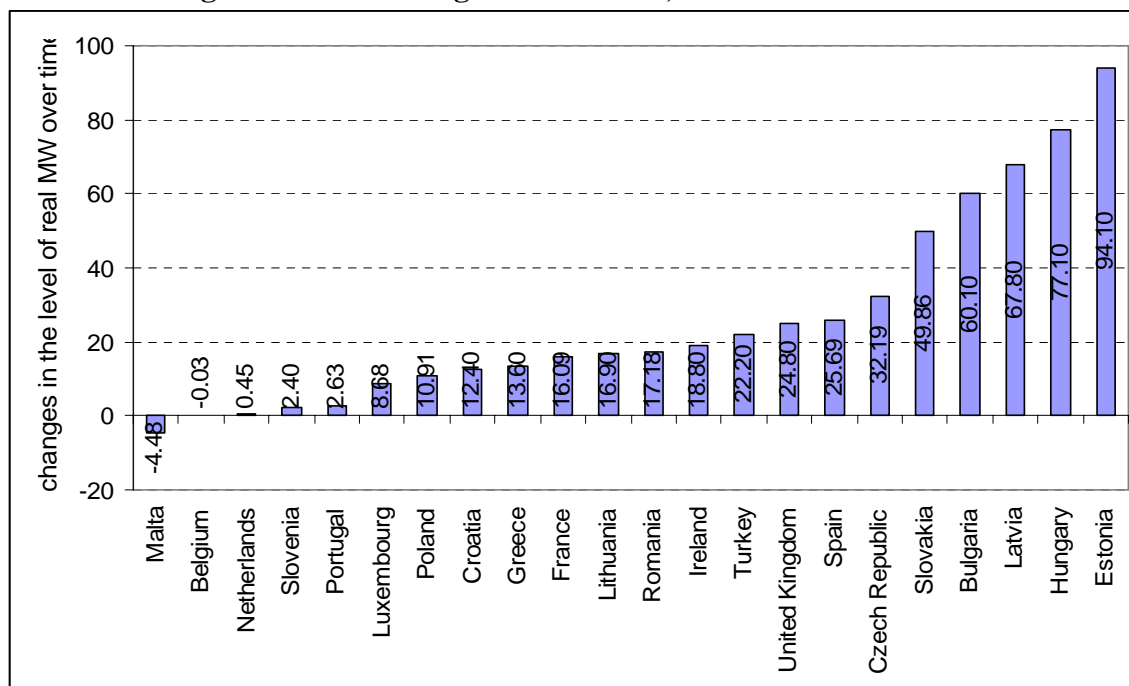
### Box 3.9: The minimum wage revisited in the enlarged EU

The minimum wage has returned to the EU policy agenda. EU enlargement and legal developments have contributed to this. While only nine out of the EU-15 Member States have introduced a statutory national minimum wage, the integration of the 12 new EU Member States has significantly increased the proportion of Member States with such a system: 20 out of 27 now have a national statutory minimum wage.

Symbolic of the revival of minimum wages was the decision by the United Kingdom to introduce a national minimum wage in 1999 (the previous government having dismantled the system of industry minimum wages in the 1980s), immediately followed by Ireland in 2000. From 1 January 2009 Austria will also introduce a national minimum wage fixed by collective agreement. The possibility of implementing a national minimum wage has also been debated recently in Germany and Sweden, where minimum wages are traditionally fixed by sectoral collective bargaining. The issue remains open and discussions taking place in these countries are addressing the pros and cons of such a shift for their economy and society, as well as for their industrial relations system. Among the candidate countries, in 2008 Croatia implemented a new law on minimum wages, while Turkey decided to reduce taxes for minimum wage earners in 2008.

This renewed interest in the minimum wage is confirmed by the statistics. Globally, over the most recent period, 2000–08, nearly all countries — 18 out of the 20 with a statutory minimum wage — have allowed the minimum wage to increase in real terms to improve the purchasing power of workers at the lower end of the labour market. The growth has been particularly marked in the EU-12 — Estonia tops the rankings with + 94 % — but it has also been significant in some EU-15 countries such as the United Kingdom (+ 25 %), followed by Spain, Ireland, France and Greece, and in Turkey (+ 22 %).

**Chart 1: Change of minimum wage in real terms, 2000–07**



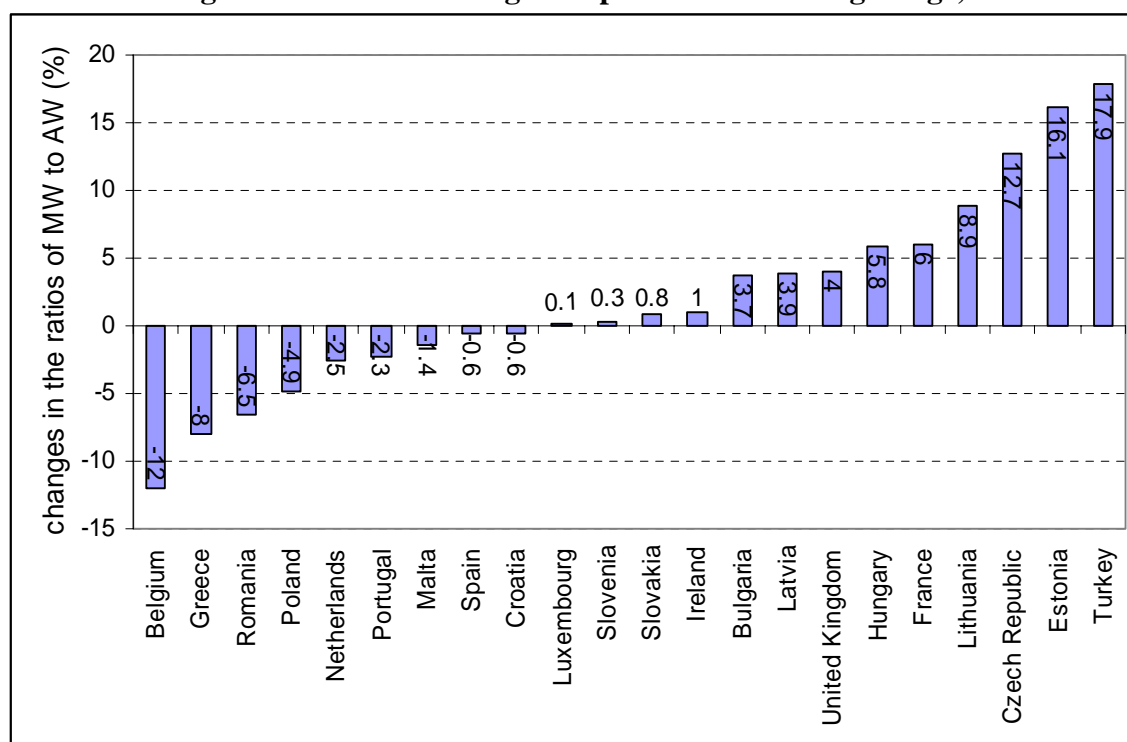
Source: Eurostat, complemented by national statistics.

NB: 2001–07 for Poland; 2002–07 for Malta, Romania and Slovakia; 2003–07 for the Czech Republic, Slovenia and Turkey.

This more active minimum wage policy is also illustrated by the increase in the minimum

wage relative to the average wage, which increased in 13 out of 20 countries between 1995 and 2007, with the EU-27 average ratio increasing from 40 % to 41.5 % over the period. Two countries experienced an advance of more than 10 points — Estonia and the Czech Republic — followed by Lithuania and Hungary. Turkey has also experienced an increase of 18 points. Finally, among those countries that have experienced adverse minimum wage developments since the mid-1990s, a few of them shifted recently to a more active minimum wage policy; for example Spain, where the minimum wage in real terms has increased since 2000 by 26 %, and Greece (+ 14 %) and Poland (+ 11 %).

**Chart 2: Change of the minimum wage compared to the average wage, 1995–2007**



Source: Eurostat, complemented by national statistics.

NB: The last year was 2006 for Belgium, the Czech Republic, Greece, Spain, Hungary, Malta, the Netherlands, Poland, Romania, Slovakia and Croatia; 2008 for Estonia, Latvia and Lithuania; data were for 2002–06 for Ireland, Luxembourg, Portugal and the United Kingdom.

There are three major reasons for such a renewed interest in minimum wages.

### ***Increased labour and capital mobility***

The first is the increased mobility of labour and capital after EU enlargement, but also intensified flows at international level. The arrival of significant numbers of migrant workers, often hired on lower wages and under more intensive working conditions, has put the ensuing new labour reserve in the spotlight. In countries such as Ireland and the United Kingdom not only has the minimum wage helped to reassure domestic workers that their pay will not be undermined by such immigration, but it has also protected workers from central and eastern Europe from excessively low wages. It also became an element in attracting them in a context of labour shortages. Interest in minimum wage developments has also developed among countries of origin as a potential tool for limiting outward migration, as in Poland where a minimum wage for healthcare employees has been proposed.

### ***New forms of employment contracts and low pay***

The second reason is the rise, since the late 1990s, of new forms of employment contract such as part-time work, self-employment and temporary employment. While this has certainly managed to boost employment it also had the effect of confining certain categories

of workers to the more precarious employment conditions often associated with lower wages. In Germany, 85 % of those with so-called ‘mini-jobs’ have been found to be low paid (below two thirds of the median wage). The case is similar in Spain among workers on fixed-term contracts. Low pay is also increasingly prevalent among part-timers in the Netherlands. It is important to report, however, that the increase in the minimum wage has been accompanied by a decrease in the number of low-paid workers in countries such as the Bulgaria, Estonia, Greece, France, the United Kingdom and Turkey. In contrast, the decline of the minimum wage has coincided with an increase in the number of low-paid workers in the Netherlands and Poland.

### ***The progressive decline of collective bargaining***

Another explanation must be found in the progressive decline in trade union membership and collective bargaining coverage observed in most EU countries. To counter their declining influence in the wage-fixing process — especially in those countries without a statutory minimum wage — many trade unions have pushed for the introduction of such a statutory tool to help them to keep better control of workers’ real wages and purchasing power. It is also possible that this new interest in the minimum wage is due to the difficulties of existing industrial relations systems to deal with the combination of the two factors described above, namely increased mobility and new forms of employment. It is true that migrant workers are present mainly in sectors such as construction, hotels and restaurants and hospital cleaning, which remain, like many service activities, traditionally less covered by collective bargaining. Moreover, the decision of the Court of Justice of the European Communities in the *Laval* case in Sweden is a challenge to traditional collective bargaining without statutory minimum wages.

### ***Towards an EU minimum wage?***

The new context has also led to suggestions to introduce a minimum wage at EU level. However, most observers agree that it is not a minimum wage as such that should be envisaged at EU level, but the need to introduce national minimum wages and a number of basic principles. Basic principles could cover such important questions as the existence, scope and beneficiaries of the minimum wage — certain categories of workers are excluded from the national minimum wage in several countries — as well as recommendations concerning its level compared to other variables, such as the subsistence minimum or the average wage.

Such policy guidelines at EU level, eventually combined with exchange of good practices between EU Member States, may contribute to improving minimum wage institutions in the near future.

This box is based on a text drafted by Daniel Vaughan Whitehead (ILO), and relates to a project carried out by the ILO with financial support of the European Union: Vaughan-Whitehead, D. (ed) (2008) *The minimum wage revisited in the enlarged EU*, ILO, Geneva.

## Annex to chapter 3

**Table 1: Economic and institutional factors affecting nominal wage changes in EU Member States**

Independent variables	I	II	III
Nominal wage growth (– 1)	– 0.15*	– 0.1046	– 0.1346
	0.073	0.203	0.102
Productivity growth	0.4942**	0.4190**	0.510**
	0.02	0.048	0.014
Productivity growth (– 1)	0.115186	0.053494	0.12343
	0.569	0.788	0.53
Unemployment (– 1)	– 0.69***	– 0.61***	– 0.60***
	0.007	0	0
Δunemployment	– 0.0461	– 0.031**	– 0.031**
	0.205	0.016	0.011
Inflation	0.478***	0.8417**	0.469***
	0	0.032	0
Inflation (– 1)	0.255**	0.6387*	0.259**
	0.02	0.083	0.015
Bargaining coverage	– 0.35***	– 0.32***	– 0.34***
	0	0.001	0
Coordination	1.51783		0.317246
	0.601		0.517
Centralisation		– 0.2178	– 0.0639
		0.55	0.523
Constant	29.28***	16.782**	33.38***
	0	0.013	0
Observations	148	148	148
F– statistic	6.06***	6.67***	7.33***
R– squared (within)	0.4043	0.4482	0.4058
R– squared (between)	0.4089	0.3998	0.4127
R– squared (overall)	0.3289	0.3217	0.3278
Rho_AR	0.125573	0.067987	0.110661
Rho_fov	0.948422	0.95911	0.956174
Modified Bhargava et al. Durbin– Watson	1.911995	1.958525	1.921784

Dependent variable is nominal wage growth. The p-value is below the coefficient.

\*, \*\*, and \*\*\* indicated significance on a 0.90, 0.95 and 0.99 confidence interval, respectively.

An AR(1) time series model was used

NB: Some control variables are omitted in table. In 1997, wage growth in Bulgaria was 848 and in Romania inflation was 107%. Therefore, these two outliers were excluded.

**Table 2: Regression analysis; gender pay gap as dependent variable**

Independent variable	I	II	III	IV	V	VI
Part-time gap	0.0833 (0.303)	0.157* (0.092)	0.1302 (0.190)	0.1670* (0.076)	0.11102 (0.161)	0.0498 (0.560)
Secondary education gap	-0.524* (0.075)	-0.686** (0.020)	- 0.692** (0.020)	- 0.702** (0.047)	-0.647** (0.049)	-0.467 (0.122)
Tertiary education gap	-0.4587 (0.250)	-0.1644 (0.707)	-0.1262 (0.771)	0.03104 (0.946)	-0.3129 (0.467)	-0.0252 (0.940)
Bargaining coverage	-0.06 (0.197)	-0.155** (0.017)	- 0.143** (0.038)	- 0.183** (0.011)	-0.152** (0.037)	
Wage coordination		0.025** (0.039)	0.026** (0.048)	0.029** (0.014)	0.0245** (0.050)	
Government intervention			-0.0096 (0.511)			
MW bargaining level				0.00309 (0.500)	0.00587 (0.315)	
TU density					0.0849 (0.215)	-0.0235 (0.663)
Observations	19	19	13	18	18	25
F-statistic	3.17** (0.047)	10.08*** (0.000)	23.7*** (0.000)	7.63*** (0.002)	7.56*** (0.002)	0.91 (0.474)
R2 value	0.4076	0.5314	0.6505	0.5852	0.6358	0.1134

Dependent Variable is gender pay gap.

\*, \*\*, and \*\*\* indicated significance on a 0.90, 0.95 and 0.99 confidence interval, respectively. P-values using robust standard errors are in parenthesis. These findings are based on an Ordinary Least Squares method, with cross sectional data using the average Gender pay Gap between 1995-2006. The data source for these calculations is Eurostat data on education and pay.

In these regressions, the variable centralisation has not been included, as previous controls showed that collective bargaining and centralisation were significantly and positively correlated – almost on a 1-to-1 basis, which is expectable given the fact that centralisation is a form of coordination.

**Table 3: Regression analysis: wage inequality (P10/P90) as dependent variable**

<b>Independent variable</b>	<b><i>I</i></b>	<b><i>II</i></b>	<b><i>III</i></b>	<b><i>IV</i></b>	<b><i>V</i></b>	<b><i>VI</i></b>	<b><i>VII</i></b>	<b><i>VIII</i></b>
<i>Ln GDP per capita</i>	0.1046** (0.042)	0.0965** (0.060)	0.0820* (0.098)	0.132*** (0.007)	0.0664 (0.265)	0.0968* (0.069)	0.148*** (0.007)	0.1067 (0.154)
<i>Unemployment</i>	0.1519 (0.674)	0.328 (0.493)	0.3083 (0.390)	0.0017 (0.996)	0.0353 (0.929)	0.2828 (0.474)	0.0432 (0.922)	0.2523 (0.607)
<i>Export share</i>	-0.0087 (0.858)	-0.0006 (0.991)	-0.0263 (0.407)	-0.0409 (0.225)	-0.013 (0.723)	-0.0447 (0.165)	-0.0634 (0.103)	-0.0623 (0.395)
<i>Average part-time</i>	0.0993 (0.468)	0.1331 (0.564)	0.1453 (0.398)	-0.0007 (0.996)	-0.0666 (0.695)	0.1949 (0.268)	0.0905 (0.527)	0.1513 (0.393)
<i>Secondary education</i>	-0.014 (0.919)	0.0820 (0.597)	0.0283 (0.793)	0.1569 (0.163)	0.1743* (0.087)	0.0552 (0.655)	0.1746 (0.134)	0.0824 (0.588)
<i>Tertiary education</i>	-0.2465 (0.348)	-0.1151 (0.677)	-0.3003 (0.111)	-0.0902 (0.740)	0.217 (0.547)	-0.3768* (0.093)	-0.2191 (0.392)	-0.389* (0.099)
<i>MW bargain institutions</i>		-0.0098 (0.282)						0.00599 (0.654)
<i>TU density</i>			0.2120*** (0.009)			0.1904*** (0.009)		0.2152** (0.037)
<i>Wage coordination</i>				0.018 (0.097)		-0.0050 (0.772)	0.0123 (0.259)	0.0111 (0.447)
<i>Coverage</i>					0.117 (0.122)			
<i>Government intervention</i>						0.0153 (0.268)	0.0202 (0.144)	0.0122 (0.502)
<i>Constant</i>	-0.6757 (0.202)	-0.6585 (0.174)	-0.549 (0.243)	-1.075** (0.022)	-0.5262 (0.306)	-0.7216 (0.167)	-1.251** (0.019)	-0.8653 (0.262)
<i>Observations</i>	25	22	23	23	19	23	23	22
<i>F-statistic</i>	2.56* (0.057)	2.94** (0.041)	5.41*** (0.003)	2.58* (0.058)	3.25** (0.040)	4.78*** (0.005)	2.41* (0.072)	3.63** (0.023)
<i>R-squared</i>	0.3338	0.4972	0.6746	0.5281	0.5458	0.6957	0.5604	0.7055

Dependent variable is P10/P90 ratio (percentages are expressed as between 0 and 0.1 rather than 0 and 100).

\*, \*\*, and \*\*\* indicate significance on a 0.90, 0.95, and 0.99 confidence interval, respectively. OLS regression method used. P-values using robust standard errors are in parenthesis.

When standard OLS regressions were conducted using two different measures of wage inequality (P50/P90 ratios and P10/P90 ratios) and additionally the proportion of in-work poor as dependent variables for three separate regressions, trade union density had a consistent, significant, inverse relationship with wage inequality, across over 30 regression models for robustness checks. Controlling for Ln GDP per capita, export share, unemployment levels, proportion of the population with a secondary qualification and



tertiary qualification, as well as other industrial relations variables (wage coordination, minimum wage bargaining institutions, and centralization), trade union density was significantly, and negatively correlated with wage inequality and negatively and significantly correlated with the proportion of in-work poor. We found the significant, robust correlations particularly striking considering the fact that our sample included only 25 countries.

**Table 4: Regression analysis Percentage of In-Work Poor as Dependent Variable:**

<b>Independent variable</b>	<b><i>I</i></b>	<b><i>II</i></b>	<b><i>III</i></b>	<b><i>IV</i></b>	<b><i>V</i></b>	<b><i>VI</i></b>	<b><i>VII</i></b>	<b><i>VIII</i></b>
<i>Ln GDP perCapita</i>	-0.146*** (0.003)	-0.0945 (0.123)	-0.133*** (0.000)	-0.153*** (0.008)	-0.1306 (0.151)	-0.138*** (0.001)	-0.1097 (0.102)	-0.124* (0.063)
<i>Unemployment</i>	-0.1444 (0.687)	-0.3835 (0.506)	-0.809 (0.126)	-0.0524 (0.912)	-0.3562 (0.502)	-0.74995 (0.159)	-0.4081 (0.474)	-0.76232 (0.290)
<i>Export share</i>	0.0117 (0.838)	-0.05633 (0.400)	0.01539 (0.702)	0.03133 (0.550)	-0.0052 (0.926)	0.0281 (0.513)	-0.0287 (0.688)	0.0051 (0.952)
<i>Average part-time</i>	-0.19204 (0.374)	-0.3133 (0.217)	-0.2991** (0.050)	-0.1418 (0.576)	0.0787 (0.632)	-0.3316* (0.077)	-0.3873* (0.095)	-0.36465 (0.215)
<i>Secondary education</i>	-0.0334 (0.827)	-0.0328 (0.887)	-0.0067 (0.965)	-0.1742 (0.248)	-0.2531* (0.072)	-0.0256 (0.874)	-0.0587 (0.807)	-0.0039 (0.986)
<i>Teritiary education</i>	0.2516 (0.478)	0.183 (0.578)	0.5287** (0.049)	0.13584 (0.721)	-0.31957 (0.508)	0.5774* (0.076)	0.30244 (0.408)	0.5480 (0.168)
<i>MW bargain institutions</i>		0.025* (0.063)					0.0225 (0.113)	0.0071 (0.689)
<i>TU density</i>			-0.368*** (0.000)			-0.344*** (0.000)		-0.303*** (0.008)
<i>Wage coordination</i>				-0.0249 (0.197)		-0.005 (0.772)		-0.000 (0.999)
<i>coverage</i>					-0.191 (0.124)			
<i>Government intervention</i>						-0.0126 (0.606)	-0.0197 (0.469)	-0.0128 (0.654)
<i>Constant</i>	1.643*** (0.001)	1.142* (0.065)	1.638*** (0.000)	1.850*** (0.001)	1.8171** (0.029)	1.726*** (0.000)	1.3391* (0.059)	1.549** (0.039)
<i>Observations</i>	27	24	25	25	19	24	24	24
<i>F-statistic</i>	4.64*** (0.004)	6.2*** (0.001)	21.66*** (0.000)	3.92*** (0.010)	5.78*** (0.005)	14.38*** (0.000)	6.13*** (0.001)	11.93*** (0.000)
<i>R-squared</i>	0.4513	0.6595	0.7741	0.5486	0.6253	0.784	0.6721	0.7882

Dependent variable is proportion of in-work poor (percentages are expressed as between 0 and 0.1 rather than 0 and 100).

\*, \*\*, and \*\*\* indicate significance on a 0.90, 0.95, and 0.99 confidence interval, respectively. OLS regression method used. P-values using robust standard errors are in parenthesis.

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## European social partners' views on the macroeconomic dialogue

The Macroeconomic Dialogue (MED), instituted by the June 1999 Cologne European Council, contributes to the growth and stability orientation of the macroeconomic framework in the EU. It provides a high level forum for the exchange of views between the Council, Commission, European Central Bank and the social partners.

According to the European Council of Cologne, the MED should focus on the economic situation and outlook and the macroeconomic policy mix. The MED is based on the principle that key macroeconomic policy stakeholders and decision-makers and those responsible for wage formation should have a proper understanding of each other's positions and constraints in carrying out their respective responsibilities. Against that background, its purpose is to improve the interaction between wage developments and monetary and fiscal policies to make it conducive to non-inflationary growth. An important feature of the MED is the strict confidentiality of the proceedings so that participants can speak freely and frankly with confidence, considered to be crucial for the success of the MED.

The MED, which takes place twice a year, has a two-layer structure; political and technical. The organisation of the MED at political level (MEDPOL) is a matter for the Presidency of the time, assisted by the Council secretariat. The MEDPOL is preceded by a preparatory technical meeting which the Economic Policy Committee (EPC) sets the framework for. The President (or Vice-President) of the EPC acts as moderator and sets the agenda for the meeting at technical level, in agreement with the EPC and the Council Presidency, having regard to the views of the other participants. In its recommendations for strengthening the macroeconomic dialogue from March 2006, the EPC suggested:

- the first of the two meetings in the year should also include strategic topics linked to the Spring European Council, in particular the Broad Economic Policy Guidelines and the Lisbon strategy, reflecting their macroeconomic implications;
- the second meeting in the year could also include a discussion of policies to further improve the interaction between wage developments, monetary and fiscal policies. Ideally, the MED should then take place after the publication of the new autumn forecasts.

The secretariat for the meeting at technical level is provided by the Commission's Directorate-General for Economic and Financial Affairs; the Commission services are also typically asked to introduce the discussions at the technical level. The moderator then reports briefly to the political level on the main results of the discussions at the technical level.

The social partners are represented by BUSINESSEUROPE, UEAPME and CEEP on the employers' side and by ETUC on the trade unions' side. *For the Industrial Relations in Europe 2008 report, the Commission has invited the European Trade Union Confederation (ETUC) and BUSINESSEUROPE to present their views on the functioning and the future of the MED. Their articles are quoted in full.*

## **‘The macroeconomic dialogue: experiences and evaluation from the point of view of the ETUC**

### **The background: European integration and wage formation**

A key point which cannot be stressed enough is that European integration, in particular monetary integration, has had a profound impact on the processes and dynamics of wage bargaining. As illustrated in the graph below, collectively bargained wages at the level of the euro area have become extremely disciplined already since the beginning of the 1990s. During this entire period, growth of collectively bargained wages has stayed extremely close to the 2 % price stability target of the European Central Bank, thereby leaving most of productivity growth to capital and increasing profit shares. Even now, at the peak of the recent upturn, with unemployment falling and with rising energy and food prices eating away the purchasing power of wages, growth of collectively bargained wages is still subdued and limited to 2 % in the last quarter of 2007.



*Source:* ECB monthly bulletin.

This structural change in the dynamics of collectively bargained wages has primarily to do with reforms initiated at the national level in response to the process of European monetary integration. Social partners in several Member States clearly understood that currency devaluations were no longer possible in monetary union and reformed their wage bargaining systems with the aim of preventing wages from getting out of line in the first place. On the other hand, Member States with an already existing tradition of ‘competitive disinflation’ started to see monetary union as an opportunity to intensify wage moderation policies since gains in competitiveness in relation to other members of monetary union would no longer get erased by a revaluation of the national currency.

### **The Macro Economic Dialogue in the past: turning wage moderation into a call for growth and job friendly macroeconomic policy mix**

Against this background of ongoing wage moderation, the ETUC’s key message towards the other discussion partners in the Macro Economic Dialogue has consistently been to stress that trade unions were playing their part and that other actors (monetary and fiscal policymakers) should now take up their responsibility. The idea behind is that, if wage moderation is to work and produce more and better jobs, monetary and/or fiscal policy needs to become expansionary so that losses in aggregate demand triggered by a stagnation of real wages can be compensated for.

In the ETUC's experience with the discussions in the Macro Economic Dialogue, this rather basic approach was and remains highly necessary given the fact that, with the exception of employer organisations who are also close to collective bargaining reality, the other policy makers (central banks, finance ministers, Commission and EPC) have not been able to fully grasp the sea change that has taken place in the structure of collective bargaining. Indeed, again and again, the ETUC has been confronted at the Macro Economic Dialogue with calls to change wage behaviour and deliver more "responsible" wage settlements, even though wage moderation was already ongoing.

This lack of understanding can be partly explained by the fact central bankers and finance ministers have tended to focus on wage **demands** and less on the actual agreements coming out of the bargaining process themselves: wage demands of 5 % or 6 % easily enter the mind of central bankers and finance ministers, whereas these actors tend to be oblivious to the fact that such a wage demand is part and parcel of a negotiating process and that the actual outcome is actually a modest one. In this way, wage bargaining remains associated in policy thinking with potential inflation instead of being thought of as a force for disinflation.

This bias in the way wages and collective bargaining are perceived also has consequences for the issues discussed at the Macro Economic Dialogue (MED) itself. Indeed, there have been systematic attempts from the side of other actors to shift the discussion away from macroeconomic policies towards the theme of structural reforms. If wages are indeed part of the problem, it may indeed seem logic to do so and to promote more structural reforms in labour and/or product markets to change wage bargaining behaviour. However, doing so when wages already are part of the answer does not make any sense.

### **Impact on internal organisation within the ETUC**

How did the ETUC organise itself internally in order to prepare its input into the MED? In parallel with the creation of the MED, the ETUC at its 1999 Helsinki Congress decided to install a committee on the coordination of collective bargaining in Europe, assembling those trade union officers responsible for (the coordination of) collective bargaining in the different countries as well as the European industry federations. The aim was double. On the one hand, it was to avoid that monetary integration as well as European enlargement would result in trade unions undercutting each other in their collective bargaining strategies. On the other hand, the ETUC internal committee was to accompany the discussions at the MED and contribute, through its coordination of different collective bargaining strategies to a growth and job friendly macroeconomic policy mix. In other words, the ETUC was (and is) seeking to avoid excessive wage moderation and at the same time obtain responsible wage formation, compatible with non-inflationary growth, by trying to improve the coordination of different collective bargaining strategies in Europe.

As regards the MED, what has been the practical impact to date? The ETUC collective bargaining committee has certainly allowed improving the flow of information. In addition to an annual questionnaire and report on overall bargaining trends, real-time information on collective bargaining deals is being exchanged by collective bargaining bulletins and internal updates. This certainly allows the ETUC to undertake a thorough and documented input to the MED.

Moreover, the question of a growth and job friendly policy mix and the role of wages in realising this policy mix have also been discussed regularly inside the committee. The tonality of the discussion has been somewhat mixed. On the one hand, members have shown strong reluctance in recognising the price stability target of the ECB as a formal basis for



wage bargaining strategies, fearing, amongst other things, that this would constitute a “free lunch” for governments to hike indirect taxes and administrative prices. On the other hand, the ETUC committee has taken the view that guidelines on bargaining wages should be handled in a flexible way and should also take the broader economic context into account.

Finally, the real-time exchange of information has also served to raise further our members’ awareness that they are not ‘bargaining on an island’ and that situations in which employers abuse collective agreements in one country to weaken the bargaining position of trade unions in other countries need to be avoided.

### **Future expectations for the macroeconomic dialogue: an opportunity to rethink the Brussels/Frankfurt consensus**

After 10 years of MED, in combination with a decade or more of wage moderation, it needs to be recognised that the existing macroeconomic policy framework is up for revision. As highlighted above, with the European Central Bank in particular being rather reluctant to translate wage moderation into more and better jobs, workers’ efforts have not been fully recognised. So, the question whether to continue a situation of stagnating real wages has become pressing for the ETUC and its affiliates.

This question has become even more pressing since recent developments in the economy (bursting of the subprime mortgage and housing bubble, continuing appreciation of the euro) point to the fact that there are limits to what monetary policy and strategies of export led growth can do in substituting the loss of aggregate demand coming from wage moderation. With the share of profits in the euro area at a record high, the time has come to pursue the development of a policy mix in which growth is not driven any longer by unsustainable “beggar-thy-neighbour” policies and/or by speculative debt-asset price bubbles but by workers receiving a fair share of economic progress in the form of higher real wage dynamics. Here, the MED is to be seen as a platform and an opportunity to develop such a new growth model.’

### **‘BUSINESSEUROPE: Building mutual understanding of growth-enhancing policies**

The Macroeconomic Dialogue is an essential part of the governance framework of the European Economic and Monetary Union and the business community is entirely committed to it. BUSINESSEUROPE takes part in this process with the full support of its 39 national member federations, representing a total of 20 million companies in Europe.

The main objective of this dialogue is to ensure constructive exchange of views between European social partners, the Council, the Commission and the ECB on the appropriate mix between fiscal, monetary, wage and structural policies.

For the business community, an unwavering commitment to fiscal sustainability remains of the essence, even more so in today’s uncertain global economic environment. Governments must abide with the letter and spirit of the Stability and Growth Pact and euro-area Member States must continue to honour their pledge to balance budgets by 2010. While so-called automatic stabilisers should be allowed to play their role in a slowing economy, the political debate should today focus on the quality of public expenditures with a clear emphasis on growth-enhancing areas like research, innovation and education, and on tax reforms able to

rapidly support the next economic upturn. The EU must also better than today learn from the successes of some of its Member States, and promote national fiscal rules and institutions that are most conducive to forward-looking and sustainable budgetary policies.

Regarding monetary policy, BUSINESSEUROPE strongly supports the independence and mandate of the ECB and assesses its track record positively. The ECB has been credible in its commitment to deliver price stability, which has allowed favourable financing conditions to be maintained in all euro-area countries. It has reacted well and appropriately to the credit market turmoil and is showing pragmatism in the face of uncertain and sometimes conflicting economic developments. Finally, in the context of the Macroeconomic Dialogue it has made a useful contribution to the debate in the area of fiscal and structural policies.

Moving to wage policy, it has two dimensions that influence the discussions in the Macroeconomic Dialogue. First, real wage levels are a fundamental factor determining unemployment and, second, nominal wage flexibility shapes the capacity of an economy to adjust when it is hit by a shock. Obviously, with the loss of two national policy instruments in monetary union (interest rates and exchange rates), the pressure on flexible wage setting has increased considerably among euro-area countries.

In this regard, while a sustained process of wage moderation has been key in supporting a strong labour market performance and declining unemployment over the last decade, wage flexibility remains an important topic for discussion as competitiveness imbalances continue to grow unabated across euro-area Member States.

In this regard, BUSINESSEUROPE has repeatedly called for wage policies to be:

- consistent with productivity developments, not only at the macroeconomic level but also across sectors and at company level;
- discussed on the basis of the ECB's definition of price stability (inflation close to but below 2 %);
- reactive to labour market and competitiveness conditions.

But, of course, there is only so much wage policy can do in isolation. It is part of a more general framework that needs to be conducive to effective macroeconomic adjustments at the national level. The main ingredients are sound and counter-cyclical fiscal policies, labour mobility, product market competition and financial market integration. This is why the Macroeconomic Dialogue touches on a wide range of policy areas, including the EU's Lisbon agenda in its Community dimension, and in the coordination of national reforms.

Returning to wage policies, it is very important to acknowledge that no bargaining system will work for all countries and that a harmonisation of practices is not needed to improve the functioning of monetary union. The effectiveness of individual systems will depend on culture, traditions and, most importantly, the degree of trust among social partners and governments. The diversity of bargaining structures and of labour market performances is there to illustrate that there is no one-size-fits-all model.

However, looking at current developments, we see in most euro-area countries a tendency for wage agreements to be concluded at a lower level today than in the past.

The Macroeconomic Dialogue has an important contribution to make to bridge this tendency towards more decentralisation of wage bargaining structures and the need for social partners to consider the macroeconomic dimension of their decisions in monetary union.

To conclude, the macroeconomic dialogue serves its purpose of building mutual awareness among policy stakeholders in the euro area and beyond. It deserves the full commitment of all its participants and will continue to be considered as a crucial exercise by the European business community.'

*May 2008*

## Chapter 4

### European social dialogue developments 2006–08

*The last two years have confirmed two trends in European social dialogue. First, the European social partners have developed autonomous action and delivered on their commitments. Second, a growing number of sectoral European social partners have taken part in a sectoral dialogue and thereby broadened its coverage of the economy, including a move to focused cooperation between several European social partners representing different sectors.*

European social dialogue refers to the EU-level dialogue of management and labour (see box 4.1). This chapter reports on main developments and cross-industry social dialogue (section 1), major developments in different sectors and newly established sectoral social dialogue committees (section 2) over the last two years.

#### **Box 4.1: European social dialogue**

European social dialogue is one of the instruments of governance in the employment and social area in the European Union. It refers to the discussions, consultations, negotiations and joint actions undertaken by the social partner organisations representing the two sides of industry (management and labour) at European level. It is an instrument by which the social partners assist in the definition of European employment policy and social standards.

Article 138 of the EC Treaty gives the Commission the role to promote social dialogue, gives recognition to social dialogue at European level and obliges the Commission to consult the European social partners in two phases before submitting proposals in the employment and social policy field. The autonomous bipartite dialogue takes place in social dialogue committees (SDCs). Article 139 offers the possibility to negotiate agreements that can be implemented in Member States either by the social partners themselves or by Council directive for areas covered in Article 137.

All joint texts of the European social partners can be found in the social dialogue texts database ([http://ec.europa.eu/employment\\_social/dsw/dspMain.do?lang=en](http://ec.europa.eu/employment_social/dsw/dspMain.do?lang=en)). For definitions, see chapter 5. .

### **Main developments in European social dialogue**

#### **Social partners' contribution to employment policy development: flexicurity in response to labour market challenges**

Flexicurity is the deliberate combination of flexible and reliable contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies, and modern, adequate and sustainable social protection systems. The European Council adopted common principles on flexicurity in December 2007. These principles are a means to reinforce the implementation of the Lisbon Strategy. As such they do not promote one single labour market or work–life model, but Member States should tailor them to their specific circumstances and report on their implementation in their national reform programmes. (For more information on flexicurity, see Box 2.1 in Chapter 1.) As trust and broadly based dialogue are essential for a successful flexicurity strategy the Council stressed that ‘the involvement of social partners in the design and implementation of flexicurity policies

through social dialogue and collective bargaining is of crucial importance'. The European social dialogue has contributed to building the consensus around the flexicurity principles.

European social partners conducted for the first time a vast joint study of the developments and challenges on Europe's labour markets and reached a joint understanding on the implications for public policy and social dialogue.

The cross-industry social partners (the ETUC, BUSINESSEUROPE, CEEP and UEAPME) had already started working on a **joint analysis of the key challenges facing European labour markets** in September 2006, as foreseen in their joint social dialogue work programme for 2006–08. Discussions on this document were concluded in September 2007.

The result is a substantial document of more than 60 pages, which was formally adopted by the decision-making bodies of the European social partners. In the introduction the European social partners 'reiterate their support for the Lisbon strategy aimed at turning Europe into the most competitive knowledge-based society in the world, capable of sustainable economic growth, with more and better jobs and greater social cohesion. Faced with the challenges of globalisation, technological progress and demographic ageing, the Lisbon strategy remains as valid and necessary as when it was adopted in 2000. Europe's weakness in terms of growth and jobs needs to be addressed'.

In terms of the way forward to modernise the European economies and labour markets, social partners recognise the need to improve 'our competitiveness in high added-value products and services and more generally about securing Europe's place on world markets by moving up the ladder of innovation, technology and productivity. Europe cannot compete with low-wage countries for labour-intensive products'.

The joint analysis consists of three parts.

- First it examines recent labour market outcomes and its determinants, such as growth, productivity, demography, contractual arrangements, education and training, social cohesion, job mobility and job quality, by looking at available data and statistics and providing a shared understanding and analysis of this information.
- The document then goes on to identify the key challenges and the right mix of policy measures, including active labour market policies, lifelong learning, macroeconomic policies, a favourable business environment, public services, tax and social protection policy, labour regulation and industrial relations and flexicurity.
- Finally, social partners address specific recommendations to Member States, the EU institutions and their members in the abovementioned policy areas.

In part, this was a response to the request from the 2006 Spring European Council to the Commission, Member States and the social partners to explore the development of common principles on flexicurity. With a view to encouraging the European social partners to play their full role in the debate, the Finnish Council Presidency and the Commission jointly organised an informal Tripartite Social Summit meeting in Lahti (Finland) on 20 October 2006. The Commission asked the social partners at EU level to deliver a joint contribution as input to the communication on flexicurity (June 2007), which would also engage their national members in the follow-up work on labour market reforms at national level.

In the text of the joint analysis, social partners also embrace the concept of flexicurity which they recognise 'can create a win-win situation and be equally beneficial for employers and employees'. Agreeing that 'there is no one single model applicable for all 27 Member States', social partners acknowledge the need for a holistic and balanced approach combining the four components proposed by the Commission: labour law and contractual

arrangements; effective and high-quality active labour market policies; lifelong learning policies; and efficient and sustainable social protection systems. They suggest adding as a fifth component the need for a social dialogue contributing to negotiated solutions and highlighting the importance of the quality of work. European social partners call on Member States to ‘strengthen efforts for a real and effective implementation of the various flexicurity measures at the appropriate level’ and invite their national members to ‘actively contribute to the design and implementation of policy measures’.

Social partners presented the joint analysis at the informal Tripartite Social Summit meeting in Lisbon on 18 October 2007, at which both the Portuguese Council Presidency and the Commission warmly welcomed it as a milestone in social dialogue and as a key contribution to the flexicurity debate. The document helped to reach consensus on the common principles on flexicurity in the Council in December 2007.

Representatives of BUSINESSEUROPE and the ETUC were also actively involved in the Expert Group on Flexicurity in the beginning of the process as well as in the mission for flexicurity that was carried out by a high-level group of the employment ministers of the Slovenian and French Presidencies and Commissioner Spidla to France, Sweden, Finland, Poland and Spain, in summer 2008, in order to raise awareness and ownership of the common principles.

The joint analysis will not be the final element of the social partners’ action in this area. The cross-industry social dialogue work programme for 2006–08 already provides for a follow-up of the joint analysis. In concrete terms the social partners had agreed that they will, on the basis of the joint analysis, ‘define priorities to be included in a framework of actions on employment by the social partners’ and ‘negotiate an autonomous framework agreement on either the integration of disadvantaged groups on the labour market or lifelong learning’.

For their next **autonomous agreement**, the social partners agreed that they did not want to choose either one or the other of the two topics mentioned in the work programme but to combine both through a broader approach, as in practice there is a ‘significant overlap’ between the two themes.

They agreed that ‘one of the ways in which social partners can best contribute to the integration of disadvantaged groups is through the improvement of competences and qualifications as this (partly) falls within their remit. [...] The main aim of the negotiations would be to determine how the social partners could best contribute to maximising Europe’s labour market potential and that of its workforce. This will include provisions for facilitating access to and progression in the labour market for disadvantaged groups through a series of preventative and curative measures including lifelong learning. [...] The focus should not only be on getting people on the labour market or into a job but also on workers at risk in order for them to be able to remain on the labour market.’ The social partners also agreed to ‘avoid focusing on people furthest from the labour market, as this is a topic requiring first and foremost the involvement of other stakeholders, notably public authorities’.

The preliminary working title of ‘inclusive labour markets’ was also agreed. Negotiations started in October 2008.

For the **framework of actions on employment**, the social partners considered that the priorities to be included and the procedures to be followed should be discussed at a later stage.

### ***The contributions of the European social partners of the temporary agency work sector***

The Commission also consulted the sectoral European social partners on flexicurity. In March 2007, the social partners of the **temporary agency work** sector pointed out that temporary agency work can contribute to transitions between education and work as well as between different types of contracts; that it can contribute to matching supply and demand on the labour market and to improving work–life balance. This is supported by good practices in some Member States, like joint sectoral training funds (Belgium, Spain, France, Italy and the Netherlands,) social funds (providing subsidies to support scholarship and university fees for temporary workers' children, financial guarantees to get housing, or complementary private health insurance in Belgium, France and the Netherlands), cooperation agreements with the national public employment services, collective bargaining agreements granting extra benefits (e.g. pension schemes), and bipartite bodies monitoring their implementation.

The European social partners draw the attention of policymakers to a list of topics that should be taken into account, like, for example, the principle of equal treatment, that temporary agency workers should not replace workers who are on strike, the importance of continuity of rights, vocational training, a system of licensing where relevant, the regular review of restrictions or prohibitions, the prevention of discriminatory measures against the industry, or ILO Convention 181 on temporary agency work as useful regulatory guidance at the national level.

### **Violence and harassment**

#### ***Cross-industry framework agreement on harassment and violence at work***

The European cross-industry social partners (the ETUC — representing also the Liaison Committee Eurocadres/CEC — BUSINESSEUROPE, UEAPME and CEEP) signed the framework agreement on harassment and violence at work on 26 April 2007. This is the third autonomous agreement negotiated by them, following a consultation by the European Commission under Article 138 of the EC Treaty.

In reaction to the first stage of the Commission consultation, launched on 23 December 2004, concerning violence at the workplace and its effects on health and safety at work, the European cross-industry social partners informed the Commission that they would organise a seminar on this issue to explore the possibility of negotiating an autonomous agreement, in line with their social dialogue work programme for 2003–05. Following this seminar, the organisations prepared their negotiating mandates and officially opened negotiations on 6 February 2006. The negotiations on a framework agreement lasted over 10 months and were successfully concluded on 15 December 2006. After approval by the internal decision-making bodies of the four social partner organisations involved in the negotiations, the agreement was officially signed on 26 April 2007 and presented to the press.

The agreement aims to prevent and, where necessary, manage problems of psychological and sexual harassment and physical violence at the workplace. It condemns all forms of harassment and violence and confirms the duty of the employer to protect workers against them. Companies in Europe are requested to adopt a policy of zero tolerance of such behaviour and to specify procedures to deal with cases of harassment and violence where they occur. These procedures can include an informal stage involving a person trusted by management and the workforce. Complaints should be investigated and dealt with quickly. The principles of dignity, confidentiality, impartiality and fair treatment need to be

respected. Appropriate measures will be taken against the perpetrator, including disciplinary action up to dismissal, and the victim will receive support with reintegration, if needed.

The autonomous agreement is to be implemented by the members of the signatory parties, i.e. the national social partner organisations, in accordance with the procedures and practices specific to management and labour and the Member States, as provided for by the first alternative in Article 139(2) of the EC Treaty. It is to be implemented within three years after signature. The first progress report was adopted by the Social Dialogue Committee in June 2008. In the fourth year the Social Dialogue Committee will prepare a report on implementation of the agreement.

In order to raise awareness and as announced in its last communication on social dialogue <sup>(33)</sup>, the Commission informed the European Parliament and the Council about the conclusion of the framework agreement. This communication <sup>(34)</sup> contains a brief *ex ante* assessment of the representativeness of the signatory parties as well as the compatibility of the agreement's content with EU law and policy. Furthermore, the communication provided a translation of the agreement in all official EU languages, with a view to facilitating or accelerating the dissemination and implementation process in Member States.

### ***Sectoral follow-up of the framework agreement***

European social partners from the **electricity** and the **gas** sectors signed joint declarations endorsing the autonomous agreement. In the declaration they call upon their national affiliates to implement this agreement by May 2010. Moreover, they pledge to monitor the implementation process through annual reports. The final implementation reports are foreseen for June 2010. The European social partners for central **public administration** have included the issue of violence and harassment at work in the work programme for their test phase in 2008 and 2009.

### ***Multisector initiative on third-party violence***

The signatory parties of the cross-industry agreement chose not to agree on detailed provisions with regard to violence from third parties, i.e. violence exerted by individuals from outside the enterprise or work organisation, e.g. customers, students and patients. The form it can take and ways to tackle it depend very much on the characteristics of those sectors whose employees have contact with third parties. It can range from abusive behaviour of clients to armed robbery. As such it differs from violence within the workplace. Therefore, Hospeem, CEMR, EuroCommerce, UNI-Europa, EPSU and CoESS (**commerce, local governments, hospitals and private security**) informed the Commission in a joint letter that, as the social partners of sectors particularly affected by third-party violence, they wished to jointly explore any possibility to complement the cross-sectoral agreement from a more specific sectoral and/or multisectoral point of view. The representatives of these sectors met four times in 2007 and early 2008 to develop ways to promote the violence and harassment agreement on the sectoral level.

At their initiative, the Commission organised a multisectoral seminar on third-party violence in Brussels on 14 March 2008. The seminar gathered nearly 200 participants from 26 Member States. The representatives of 16 sectors attended the seminar (organising sectors: commerce, local governments, hospitals and private security; observers: Horeca, finance,

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<sup>(33)</sup> COM(2004) 557 of 12 August 2004.

<sup>(34)</sup> COM(2007) 686 of 8 November 2007.



banking, post, electricity, education and central administration; invited sectors: telecommunications, temporary work, railways, local public transport, and the cleaning industry). The representatives of the cross-industry social partners were also present in the seminar.

The conference was an occasion for the exchange of good practices, collecting concrete experience from employers and workers that have been able to successfully put in place policies against third-party violence. This first exchange allowed the social partners at the sectoral level to gain a common understanding of the issue and to explore the possibility for further joint action in this field. As a next step, the sectoral social partners will assess the conclusions of the seminar and decide on further actions, for example to open multisectoral negotiations on third-party violence.

This initiative on third-party violence shows the potential for reinforced cooperation between several social dialogue committees on specific subjects. Another example of such multisectoral cooperation is the promotion of procurement guides (see Box 4.2).

#### **Box 4.2: Cross-sector cooperation: the promotion of socially responsible procurement**

European social partners of four sectors have joined forces to promote socially responsible procurement. With the support of the Commission, four sectoral social dialogue committees have issued handbooks for organisations and public authorities awarding contracts in the areas of contract catering, cleaning, private guarding and clothing–textiles <sup>(35)</sup>.

The aim of these handbooks is to assist public purchasers in selecting best value bids, i.e. awarding contracts not only on the basis of the price but also taking quality into account. Quality may relate to the skills and capabilities of the service providers; working conditions of staff; environmental, health and hygiene requirements for the methods and products used; and working conditions in supply chains. The guides are in line with EU public procurement directives, which allow for contracting authorities to award a contract either on the basis of the lowest price, or on the basis of the economically most advantageous tender.

The social partners concerned consider that a cross-sectoral approach can improve awareness of purchasers in public entities and companies. They therefore agreed, together with the Commission, to organise a major event on 18 April 2008 to highlight the importance of qualitative criteria in procurement and to present the guides to potential users. In addition to best practices presented by users of the guides, the EU legal framework was explained and recent developments in terms of social criteria in procurement outlined.

In a joint statement the social partners of the four sectors call upon public and private contractors to select the economically and socially most advantageous offer rather than the lowest bid, taking into consideration quality criteria such as competencies of the service provider, environmental and sustainable aspects, working conditions, respect for labour standards, trade union rights, social legislation and collective agreements of workers along the supply chain. Both sides of the industry agree that ‘procurement processes based solely upon price leads to unprofessional or even illegal practices, which are strongly condemned by the social partners of all four sectors’. They committed to further promote the principle of best value, to update the guides as necessary, and to evaluate their impact in the Member States,

<sup>(35)</sup> Catering: ‘Guide to most economically advantageous offering in contract catering’ (2006); Cleaning industry: ‘Selecting best value — A manual for organisations awarding contracts for cleaning services’ (2004); Private security: ‘Selecting best value — A manual for organisations awarding contracts for private guarding services’ (1999); Textiles: ‘Public procurement awarding guide for the clothing–textile sector’ (2005)

without, however, setting a target date. They also encouraged the social partners of other sectors to take up the initiative in the fields where their goods or services are subject to the awarding of contracts through procurement procedures.

## Reconciliation of professional, private and family life

In response to the second-phase consultation under Article 138 of the EC Treaty on the reconciliation of professional, private and family life launched in May 2007, the ETUC, BUSINESSEUROPE, UEAPME and CEEP, in a joint letter to the Commission, of 11 July 2007, committed themselves to:

- assess, more than 10 years after its adoption, the progress made with the implementation of the framework agreement on parental leave (1995) <sup>(36)</sup> in the EU Members States;
- evaluate parental leave arrangements in connection with other arrangements supporting parents and work–life balance, such as flexible work arrangements and childcare, as well as other forms of leave; and
- determine whether joint actions need to be taken.

In autumn 2007 the European social partners subsequently launched a consultation of their members at national level to obtain the necessary information and held two meetings of an ad-hoc working group in early 2008. In their progress report <sup>(37)</sup> to the Tripartite Social Summit of 13 March 2008, the social partners assessed the progress made in the field of work–life balance in the last ten years and agreed to:

- undertake joint action to better achieve the aims of the Parental Leave Directive as part of wider work on reconciliation;
- agree, with regard to maternity protection, which has a larger scope than just leave arrangements, that an assessment should be made of the current legal framework at EU level to see if it is still up to date;
- assess if and in what form innovative and adaptable working arrangements for women and men can be promoted; and
- call on the EU to add a new target to the Lisbon goals regarding care services for dependants.

Social partners met after the Tripartite Social Summit to decide on the content and form that these actions will take. As one of the key actions, they decided to open **negotiations to revise their agreement on parental leave**. Negotiations started in September 2008 and it is the first time that social partners themselves revise one of their agreements implemented by way of directive.

## Restructuring, management of change and skills development

Social dialogue can be a powerful instrument for successful anticipation and management of change. The representatives of management and labour are well placed and they have a responsibility at company, sector, national and European level. The European Commission has consulted European social partners twice on appropriate ways to tackle the challenge of restructuring. Social partners have responded to this call in four different ways.

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<sup>(36)</sup> Integrated in Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

<sup>(37)</sup> Available online ([http://www.etuc.org/IMG/pdf\\_2008-00393-E.pdf](http://www.etuc.org/IMG/pdf_2008-00393-E.pdf)).

Firstly, they have continued to identify and disseminate best practices. The European social partners in the **contract catering** sector signed policy orientations for corporate social responsibility at the beginning of 2007 which recommends that employees be kept aware of the situation of the enterprise and be informed in due time. The sectoral social dialogue committee will agree on best practices, disseminate them and monitor progress in its application. This practice is already being followed in the **sugar** <sup>(38)</sup> and the **hospitality** sectors. Three sectors, **local and regional governments, chemicals and textiles**, are implementing joint projects on the identification of best practices in the management of restructuring. A similar initiative in the **rail** sector adds a study on the employment consequences of the reorganisation of freight services to this exercise, which should help workers and enterprises in anticipating change.

Secondly, they have been developing research and recommendations. The **cross-industry** social partners continued to engage in dialogue with their members on restructuring through national studies and seminars on the economic and social change under way in their countries. The aim of this component of the so-called 'integrated programme' is to contribute to a better understanding of the restructuring phenomenon and a better analysis of the underlying causes and effects, both in individual Member States and at an aggregate European level. It looks also at the role that social partners play in the restructuring process, in particular through a number of company case studies. The first project covering the new Member States (2004–06) concluded that joint, strategic and anticipatory management of important and inevitable changes had been rare and analysed the reasons for this. In 2006–08 the social partners extended the national studies and seminars to cover the EU-15. At the time of writing, seminars had been held in Ireland, the Netherlands, Greece, Italy, France, Austria, Denmark, Spain, the United Kingdom and Sweden and there was an interim conference in June 2008. Themes that came up at several of those seminars and were discussed by the Brussels conference include the causes of restructuring, flexibility and security, the need for a shared diagnosis and agenda, current and future skills gaps as well as the phenomenon of 'silent restructuring'. The remaining EU Member States will also be visited, and in 2010 the social partners plan to use the information and experience gathered to review their agreed 'orientations for reference in managing change and its social consequences' of 2003 <sup>(39)</sup>. Social partners in the **rail** and **electricity sector** conducted a number of studies and conferences on the consequences of liberalisation over the last two years with the aim to better anticipate restructuring triggered by policy changes. These joint activities will lead to a best-practice toolkit for restructuring in the electricity sector, which will be useful for human resource and line managers and trade union officials working in the electricity sector.

Practical toolkits are a third area of activity. The social partners in the **civil aviation** sector agreed on a tool aiming at promoting consultation arrangements between air navigation service providers (employers) and workers within the context of the important reorganisation of the air traffic management sector (creation of 'functional airspace blocks', Single European Sky). In October 2007, the parties committed themselves to assess on a yearly basis the progress made by their members in achieving the agreed goals. The social partners in the **furniture** industry have been developing a sophisticated tool to guide restructuring in SMEs 'Furniture industry in restructuring: solutions and tools' (FIRST) <sup>(40)</sup> from 2006 to 2008. The tool allows SMEs to identify their strengths and weaknesses by comparing different criteria relating to what they can do in-house and what they can subcontract in order to reduce their costs with neutral social costs. It provides for benchmarking with other manufacturers' experiences and indicates potential partners. The social partners of the

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<sup>(38)</sup> See European Commission, *Industrial Relations in Europe 2006*, pp. 101 *et seq.* (<http://www.eurosugar.org>).

<sup>(39)</sup> See European Commission, *Industrial Relations in Europe 2004*, pp. 146 *et seq.*

<sup>(40)</sup> Available online (<http://www.ueanet.com/first/default.htm>).

**chemical industry** sector collected good practice examples of handling restructuring cases. They analysed these cases together with external project partners and found that some economic developments cannot be influenced. Joint lessons were learned and will be further analysed to manage restructuring cases and to minimise constraints on individuals.

Finally, the European social partners are also exploring ways of anticipating future skills needs in their sectors. The Social Dialogue Committee of the postal sector agreed a joint declaration on training and skills development in the **postal** sector in June 2006. It established six orientations for training and provides for a review report summarising actions taken after one year. The declaration has been disseminated in 2007 and 2008 through a series of workshops organised by the European social partners in Tallinn, Vienna and London. The Social Dialogue Committee of the postal sector also adopted in 2007 a joint statement on developments in the postal sector, in which it states that future market opening must go hand in hand with socially acceptable employment conditions. A postal sector evolution working group will collect and share practices of social regulation at the national level, and analyse work organisation and skills development policies. Similarly, the European Social Dialogue Committees in the **sugar** and **furniture** industries have respectively set up working groups on employability. The social partners in the **civil aviation** sector have launched a joint project on 'training and qualifications in the ground handling sector', with the aim of benefiting from members' experience. The objective is a compendium of best practices which will help national members to anticipate change following the gradual opening-up of access to the ground handling market.

#### **Box 4.3: European social dialogue in the Treaty of Lisbon**

**In the Lisbon Treaty social dialogue at the EU level has an enhanced role in the governance of employment and social affairs. A new article (Article 152) features at the beginning of the chapter devoted to social policy.**

‘The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.’

This article extends the recognition and promotion of European social dialogue from ‘the Commission’ (ex Article 138 TEC) to ‘the Union’. It also gives Treaty-status to the most important instrument of tripartite concertation, the Tripartite Social Summit. Tripartite concertation at EU level dates back to the 1970s. A tripartite meeting between the troika (the previous, present and following Council Presidencies), the Commission and European social partners’ delegations coordinated by the ETUC and BUSINESSEUROPE has been taking place since 1997 and was institutionalised by Council Decision 2003/174/EC in March 2003.

There are two further changes related to industrial relations. An addition to Article 153 (ex Article 137 TEC) clarifies that framework agreements concluded by the European social partners and implemented through a Council decision can also be implemented by the social partners at national level, like directives that are adopted through the classical legislative procedure. In addition, paragraph 4 of Article 154 (ex Article 138 TEC) now stipulates that the European social partners can already enter into negotiations after the first consultation based on this article, and not only at the stage of the second consultation.

### **Major developments in European sectoral social dialogue**

#### **Working conditions**

On 9 November 2007 the European social partners reached a **Joint Agreement on Maritime Labour Standards** after negotiations lasting more than a year. This agreement aims to incorporate certain provisions of the ILO Maritime Labour Convention 2006 into Community law. This would encourage the ratification and implementation of the ILO Convention, and it would create a global level playing field in terms of legislation. In practice, maritime labour standards will be strengthened at global level and this will be helpful to combat substandard working conditions and social dumping in the long term. The social partners requested the Commission to work on a proposal for a Council decision through which the provisions contained in their agreement should be effectively implemented at Community level. This implementation into Community law would create binding standards. The Commission proposed this Council directive on 2 July 2008 as part of its social package.

The social partners of the **inland waterways** sector entered officially into **negotiations** in January 2008 **with a view to reaching an agreement on working time** after a number of preparatory talks during the last couple of years. With such an agreement, the parties wish to adapt the general rules on working time which are currently applicable to them (Directive 2003/88/EC concerning certain aspects of the organisation of working time) to the specific

circumstances of the sector, like the crewing of vessels, qualification of on-call duty, reference periods, etc.

On 4 October 2007, the **railway** social partners signed policy orientations on the concept of employability in the railway sector which aim at implementing employability as a new concept for human resources policy. The signatory parties CER, EIM and ETF will take stock of the progress made at a conference which will be held one year after the signature of the recommendations.

## **Mobility**

Free movement of labour is one of the key pillars of the European Union. Job mobility helps match labour supply and demand but Europeans still make little use of this opportunity. Only 2.2 % of EU citizens lived and worked in a Member State different from their country of origin in 2007. But mobility has been on the increase in the EU and is much higher in certain sectors. The social partners in those sectors have, driven by the needs of their members, started to work at EU level to make qualifications comparable, match supply and demand and improve framework conditions.

### ***Qualification passports***

It is often difficult for workers to provide documentary proof of their qualifications and particularly skills acquired on the job when looking for employment in another country. And for employers, particularly of small and medium-size companies, it is often difficult to assess qualifications and skills documented in another country/language. Several European social partners have taken initiatives to jointly develop sector-specific instruments to make workers' qualifications and skills more transparent and comparable.

At their plenary meeting in December 2007 the social partners in the **hospitality** sector agreed on a qualification and skills' passport. Horeca (hotels, restaurants, and cafés) is one of the sectors with a high cross-border mobility of workers. The passport will be jointly administered by the social partners (European and national). It will be an internet-based data system where workers can introduce detailed information about their skills; this is then automatically displayed in various Community languages. The social partners aim to make it compatible with existing systems such as Europass (sectoral supplement) and Eures.

Social partners in the **personal services** sector (UNI-Europa and Coiffure-EU) launched negotiations in 2007 to implement their European Hairdressers' Certificate through an autonomous agreement. The agreement should cover education and training, building upon the EHC levels B and C, as well as health and safety and environmental issues. The EHC sets up minimum requirements for the various branches of the standard training, and it is being implemented in a number of EU Member States.

The social partners in the **inland waterways** sector are currently addressing the issue of professional profiles and professional qualifications. They aim to adopt joint recommendations for the harmonisation of professional profiles by describing the tasks carried out by boatmen and skippers, using the European Qualifications Framework (EQF) (see Box 4.4).

In the preparatory work for a European social dialogue in the **sports** sector, the issue of definition, comparability and recognition of qualifications has been highlighted as a priority.

Some of the organisations that are consolidating at the European level have actively engaged in the development of the EQF in this sector.

#### **Box 4.4: European Qualifications Framework and social partners**

The European Qualifications Framework is a common European reference framework which links countries' qualifications systems together, acting as a translation device to make qualifications more readable. Its eight reference levels will simplify comparisons between qualifications and enable a better match between supply and demand for knowledge, skills and competences both between and within countries and sectors. For employers, the EQF will make it easier to interpret the qualifications of foreign applicants. The social partners have been involved in developing the EQF from its earliest stages. In particular, social partner representatives helped draft the descriptors for the eight reference levels. Additionally, the EQF aims to facilitate the development of sectoral frameworks and qualifications, which reflects the growing internationalisation of qualifications. The EQF was formally adopted by the European Parliament and the Council on 23 April 2008.

The social partners in the **agricultural** sector are presently developing a multilingual online database. They have defined job descriptions for agricultural professions that help jobseekers to communicate their competences in a comparable way to potential employers. Jobseekers and employers can enter their profile and vacancies in their language, and they will be automatically matched. The launch of this process took place in May 2007. The challenge is to find stable financing for the system and to make it complementary with other mobility initiatives.

#### ***Improving framework conditions for mobility***

In the **hospitals** sector, EPSU and Hospeem have committed to a code of conduct on ethical cross-border recruitment and retention. It addresses inequalities and unnecessary burdens on healthcare caused by unethical recruitment practices. This agreement establishes a full commitment to promote ethical recruitment practices at European, national, regional and local levels in the European hospitals sector. It sets out 12 key principles and commitments that include minimum standards such as the exclusive use of agencies with demonstrated ethical recruitment practices, or a sound and comprehensive induction policy for newly recruited staff that should at least include in-house training on the work practices and relevant regulatory framework, as well as information on local housing and community facilities. The national affiliates will implement the code within a period of three years, as well as report annually on progress and in the fourth year on overall implementation.

In their joint position on the Commission communication regarding posting of workers <sup>(41)</sup> of December 2007, the social partners in the **construction** industry reconfirm that the Posting of Workers Directive does not need to be revised, and that it is a well-balanced instrument. As this directive aims at guaranteeing the free movement of services and persons while ensuring that the service provider, posting workers in another Member State, will realise this 'under the same conditions as imposed by that state on its nationals', the social partners in the construction industry 'regret that prior declarations are never expressly mentioned as adequate and proportionate formalities to ensure that the host Member State's social law is respected'. The social partners in the construction industry are also working on a '**Posting of workers**' database. This database will contain all necessary information on

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<sup>(41)</sup> 'Posting of workers within the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers' (COM(2007)304 final of 13 June 2007).

the posting of workers, national regulations and the administrative stages to satisfy in the event of the workers' detachment within the EU.

Social partners in the **culture and live performing arts** sector adopted at the end of 2007 a joint position in which they highlighted the particularity of the sector and the high mobility of cultural workers, who in some cases work on the basis of short-term contracts that can only be arranged at very short notice, and they urged the Commission, the European Parliament and the Council to recognise the necessity of first improving the procedures for residence and work permits so that the legal employment of third-country nationals can be appropriately fast-tracked if necessary.

**Table 4.1 European social partner joint texts May 2006 to September 2008**

<b>Title</b>	<b>Domain</b>	<b>Sector</b>	<b>Type</b>	<b>Date</b>
<i><b>Agreements implemented in accordance with Article 139(2)</b></i>				
Framework agreement on harassment and violence at work	Health and safety	Cross-industry	Autonomous agreement	27/04/2007
Agreement on the Maritime Labour Convention, 2006	Working conditions	Sea transport	Autonomous agreement	19/05/2008
<i><b>Process-oriented texts</b></i>				
Code of conduct and follow up on Ethical Cross-Border - Recruitment and Retention in the Hospital Sector	Mobility	Hospitals	Code of conduct	7/04/2008
Policy statement on Health & Safety and Training	Health and safety	Electricity	Guidelines	13/12/2006
Guidelines to drawing up gender equality action plans in local and regional government	Gender equality	Local and regional government	Guidelines	14/12/2007
Joint recommendation on the prevention of occupational stress in the construction sector	Health and safety	Construction	Policy orientations	10/01/2006
Agreement on Corporate Social Responsibility (CSR)	CSR - Corporate social responsibility	Catering	Policy orientations	31/01/2007
Joint recommendations for a better representation and integration of women	Gender equality	Railways	Policy orientations	12/06/2007
The concept of employability in the railway sector	Working conditions	Railways	Policy orientations	4/10/2007
Joint statement on the social and economic aspects of CSR	CSR - Corporate social responsibility	Telecommunications	Policy orientations	1/12/2007
<i><b>Joint opinions, declarations, tools</b></i>				
Appeal of social partners in the security sector of the Baltic States to the National Administrations of Estonia, Latvia and Lithuania responsible for private security issues	Social dialogue	Private security	Declaration	22/03/2006



Social Dialogue as a tool to tackle changing environments	Social dialogue	Audiovisual	Declaration	7/05/2006
Joint declaration on Worker's mobility in public administrations	Mobility	Others	Declaration	29/05/2006
Joint declaration on training and skills development in the postal sector	Training/lifelong learning	Postal services	Declaration	22/06/2006
Reach: safety and workability	Economic and/or sectoral policies	Chemical industry	Declaration	26/10/2006
Promoting a safer working and shopping environment in European commerce	Health and safety	Commerce	Declaration	28/11/2006
BeQuaWe European Certified Training	Training/lifelong learning	Commerce	Declaration	28/11/2006
CEMR - EPSU joint statement on the development of social dialogue in local and regional government	Social dialogue	Local and regional government	Declaration	29/11/2006
Joint declaration on the extension of the social dialogue in the enlarged countries	Enlargement	Furniture	Declaration	19/12/2006
Joint position on the expected Communication on Culture	Social aspects of Community policies	Live performance	Declaration	1/02/2007
Joint Declaration within the framework of the "Flexicurity debate" as launched and defined by the EU Commission	Employment	Temporary agency work	Declaration	28/03/2007
Sofia Declaration: strengthening social dialogue and reinforcing capacities of national social partner organizations in the new member states in the performing arts sector	Enlargement	Live performance	Declaration	26/06/2007
Bucharest Declaration: strengthening social dialogue and reinforcing capacities of national social partner organizations in the new member states in the performing arts sector	Enlargement	Live performance	Declaration	22/09/2007
Common declaration on ECOTEC study on the impact on employment in EU-25 of the opening of electricity and gas markets, and of key EU directives in the field of energy	Economic and/or sectoral policies	Gas	Declaration	15/11/2007
Joint declaration on violence at work	Harassment	Gas	Declaration	15/11/2007
Common Understanding on a Competence and Training Scheme for Air Traffic Safety Electronics Personnel (ATSEP)	Training/lifelong learning	Civil aviation	Declaration	22/11/2007
Joint declaration on harassment and violence at work	Harassment	Electricity	Declaration	7/12/2007
Joint declaration on stress	Health and safety	Electricity	Declaration	7/12/2007
Joint declaration "Towards responsible awarding of contracts	Public procurement	Multisectoral	Declaration	18/04/2008

Joint position against undeclared work in the private security sector	Undeclared work	Private security	Joint opinion	6/04/2006
Common position on the Mid-term Review of the 2001 White Paper on European Transport Policy	Economic and/or sectoral policies	Railways	Joint opinion	19/05/2006
Relation between the European Social Partners in the railway sector and the European Railway Agency	Social aspects of Community policies	Railways	Joint opinion	19/05/2006
Position paper on the European Commission Communication "Improving the economic situation in the fishing industry" (COM(2006)103 final)	Economic and/or sectoral policies	Sea Fisheries	Joint opinion	12/06/2006
Social partners demand the recognition of wood-based products as carbon stores with a positive contribution to climate change	Sustainable development	Woodworking	Joint opinion	24/10/2006
Joint statement on functional airspace block developments	Economic and/or sectoral policies	Civil aviation	Joint opinion	24/01/2007
Joint statement regarding the proposed Green Paper on Urban Mobility	Economic and/or sectoral policies	Road transport	Joint opinion	30/01/2007
Joint position on Green Paper on Labour Law	Social aspects of Community policies	Live performance	Joint opinion	1/03/2007
Response to the second stage consultation on work-related musculoskeletal disorders	Health and safety	Telecommunications	Joint opinion	1/03/2007
Joint declaration on daytime cleaning	Working time	Cleaning Industry	Joint opinion	2/03/2007
Public consultation on Simplification of Cosmetics Directive 76/768/EEC	Social aspects of Community policies	Personal services	Joint opinion	16/03/2007
Joint response to the European Commission's Green Paper COM (2006) 708 Modernising Labour Law to Meet the Challenges of the 21st Century	Working conditions	Local and regional government	Joint opinion	3/04/2007
Joint Position on Green Paper on Labour Law	Social aspects of Community policies	Audiovisual	Joint opinion	16/04/2007
Joint declaration on internalisation of external cost in transport for an acceleration of Community activities	Economic and/or sectoral policies	Railways	Joint opinion	17/04/2007
Joint IRU-ETF Press Release on rest facilities	Working conditions	Road transport	Joint opinion	11/06/2007
Joint opinion regarding the Green paper on the future EU maritime policy	Economic and/or sectoral policies	Sea Fisheries	Joint opinion	15/06/2007
Joint statement from the European Social Partners in the "Live performance" sector on the Communication from the Commission on a European agenda for culture in a globalising world	Social aspects of Community policies	Live performance	Joint opinion	15/06/2007
Joint Statement on Just Culture	Economic and/or sectoral policies	Civil aviation	Joint opinion	20/06/2007

Joint Declaration on the Evolution of the Postal Sector	Economic and/or sectoral policies	Postal services	Joint opinion	22/06/2007
Joint Position on Articles and Aspects of Regulation 561/2006/EC Requiring Clarification and Enforcement Guidance	Working conditions	Road transport	Joint opinion	5/07/2007
Joint position on the Commission proposal for a EU-Framework Directive on Soil Protection (COM 2006 (232) - 22.09.2006)	Social aspects of Community policies	Extractive industry	Joint opinion	22/07/2007
Joint declaration on illegal logging	Sustainable development	Woodworking	Joint opinion	1/10/2007
Common statement on obesity	Health and safety	Catering	Joint opinion	9/10/2007
Joint statement from the European conference on Functional Airspace Blocks	Economic and/or sectoral policies	Civil aviation	Joint opinion	9/10/2007
Common declaration on illegal employment	Employment	Road transport	Joint opinion	16/10/2007
Joint analysis of Key Challenges facing European Labour Markets	Employment	Cross-industry	Joint opinion	18/10/2007
Joint statement on EC proposals revising the regulatory framework for electronic communications networks and services	Economic and/or sectoral policies	Telecommunications	Joint opinion	23/10/2007
Joint Statement on the Commission Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals	Mobility	Live performance	Joint opinion	1/12/2007
Joint declaration on employment effects of the opening of electricity & gas markets (ECOTEC study)	Social aspects of Community policies	Electricity	Joint opinion	7/12/2007
Joint declaration on health services	Health and safety	Hospitals	Joint opinion	7/12/2007
The social aspects of the European energy community (south east Europe) and the implementation of the Memorandum of understanding	Economic and/or sectoral policies	Electricity	Joint opinion	7/12/2007
Joint position on "Posting of workers within the framework of the provisions of services: maximising its benefits and potential while guaranteeing the protection of workers" COM(2007)304	Working conditions	Construction	Joint opinion	11/12/2007
Energy policy and the future of the extractive industries: Inseparably linked	Social aspects of Community policies	Extractive industry	Joint opinion	12/12/2007
Common contribution regarding the "Second stage consultation of the European Social Partners on active inclusion of people furthest away from the labour market	Employment	Commerce	Joint opinion	28/02/2008
Joint statement for the second Single European Sky package	Economic and/or sectoral policies	Civil aviation	Joint opinion	28/02/2008
Joint declaration on paritarian funds	Social dialogue	Construction	Joint opinion	8/03/2008

Joint Statement on the Active Inclusion of Those Furthest from the Labour Market	Employment	Local and regional government	Joint opinion	19/03 /2008
The IRU and ETF agree to work together on the 12-day derogation in coach tourism	Working conditions	Road transport	Joint opinion	11/04 /2008
Position paper on EU Commission's climate package of 23 January 2008	Sustainable development	Extractive industry	Joint opinion	21/05 /2008
Joint Declaration on the Directive on working conditions for temporary agency workers	Working conditions	Temporary agency work	Joint opinion	28/05 /2008
Joint Statement on the Commission proposal for the revision of the EU Emissions Trading System	Economic and/or sectoral policies	Steel	Joint opinion	26/06 /2008
Opinion regarding the Commission's Communication (COM(2007)591) on re-examining the social regulation	Working conditions	Sea Fisheries	Joint opinion	16/07 /2008
Overview of the legislation governing Cash in Transit in the 25 Member States	Enlargement	Private security	Tool	25/08 /2006
Skills for Chemical Businesses Understanding Society Needs - skills, education and training	Training/lifelong learning	Chemical industry	Tool	26/10 /2006
Equal opportunities and diversity toolkit / best practices guide	Gender equality	Electricity	Tool	3/11/ 2006
Report by the Social Dialogue Air Traffic Management Work Group on the Implications of Functional Airspace Blocks	Economic and/or sectoral policies	Civil aviation	Tool	3/11/ 2006
Development of a European Educational Toolkit for three Private Security Activities/Profiles: 1. Mobile Patrolling, 2. Alarm Response Centres, 3. Airport Security	Telework	Private security	Tool	15/12 /2006
Diversity at work	CSR - Corporate social responsibility	Telecommunications	Tool	1/05/ 2007
Resolution regarding creation of a Agripass CV	Mobility	Agriculture	Tool	10/05 /2007
Ergonomics in cleaning operations	Health and safety	Cleaning Industry	Tool	25/06 /2007
Guidelines for Consultation arrangements for Functional Airspace Blocks	Economic and/or sectoral policies	Civil aviation	Tool	17/07 /2007
Musculoskeletal disorders - Introduction and review of good working practices in Telecoms	Health and safety	Telecommunications	Tool	1/10/ 2007
Prevention of accidents at sea and the safety of fishermen	Health and safety	Sea Fisheries	Tool	19/10 /2007
<b><i>Procedural texts</i></b>				
Rules of procedures	Social dialogue	Steel	Procedural text	21/06 /2006

Rules of procedures	Social dialogue	Construction	Procedural text	22/09/2006
Rules of procedures	Social dialogue	Temporary agency work	Procedural text	20/10/2006
Rules of procedures	Social dialogue	Personal services	Procedural text	17/11/2006
Rules of procedures	Social dialogue	Private security	Procedural text	15/12/2006
Rules of procedures	Social dialogue	Railways	Procedural text	17/04/2007
Rules of procedures	Social dialogue	Gas	Procedural text	15/06/2007
Rules of procedures	Social dialogue	Catering	Procedural text	9/10/2007
Rules of procedures	Social dialogue	Cleaning Industry	Procedural text	15/10/2007
Rules of procedures	Social dialogue	Professional Football	Procedural text	1/07/2008
<b><i>Follow-up reports</i></b>				
Framework agreement on work-related stress - Yearly joint table summarising ongoing social partners activities - 2006	Health and safety	Cross-industry	Follow-up report	28/06/2006
Implementation of the European Framework Agreement on Telework - Report by European Social Partners	Telework	Cross-industry	Follow-up report	28/06/2006
Framework of actions on gender equality - First follow-up report 2006	Gender equality	Cross-industry	Follow-up report	7/11/2006
Fourth implementation report (2006) on the code of conduct on corporate social responsibility	CSR - Corporate social responsibility	Sugar	Follow-up report	28/02/2007
Implementation of the Framework agreement on work-related stress - Yearly joint table summarising ongoing social partners activities - 2007	Health and safety	Cross-industry	Follow-up report	20/06/2007
Framework of actions on gender equality - Second follow-up report 2007	Gender equality	Cross-industry	Follow-up report	7/11/2007
Fifth implementation report (2007) on the code of conduct on corporate social responsibility	CSR - Corporate social responsibility	Sugar	Follow-up report	28/02/2008

## Health and safety

In quantitative terms, occupational health and safety is the area where European social partners have been most active over the last two years. A set of concrete guidelines and practical guides addressed directly to enterprises and workers has been developed by sectoral social partners.

In December 2006, social partners in the **electricity** sector signed guidelines on health and safety (H & S) and training. The document recommends national affiliates to include recent documents adopted at EU level, such as the framework agreement on stress and new directives on workers exposure to risks arising from asbestos, noise etc., in their vocational

training curricula. It recognises the importance of the training on H & S provided by employers and it includes recommendations on the structure and objectives of such training. Likewise, it recommends that employees on fixed or short-term contracts should also be able to participate in training and stipulates information that new employees should obtain on health and safety. Moreover the statement includes provisions on training of workers' representatives, managers and H & S advisers. Social partners pledge to compile best practices in this area and to monitor the situation in the sector.

After completing successfully a set of guidelines to prevent musculo-skeletal disorders (MSDs) in the **telecoms** sector ([www.msdonline.org](http://www.msdonline.org)) social partners started exploring the link between MSD and psychosocial factors such as stress and burnout. In their work programme for 2008 the Committee has given a mandate to the health and safety working group to begin work on a shared 'Good work - Good health' agenda, with particular focus on the psychosocial aspect, looking at shared values with other working groups and possible best practices.

The **culture and live performing arts** working group cooperated during 2006 and 2007 with the Commission in the preparation of a set of voluntary guidelines for the implementation of the Noise Directive, adopted in 2003. Social partners provided key expertise for the identification of measures that employers and workers of orchestras, ballets, etc. could take in order to minimise noise exposure and its effects.

The social partners in the **furniture** sector agreed, in 2007, on a joint declaration on accident reduction and organised a conference that presented best-practice campaigns in order to incite national members to be more active in the area of accident prevention campaigns. Progress will be reviewed after two years.

The European social partners in **fishing** adopted the *European handbook for the prevention of accidents at sea and the safety of fishermen* in 2007. This clear handbook lays out graphically the minimum advice on safety and health for fishermen working on board fishing vessels. It is not a safety manual nor is it a substitute for effective training but it raises the awareness of the need for such training, knowledge and competence with regard to safety. It was printed and disseminated in 13 languages.

The European social partners in the **cleaning** sector published a practical guide to ergonomics in cleaning operations in 2007. It is addressed to cleaning workers directly with concrete examples and illustrations.

## **Gender equality**

The European social partners in **local and regional government** adopted on 14 December 2007 common guidelines for drawing up gender equality action plans. These guidelines aim to support regional and local initiatives on equality and to encourage a joint, long-term and sustained approach to equality by national social partners. They provide a framework to develop best practices and to monitor progress. A template for gender equality plans should be used by employers in cooperation and in dialogue with trade unions and employees to better implement equality legislation or other equality objectives. An equality checklist helps social partners to assess equality performance over time. The guidelines also refer to the relevant EU legal instruments.

The social partners in the **electricity** sector published in March 2007 a very comprehensive equal opportunities and diversity toolkit. The main purpose of the toolkit is to promote gender equality and diversity in the workplace and to raise awareness for the benefits this

brings for the company. It provides practical advice and tools for managers and unions to implement equality and diversity programmes in the workplace. The document goes beyond gender equality and refers to all sources of discrimination. The toolkit can assist managers in drawing up and implementing strategies in areas such as recruitment and selection, work–life balance, sexual harassment and training. It presents practical tools such as how to carry out an equality review or audit in the workplace and how to ensure that pay systems do not under-value women’s skills. Finally it provides monitoring tools.

On 12 June 2007, CER and ETF adopted joint recommendations for a better representation and integration of women in the **railway** sector. These policy orientations, addressed to their affiliated members, aim to contribute to a better representation and integration of women in a traditionally ‘male-dominated sector’. The joint document contains a Charter for Equal Opportunities in the European Railway Companies and Trade Unions, recommendations for positive actions, methodological recommendations and provisions on evaluation and follow-up. The social partners have agreed to assess progress on an annual basis and perform a study on the measures introduced by their affiliated companies and unions three years after signing the recommendations.

The social partners of the **Telecoms** Committee published in 2007 a collection of good practices to promote diversity at work. Diversity is considered from a large perspective and takes into account a wide array of aspects such as gender equality, sexual orientation, disabilities, age, race and religion, and work-life balance. Social partners highlight the business case for diversity and illustrate how valuing and encouraging diversity is good for customers, employees and business.

The **cross-industry** social partners continued to follow up and report on their framework of actions on gender equality of 2005 (see chapter 5).

## **Attractiveness**

In March 2006, the Social Dialogue Committee organised the first European **Shipyard** Week. The starting point was the social partners’ conviction that the public image of the shipbuilding sector is often in stark contrast to its strategic importance and performance as a high-tech industry that relies on a highly skilled workforce. The media frequently presents the industry as old, of poor financial performance and with an uncertain future. As a result, the industry has not been able to attract sufficient interest of young graduates and highly skilled workers.

This project intended to demonstrate to key target groups (schools, universities, people within the sector, policymakers, financial institutions, etc.) the contribution of the European shipyards to the implementation of the employment and growth objective of the Lisbon strategy. The European Shipyard Week consisted of numerous events organised by the social partners at national, regional and company levels. The national events were conducted on the basis of a centrally organised campaign with a common logo, common campaign messages and centrally produced campaign material, i.e. promotional DVDs, multilingual leaflets and dedicated pages on the EMF and CESA websites.

## **Corporate social responsibility**

On 17 June 2008, the Tanning and Leather Sectoral Social Dialogue Committee adopted a **Framework Agreement on Social and Environmental Reporting Standards of the European Leather/Tanning Industry**. This autonomous agreement is based on Article 139 of the EC Treaty.

The document provides indications for companies in the leather sector for the preparation of social reports and environmental declarations aimed at informing all concerned parties about their policies. A list of key social and environmental indicators is provided for this purpose. Moreover, this document includes guidelines to independent certification bodies for auditing these reports.

The European social partners Cotance and ETUF:TCL call on their members to actively encourage companies and workers of the sector to develop social and environmental reporting and they will provide an annual overview of the implementation process of the agreement. An implementation report will be agreed after three years. In addition, they will follow up the signature of this document with training and awareness-raising programmes.



**Table 4.2 Topics covered by sectoral social partners' work programme**

*In quantitative terms, life-long learning, which includes measures to facilitate mobility, occupational health and safety, and working conditions are currently the most important topics in the sectoral European social dialogue. But the social dialogue committees continue to make their voice heard on policy developments that affect their sectors.*

Sectors	Training, Lifelong Learning	Health and Safety, Violence, Security	Sectoral policy initiatives	Capacity Building, Enlargement	Employment, Industrial Policy, Competitiveness	Working conditions (incl. Telework, Working Time)	Demography (Youth Integration, Active Ageing)	Corporate Social Responsibility	Green Paper Labour law, Flexicurity, Temporary Work	Gender equality/ anti-discrimination	Migration, Mobility	Public Procurement	Restructuring	Stress	Year WP
Agriculture	x	x		x	x				x		x				2008
Audiovisual	x		x	x					x						2008
Banking	x			x			x	x							2006
Catering	x	x						x		x		x			2007-2008
Chemical industry	x	x		x	x										2007-2008
Civil aviation	x	x	x			x									2007-2008
Cleaning industry		x				x			x	x		x			2008
Commerce	x	x		x	x	x	x	x		x	x				2008
Construction	x	x	x	x	x		x		x		x			x	2008-2011
Electricity		x			x		x	x					x	x	2008-2009
Extractive industry		x	x												2008-2009
Footwear	x		x	x	x								x		2006
Furniture	x	x		x	x										
Gas		x	x		x		x								2007-2008
Horeca	x	x				x		x	x		x				2008
Hospitals	x	x	x			x	x			x					2008-2012
Inland waterways			x			x									2007-2008
Insurance			x	x		x	x		x						2007-2008
Live performance	x	x	x	x					x		x				2007-2009
Local and regional government	x	x	x	x			x			x					2008-2010
Personal services	x	x													2008
Postal services	x	x	x					x							2008
Private security	x	x	x	x		x				x					2007-2008
Professional football				x		x									2008-2009
Railways		x	x		x	x	x			x	x				2008-2009
Road transport	x	x	x			x					x			x	
Sea fisheries	x	x	x	x											2007
Shipbuilding	x		x												2007-2008
Steel	x	x	x		x										2006-2008
Sugar								x							2008
Tanning and leather	x	x	x	x	x										2008
Telecommunications	x	x		x				x							2008
Temporary agency work	x		x			x			x	x	x				2008-2009
Textile and clothing	x		x	x	x			x				x	x		2008
Woodworking	x	x			x										2008
Sum	26	25	21	17	13	12	9	9	8	8	8	3	3	3	

## Increasing number of new sectoral committees

The launch of three new European sectoral social dialogue committees (SSDCs) since 2006 has brought the overall number to 36, bringing closer the goal of engaging management and labour of all main sectors of the economy in a dialogue at European level.

On 9 October 2007, the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) and the European Federation of Contract Catering Organisations (FERCO) resumed their long-standing cooperation at EU level, in the setting of a European social dialogue committee, with the backing of the European Commission. They have been pursuing a constructive — although informal — dialogue with the support of the EU Commission since 1998. Main achievements are: a joint declaration in favour of a reduced VAT rate for the **contract catering** sector (1998), guidelines on employment and training (1999), a joint declaration on food hygiene and safety (2000), a survey on employment and training in the contract catering sector (2002) and in 2006, the publication of a ‘Guide to the economically most advantageous offer’ ([www.catering-guide.org](http://www.catering-guide.org)). In January 2007, EFFAT and FERCO signed policy recommendations on corporate social responsibility.

The first meeting of the SSDC in the **gas** sector took place on 15 March 2007. The European Public Service Union (EPSU), the European Mine, Chemical and Energy Workers’ Federation (EMCEF) and Eurogas agreed to work on issues such as health and safety, demographic change and social consequences of the opening of the energy markets. In November 2007 social partners signed their first joint document ‘Joint declaration on violence at work’ endorsing the autonomous agreement on violence. They are currently working on a project proposal concerning the ageing workforce.

EUPAN (European Public Administrations Network), an informal network of the Directors General responsible for **public administration** in the Member States of the European Union, accession and candidate countries, and TUNED (Trade Union delegation composed of EPSU and CESI, European social partners) had been engaged in an informal social dialogue in the central public administrations sector for years, under the aegis of the European Council Presidency.

In order to comply with the mandate of the ministers responsible for the public administration to further enhance their European social dialogue, EUPAN and TUNED decided to ‘test’ a real social dialogue committee during two years (2008 and 2009) by adopting common rules of procedure and a work programme. They also agreed on indicators with a view to assessing the feasibility of establishing a permanent social dialogue committee at the end of the test phase. The interim and final evaluations of the test phase will be undertaken during the French and Swedish Presidencies at the end of 2008 and 2009 respectively.

The themes of their common work programme are:

- social dialogue (horizontal theme), e.g. reacting to relevant initiatives from the Commission;
- sustaining efficient administration — in view of demographic changes, etc.;
- effective contribution of central government administrations to the implementation and foreseen revision of the Lisbon Strategy
- violence and harassment at work.

The consolidation of social dialogue in the **sports** sector has made big advances over the last two years. The European Association of Sports Employers (EASE) and the European services trade union EURO-MEI have recognised each other as the social partners representing the other side of industry at European level and informed the Commission that they want to take part in an official European social dialogue. Both are open for membership from the four subsectors of sport: professional, voluntary, outdoor and fitness. In 2007 and 2008, two more organisations were set up; the European Elite Athletes Association (EEAA) has the ambition to represent the interests of professional athletes; and the European

Confederation of Outdoor Employers (EC-OE) aims to represent commercial outdoor sports employers.

The Commission has encouraged social dialogue as an instrument which would allow social partners to contribute to the shaping of employment relations and working conditions in an active and participative way in its White Paper on Sport of 2007. In its accompanying document the Commission explains that while it strongly encourages cooperation between the different subsectors it will adopt a pragmatic approach towards requests and to the future architecture of social dialogue in the sports sector. Due to the specificity of sport it remains a challenge to find the appropriate role for sports federations and governing bodies that reflects both their role in the governance of sport and the fact that they are not social partners. A study into the representativeness of social dialogue actors in the sport sector will be carried out in 2009. Issues discussed so far in informal meetings are minimum standards for standard player contracts relating to insurance cover, education, health and safety, etc., the cross-border recognition of qualifications, or the strengthening of social dialogue in the sector.

The European Association of Professional Football Leagues (EPFL) and the Federation of Professional Footballers Associations — Division Europe (FIFPro) launched the European social dialogue in **professional football** on 1 July 2008. The European Club Association (ECA) that represents around 100 (of which up to 60 in the EU) clubs playing in European club competitions complements the employers' side. UEFA (Union of European Football Associations) has a facilitating role in this social dialogue and will chair the meetings. Minimum requirements for professional players' contracts is the first issue on the table. The partners will discuss and try to reach agreements on minimum standards in fields like health and safety at work, health insurance, education for young players, obligations and rights of players, conflict resolution and image rights. In addition, they will promote social dialogue in the new Member States and candidate countries.

The Commission received an independent request for the establishment of a European SSDC in the professional cycling sector at the end of 2007. It has not yet received all necessary information from the organisations representing teams and cyclists.

**Table 4.3: The 36 sectoral social dialogue committees**

Sectors	Employees' organisations	Employers' organisations	Date of creation
<b>Agriculture</b>	EFFAT	GEOPA/COPA	1999
<b>Audiovisual</b>	EFJ, EURO-MEI, FIA, FIM	ACT, AER, CEPI, EBU, FIAPF	2004
<b>Banking</b>	UNI-Europa	EACB, ESBG, FBE	1999
<b>Contract catering</b>	EFFAT	FERCO	2007
<b>Chemical industry</b>	EMCEF	ECEG	2004
<b>Civil aviation</b>	ECA, ETF	ACI Europe, AEA, CANSO, ERA, IACA, IAHA	2000
<b>Cleaning industry</b>	UNI-Europa	EFCI	1999
<b>Commerce</b>	UNI-Europa	Eurocommerce	1999
<b>Construction</b>	EFBWW	FIEC	1999
<b>Electricity</b>	EMCEF, EPSU	Eurelectric	2000
<b>Extractive industry</b>	EMCEF	APEP, Euracoal, Euromines, IMA	2002
<b>Professional football</b>	FIFPro	EPFL (ECA)	2008

Sectors	Employees' organisations	Employers' organisations	Date of creation
Footwear	ETUF:TCL	CEC	1999
Furniture	EFBWW	UEA	2001
Gas	EMCEF, EPSU	Eurogas	2007
Horeca	EFFAT	Hotrec	1999
Hospitals	EPSU	Hospeem	2006
Inland waterways	ETF	EBU, ESO	1999
Insurance	UNI-Europa	ACME, BIPAR, CEA	1999
Live performance	EAEA	Pearle	1999
Local and regional government	EPSU	CEMR	2004
Personal services	UNI-Europa	EU Coiffure	1999
Postal services	UNI-Europa	PostEurop	1999
Private security	UNI-Europa	CoESS	1999
Railways	ETF	CER, EIM	1999
Road transport	ETF	IRU	1999
Sea fishing	ETF	Europeche/Cogeca	1999
Sea transport	ETF	ECSA	1999
Shipbuilding	EMF	CESA	2003
Steel	EMF	Eurofer	2006
Sugar	EFFAT	CEFS	1999
Tanning and leather	ETUF:TCL	Cotance	2001
Telecommunications	UNI-Europa	ETNO	1999
Temporary work	UNI-Europa	Euro CIETT	2000
Textile and clothing	ETUF:TCL	Euratex	1999
Woodworking	EFBWW	CEI-Bois	2000
<b>Sectors having submitted a formal request to create a committee</b>			
Automotive industry	EMF	CLEPA	
Non-ferrous metal	EMF	Eurometaux	
Cycling	CPA	AIGCP, IPCT	
Sport	EURO-MEI	EASE	
<b>Test social dialogue (2008–10)</b>			
Public administration	TUNED (EPSU + CESI)	EUPAN	

## Conclusions

European social dialogue continues to play its role in employment and social governance in the EU, including increasingly autonomous action. The cross-industry social partners' joint analysis of the European labour market facilitated the agreement on principles of flexicurity and laid the foundation for future joint texts on employment and more inclusive labour markets. For the first time, the cross-industry social partners re-negotiate a Council directive based on a framework agreement, the Parental Leave Directive of 1996. Their new autonomous agreement on violence and harassment at work will be implemented until 2010

and help to prevent and manage problems of psychological and sexual harassment and physical violence at the workplace. Several sectoral European social partners took the opportunity to complement this agreement by a multisector initiative on third-party violence. Violence is typically an area which is not easily regulated by law, but where social partners can make a difference by influencing practices at the workplace. Sectoral social dialogue led to an agreement on maritime labour standards and an autonomous agreement on environmental and social reporting in the leather/tanning sector. The coverage of European social dialogue has now extended to the contract catering and professional football sectors as well as public administrations where the social partners are testing the European social dialogue in 2008 and 2009.

## Chapter 5

### The challenge of implementation in European social dialogue

*The implementation of European social dialogue joint texts attracts increasing attention from the social partners, academia and public authorities. It is still a recent process but first success stories and a gradual improvement can be observed. In particular, European autonomous agreements (e.g. telework, stress at work) clearly have an impact. Process-oriented texts can create a learning process and raise awareness, but further research is needed. The commitment and capacity of the European and, in particular, the national social partners are fundamental.*

#### Introduction

In their social dialogue at European level, social partners have developed trust and a shared understanding on a large range of issues such as economic and labour market policy, corporate social responsibility, vocational training, social dialogue practices and others. By engaging employers' and workers' representatives from Member States in a wider European debate their cooperation has also had a beneficial impact on social dialogue at national level. With joint opinions they influence and initiate policy debates. Transnational projects produce concrete results and forge links between practitioners in trade unions and employers' organisations. As such, European social dialogue produces many results that are not easily measured.

In recent years, however, there has been a qualitative shift towards more autonomous action. This is reflected by the increasing adoption of 'new generation' texts, in which European social partners undertake commitments or make recommendations to the national level, which are followed up by them and their national members. This has increased the interest in the actual implementation of European social dialogue results and its monitoring.

A lack of transparency about the nature of European social dialogue outcomes and a failure to clarify all aspects of the follow-up of texts in negotiations were regarded as one reason for difficulties when it comes to implementing them in practice by those not directly involved in the process. Therefore, in its last communication on social dialogue from 2004, the Commission encouraged the social partners to include detailed follow-up provisions in their new generation texts and proposed a typology (see Table 5.1) and drafting checklist to be used by social partners. <sup>(42)</sup>

This chapter presents some experiences with implementing European social dialogue results.

**Table 5.1 Outcomes of the European social dialogue**

Category	Sub-categories	Follow-up
Article 139 (2) agreements	Implementation by directive	Implementation reports
	Implementation by social partners (autonomous agreements)	

<sup>(42)</sup> For definitions and further information, see COM(2004) 557 of 12 August 2004.

Process-oriented texts	Framework of actions	Follow-up reports
	Guidelines, codes of conduct	
	Policy orientations	
Joint opinions and tools	Joint opinions, declarations	No-follow-up clauses; promotional activities
	Guides, handbooks, websites	

## Agreements based on Article 139(2) of the EC Treaty

**Two options** are available for implementing and monitoring of agreements negotiated by the social partners according to **Article 139 of the EC Treaty**.

1. The European agreement is ‘implemented in accordance with the procedures and practices specific to management and labour and the Member States’. This method of implementation implies that the national members of the European social partners are responsible for implementing the agreements according to their respective industrial relations systems. For this purpose they are expected to make use of the existing structures, procedures and instruments which would be applied for national regulations. Such texts are called **autonomous agreements**. This option was chosen for the first time for the autonomous agreement on telework of 2002. Consequently, evidence on the functioning of this implementation option has now become available for the first time.
2. The Commission presents a proposal for a **Council decision** in areas covered by Article 137. So far this has always taken the form of a **directive**. This follows a joint request of the signatory parties following examination by the Commission of the following criteria: sufficiently representative contracting parties, lawfulness of all clauses of the agreement under Community law, and compliance with the provisions concerning small and medium-sized enterprises. The social partners’ agreement is then transmitted to the Council for its decision. In such cases, which take the form of a procedure for extending agreements negotiated and concluded by the social partners, the Council is required to take a decision on the social partners’ text without changing the substance.

### Autonomous agreements

Three autonomous agreements (on telework, work-related stress, and harassment and violence at work) have so far been concluded in cross-industry social dialogue since 2002 and a fourth (on inclusive labour markets) will be negotiated as from the second half of 2008. As regards implementation, all these agreements explicitly refer to the first option given in Article 139 of the EC Treaty.

The adoption of autonomous agreements ushered in a new phase in European social dialogue and upgraded the role of national social partner organisations. While they were previously involved in the agenda-setting, negotiation and decision-making phases, they now also have a key role to play in the implementation phase. Through their affiliation in European organisations, they commit to putting the agreements into practice through the instruments and procedures available to them in their own system of industrial relations.



## ***Telework***

The Framework Agreement on Telework was signed on 16 July 2002 by the ETUC (representing also the Liaison Committee Eurocadres/CEC), BUSINESSEUROPE (then called UNICE), CEEP and UEAPME. The negotiation of this first autonomous agreement followed a two-stage consultation of the social partners by the European Commission under Article 138 of the EC Treaty on modernising and improving employment relations, launched in 2000. Telework was recognised by both sides of industry as a means for workers and companies to modernise work organisation by introducing flexible work arrangements and greater autonomy and to allow better reconciliation of work, private and family life.

The aim of the framework agreement is to promote the development of telework, while safeguarding the protection of workers and the interests of employers. The intention is to avoid the expansion of telework resulting in a new employment status. Telework was therefore defined as ‘a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis’.

The agreement established a general framework of rules and minimum standards for the introduction and use of this new method of working which respond to the needs of both employers and workers. While stressing that teleworkers benefit from the same legal protection as employees working permanently at the employer’s premises, it identifies the aspects which are specific to working at a distance and which require adaptation or special attention, such as employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training and collective rights.

The implementation period stipulated in the framework agreement was three years after the date of signature, i.e. until July 2005. In the fourth year (June 2006), the Social Dialogue Committee adopted a joint report on the implementation of the agreement, which was presented by the social partners to the public on 11 October 2006.

The social partners’ implementation report is based on joint national reports from member organisations in 21 EU Member States, Iceland and Norway. Final joint reports had not been received from Cyprus, Estonia, Lithuania and Slovakia. The implementation process had not started yet in Bulgaria and Romania, whose social partners joined the European social dialogue only in 2007.

The EU-level implementation report considers that implementation has been achieved or was in the process of being finalised in all countries covered. It looks at actions carried out to translate the agreement into the national languages and to disseminate it amongst members. It also analyses the choice of instruments used in each country to implement the text. Finally the report examines the way in which the provisions of the framework agreement have been implemented, looking at each individual clause. This part does not contain a systematic analysis of implementation in each country, but opts for giving examples of elements agreed by national social partners beyond the requirements of the EU text.

The conclusions of the report stress the wealth and heterogeneity of implementation activities. While recalling that this is the first time that an autonomous agreement had to be implemented by national social partners, it stresses the capacity of the member organisations to follow up their commitments taken at European level. The question of what will be done in those countries or sectors where implementation has been lacking or insufficient (or not reported yet) is not addressed.

As announced in the last Commission communication on social dialogue<sup>(43)</sup>, the Commission carried out its own monitoring of the implementation process and presented its assessment in the form of a report published in July 2008<sup>(44)</sup>.

Overall, the report found that the implementation of the agreement has been successful, bearing in mind that it was a first-time experience for the European and national social partners. Social partners in most countries have developed rules and tools to apply the principles of the telework agreement in the national context. The key provisions of the agreement were integrated in most of the national implementing measures. However, in two countries (the Czech Republic and Slovenia) not all principles were covered; and in six others no implementing measures had yet been taken (Bulgaria, Estonia, Cyprus, Lithuania, Malta and Romania).

Taking account of the variety of industrial relations systems, very different instruments were used to implement the European text. The traditional procedures and practices, i.e. those which would be usual practice for the regulation of similar issues in the context of national industrial relations, have been followed in most instances: collective bargaining at national or sector level has reflected traditional practice in several countries (Belgium, Denmark, France, Greece, Iceland, Italy and Luxembourg). Some national social partners have made recommendations to counterparts at lower levels in accordance with their usual procedures (Spain, Finland, the Netherlands and Sweden). Guidelines have been adopted by the social partners in countries where industrial relations tend to be decentralised and do not provide for binding instruments at national level, leaving national social partners with little more than a coordinating function (Ireland, Latvia and the United Kingdom). In Germany the issue has typically been dealt with at company level and several social partners have issued model agreements for use at that level. In some Member States, given their industrial relations system, the social partners left regulatory matters to the legislator even though they were involved in the drafting or consultation process (the Czech Republic, Hungary, Poland and Slovakia).

In several cases the social partners have developed promising innovative practices that have sometimes gone further than could have been expected, given the traditional industrial relations there (Poland and the United Kingdom).

In some countries the implementing measures have not gone as far as expected, given the degree of development of industrial relations there. Sectoral social partner organisations could have been more involved in the implementation process (Germany, Austria and Sweden) and coordination and dissemination at cross-industry level could have been better. In Portugal and Slovenia, the social partners would traditionally have been more involved in the implementation process.

Table 5.2 gives an overview, country by country, of the implementing measures adopted or of the lack of implementation.

**Table 5.2: Telework - implementing measures adopted**

Country	Implementing measure(s)
Austria	Guide by employer organisations (15.7.2005); no trade union involvement.

<sup>(43)</sup> COM(2004) 557 of 12 August 2004.

<sup>(44)</sup> Commission Staff Working Paper, 'Report on the implementation of the European social partners' framework agreement on telework', SEC(2008) 2178.

Belgium	Collective Labour Agreement No 85 on telework adopted by National Labour Council (9.11.2005), extended by royal decree (13.6.2006)
Bulgaria	No implementation reported yet (joined social dialogue only in 2007)
Cyprus	No implementation reported yet
Czech Republic	New Labour Code (Act No 262/2006 Coll.), Article 317, entering into force on 1.1.2007 (only partial implementation)
Denmark	Private sector: collective agreements (industry: 16.7.2005; services: April 2006), accompanying guidelines and subsidiary agreement by the cross-industry social partners (27.10.2006)  Public sector: renewal of previous agreements and guidelines in the state (6.7.2005) and local and regional government (30.11.2005) sectors
Estonia	No implementation reported yet
Finland	Social partner agreement (23.5.2005) with recommendations
France	National collective agreement (19.7.2005), extended by government decree (30.5.2006)
Germany	Joint declaration; model company agreements by some sectoral social partners
Greece	Reference in and annex to National General Collective Labour Agreement 2006–07 (12.4.2006)
Hungary	Amendments to the Labour Code, new Chapter X/A, and other laws, entering into force on 1.5.2004 (implementation of most provisions)
Iceland	National collective agreement (5.5.2006)
Ireland	Updating of code of practice on ‘e-working’ (not finalised yet)
Italy	National collective agreement (9.6.2004)
Latvia	Social partner agreement (12.4.2006)
Lithuania	No implementation reported yet
Luxembourg	National collective agreement (21.2.2006), extended by grand-ducal decree (13.10.2006)
Malta	No implementation reported yet
Netherlands	Recommendation by the Labour Foundation (11.9.2003) to lower bargaining levels
Norway	Joint guidelines (Dec. 2005)
Poland	Amendments to Labour Code, new Chapter II b, entering into force on 15.11.2007, on the basis of a social partner agreement (10.6.2005)
Portugal	New Labour Code (Act No 99/2003), Articles 233–243, entering into force on 1.12.2003
Romania	No implementation reported yet (joined social dialogue only in 2007)
Slovakia	Amendment to Labour Code, Article 52, entering into force on 1.9.2007

Slovenia	Amendment to Employment Relationship Act, extending provisions on homework (Articles 67–71) to telework (only partial implementation)
Spain	Reference in and annex to national agreement on collective bargaining 2003 (30.1.2003) and following agreement in 2005 and 2007
Sweden	Common guidelines (28.5.2003)
United Kingdom	‘Telework Guidance’ (guidelines) (Aug. 2003)

The agreement successfully triggered discussions and joint actions by social partners in most Member States on how this new form of work can be used to the advantage of both workers and employers. It had a real value added, since only two Member States (Denmark and Ireland) already had a comprehensive set of rules on telework prior to the EU agreement.

Telework has been ‘mainstreamed’ in common labour law in the vast majority of countries. It is recognised as a form of work organisation, instead of a new employment status. The risk of discrimination of teleworkers compared to employees working permanently at the employer’s premises is likely to have been reduced, as well as fake self-employment among teleworkers.

There is still scope for improvement in the way the agreement has been implemented in some countries, and efforts are needed particularly in those countries that have not yet implemented the agreement or have done it partially. More visibility also needs to be given to the agreement by raising awareness among individual employers and trade union officials in order to ensure tangible results.

The **commerce** as well as the **telecommunications** social partners agreed voluntary guidelines for telecommerce shortly before the cross-industry social partners. The European social partners of the **electricity** sector called on their members to implement the cross-industry agreement. But follow-up provisions were more vague or missing, and no implementation measures have been reported in these cases.

### ***Work-related stress***

The Framework Agreement on Work-related Stress was adopted on 8 October 2004 by the cross-industry social partners. The process and status of this agreement is equivalent to the telework agreement (negotiations following an Article 138 consultation (in 2002) and autonomous implementation. The responsibilities of European and national social partners in the implementation process are therefore the same (see below).

The aims of the framework agreement are to ‘increase the awareness and understanding of employers, workers and their representatives of work-related stress, draw their attention to signs that could indicate problems of work-related stress’ and to ‘provide employers and workers with a framework to identify and prevent or manage problems of work-related stress’. The agreement gives indications as to how such problems can be detected and which factors have to be analysed. Furthermore, it clarifies the responsibilities of employers and workers, and in particular the fact that all employers have a legal duty under Framework Directive 89/391/EEC to protect the occupational health and safety of workers, which also applies to stress. Finally the agreement highlights measures to prevent, eliminate or reduce stress problems at work.

The social partners, both at European and national level, could benefit from the experiences of the telework autonomous agreement. The European organisations fulfilled their

coordinating and monitoring function by informing their members and regularly requesting them to report on progress in the implementation process. As foreseen in the agreement, European social partners compiled yearly progress tables in 2006 and 2007 with information on activities carried out in the EU Member States to date.

Furthermore, the ETUC carried out a project to assist its member organisations in the implementation process, through the drafting of an interpretation guide, the translation of the agreement into several languages, and the organisation of regional seminars and a conference to allow an exchange of experience between trade unions from different Member States in dealing with the implementation.

At national level, social partners in many countries followed the same procedures and instruments they had already used for the telework agreement. In Spain, for instance, the national social partners (CEOE, CEPYME, UGT and CC.OO.) translated the agreement and integrated it in the annual framework agreement for collective bargaining (*Acuerdo interconfederal para la negociación colectiva* — ANC) for 2005, which is addressed to negotiators at sectoral and company level; it encourages sectoral and local social partners to adapt the agreement in the context of the Spanish labour market. The UK social partners (TUC, CBI, CEEP UK and FPB) developed, with the support of the government and the involvement of the Health and Safety Executive, a ‘guide’, similar to the one on telework, which also contains links to useful existing tools (management standards, stress risk assessment tool). In Poland the trade union confederation NSZZ Solidarność launched a project to raise awareness and knowledge about work-related stress among social partners and to start a negotiation process with the employers and the other trade unions.

As in the case of telework the Icelandic, Italian and French social partners signed specific national collective agreements on work-related stress on 7 June 2007, 9 June and 2 July 2008 respectively, while the Finnish and Swedish social partners issued recommendations to lower bargaining levels and the Latvian social partners agreed to implement the text. In Austria, social partners developed joint guidelines, while the Dutch social partners’ Labour Foundation updated an earlier joint declaration and brochure on work-related stress. Social partners in several countries (Belgium, Denmark and Norway) considered that the legal or conventional framework already in place covers the content of the autonomous agreement and that additional implementing measures were not necessary.

European social partners will present their joint implementation report in December 2008. While it is too early to draw conclusions, it can be assumed that some of the instruments will strongly resemble those developed on telework. However, it can also be assumed that the overall process will generate more ‘soft’ tools like guidelines, recommendations and brochures, and less legislation or ‘hard’ collective bargaining than on telework, since the European agreement on work-related stress does not stipulate detailed rules to be observed, but rather presents a pragmatic approach on how to address stress-related problems at the workplace. This may also be linked with the difficulty of regulating the prevention of psychosocial risks in the context of occupation health and safety in general.

### ***Multisector agreement on crystalline silica***

In April 2006, the first agreement in the history of European social dialogue covering 14 industrial sectors was concluded on the theme of preventing occupational exposure to breathable crystalline silica, as a hazardous chemical agent<sup>(45)</sup>. This autonomous agreement establishes a strong follow-up mechanism that does not rely on the development of an

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<sup>(45)</sup> See in more detail in *Industrial relations in Europe 2006*, Chapter 5, p. 106

implementing measure by national social partners or a Member State.

Instead, Article 7 of the Agreement requires information on the application of agreed good practices, which are annexed to the agreement, to be collected at site level and consolidated by the signatory parties before being communicated to a joint controlling body, the so-called 'Council'. For this purpose, a reporting format was developed and annexed to the agreement. This format allows each of the 15 signatory EU sector associations to provide the 'Council' with quantitative data on the application of the agreement. This report forms the basis of a summary report on the application of the Agreement to be addressed to the Commission, the Member States and the authorities responsible for health and safety.

The signatories of the Agreement had to provide information on its application within their sector for the first time in June 2008 and every two years from then on. In order to facilitate reporting, and to ensure a harmonised reporting procedure, collection of data and therefore consistent results, the Council decided to create an **online reporting system**. This tool allows minimising the reporting effort and consolidation workload for sectors totalling thousands of sites and ensuring that the same instructions and guidance on reporting are provided to all, from the signatories at European level to each site applying the agreement. The reporting tool is placed on the agreement's web portal ([www.nepsi.eu](http://www.nepsi.eu)).

In order to maintain the efforts initiated at the negotiation stage to ensure an immediate and efficient dissemination of the Agreement, the Council decided in 2007 to issue a preliminary summary report on the status of the application of the agreement. Six months after its entry into force, information was collected on the actions already undertaken at national level. So far, the Agreement has been translated into 22 languages and published in the Official Journal. It has been fully implemented by the Czech cement industry into ISO systems in the plants. In Finland, social partners and public authorities agreed on a project to fight against exposure to crystalline silica dust. In most countries awareness campaigns, training sessions, working groups and workshops were organised with a view to disseminate and implement the Agreement and the good practices guide. Signatories are now finalising the first interim report, which will provide the results of the first quantitative reports for industrial sectors and sites.

#### ***Agreement on the European licence for drivers carrying out a cross-border interoperability service***

Through this agreement signed on 27 January 2004, CER and ETF decided to set up a system of a European licence for train drivers. The agreement shall be implemented by the CER-affiliated companies pending a European directive. For the part covering the scope of the agreement, both parties wanted the directive to be written on the basis of the social partners' agreement. Indeed, Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community took some elements from the social partners' agreement. Thus, its Annexes II ('Medical requirements') and V ('Professional knowledge of rolling stock and requirements regarding the certificate') are largely inspired by the agreement. However, some elements of the agreement are not covered by the directive, and the signatory parties still have to decide how to deal with these points. In their agreement, the social partners committed themselves to follow up the agreement and to discuss problems linked to the implementation of the agreement. In May 2008, the signatory parties decided to identify the provisions not covered by the directive and to clarify how to deal with them by the end of 2008.

## Conclusions

Several years of experience with the implementation of autonomous agreements have produced a clearer picture of the different actors involved and their respective responsibilities. Table 5.3 attempts to indicate how different levels and instances need to interact so that the implementation process can be successful.

**Table 5.3: Responsibilities in the implementation process**

Actors	Responsibilities
National social partners	Main responsibility for implementation <ul style="list-style-type: none"> <li>Translation (if necessary)</li> <li>Dissemination of autonomous agreement and information</li> <li>Discussions/negotiations between social partners</li> <li>Developing implementing measure</li> <li>Reporting about implementation activities</li> </ul>
European social partners	<ul style="list-style-type: none"> <li>Assistance and advice (e.g. translation, best practices)</li> <li>Coordination and monitoring of activities</li> <li>Yearly progress reports and final implementation reports</li> <li>Interpretation (in case of doubts/requests)</li> </ul>
National authorities	<ul style="list-style-type: none"> <li>Subsidiary role in implementation, e.g. through regulation or legislation (not compulsory)</li> </ul>
Commission	<ul style="list-style-type: none"> <li>Assistance and financial support (if necessary)</li> <li>Monitoring and assessment</li> </ul>

The cross-industry social partners have also refined the implementation provisions in the consecutive autonomous agreements. The innovations are highlighted in italics in Table 5.4.

**Table 5.4: Implementation and follow-up provisions of autonomous agreements**

Telework	Stress	Violence
In the context of article 139 of the Treaty, this European framework agreement shall be implemented by the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/ CEC) in accordance with the procedures and practices specific to management and labour in the Member States.	In the context of article 139 of the Treaty, this voluntary European framework agreement commits the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) to implement it in accordance with the procedures and practices specific to management and labour in the Member States <i>and in the</i>	In the context of article 139 of the Treaty, this <i>autonomous</i> European framework agreement commits the members of BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) to implement it in accordance with the procedures and practices specific to management and labour in the Member States and in the

	<i>countries of the European Economic Area.</i>	countries of the European Economic Area.
	<i>The signatory parties also invite their member organisations in candidate countries to implement this agreement.</i>	The signatory parties also invite their member organisations in candidate countries to implement this agreement.
This implementation will be carried out within three years after the date of signature of this agreement.	The implementation of this agreement will be carried out within three years after the date of signature of this agreement.	The implementation of this agreement will be carried out within three years after the date of signature of this agreement.
Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement.	Member organisations will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare a <i>yearly table summarising the on-going implementation</i> of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee during the fourth year.	Member organisations will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare and <i>adopt</i> a yearly table summarising the on-going implementation of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee <i>and adopted by the European social partners</i> during the fourth year.
In case of questions on the content of this agreement, member organisations involved can separately or jointly refer to the signatory parties.	In case of questions on the content of this agreement, member organisations involved can jointly or separately refer to the signatory parties, who will jointly or separately reply.	In case of questions on the content of this agreement, member organisations involved can jointly or separately refer to the signatory parties, who will jointly or separately reply.
The signatory parties shall review the agreement five years after the date of signature if requested by one of the signatory parties.	The signatory parties shall <i>evaluate</i> and review the agreement any time after the five years following the date of signature, if requested by one of them.	The signatory parties shall evaluate and review the agreement any time after the five years following the date of signature, if requested by one of them.
	<i>When implementing this agreement, the members of the signatory parties avoid unnecessary burdens on SMEs</i>	When implementing this agreement, the members of the signatory parties avoid unnecessary burdens on SMEs.
	<i>Implementation of this agreement does not constitute valid grounds to reduce the general level of</i>	Implementation of this agreement does not constitute valid grounds to reduce the general level of



	<p><i>protection afforded to workers in the field of this agreement.</i></p> <p><i>This agreement does not prejudice the right of social partners to conclude, at the appropriate level, including European level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific needs of the social partners concerned.</i></p>	<p>protection afforded to workers in the field of this agreement.</p> <p>This agreement does not prejudice the right of social partners to conclude, at the appropriate level, including European level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific needs of the social partners concerned.</p>
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The Commission has also taken steps to better reflect the regulatory nature of agreements in European social dialogue. The autonomous agreements on violence and harassment at work and on crystalline silica as well as the cross-industry social partners implementation report on their telework agreement were communicated to the European Parliament and the Council as well as published in the Official Journal. For the telework agreement, it has also published the first report on the implementation of an autonomous agreement.

European agreements take their way from the European to the national level, and further from there onwards. In a somewhat different manner, the crystalline silica agreement creates a sort of direct effect on the workplace by establishing good practices and reporting procedures in all companies represented by the signatory parties. Commentators observed that ‘a private dispute settlement and reporting system as set up with the “Council” may be more appropriate to agreements that regulate the introduction of mechanisms than in cases where an agreement aims to establish substantial rights’ (Eurofound 2007, p. 41).

The agreement on the European driving licence for train drivers is an interesting example of an encompassing agreement that covers issues outside the scope of Article 137 of the EC Treaty (on social policy) but served as a starting point for EU legislation in other areas.

The implementation of autonomous agreements follows the specific rules of each country’s national industrial relations systems, which vary considerably as regards the responsibilities of the actors, which implies great variation in legal status and options for enforcing the implementation measure. Autonomous agreements are very well adapted to regulate and improve certain aspects of working conditions, but they cannot guarantee uniform outcomes, binding status and full coverage in all countries. Therefore experience seems to confirm the statement made in the 2004 Commission communication: ‘while recognising the broad scope of the social partners’ competences [...] where fundamental rights or important political options are at stake, or in situations where the rules must be applied in a uniform fashion in all Member States and coverage must be complete, preference should be given to implementation by Council decision’.

### **Agreements implemented by way of a Council decision**

This category includes the three cross-industry framework agreements on parental leave, part-time work and fixed-term contracts, as well as the maritime transport and civil aviation

sector agreements on working time, and the railway sector agreement on the working conditions of mobile workers assigned to cross-border interoperable services. The three cross-industry framework agreements were negotiated as a result of a Commission consultation under Article 138, whereas the sectoral agreements make use of the space left to the social partners by a directive <sup>(46)</sup> to adapt the Community provisions to the specific needs of the sector.

The responsibility for ensuring that agreements implemented by Council decision are transposed and implemented lies with the Member States, even in cases where the provisions are implemented through collective bargaining by the social partners. Responsibility for monitoring these agreements lies with the Commission, although the social partners are systematically consulted on the implementation reports. They also play an enhanced role in the review of these directives. For example, the agreement on working time in civil aviation and the agreement on working conditions in the railway sector indicate that the social partners will undertake evaluations of the implementation of these agreements. The negotiation of the cross-industry social partners to revise their 1995 parental leave agreement was already mentioned above.

### ***Part-time work directive***

A good example to analyse the implementation by way of directive is the cross-industry social partners' framework agreement on part-time work of 1997. It was adopted as Directive 97/81/EC by the Council. The Commission delivered its implementation report in accordance with the relevant provision in the directive <sup>(47)</sup> in 2003. It found that 'part-time work was an established phenomenon and was already covered by legislation in some Member States before the directive was adopted. Thus many Member States (Spain, Finland, France, Greece, Italy, Netherlands) have transposed the directive by means of changes to existing legislation. Two Member States (Belgium and Denmark) have combined legislation with collective agreements to implement the directive. In two others (Austria and Luxembourg) the authorities did not consider specific transposition measures necessary. Five Member States (Portugal, Germany, Ireland, Sweden and United Kingdom) actually took the advantage of the opportunity to draft new and specific legislation concerning part-time work with a view to encouraging its promotion. In general, it could be considered that Member States have correctly transposed the provisions'. Some shortcomings were found.

Research <sup>(48)</sup> shows that although the directive had only one binding standard, i.e. the principle of non-discrimination against part-time workers, plus 11 'soft law' recommendations and four exemptions, it nevertheless had some impact in most Member States. The principle of non-discrimination was new in seven (of the then 15) Member States, and in terms of need for adaptation it ranked in the middle range of directives on employment matters. The directive improved the situation of part-time workers in several countries (e.g. Denmark, Ireland and the United Kingdom), while it facilitated access to part time work in other countries (e.g. Germany, Spain, Italy and Portugal) by transforming the soft-law provisions into hard law. The social partners were active in several Member States to transpose the directive.

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<sup>(46)</sup> In this instance Directive 93/104/EC concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993), now replaced by Directive 2003/88/EC.

<sup>(47)</sup> Report by the Commission's services on the implementation of Council Directive 97/81/EC of 17 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC.

<sup>(48)</sup> M. Hartlapp, Social Science Research Centre, Berlin, presentation at conference, 'European social dialogue — Working together for results', 29 and 30 November 2008, Lisbon ([http://ec.europa.eu/employment\\_social/social\\_dialogue/docs/lisbon\\_conf\\_hartlapp\\_20071129\\_en.pdf](http://ec.europa.eu/employment_social/social_dialogue/docs/lisbon_conf_hartlapp_20071129_en.pdf)).

The European Trade Union Institute (ETUI) has produced its own implementation reports on the parental leave, part-time and fixed-term work agreements through its Netlex network of national legal experts ([www.etui-rehs.org](http://www.etui-rehs.org)).

### ***European agreement on the organisation of working time of mobile staff in civil aviation***

The agreement of 22 March 2000 implemented by Council Directive 2000/79/EC of 27 November 2000 provides for a review of the provisions of the agreement two years after the end of the implementation period laid down in the directive (i.e. December 2005). The signatories launched the review process in mid-2006 before eventually examining thoroughly the problems encountered with the agreed clauses at the end of 2007. A report is planned for 2008.

### ***Working conditions of railway mobile workers assigned to interoperable cross-border services***

The agreement of 27 January 2004 implemented by Council Directive 2005/47/EC of 18 July 2005 provides for an evaluation of the provisions of the agreement two years after its signing in the light of initial experience in the development of interoperable cross-border transport. Considering that January 2006 was too close to start this evaluation exercise (slow evolution of the interoperable cross-border market), it was launched by the signatory parties in June 2008.

In their agreement, the social partners also agreed that at European level, the question of the number of consecutive rests away from home as well as compensation for the rest away from home will be renegotiated two years after signature of the agreement. This renegotiation at European level started in early 2007 but has not yet been concluded. However, the signatory parties shall jointly inform the Commission about the outcome of their negotiations. The Commission will submit a report to the Council taking account of the economic and social impact of the social partners' agreement on undertakings and workers and of the social dialogue talks held under Clauses 10 and 11 of the agreement ('Follow-up to the agreement, evaluation') on all pertinent issues, including Clause 4 ('Daily rest away from home'). In order to prepare this report, the Commission has launched a study on the economic and social impact of the agreement which is being carried out in 2008.

### ***Conclusions***

When we compare the actual implementation measures for autonomous and for 'legislative' European level agreements, the two implementation routes reveal distinct features. Agreements that take an *erga omnes* effect through a Council decision entail Member State legislation. It is sometimes accompanied by collectively bargained transposition and more often by a consultation of social partners. In general, the involvement of national social partners is seen less than is the case with implementation of autonomous agreements. The process resembles the implementation of 'classic' Council directives. In contrast, legislation remains the exception as transposition instrument for autonomous agreements and collective bargaining or social dialogue solutions prevail. But experience shows that, in both cases, actual implementation implies a sustained effort of all actors, the European Commission, Member State authorities and social partners.

The Commission has drawn up implementation reports for directives as well as for autonomous agreements. For EU directives, it has the task of monitoring their implementation. In its 2002 communication, the Commission pointed out that the implementation of a Council decision is monitored in accordance with the nature of the

instrument used (directive, regulation or decision). However, social partners who triggered the regulatory text hold special responsibility for its implementation and revision. The re-negotiation of the cross-industry parental leave agreement, the ETUI-REHS reports, and the joint reports of the railway and civil aviation social partners show a re-enforced interest in the process. For autonomous agreements, the Commission verifies whether the Community objectives outlined in the consultation phase have been reached as the negotiations of the autonomous agreement have interrupted the legislative procedure.

## **Process-oriented texts**

In process-oriented texts the European social partners make recommendations of various kinds to their members for follow-up in different forms. As such, implementation is more incremental and difficult to assess.

## **Frameworks of actions**

Frameworks of actions identify certain policy priorities at EU level towards which the national social partners undertake to work. The social partners report annually on the action taken to follow up these texts.

### ***Framework of actions on gender equality***

Following the experience with the 'Framework of actions for the lifelong development of competencies and qualifications' (2002), the European cross-industry social partners had developed in March 2005 the 'Framework of actions on gender equality' <sup>(49)</sup>. This joint document has been followed up during the past three years.

As stipulated in the text, the Social Dialogue Committee adopted yearly follow-up reports in 2006 and 2007 which described how the four priorities identified in the framework of actions (addressing gender roles, promoting women in decision-making, supporting work-life balance, tackling the gender pay gap) have been integrated into the social partners' activities on gender equality in the Member States. National fact sheets from 20 and 18 countries respectively give information about initiatives at European, national, cross-industry, sectoral and company levels.

In the first year of implementation, translating and disseminating the framework of actions comprised the major task for national social partners, whereas later action focused more on finding practical solutions to the problems faced by workers and companies on the ground. The reporting revealed a range of activities such as the negotiation of collective agreements addressing gender equality concerns, the discussions with public authorities, the design of new gender equality policies or the development of projects tackling gender gaps.

The reports revealed that many organisations focused on the priority of facilitating work-life balance, which represented the largest number of reported activities (e.g. introduction or extension of care leave, prevention of long working hours, promotion of flexible and innovative forms of working). The issue of equal pay also features high on the agenda (through guidance tools, training schemes, better statistics to understand the underlying causes of the pay gap). Additional efforts were also made to address gender-related labour market segregation and the under-representation of women in management positions.

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<sup>(49)</sup> See in more detail in *Industrial Relations in Europe 2006*, Chapter 5.

The follow-up reports were presented at the launch and closing conferences of the European Year of Equal Opportunities for All, 2007. The need for better dissemination of the framework and its results was stressed at a ‘mid-term reflection’ conference organised by the German social partners in July 2008. Overall, participants gave a positive assessment to this point, even though some underlined that it should not only monitor social partner initiatives at national level on gender equality, but it should also be used as a starting point to trigger new action.

### ***Agriculture: musculoskeletal disorders***

In November 2005, the social partners in agriculture signed the ‘European agreement on the reduction of workers’ exposure to the risk of work-related musculoskeletal disorders in agriculture’. This framework of actions calls on the social partners in each Member State to create a ‘national observatory of agricultural workers’ health and safety’ and to encourage the designation of an authority or body in each Member State to be responsible for defining and coordinating policies for the prevention of musculoskeletal disorders (MSD). National social partners shall also ensure that, in line with the arrangements defined by each Member State, best practices for the prevention of MSD are implemented in farms and agricultural enterprises. A monitoring committee was to be set up within three years.

Given that a common final report presenting best practices in different countries will be finalised by the end of 2008 it is still too early to draw conclusions on implementation. Among others, the social partners in agriculture participated in the activities of the European Agency for Health and Safety at Work in Bilbao to fight against MSD and were invited to the final conference of the campaign to report on their activities. One of the nine prizes awarded in Bilbao was won by an agricultural undertaking in Cyprus. The Bilbao Agency has appointed a special contact person to deal with agriculture. Flyers and posters on the joint text were produced in all official EU languages, as well as in Turkish and Croatian, and disseminated to companies.

### **Other process-oriented texts**

In the ‘Code of conduct on corporate social responsibility’ in the **sugar** industry EFFAT and CEFS agreed in 2003 some minimum standards and a formalised follow-up procedure. They monitor the progressive implementation of the code through a survey and jointly choose and regularly update examples of good practice. This evaluation is carried out each year in the form of a detailed annual report. The survey for 2007 confirmed that this process is delivering constructive results within the national delegations’ areas of responsibility against a background of heavy restructuring following the reform of the sugar regime. Three new examples of good practices were agreed and proposed to other national members; two in the field of health and safety (a French expert handbook on security and sanitary issues and a free vaccination programme against specific occupational disease risks in the Czech Republic) and one concerning restructuring (the Italian agreement on assistance for workers affected by company closure).

The European social partners of the **commerce** sector have compiled national follow-up actions of their last three policy recommendations with the help of a questionnaire that was answered by affiliates from eight and six Member States in 2006 and 2007. The exercise showed that a number of measures have been taken at the national level but it does not analyse how they are linked to the European texts nor the extent to which they address the recommended standards.

Social partners in the **postal** sector published best practices related to their declaration on training (2006) on their joint website ([www.postsocialdialogue.org](http://www.postsocialdialogue.org)) and are implementing an EC project to assess the impact of this joint declaration. The **telecoms** SSDC is preparing a report to follow-up the impact of the guidelines for the prevention of MSD adopted at the end of 2005. Social partners in this committee have also launched a questionnaire to assess the level of implementation of their 'Guidelines on customer contact centres', adopted in 2004. The **personal services** committee started working in 2006 on the follow-up of adopted texts. They are currently assessing through a questionnaire the level of implementation of their 'How to get along' code of good conduct, adopted in 2001.

## *Conclusions*

European social partners of most sectors have improved the labelling of their joint texts and strengthened their follow-up provisions. In most cases, addressees can now better identify what the texts aim at. But it remains difficult to evaluate the impact and the value added of process-oriented texts.

In the case of frameworks of actions it is difficult to assess which activities have been triggered by the follow-up process and which activities would have also taken place without the European text. Nevertheless, the process has several clear merits.

- Frameworks of action spell out the most urgent priorities where social partners should concentrate their work at national level.
- It helps to raise the visibility and awareness at EU and national level of the role and experience that social partners have in promoting specific concerns, e.g. gender equality at work.
- The reporting process allows for an exchange among national trade union and employer experts and the documentation of experiences with different approaches and instruments.
- The duty to produce national reports provides an opportunity for contact persons in national trade unions and employers' organisations to meet and discuss jointly the best strategies for certain policy areas in the context of the respective national industrial relations systems. This may result in new joint action and/or influence collective bargaining.

Frameworks of actions are inspired by the open method of coordination (OMC) (as suggested by the High-Level Group on Industrial Relations in 2001). The OMC uses priority and target setting, monitoring and benchmarking as well as peer review and learning. Priority setting and monitoring have been institutionalised. Targeted peer reviews and mutual learning do not seem to have been established in an equally structured form. Recent research indicates, however, that the national social partner organisations appreciate the informal learning that takes place (Eurofound 2007). It is also unclear to which extent European social partners chose best practices according to established criteria, rather than selecting all possible examples.

Robust and detailed monitoring and follow-up procedures for other process-oriented texts remain the exception. The structured approach of the sugar industry is facilitated by the fact that the sector is dominated by a comparably small number of large enterprises. But the interest in knowing more about actual implementation is growing. As indicated, some European SSDCs have started the exercise of gathering more information on implementation (see Box 5.1 for information on different approaches). Further empirical research is needed on the actual implementation as well as on the dynamics between the European and national level.

### **Box 5.1: The sectoral European social partners' approach to monitoring implementation**

The European Foundation for the Improvement of Living and Working Conditions is preparing a report on the dynamics in the European sectoral social dialogue. Among others, it found six categories of practical follow-up techniques on the basis of an analysis of 14 process-oriented texts from 2005 to 2007, i.e. the formal procedures adopted by the social partners to monitor and evaluate the impact of their joint texts. In many cases, several techniques are used and these categories are not mutually exclusive.

#### *1. Written survey among members*

Very often the verification of the national implementation is done through a questionnaire sent to the national affiliates. This questionnaire is generally a joint questionnaire. It can be completed by both sides of industry at national level or each side may send (or not) its questionnaire back to its European body. The advantage of this last possibility is that it could create some competition and can be used by each side to encourage the national affiliates to answer by sending the questionnaire completed by the other side. Generally speaking it is a long process with only limited results. The EU secretariats have to mobilise and call personally their affiliates for a return, which is generally well below 50 %. The survey can be on a single joint text or a sample. For example, **commerce** and **private security** have decided to cover most of their joint texts.

#### *2. Annual/periodic reports*

More systematic is the elaboration of an annual or biannual report. This technique was used by the social partners at cross-industry level for the framework of action on equality between men and women and on lifelong learning, and on their autonomous agreements on stress as well as violence and harassment. It is more sophisticated since the report is made public and disseminated. For a good result it should be considered as strategic by both parties. In a sense, it is a tool for showing that 'something has happened' at national level and the soft law approach delivers.

#### *3. Task forces/working groups/plenary meetings*

A third technique is less formalised. It consists in an oral report by the parties in a plenary meeting. Each affiliate is supposed to present what has been achieved at national level. Contrary to the annual report, this is much more informal and does not necessarily lead to a written document. Consequently, there is no cumulative knowledge about the implementation process.

#### *4. Agreement on good practices*

The presentation of a selection of good practices is often linked to a charter or a corporate social responsibility text. A typical example is the code of conduct of the **sugar** sector, which is reviewed each year and both sides agree on selected good practices related to one or more provisions of the code of conduct. This technique is linked to the importance of big enterprises which are the key players.

#### *5. Conferences/websites*

The follow-up can also be through the organisation of a public event and by creating a common website (**sugar**, **post** for example). In such cases, compliance with the provision of the texts is supposed to increase via better visibility. The website approach is generally

developed when a minimum of trust exists between partners.

#### *6. New texts/new initiatives*

The follow-up can also be another text or initiative. Very often the dialogue on a topic is a dynamic one and each step leads incrementally to another one. Then, the follow-up provision is more a commitment to deepen the dialogue than an objective per se. In other words, the follow-up process serves to reinforce the consensus between the members and between the partners than being a real exercise of implementation.

*European Foundation for the Improvement of Living and Working Conditions (forthcoming)*

## **Conclusions**

In 2004 the Commission expressed concern that imprecise and vague follow-up provisions compromise the impact of European social dialogue outcomes. Experience shows that joint texts do not realise their full potential when precise follow-up and monitoring provisions are missing or not respected as, for example, in the case of sectoral texts on telework. Furthermore, the political commitment and the technical capacity of both the European social partners and their national affiliates are essential prerequisites for a successful follow-up.

The case of the telework agreement demonstrated that a structured process, commitment of the European social partners and a feeling of ownership in most Member States can create a real value added. Its implementation is a groundbreaking achievement for the European and national social partners. In many instances, national actors needed to discuss and agree on their responsibilities for the implementation process. Some of them may have had initial doubts and reservations concerning their involvement and commitment. Implementation is a continuous process of learning — including across borders — and confidence-building. Lessons will certainly be learned for the future implementation of other autonomous agreements at national level.

The implementation of European social dialogue outcomes and in particular autonomous framework agreements is not necessarily finished at the date stipulated in the text. It may continue to provide useful guidance for many years. National industrial relations have their own dynamics and different priorities may prevail at different times in different countries. European agreements may be implemented as part of package deals or in conjunction with other issues. In several countries, collective bargaining rounds on the subject of working conditions (other than wages and working time) take place only every few years. A European social dialogue text could therefore feature as one aspect of periodic sector-level bargaining years later.

The impact of European social dialogue texts depends crucially on awareness and also commitment among national and sectoral social partner organisations as well as among individual employers and trade union officials. This is especially true in the case of non-binding instruments, where specific efforts to disseminate social dialogue results are essential.

In successful implementation procedures, the European social partner organisations have played an important role in informing, coordinating exchanges and cross-border learning, and monitoring the implementation process. This coordinating role has been recognised by all actors in the context of the telework agreement. In their current work programme, the cross-industry social partners have also agreed to further develop the common understanding



of their social dialogue instruments.

With regard to recent enlargement rounds, the Commission stated in 2002 that ‘only with sufficiently robust national structures the social partners will be able to participate effectively in negotiations and other European social dialogue activities and also implement agreements at national level’. For the Member States having joined in 2004 and 2007, most of them with recent social dialogue structures, implementation of autonomous agreements presents a particular challenge. The implementation experience of the telework agreement suggests two conclusions. Firstly, the national industrial relations structures in some new Member States have proved their capacity to implement a European social dialogue agreement. European social partners’ activities have contributed to improving the capacity of their national members to implement such social dialogue results <sup>(50)</sup>. Secondly, it points to the fact that national public authorities have a facilitating role in some Member States and can, in the last resort, transpose autonomous agreements by their inclusion in the labour code. Indeed, this potential role is provided for in Article 139(2) of the EC Treaty, which refers to procedures and practices specific to management and labour **and** the Member States.

The experience gathered by different actors over the past few years shows that when implementation is treated seriously, European social dialogue texts and in particular autonomous agreements can go a long way to improving working conditions and competitiveness. European social partners are increasingly prepared to take the responsibility for the implementation (and potentially the revision) of their joint instruments that they took on by taking autonomous regulatory action in their field of competence.

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<sup>(50)</sup> The Commission has suggested to Member States and social partners that parts of the allocation from the European Social Fund earmarked for social partners’ joint actions and capacity building be dedicated to the implementation of European social dialogue outcomes. This approach was confirmed by Member States and European as well as national social partners in the ESF Management Committee in November 2007 (see Chapter 7).

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## Chapter 6

# Review of European legislation 2006-08

*The EU has among its objectives the promotion of employment, improved working conditions, and dialogue between management and labour (Article 136 of the EC Treaty). In contrast to other regional trade areas, like NAFTA, Mercosur and ASEAN, the EU has the competence to establish minimum standards to support and complement the activities of its Member States with a view to achieving its objectives (see Chapter 1). Over the years, a considerable body of EU law has been adopted and subsequently implemented in the Member States.*

## 1. Introduction

Since the *Industrial Relations in Europe 2006* report action relating to legislation has been carried out in the fields of labour law, health and safety at work, anti-discrimination and social security. The Commission launched several consultations of the European social partners before submitting proposals in accordance with Article 138 of the EC Treaty.

Given the time since the adoption and/or transposition of some directives, the Commission carried out a review of their application to assess whether they need to be up-dated or clarified. Such a review was carried out in the area of information and consultation of workers.

In addition, the Commission continued to deploy significant efforts to monitor the correct implementation and application of Community law in the enlarged EU. It also provided technical assistance with regard to the implementation of the relevant EU *acquis* in the candidate countries.

Furthermore, the European Court of Justice handed down several important judgments (see boxes below), either following infringement proceedings launched by the Commission or in response to preliminary questions submitted by national tribunals seeking guidance on the interpretation of EU law. Several of these judgments have significant implications for industrial relations in certain Member States, the extent of which in some cases remains to be seen.

## 2. Labour law

### 2.1. Working time and temporary agency work

The Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council continued its first reading of the Commission's legislative proposals to revise the Working Time Directive (Directive 2003/88/EC) and for a directive on temporary agency work. Political agreement was reached on a compromise package under the Slovenian Presidency on 9 June 2008.

On working time, the Council agreed by qualified majority on a common position which would:

- introduce specific provisions about ‘on-call’ time (when a worker has to remain at the workplace ready to work if called upon to do so);
- allow more flexibility about the timing of compensatory rest for missed minimum rest periods;
- introduce a number of extra protective conditions for workers who agree to use the ‘opt-out’ from the normal 48-hour limit to average weekly working time;
- allow Member States to calculate weekly working time over a longer average period (maximum one year);
- support measures to reconcile work and family life, including ensuring that employers inform workers in good time of any major changes to organisation of working time.

On temporary agency work, the Council agreed by near unanimity on a common position which would ensure that the principle of equal treatment, as regards basic working and employment conditions like pay, maternity leave and leave, can apply between temporary agency workers and the workers directly recruited by user companies from day one of their assignments. Different industrial relations practices among the Member States have been accommodated through derogations which can be introduced by collective agreement or — under specific conditions — by agreement between the social partners at national level.

Other features of the proposed directive include the following provisions.

- Temporary agency workers must be informed about permanent employment opportunities in the user enterprise.
- Temporary agency workers will have access to any childcare facilities, as well as canteens and transport services that may be provided by user enterprises for their own employees. They should also be afforded access to childcare facilities provided by their temporary work agencies even when they are between assignments.
- Temporary agency workers should be afforded access to the training provided by user enterprises for their own workers and their training needs should also be assisted in the period when they are between assignments.
- Member States will have to review and justify any restrictions or prohibitions that may have been imposed on the use of temporary agency work.

Both legislative proposals are now in their second reading under the co-decision procedure.

Meanwhile the Commission is finalising a report on the application of the Working Time Directive in the Member States, following reports from national authorities and social partners, which is expected to be presented to the European Parliament and the Council during the second half of 2008.

## **2.2. Employee involvement**

### ***2.2.1. Revision of the European Works Councils Directive***

**The Commission adopted a proposal for a Directive recasting Directive 94/45/EC on European Works Councils (EWC) in the context of the renewed Social Agenda on 2 July 2008 <sup>(51)</sup>.** On 20 February 2008, the European social partners were consulted on the objectives and content of the proposal envisaged by the Commission, and were invited to

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<sup>(51)</sup> COM(2008) 419 of 2 July 2008.

start negotiations on updating and improving the way European works councils operate, with a view to revising the existing legislation <sup>(52)</sup>. They could, however, not agree to start such negotiations.

European works councils currently operate in 820 major companies across the EU, covering some 14.5 million employees. They have a key role in anticipating and managing the social dimension of change in large enterprises Europe-wide. They also contribute to improving corporate governance, a key factor in sustaining competitiveness.

The revision of the 1994 directive governing European works councils is one of the Commission's legislative priorities for 2008. It is part of the renewed Lisbon strategy and of the Commission's 'Better regulation' programme. It adds to the promotion of best practice, for which the European Union continues to provide substantial aid to social partners.

The Commission considers that a Community initiative could meet the following objectives. Firstly, ensure the effectiveness of employees' transnational information and consultation rights, currently lacking in a significant proportion of situations. Secondly, increase the take up of EWCs. Thirdly, resolve the problems identified in the practical application of the directive and remedy the lack of legal certainty resulting from some of its provisions or the absence of certain provisions. Finally, ensure consistency with Community legislation on information and consultation of employees.

#### **Box 6.1: Stakeholder views on the European Works Councils Directive**

In April 2004, the Commission launched the first phase of consultation of the social partners on a review of the directive. This consultation showed a divergence of opinion with employees' organisations in favour of a revision and employers' organisations opposed to it. While all social partners agreed on the usefulness of European works councils and the benefits of a clear procedure guaranteeing the timely information and consultation of workers, they noted that it is difficult to organise useful information and consultation without delays and uncertainties and that getting all workers to accept a European works council constitutes a challenge.

In March 2005, the Commission again consulted the European social partners simultaneously on the restructuring of undertakings and on the 'best-practice' aspect of European works councils, encouraging them to negotiate with a view to reaching agreement on the requisite ways and means for promoting best practice. The social partners have included promotion and evaluation of their joint conclusions on European works councils in their 2006–08 work programme.

The European Parliament has given its views on European works councils on several occasions. In its resolution of 10 May 2007 on strengthening European legislation in the field of information and consultation of workers, it called on the Commission to update this legislation in order to ensure a coherent and efficient framework of law, guarantee legal certainty and improve the linking of the social dialogue at the national and the European levels, and to present to it a timetable, in particular for the 'long-awaited revision of the Directive on European Works Councils'.

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<sup>(52)</sup> COM(2008)660 of 20.2.2008.

The European Economic and Social Committee has also delivered opinions on European works councils, the most recent of which, in 2006, recommended ‘rapid updating’ of certain points in the directive.

### ***2.2.2. Review of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community***

**On 17 March 2008, the Commission adopted a communication on the review of the application of Directive 2002/14/EC in the EU.** This communication summarises the main characteristics of the transposition of Directive 2002/14/EC in the 27 EU Member States, sets out the conclusions drawn from the analysis of the transposing measures, and takes a position on the review of the application of the directive. It points out that the implementation of the directive represents an important step forward in the consolidation of the right to information and consultation of employees across the EU, and that a particularly significant impact is expected in the Member States which did not previously have a general, permanent and statutory system of information and consultation. It notes, however, that the directive has not yet deployed its full impact, and that more time is needed before a definite assessment on a possible revision can be made. It concludes that it is not justified to propose amendments to the directive, with the exception of the inclusion of seafarers in its scope of application (see point 2.4). The main challenge now is to ensure its correct transposition and enforcement, through monitoring and control of its implementation, whilst stepping up efforts geared to awareness raising, exchange of best practices, research and capacity building of the concerned stakeholders. (For empirical research on developments concerning workers’ representation at company level see Chapter 3 of *Industrial Relations in Europe 2006*.)

### ***2.2.3. Transnational company agreements***

**On 2 July 2008, a staff working document and a study report were issued on the role of transnational company agreements in the context of increasing international integration** <sup>(53)</sup>. In the context of the renewed Social Agenda, the document emphasises the role and the potential of transnational company agreements in today’s increasingly international business environment. It is intended as input to the debate on such agreements and on the contribution of different stakeholders to their development.

The growing need to anticipate developments in terms of employment, restructuring and managing human resources throws down new challenges for both management and workers in transnational companies. Against the backdrop of new approaches to dialogue and corporate social responsibility, companies and workers’ representatives have begun agreeing texts in various forms, which are to be applied in more than one Member State. The Commission has listed 147 joint transnational texts in 89 companies, most of which have been concluded since 2000, affecting nearly 7.5 million workers across the world. These texts include worldwide international framework agreements on fundamental rights and social responsibility as well as texts addressing specific European issues such as anticipation of change and management of restructuring, development of joint health and safety standards, common strategies on equal opportunities, a mechanism for transnational financial participation, rules on cross-border data protection, joint principles on human resources policy, training or mobility.

Some practical, legal and political questions for the social actors and the European Union are related to the potential discrepancies between the transnational scope of texts concluded and

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<sup>(53)</sup> SEC(2008) 2155 of 2 July 2008.

national norms and references. The documents provide for a mapping of existing texts, analyse their development, and propose a number of practical measures to the social partners, the EU institutions and the other stakeholders (see also Box 1.4 in Chapter 1)

### ***2.3. Review of Directive 2001/23/EC on transfer of undertakings***

**On 20 June 2007, the Commission launched a first-stage consultation of the European social partners on the need to amend Directive 2001/23/EC to clarify its application to cross-border transfers of undertakings with a change in the place of work.**

In its communication of 18 June 2007, the Commission analysed the effects of this directive in the EU Member States. It concluded that by achieving the correct balance between the protection of employees and the freedom to pursue an economic activity, the directive has made a major contribution to ensuring that numerous restructuring operations in Europe are socially more acceptable.

The Commission pointed out, however, that the directive does not deal explicitly with cross-border transfers, although it does apply to transfers in which the undertaking being transferred ‘falls within the territorial scope of the Treaty’. It considered that this can cause uncertainty on the part of employers and employees. Consequently, it requested the opinion of the social partners at Community level on the eventual need to amend this directive to cover explicitly this issue.

The social partners replied, in essence, that no problems have been detected so far that could not be dealt with by the existing legal instruments of Community or private international law. Taking into account these replies, the Commission decided not to pursue further, for the time being, the procedure for amending the directive. However, it will continue to monitor developments in this field in order to gather more information and evidence in this regard.

### ***2.4. Review of the regulatory social framework concerning seafarers***

**On 10 October 2007, the Commission launched a first-stage consultation of the European social partners on reassessing the regulatory social framework for more and better seafaring jobs in the EU.** This consultation aimed to strengthen the social dimension of maritime policy and to make the sector more attractive without undermining its competitiveness. It was a follow up to last year's Green Paper on the Future of Maritime Policy and part of the EU maritime package adopted also on 10 October 2007.

The maritime sector is currently excluded from the scope of part of EU labour and social legislation and this situation was reassessed in close cooperation with the social partners. The Commission reviewed the pertinent legislation, identified exclusions or derogations affecting workers in maritime professions and pointed out problems raised by the practical application as well as difficulties of interpretation of such legislation.

The social partners were invited to take a position on the Commission's analysis and to assess priority areas for action. They were requested, in particular, to express their opinions on which ‘exclusions’ could be suppressed because they are not/no longer justified or which may need to be adapted. The social partners were also asked to provide input on what means of action would be appropriate in order to improve the social security protection of workers in seagoing professions and to improve health and safety on board, in particular on small fishing vessels.

Table 6.1 gives an overview of all Article 138 consultations of the last two years.

**Table 6.1: Article 138 consultations 2006–08**

Date	Subject	Social partners' contribution	Result
2006	Musculoskeletal disorders	First phase of consultation November 2004 to January 2005.  Second phase planned for second half of 2006.	Framework of actions ('agreement') in the agriculture sector
2006	Strengthening of maritime labour standards	First phase of consultation in 2006	Agreement on Maritime Labour Standards
2006	Blood-borne infections due to needlestick injuries	First phase of consultation in 2006 Second phase in 2007	
2007	Carcinogens, mutagens and reprotoxic substances	First phase of consultation in 2004 Second phase in 2007	Multisectoral agreement on crystalline silica
2007	Reconciliation of professional, private and family life	First phase of consultation in 2006 Second phase in 2007	Negotiations on revising the parental leave agreement
2007	Cross-border transfers of undertakings, businesses or parts of undertakings or businesses	First phase of consultation in 2007	
2007	Regulatory social framework for more and better seafaring jobs in the EU	First phase of consultation in 2007	
2007	Active inclusion of the people furthest from the labour market	First phase of consultation in 2007	Negotiations on a framework agreement on the integration of disadvantaged groups on the labour market
2008	European works councils (EWC)	First phase of consultation in 2004 Second phase in 2008	Commission proposal for recast of EWC Directive; 'joint advice' of the ETUC and BUSINESSEUROPE to European Parliament and the Council of Ministers
All consultations are available on the social dialogue website ( <a href="http://ec.europa.eu/socialdialogue">http://ec.europa.eu/socialdialogue</a> ) 'Consultations (Art. 138)'.			

## 2.5. Posting of workers

**On 13 June 2007, the Commission issued a communication entitled 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers' and on 3 April 2008 a Recommendation on enhanced administrative cooperation in this context.**

The Commission communication on posting of workers examined the situation and developments in the Member States, in particular following its guidance of 4 April 2006, and identified the next steps with a view to remedying the shortcomings in the implementation, application and enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

As a follow-up to this communication, the Commission adopted a Recommendation on enhanced administrative cooperation in the context of the posting of workers.

This act contains a number of concrete recommendations focusing in particular on (a) enhancing administrative cooperation between the Member States, through the use of a more



effective system of exchange of information, such as the internal market information system (IMI), (b) improving access to information for service providers and posted workers, and (c) promoting exchange of information and best practices among Member States through the setting up of a High-Level Committee.

## **2.6. Facilitation and monitoring of implementation in the Member States**

### *2.6.1. Transposition/application reports*

In the past two years, the Commission has prepared a number of reports concerning the transposition and/or application of certain directives in the area of EU labour law. In particular, on 7 July 2006 it issued a report on the operation of the provisions of Directive 2003/88/EC (organisation of working time for workers concerned with the carriage of passengers on regular urban transport services) and on 22 December 2006 a report on the operation of the provisions of Directive 2003/88/EC applicable to offshore workers. On 11 August 2006, a Commission staff working document was published on the implementation in the EU-15 of Directive 1999/70/EC concerning fixed-term work. Another Commission staff working document of 17 March 2008 dealt with the transposition of Directive 2002/14/EC on information and consultation of employees.

### *2.6.2. Monitoring of implementation of directives*

Following the 2004 enlargement, the Commission launched a wide-ranging series of studies with the aim of reviewing the process of implementation of the EU labour law *acquis* in the enlarged European Union. The studies covered not only the EU-10 as regards the transposition and application of all directives in the field of labour law, but also the EU-15 Member States as regards the more recent *acquis*.

The studies were prepared by independent national experts and are published on the website of the Directorate-General for Employment, Social Affairs and Equal Opportunities. Given that the studies do not deal with Romania and Bulgaria, the Commission envisages new studies to cover these countries. These studies are expected to be finalised by mid-2009.

In line with its communication entitled ‘A Europe of results — applying Community law’<sup>(54)</sup>, the Commission lays great emphasis on monitoring the correct transposition and application of the labour law directives. Following complaints or on the basis of its own findings, it cooperated with the Member States concerned to resolve the issues. Where it was not possible to find a solution, it launched infringement proceedings for non-notification and/or incorrect implementation of the EU legislation, which led in some cases to judgments by the Court of Justice of the European Communities. The Commission intends to use the results of the studies as well as its own reports on the application of the directives to ensure better enforcement of the Community law focusing on the priority categories of cases described in its 2007 communication.

## **2.7 Green Paper and follow-up**

The Green Paper on ‘Modernising labour law to meet the challenges of the 21st century’ was launched by the European Commission in order to identify the key challenges in adapting labour law to the changing realities of the world of work; to engage all stakeholders in an open debate about how labour law can assist in promoting flexibility and security; to stimulate discussion on how flexible contractual relations combined with basic rights can

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<sup>(54)</sup> COM(2007) 502.

facilitate job creation and promote transitions in the labour market; and to contribute to the 'Better regulation' agenda.

The Commission's communication on the outcome of the public consultation on the Green Paper on Labour Law was adopted on 24 October 2007. The debate launched by the Green Paper became a focus for public opinion and media interest throughout the EU, stimulating consultation processes at national level between governments and their social partners, public authorities and independent experts. At the EU level, the Green Paper was discussed at the EPSCO Council and was the subject of an own initiative resolution adopted by the European Parliament on 11 July 2007. The European Economic and Social Committee also adopted an opinion on the Green Paper. Overall the responses reflected a deep awareness of the challenges presented by the emerging European labour market — which is being shaped by increased labour mobility and transnational corporate activity.

The Commission's follow-up communication presented the results of this extensive public consultation process. Over 450 opinions had been received from a wide range of stakeholders in the EU and beyond — including Member States, national parliaments, social partners, social NGOs, enterprises, legal experts and individuals. The responses have been made available on the Commission's Europa website<sup>(55)</sup>. A Commission staff working document also provided a detailed summary of the responses received.

Despite great divergence in the content of the responses, the results of the consultation highlighted the central role that labour law is deemed to play in managing the EU's workforce and providing workers with a sense of security. Overall, contributors expressed a preference for finding solutions primarily through action at national level — involving a variety of approaches reflecting national legal traditions, industrial relations and practice. However, they also showed that there is a strong willingness to test that experience through dialogue and an exchange of good practice at EU level.

The variety of views expressed underlined the relevance and timeliness of the main strands of the debate. It also highlighted areas where labour law reform has a role to play in the efforts of the Member States to frame national policy options and specific national arrangements in the field of flexicurity.

The social partners put strong emphasis on the need to address the modernisation of labour law as part of a broader flexicurity agenda, acknowledging that labour law is only one component of a flexicurity approach. Their responses revealed a common concern to reduce the segmentation of labour markets and to harness education and training measures to assist individuals in their career development. They also showed a shared interest in developing arrangements to strengthen the position of workers in the context of job-to-job transitions through effective active labour market policies combined with employment-friendly social protection systems.

The responses received from social partner organisations at EU, national and sectoral levels placed strong emphasis on the need to avoid a uniform top-down EU approach to promoting flexicurity policies including labour law reform and flexible contractual arrangements. They shared the view that no single model of flexicurity policies can be applied everywhere since each country has to decide itself on the sequence of reforms and on the different components of the policy mix to be put in place. While employers considered that competence to modernise labour law lies primarily at national level, trade unions favoured the development of an EU-wide supportive legal framework. The European social partners emphasised their

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<sup>(55)</sup> [http://ec.europa.eu/employment\\_social/labour\\_law/green\\_paper\\_responses\\_en.htm](http://ec.europa.eu/employment_social/labour_law/green_paper_responses_en.htm)

shared commitment to joint initiatives such as the analysis of key labour market challenges, a framework of action on employment and an autonomous agreement for the facilitation of access to and progression in the labour market for workers at risk (see Chapter 4).

The responses to the public consultation on the Green Paper provide useful information on national legal systems and on emerging European labour market issues. Issues raised include the challenges of greater cross-border mobility and the extended scope of transnational business operations throughout the EU. While the Commission decided not to propose any new legislative initiatives on the issues raised in the Green Paper, it nonetheless identified a number of areas that should, in its view, act as a basis for further discussion so as to achieve more cooperation, clarity and better information and analysis. They pick up on a number of themes of the consultation, namely:

- the prevention and combating of undeclared work, especially in cross-border situations;
- the promotion, development and implementation of training and lifelong learning to ensure greater employment security over the life cycle;
- the interaction between labour law and social protection rules in support of effective employment transitions and sustainable social protection systems;
- the clarification of the nature of the employment relationship to promote greater understanding and facilitate cooperation across the EU;
- the clarification of the rights and obligations of the parties involved in subcontracting chains, to avoid depriving workers of their ability to make effective use of their rights.

The Commission's communication marked the end of the public consultation process on the Green Paper. It is envisaged that the topics that the Commission has identified as areas for continued discussion might usefully be addressed by Member States and their national social partners in the context of the preparation of their national reform programmes under the EU's Jobs and Growth Strategy, particularly in the light of the adoption of common principles on flexicurity<sup>(56)</sup>. Similarly, they might be addressed in the context of social dialogue at sectoral or cross-industry level whether within Member States or at EU level. Already the Commission is aware of proposals for improving information and analysis on topics addressed in the Green Paper that have featured among proposals for studies submitted for support under the Community financial instrument PROGRESS. The Commission will be examining further avenues for improving information and analysis in these areas.

### **Main judgments of the European Court of Justice in the field of labour law in 2006–07**

On the Working Time Directive, two judgments about the right to paid annual leave are worth mentioning. In Case **C-124/05**<sup>(57)</sup> the ECJ ruled that Article 7(2) of the directive precludes a national provision which, during a contract of employment, permits days of annual leave which are not taken in the course of a given year, to be replaced by an allowance in lieu in the course of a subsequent year. In Joined Cases **C-131/04 and 257/04**<sup>(58)</sup> the Court further ruled that Article 7 of the directive precludes part of the remuneration payable to a worker for work done from being attributed to payment for annual

<sup>(56)</sup> See EPSCO Council conclusions of 5 and 6 December 2007 in Doc 15497/07 defining common principles on flexicurity (<http://register.consilium.europa.eu/pdf/en/07/st15/st15497.en07.pdf>).

<sup>(57)</sup> Judgment of the Court (First Chamber) of 6 April 2006, *Federatie Nederlandse Vakbeweging* [2006], ECR I-3423

<sup>(58)</sup> Judgment of the Court (First Chamber) of 16 March 2006, *Robinson-Steele* [2006] ECR I-2531.

leave without the worker receiving, in that respect, a payment additional to that for work done; it also ruled that Article 7(1) of the directive precludes payment for minimum annual leave from being made in the form of part payments staggered over the corresponding annual period of work and paid together with the remuneration for work done, rather than in the form of a payment in respect of a specific period during which the worker actually takes leave.

A further judgment of the Court, in Case **C-484/04** <sup>(59)</sup>, considered the definition of ‘autonomous workers’ in the derogation at Article 17(1) of the working-time directive and the obligations of Member States and of employers to promote observance of workers’ rights to minimum daily and weekly rests under Articles 3 and 5 of the directive.

As for Directive 2001/23/EC (transfer of undertakings) two judgments are worth mentioning: (i) in Case **C-499/04** <sup>(60)</sup> the Court ruled that Article 3(1) of the directive does not preclude, in a situation where the contract of employment refers to a collective agreement binding the transferor, that the transferee, who is not party to such an agreement, is not bound by collective agreements subsequent to the one which was in force at the time of the transfer of the business; (ii) in Case **C-458/05** <sup>(61)</sup> the Court ruled that Article 1(1) of the directive applies to a situation where part of the administrative personnel and part of the temporary workers are transferred to another temporary employment business in order to carry out the same activities in that business for the same clients and the assets affected by the transfer are sufficient in themselves to allow the services characterising the economic activity in question to be provided without recourse to other significant assets or to other parts of the business.

As for Directives 75/129/EEC and 98/59/EC (collective redundancies) two judgments are significant: (i) in joined Cases **C-187/05 to C-190/05** <sup>(62)</sup> the Court ruled that the directive is applicable in the case of collective redundancies that result from the definitive termination of the operation of an undertaking or establishment which has been decided on by the employer of his own accord without a prior judicial decision; (ii) in Case **C-270/05** <sup>(63)</sup> the Court ruled that an ‘establishment’, in the context of an undertaking, may consist of a distinct entity, having a certain degree of permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure allowing for the accomplishment of those tasks; the entity in question need not have any legal autonomy, nor need it have economic, financial, administrative or technological autonomy; is not essential either, for the unit in question to be endowed with a management which can independently effect collective redundancies; nor must there be a geographical separation from the other units and facilities of the undertaking.

As for Directive 1999/70/EC (fixed-term work), one of the directives based on a European

<sup>(59)</sup> Judgment of the Court of 7 September 2006, *Commission v United Kingdom* [2006] ECR I-7471 (OJ C 261, 28.10.2006, p. 3).

<sup>(60)</sup> Judgment of the Court (Third Chamber) of 9 March 2006, *Werhof* [2006] ECR I-2397.

<sup>(61)</sup> Judgment of the Court (Fourth Chamber) of 13 September 2007, *Jouini and Others* [2007] ECR I-7301.

<sup>(62)</sup> Judgment of the Court (First Chamber) of 7 September 2006, *Agorastoudis and Others* [2006] ECR I-7775.

<sup>(63)</sup> Judgment of the Court (First Chamber) of 15 February 2007, *Athinaiki Chartopoiia AE* [2007] ECR I-1499.

<sup>(64)</sup> Judgment of the Court (Grand Chamber) of 4 July 2006, *Adeneler and Others* [2006] ECR I-6057.

<sup>(65)</sup> Judgment of the Court (Second Chamber) of 7 September 2006, *Marrosu and Sardino* [2006] ECR I-7213.

<sup>(66)</sup> Judgment of the Court (Second Chamber) of 7 September 2006, *Vassallo* [2006] ECR I-7251.

<sup>(67)</sup> Judgment of the Court (Second Chamber) of 13 September 2007, *Del Cerro Alonso* [2007] ECR I-7109.

<sup>(68)</sup> Judgment of the Court (Grand Chamber) of 15 April 2008, *Impact*, not yet published in the ECR.

<sup>(69)</sup> Judgment of the Court (Second Chamber) of 18 January 2007, *Confédération générale du travail and Others* [2007] ECR I-611.

<sup>(70)</sup> Judgment of the Court (Grand Chamber) of 18 December 2007, *Laval un Partneri* [2007] ECR I-11767.

<sup>(71)</sup> Judgment of the Court (First Chamber) of 18 July 2007, *Commission v Germany* [2007] ECR I-6095.

<sup>(72)</sup> Judgment of the Court (Second Chamber) of 3 April 2008, *Rüffert*, not yet published in the ECR.

<sup>(73)</sup> Judgment of the Court (Second Chamber) of 25 January 2007, *Robins and Others* [2007] ECR I-1053.

<sup>(74)</sup> Judgment of the Court (Fourth Chamber) of 17 January 2008, *Velasco Navarro* [2008] ECR I-105.

<sup>(75)</sup> Judgment of the Court (Fourth Chamber) of 21 February 2008, *Robledillo Núñez* [2008] ECR I-921.

social partners' framework agreement, five judgments are worth mentioning: (i) in Case **C-212/04** <sup>(64)</sup> the Court ruled that the concept of 'objective reasons' within the meaning of Clause 5 of the framework agreement requires that recourse to fixed-term contracts be justified by the presence of specific factors relating in particular to the activity in question and the conditions under which it is carried out; it also ruled that a national rule under which only fixed-term contracts that are not separated from one another by a period of time longer than 20 working days cannot be regarded as 'successive' within the meaning of Clause 5; (ii) in Cases **C-53/04** <sup>(65)</sup> and **C-180/04** <sup>(66)</sup> the Court recalled the mandatory requirement for the domestic law of the Member States to include effective measures to prevent and, where relevant, punish the misuse of successive fixed-term contracts; (iii) in Case **C-307/05** <sup>(67)</sup>, the Court ruled that in applying the principle of non-discrimination laid down in Clause 4(1) of the framework agreement, one of the constituent parts of the pay should, as an employment condition, be granted to fixed-term workers in the same way as it is to permanent workers; it also ruled that the concept of objective grounds within the meaning of Clause 4 of the framework agreement requires the unequal treatment between fixed-term workers and permanent workers to be justified by the existence of precise and concrete factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose; 4(iv) in Case **C-268/06** <sup>(68)</sup> the Court ruled that an authority of a Member State acting in its capacity as a public employer may not adopt measures contrary to the objective pursued by the directive as regards prevention of the abusive use of fixed-term contracts, which consist in the renewal of such contracts for an unusually long term in the period between the deadline for transposing the directive and the date on which the transposing legislation entered into force; it also ruled that Clause 4 of the framework agreement must be interpreted as meaning that employment conditions within the meaning of that clause encompass conditions relating to pay and to pensions which depend on the employment relationship, to the exclusion of conditions relating to pensions arising under a statutory social-security scheme; furthermore, the Court ruled that Clause 4(1) of the framework agreement is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case, however, as regards Clause 5(1) of the framework agreement.

As for Directive 2002/14/EC (general framework for information and consultation), one case is to be mentioned: in Case **C-385/05** <sup>(69)</sup> the Court ruled that national legislation cannot exclude even temporarily, a specific category of workers from the calculation of staff numbers (this is also valid for the interpretation of Directive 98/59/EC on collective redundancies).

As to Directive 96/71/EC (posting of workers), three judgments are to be mentioned: (i) in Case **C-341/05** <sup>(70)</sup> the Court acknowledged that the right to take collective action for the protection of the workers of the host state against possible social dumping may constitute an overriding reason of public interest within the meaning of the case-law of the Court which, in principle, justifies a restriction of one of the fundamental freedoms guaranteed by the Treaty; the Court ruled, however, that by virtue of Article 49 of the Treaty and Article 3 of the directive a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, is barred from attempting, by means of collective action in the form of a blockade of sites, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down more favourable conditions than those resulting from the relevant legislative

provisions, while other terms relate to matters not referred to in Article 3 of the directive; (ii) in Case **C-490/04** <sup>(71)</sup> the Court considered that the obligation to have translation of four documents (the employment contract, pay slips, time-sheets and proof of payment of wages) in the context of posting of workers does not go beyond what is necessary to achieve the objective sought, namely social protection, and is therefore justified; (iii) in Case **C-346/06** <sup>(72)</sup> the Court ruled that the directive, interpreted in the light of Article 49 EC, precludes an authority of a Member State, in a situation such as that at issue in the main proceedings, from adopting a measure of a legislative nature requiring the contracting authority to designate as contractors for public works contracts only those undertakings which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the remuneration prescribed by the collective agreement in force at the place where those services are performed; in its findings, the Court had noted that the collective agreement at stake had not been declared universally applicable by Germany.

As to Directive 80/987/EEC (insolvency of the employer), three judgments are to be mentioned: (i) in Case **C-278/05** <sup>(73)</sup> the court ruled that where the employer is insolvent and the assets of the supplementary company or inter-company pension schemes are insufficient, accrued pension rights need not necessarily be funded by the Member States themselves or be funded in full; it also ruled that a national system of protection that may, in certain cases, lead to a guarantee of benefits of less than half of the benefits to which an employee was entitled, cannot be considered to fall within the definition of the word ‘protect’ used in the directive; (ii) in Case **C-246/06** <sup>(74)</sup>, the court ruled that where rules of national law fall within the scope of the directive, the national courts are bound, as regards a state of insolvency occurring between the date of its entry into force and the deadline for transposition into national law, to ensure that the application of those rules of national law is consistent with the principle of non-discrimination, as recognised by the Community legal order; (iii) in Case **C-498/06** <sup>(75)</sup>, the Court ruled that the first paragraph of Article 3 is to be interpreted as meaning that a Member State has the power to exclude compensation granted for unfair dismissal from the payment guarantee of the guarantee institutions pursuant to that provision where they have been recognised by an extra-judicial conciliation settlement and such exclusion, objectively justified, constitutes a measure necessary to avoid abuses within the meaning of Article 10(a) of that directive.

### **3. Health and safety of workers**

#### **3.1 Community strategy on health and safety at work**

**On 21 February 2007, the Commission adopted a communication on improving quality and productivity at work: Community strategy 2007–12 on health and safety at work** <sup>(76)</sup>.

The new strategy aims to increase the productivity and competitiveness of European enterprises by effectively reducing the rate of accidents at work, occupational diseases and absenteeism. It continues the activities initiated by the 2002–06 strategy, focusing more on the new challenges in order to permanently improve prevention of occupational hazards, encourage a true culture of prevention, promote a longer working life and reconcile social progress and economic prosperity, sustainable growth and social cohesion, and promotion of decent work on the international stage. The overall objective should be to aim for a 25 %

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<sup>(76)</sup> COM(2007) 62 final.

reduction in the total incidence rate of accidents at work by 2012. In order to achieve this ambitious goal, the following main instruments are proposed.

- Guarantee the proper implementation of EU legislation.
- Support SMEs in the implementation of the legislation in force.
- Adapt the legal framework to changes in the workplace and simplify it, particularly in view of SMEs.
- Promote the development and implementation of national strategies.
- Encourage changes in the behaviour of workers and encourage their employers to adopt health-focused approaches.
- Finalise the methods for identifying and evaluating new potential risks.
- Improve the tracking of progress.
- Promote health and safety at international level.

In the meantime, the Council<sup>(77)</sup>, the European Parliament<sup>(78)</sup>, the Committee of the Regions<sup>(79)</sup> and the European Economic and Social Committee<sup>(80)</sup> have welcomed the adoption of the strategy, but wished for more emphasis on the issue of health at work and the prevention of occupational illnesses.

### 3.2. Violence at work

As reported in Chapter 4, on 26 April 2007 the social partners concluded an autonomous framework agreement on harassment and violence at work that was followed by initiatives of several sectoral European social partners, including on third party violence.

### 3.3. Risks arising from physical agents

#### 3.3.1. Electromagnetic fields

**On 23 April 2008, the European Parliament and the Council adopted Directive 2008/46/EC amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)<sup>(81)</sup>.**

The directive postpones by four years, until 30 April 2012, the deadline for the transposition of this directive to allow a full analysis of studies regarding the potential negative impact of the exposure limit values set by the directive on the medical use of MRI and, pending the results of the review of the recommendations of the International Commission for Non-Ionising Radiation Protection, to take into account the environmental health criteria for electromagnetic fields of the World Health Organisation. The directive further allows for an in-depth impact analysis to be done of the provisions of Directive 2004/40/EC and to propose amendments to it in order to guarantee both a high level of health and safety protection for workers and the continuation and development of medical and industrial activities using electromagnetic fields.

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<sup>(77)</sup> Council resolution of 25 June 2007 on a new Community strategy on health and safety at work (2007–12) (OJ C 145, 30.6.2007, p. 1).

<sup>(78)</sup> European Parliament resolution of 15 January 2008 on the Community strategy 2007–12 on health and safety at work.

<sup>(79)</sup> Opinion of 28 November 2007 of the Committee of the Regions on the Community strategy 2007–12 on health and safety at work.

<sup>(80)</sup> Opinion of 29 May 2008, CESE 372/2008.

<sup>(81)</sup> OJ L 114, 26.4.2008, p. 88.

### *3.3.2. Vibrations*

**A guide to good practice with a view to implementation of Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibrations) has been published.**

This non-binding guide aims to facilitate the assessment of risks from exposure to hand–arm and whole-body vibrations, the identification of controls to eliminate or reduce exposure, and the introduction of systems to prevent the development and progression of injury. It contains a number of good-practice examples.

### **3.4. Risks arising from chemical agents**

**On 5 April 2006, the Commission adopted Decision 2006/275/EC amending Decision 95/320/EC setting up a Scientific Committee for Occupational Exposure Limits to Chemical Agents in order to adapt it to the enlarged EU.**

The decision aims to ensure that the committee provides impartial scientific opinions of a high quality, that its members are independent and highly qualified and that a high level of efficiency is maintained. The committee will be composed of a maximum of 21 members, selected from Member States' proposals of suitable candidates and appointed by the Commission.

### **3.5. Musculoskeletal disorders**

**On 14 March 2007, the second-stage consultation of the social partners on the issue of musculoskeletal disorders at work was launched by the Commission.**

Work-related musculoskeletal disorders are one of the major safety and health problems affecting both women and men in all sectors of activity throughout the European Union. There are specific legal provisions focusing on work-related musculoskeletal disorders: Directives 90/269/EEC (manual handling of loads), 90/270/EEC (display screen equipment) and 2002/44/EC (vibration). However, work-related musculoskeletal disorders are not addressed in a comprehensive manner in the existing legislation.

The Commission consulted the social partners at European level on the content of a Community initiative addressing all significant risk factors of work-related musculoskeletal disorders and laying down minimum health and safety requirements for the protection of workers from problems due to the exposure to these risk factors in all workplaces.

### **3.6. Carcinogens or mutagens**

**On 16 April 2007, the second-stage consultation of the social partners on a possible amendment of Directive 2004/37/EC was launched by the Commission.**

The Commission consulted the European social partners on the content of a Community initiative aiming to extend the scope of the Carcinogens and Mutagens Directive to substances toxic for reproduction, to revise the occupational exposure limits values (OELVs) for carcinogens listed in the directive, and to establish OELVs for some carcinogens, mutagens and reproductive toxicants not yet included in the directive. The Commission will analyse and evaluate the opinions with a view to deciding the policy options for possible Community action in this area.



### 3.7. Work equipment

**A guide to good practice for implementing Directive 2001/45/EC (work at a height) <sup>(82)</sup> was published in 2007.**

This non-binding guide is aimed not only at all employers that regularly use work equipment for temporary working at heights, particularly where there is the risk of falling (e.g. the construction sector), but also at those in any other sectors who from time to time have to carry out temporary work operations at a height and who must therefore use equipment designed for this purpose. It can help employers and the self-employed to assess the risks associated with work at a height and to choose the most suitable equipment, so that the work can be carried out without danger to the safety or health of workers.

### 3.8. Implementation and simplification of health and safety directives

#### *3.8.1. Practical implementation reports*

**On 20 June 2007, the European Parliament and the Council adopted Directive 2007/30/EC amending Council Directive 89/391/EEC, its individual directives and Council Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC with a view to simplifying and rationalising the reports on practical implementation <sup>(83)</sup>.**

The directive aims to simplify and rationalise the obligation imposed on Member States in Community directives in the field of health and safety at work to submit practical implementation reports. The frequency of submission of the reports is fixed at five years for all directives. In addition, Member States will establish one single practical implementation report covering all directives, containing a part with the general principles and specific chapters relating to the different directives concerned.

### 3.9. Statistics on health and safety at work

**On 7 February 2007, the Commission adopted a proposal for a Regulation on community statistics on public health and health and safety at work <sup>(84)</sup>.**

The proposal aims at establishing the framework for the systematic production of statistics in these two areas, in the form of a minimum data set, carried out by the European statistical system, i.e. Eurostat, the national statistical institutes and all other national authorities responsible for the provision of official statistics in these areas. The reason is to have a global and coherent approach to responding to policy needs and to promote synergies since health issues at work and outside the workplace, and their different elements, are linked; when relevant, some statistical collections can usefully be carried out for both areas together, using common tools such as population surveys. The proposed regulation sets the general principles and describes the main contents of the related data collections.

## 4. Equality rights in employment

### 4.1. Anti-discrimination directives: implementation, impact and future developments

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<sup>(82)</sup> ISBN 978-92-79-06511-8.

<sup>(83)</sup> OJ L 165, 27.6.2007, pp. 21–24.

<sup>(84)</sup> COM(2007) 46 final.

**Two anti-discrimination directives (2000/43/EC<sup>(85)</sup>, the Racial Equality Directive, and 2000/78/EC<sup>(86)</sup>, the Employment Equality Directive) were adopted in 2000. All Member States have now amended their national legislation in order to transpose the racial equality and employment equality directives. The Commission places great emphasis on the correct transposition and application of these directives in practice.**

Without a full and correct transposition of the directives, individuals will not be able to rely upon their right to non-discrimination. The Commission has therefore initiated infringement proceedings against Member States that have not correctly transposed the directives and has issued in this regard reasoned opinions to the concerned Member States on 27 June 2007 concerning Directive 2000/43/EC and on 31 January 2008 concerning Directive 2000/78/EC<sup>(87)</sup>.

Reports by the Commission on the application of the Racial Equality Directive and the Employment Equality Directive were adopted in 2006 and 2008<sup>(88)</sup>. Furthermore, a network of independent legal experts in anti-discrimination law reports regularly on developments in the Member States<sup>(89)</sup>.

The directives have helped to raise significantly the level of protection against discrimination across the EU, and to provide a uniform level of protection across the EU. They have led to the introduction of legal provisions covering certain grounds in some Member States for the first time (particularly sexual orientation and age). They have clarified rights and obligations by introducing new, detailed definitions of direct discrimination, indirect discrimination and harassment. The case-law at European level remains limited at present. However, it can already be noted that cases referred to the Court of Justice of the European Communities relate to ‘new’ grounds of discrimination such as disability<sup>(90)</sup>, sexual orientation<sup>(91)</sup> and, in particular, age (see box).

### **ECJ rulings on discrimination**

The Court has ruled or is in the process of ruling on a number of cases related to age discrimination. Two cases are worth noting.

- In *Mangold*<sup>(92)</sup>, a German law allowed workers over 52 to be hired on a succession of short-term contracts, in order to encourage recruitment by employers. The Court of Justice of the European Communities held that the aim of increasing the employability of older workers was legitimate, but the measure did not respect the principle of proportionality, as it was deemed to be too wide in scope and the aim could have been achieved in a less discriminatory way.
- In *Palacios de la Villa*<sup>(93)</sup>, the Court of Justice of the European Communities considered that rules on age did not need to be explicitly justified to be valid, but that such justification should be clear from the elements available in each particular case.

<sup>(85)</sup> OJ L 180, 19.7.2000, p. 22.

<sup>(86)</sup> OJ L 303, 2.12.2000, p. 16.

<sup>(87)</sup> See more details under [http://ec.europa.eu/employment\\_social/fundamental\\_rights/legis/lginfringe\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/legis/lginfringe_en.htm)

<sup>(88)</sup> See [http://ec.europa.eu/employment\\_social/fundamental\\_rights/legis/lgenforce\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/legis/lgenforce_en.htm)

<sup>(89)</sup> See [http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/policy/aneval/legnet\\_en.htm](http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/legnet_en.htm)

<sup>(90)</sup> Judgment of 11 July 2006, Case C-13/05 *Chacón Navas* [2006] ECR I-6467.

<sup>(91)</sup> Judgment of 1 April 2008, Case C-267/06, *Maruko*, not yet published in the ECR.

<sup>(92)</sup> Judgment of 16 October 2007, Case C-144/04 *Mangold* [2005] ECR I-9981.

<sup>(93)</sup> Judgment of 16 October 2007, Case C-411/05 *Palacios de la Villa* [2007] ECR I-8531; other cases related to age discrimination are pending before the ECJ, in particular Case C-87/06 *Pascual García* and Case C-388/07 *The Incorporated Trustees of the National Council for Ageing*.

Both cases give some indication as regards the type of ‘justification test’ required: even if national authorities have broad discretion as to social policy choices, it is essential to ensure in each particular case that the measure is suited and proportionate to the aim (for example by avoiding measures that rely solely on age and by relying on other relevant criteria as well).

In *Coleman* (<sup>94</sup>) the Court ruled that the prohibition of discrimination laid down by the Council Directive on equal treatment in employment and occupation, including irrespective of disability (2008/78/EC)<sup>95</sup> is not limited only to people who are disabled themselves, but should be extended to a person who is associated with a person with disability and has been **discriminated against by reason of that association**. The Court confirmed that where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the **disability** of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination. Equally this interpretation is valid for the prohibition of harassment.

## 4.2. Equality between women and men

### 4.2.1. *Consultation of the European social partners on the issue of reconciliation of work, private and family life*

**The Commission consulted the European social partners in a first (12 October 2006) and second (30 May 2007) consultation on reconciliation. In response, the European social partners made several commitments, in particular to open negotiations to revise their agreement on parental leave from 1995, which was implemented via Directive 96/34/EC of 3 June 1996.** For further information, see Chapter 4, ‘Reconciliation of professional, private and family life’ section.

### 4.2.2. *Communication entitled ‘Tackling the pay gap between women and men’*

**On 18 July 2007, the Commission adopted a communication entitled ‘Tackling the pay gap between women and men’. The pay gap between men and women was, in 2005, estimated at 15 %, only two points below its level in 1995, in contrast to the marked and continuous increase in the female employment rate.**

The Commission stresses that tackling the gender pay gap is a political priority. Four areas of action have been identified: (a) exploring ways to improve the legislative framework and its implementation; (b) exploiting to the full the European Strategy for Growth and Jobs; (c) encouraging employers to respect equal pay; and (d) supporting the exchange of good practice at Community level.

The Commission recognises that the current legislation has contributed to progress for women in the labour market, in particular with regard to eliminating direct discrimination. But it has been far less effective in ensuring respect of the principle of equal pay for work of

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<sup>94</sup> Judgment of 17 July 2008, Case C-303/06 *Coleman*

<sup>95</sup> [http://ec.europa.eu/employment\\_social/news/2001/jul/directive78ec\\_en.pdf](http://ec.europa.eu/employment_social/news/2001/jul/directive78ec_en.pdf)

equal value. Changes to the Community legal framework could be examined to ensure that direct and indirect discrimination based on sex is excluded from the systems used to set pay.

The Commission is currently analysing the current legislation on the gender pay gap and will propose, where necessary, amendments to the Community legal framework. For empirical evidence on the relationship between wage bargaining institutions and the gender pay gap, see Chapter 3.

#### *4.2.3. Monitoring of the implementation of Community law*

The Commission attributes utmost importance to a reinforced control of the proper implementation of Community law in the Member States. In particular, it is currently examining the transposition of Directive 2002/73/EC amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. It is further carrying out a thorough analysis of the implementation of the entire *acquis communautaire* in the field of equal treatment of men and women in the new Member States.

The Commission has also initiated infringement proceedings against nine Member States for non-communication of their national measures transposing Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

### **5. Free movement of workers and social security**

#### **5.1. Coordination of social security schemes**

##### *5.1.1. Amending regulations on the coordination of social security schemes*

The Council and the European Parliament adopted Regulation (EC) No 629/2006 on 5 April 2006, and Regulation (EC) No 1992/2006 on 18 December 2006. These regulations are two of the regular amending regulations of Regulation (EEC) No 1408/71 on the coordination of social security schemes. It is necessary to regularly update Regulation (EEC) No 1408/71 in order to take into account changes in national social security legislation, and the case-law of the Court of Justice of the European Communities.

##### *5.1.2. Regulation (EC) No 1791/2006*

This Council regulation, which was adopted on 20 November 2006, amends (amongst others) Regulation (EEC) No 1408/71 following the accession to the EU of Bulgaria and Romania.

##### *5.1.3. Proposal for the implementing regulation of Regulation (EC) No 883/2004 on the coordination of social security schemes and proposal for Annex XI to Regulation (EC) No 883/2004*

These proposals, adopted by the Commission in January 2006, are currently being discussed in the appropriate Council working group. Negotiations are now well advanced.

##### *5.1.4. Proposal for the remaining annexes to Regulation (EC) No 883/2004*

In July 2007 the Commission adopted its proposal for completion of the remaining annexes to Regulation (EC) No 883/2004. This completes two further annexes that are currently empty, and makes additions to the remaining annexes to the regulation, principally to take into account the needs of the 12 Member States who have acceded to the EU since Regulation (EC) No 883/2004 was adopted. Negotiations have begun in the Council working group on this proposal.

#### *5.1.5. Proposal for extending Regulation (EC) No 883/2004 to third-country nationals*

In July 2007 the Commission adopted a proposal for extending the scope of Regulation (EC) No 883/2004 to third-country nationals, as had previously been done for Regulation (EEC) No 1408/71.

#### *5.1.6. Proposals for Council decisions on the position to be taken by the Community within the respective association councils created by the association agreements concerning Algeria, Croatia, the former Yugoslav Republic of Macedonia, Israel, Morocco and Tunisia, with regard to the adoption of provisions on the coordination of social security systems*

On 11 and 12 December 2007, the Commission adopted the above proposals. The association agreements concluded between the European Communities, their Member States and some third countries, notably Tunisia, Morocco, Algeria, Croatia, the former Yugoslav Republic of Macedonia and Israel, contain provisions for a limited coordination of social security systems. In order to give these provisions effect, all of these agreements require a decision of the respective association council laying down the necessary implementing rules. A first discussion on these proposals should take place under the Slovenian Presidency (by the end of June 2008).

## **5.2. Portability of supplementary pension rights**

Discussions have continued under various presidencies on the proposed directive on improving the portability of supplementary pension rights. This proposal aims to ensure that workers who move jobs do not lose occupational pension rights in the process, by addressing acquisition and preservation rules. However, despite strenuous efforts it has not as yet proved possible to reach agreement on the proposal. This is disappointing, because the issue at the heart of this — removing obstacles caused by supplementary pensions to the free movement of workers — remains.

In today's constantly evolving world, being able to change jobs easily or to recruit the right person with the right skills is more important than ever before. Furthermore, the promotion of the adaptability of workers, the flexibility of job markets and the modernisation of social protection systems are cornerstones of the Lisbon strategy.

The Commission will continue its efforts to tackle the issue of portability of occupational pensions and be open to a range of further work on this including looking again at all the options to make progress.

### **Significant ECJ cases in the area of free movement of workers and social security in 2006–08**

#### **Case C-299/05 — *Commission v Parliament and Council* <sup>(96)</sup>**

<sup>(96)</sup> Judgment of the Court of 18 October 2007.

One of the main principles in the coordination of social security schemes is the right to 'export' social security benefits acquired in one Member State to another Member State: in other words, individuals should not lose entitlement to their benefits if they go to live in another Member State. However, there is an exception to this rule for 'special non-contributory benefits', which are mixed social security and social assistance benefits. These benefits are not exportable; Annex IIa to Regulation (EEC) No 1408/71 contains a list of such benefits for each Member State.

Following the introduction of Annex IIa into Regulation (EEC) No 1408/71 in 1992, the Court of Justice of the European Communities was asked on several occasions to consider the benefits that had been listed in that annex, and as a consequence of this case-law, the legislator decided to review the whole coordination system for the special non-contributory benefits, including Annex IIa. As part of the changes to the legislation, Annex IIa was completely replaced, and a number of benefits that had previously been listed in the annex were removed on the grounds that they could not be classed as special non-contributory benefits, but were in fact classic social security benefits within the meaning of Regulation (EEC) No 1408/71. The amending regulation that replaced Annex IIa was Regulation (EC) No 647/2005.

However, the Commission was of the opinion that five further benefits (one for Finland, one for Sweden and three for the UK) should not have been included in the new Annex IIa, and subsequently applied for annulment of the relevant provisions of Regulation (EC) No 647/2005. In its judgment, the Court supported the Commission's reasoning. This means that these benefits are to be treated as classic social security benefits, and must now be paid to beneficiaries resident in other Member States.

#### **Case C-444/05 — *Stamatelaki* <sup>(97)</sup>**

The question raised in this case was whether the Greek legislation which precludes the reimbursement by a national social security organisation of hospital expenses for its insured persons aged over 14 in a private care establishment abroad, constitutes a restriction on the principle of the freedom to provide services. For the Court, it is clear that such legislation discourages, or even prevents, patients from approaching hospital services established in a Member State other than the one of affiliation; it therefore constitutes a restriction on the freedom to provide services. Can such a regulation objectively be justified? The Court considered that the absolute nature of the prohibition (except for children aged under 14) was not proportionate to the aims of maintaining the capacity of providing care or medical competence on national territory, and of safeguarding of the financial balance of the national social security scheme. On the contrary, **measures that are less restrictive and more respectful of the freedom to provide services** could be envisaged, such as a preliminary authorisation arrangement respecting the requirements of Community law, or the definition of reimbursement scales.

This is a judgment that will further facilitate patients' mobility in the EU without upsetting or challenging national social security schemes. Indeed, this judgment does not oblige any Member State to meet, in every case, expenditure incurred in private clinics in other Member States. However, if national legislation enables patients to attend national private clinics in an emergency without paying expenses, in this case only, the Member State in question must meet hospital expenses in the private clinics of other countries. It is therefore the absolute

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<sup>(97)</sup> Judgment of the Court of 19 April 2007.

<sup>(98)</sup> Judgment of the Court of 11 September 2007.

<sup>(99)</sup> Judgment of the Court of 18 December 2007.

exclusion of the reimbursement of hospital expenses abroad that is against Community law.

**Case C-287/05 — *Hendrix* <sup>(98)</sup>**

The Court has ruled that Articles 39 EC and 7 of Regulation (EEC) No 1612/68 should be interpreted so that they do not prohibit national legislation which applies Articles 4, paragraph 2a, and 10a of Regulation (EEC) No 1408/71 and stipulates that special non-contributory benefit listed in Annex IIa of the latter regulation can be awarded only to persons who reside on national territory. However, the implementation of this legislation must not interfere with the rights of a person who is in a situation such as that of the complainant in the main action in a way that goes beyond the attainment of the legitimate objective pursued by the national law.

The Court points out that the national legislation stipulates expressly that there may be derogation from the condition of residence when it leads to a ‘major injustice’. It then recalls that it is up to the national courts to interpret, as far as possible, national law in a way that is compatible with the requirements of Community law. Consequently, the referring judge must ensure that, in the circumstances of the case concerned, the requirement of a condition of residence on national territory does not lead to such an injustice, taking account of the fact that Mr Hendrix exercised his right to freedom of movement as a worker and that he maintained his economic and social attachments in the Netherlands.

Finally, the Hendrix judgment confirms an important change in the case-law relating to the application of Community law to cross-border situations: a worker who always works in one Member State and who moves his residence for personal reasons can invoke Article 39 with regard to his state of origin.

**Cases C-396/05, C-419/05 and C-450/05 — *Habelt, Möser and Wachter* <sup>(99)</sup>**

The Court has declared that it is incompatible with the freedom of movement for persons for Germany to allow the inclusion of contribution periods completed outside the Federal Republic to be made subject to the condition that the recipient reside in Germany. Community Regulation (EEC) No 1408/71 lays down rules for coordination in the area of social security in order to ensure that persons who move within the Community retain their acquired rights and advantages. The regulation established the principle that old-age pensions acquired under the legislation of a Member State must not be affected by the fact that the recipient lives in the territory of another Member State. However, there are exceptions to that principle. As regards Germany, the regulation allows, inter alia, the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed outside the territory of the Federal Republic of Germany to be made subject to the condition that the recipient resides in Germany. On the basis of that exception, the Rentenversicherung Bund (Federal pension insurance body) refused to take account of two types of contribution period. Contribution periods completed between 1939 and 1945 in the territory of the Sudetenland and between 1937 and 1945 in Pomerania (Cases C-396/05 and C-419/05).

In its judgment, the Court rejects, first of all, the argument that old-age benefits in respect of contribution periods completed between 1937 and 1945 must be considered to be benefits for victims of war or its consequences and are therefore excluded from the provisions of the regulation.

The Court finds that the situation of Ms Habelt and Ms Möser does fall within the scope of Regulation (EEC) No 1408/71. The pension due to them represents the counterpart of

contributions that they have paid to insurance bodies of the Reich and subsequently of the Federal Republic. The refusal to take account, for the purposes of calculating the old-age benefits paid to recipients who do not reside in Germany, of contributions paid between 1937 and 1945 constitutes an obstacle to their right to freedom of movement within the Union.

In the absence of any objective justification for that obstacle, the Court concludes that the provision which makes it possible to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed outside the territory of the Federal Republic subject to the condition that the recipient reside in Germany is incompatible with the freedom of movement for persons.

## **6. Conclusion and future perspectives**

The Green Paper on ‘Modernising labour law to meet the challenges of the 21st century’ gave rise to a wide and stimulating debate. The Commission took stock of the results and, while it decided not to propose any new legislative initiatives on the issues raised, it identified a number of areas worth focusing upon in order to achieve more cooperation, clarity and better information and analysis.

The political agreement on a directive on temporary agency work and the Working Time Directive is a major step forward for European workers and it strengthens social dialogue. It is in line with the flexicurity approach. It creates more security and better conditions for workers and temporary agency workers while maintaining the flexibility that industry needs and workers want when reconciling family life and working life. Last but not least it contributes to a level playing field in the EU. Adoption depends on the outcome of the co-decision procedure of the European Parliament and the Council.

In the area of collective labour law, which was not specifically covered by the Green Paper because of its focus on the individual employment relationship, several important developments took place. The Commission reviewed a number of directives, in particular in the area of information and consultation of employees. On the basis of its analysis, carried out in cooperation with national governments and the European social partners, it decided that it was not necessary to propose, at this stage, any further amendments as regards the directive establishing a general framework for informing and consulting employees at company level and the directive on transfer of undertakings. As regards the implementation of the Directive on European Works Councils, the Commission’s assessment of the current situation led it to conclude that a revision is necessary in order to remedy a number of problems encountered in the practical application of the directive. The Commission is also seeking to facilitate social dialogue between management and labour and promote industrial relations, e.g. in the field of transnational collective negotiations.

Several ECJ rulings provided important contributions to a more clear interpretation of provisions laid out in a number of directives in the field of labour law, such as working time, employers’ insolvency and fixed-term work. The series of rulings on the Viking-Line, Laval and Rüffert cases, in particular, dealt with the crucial issue of how to balance the exercise of workers’ rights and the respect of fundamental economic freedoms enshrined in the Treaty, as well as the interpretation of the obligations laid out in the posting of workers directive, against a background of increasing labour mobility.



In the area of health and safety at work, the Commission's strategy for the years 2007–12 addresses the new challenges and paves the way towards improving quality and productivity at work.

In the area of anti-discrimination, the Commission's recent communication sets out the state of play and lays down the actions necessary to combat discrimination and ensure equality of opportunity for all. The Commission will make particular efforts to contribute to the reduction of the gender pay gap.

In the area of mobility of workers, in addition to the measures facilitating coordination of social security schemes, emphasis is laid on the adoption of the proposed directive concerning supplementary pension schemes.

For all areas of EU labour law, the Commission attaches the utmost importance to monitoring the effective implementation and enforcement of the *acquis*. It uses a variety of means to achieve this objective: For example, it publishes non-binding guides, issues guidance and adopts recommendations. It commissions studies or reports by independent experts. It monitors compliance, i.e. correct transposition and application of the *acquis*, and, in its role as guardian of the Treaty, it launches infringement proceedings against the Member States concerned.

**ANNEX: TRANSPOSITION OF EUROPEAN DIRECTIVES - May 2008**

DIRECTIVES	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LI	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
1. LABOUR LAW																											
Directives in force:																											
80/987 - insolvency employer	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
91/383 - temporary employment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
91/533 - written statement	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
94/33 - protection young people at work	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
94/45 - european works councils (97/74-UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR
96/71 - posting of workers	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
97/74 - extension Dir 94/45 to UK	-	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-	-	-	-	C
97/81 - part-time work (98/23-UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NR
98/23 - extension 97/81 to UK	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C
98/59 - collective redundancies - codification - JO 98.225 16-21	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
99/63 - working time of seafarers	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
99/70 - fixed-term work	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/34 - excluded sectors 93/104	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/79 - agreement on working time civil aviation	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	IC	C	C	C	C	C
01/23 - transfer of undertakings (codification 77/187 et 98/50)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
01/86 - involvement employees - statute European company	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
02/14 - information and consultation of employees	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
02/74 - insolvency employer (modif. 80/987)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
03/72 - cooperative societies	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C
03/88 - working time	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
06/109 - european works council	C	C	C	C	C	C	C	C	C	NR	C	C	C	C	C	C	NR	C	NR	C	NR	C	C	IC	C	NR	C
Directives whose implementation deadline has not yet expired:																											
05/47 - european railways (deadline: 26/07/2008)																											

DIRECTIVES	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LI	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
<b>2. EQUAL TREATMENT MEN AND WOMEN</b>																											
<i>Directives in force:</i>																											
75/117 - equal pay	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
76/207 - access to employment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
79/7 - social security	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
86/378 - occupational social security schemes	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
86/613 - self-employed women	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/85 - pregnant workers	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
96/34 - parental leave (97/75 - UK)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	NF
96/97 - occupational social security schemes (modification 86/378)	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
97/75 - extension 96/34 au RU	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C
97/80 - burden of proof (UK:98/52)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
98/52 - extension 97/80 to UK	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C
02/73 - modification Dir 76/207	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C
04/113 - equal access goods/services (deadline: 31/12/2007)	C	C	C	C	C	IC	N	N	C	IC	C	N	IC	C	C	C	NC	C	C	N	C	N	C	C	C	C	C
<i>Directives whose implementation deadline has not yet expired:</i>																											
06/54 - equal opportunities employment (deadline: 15/08/2008)																											
DIRECTIVES	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LI	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
<b>3. EQUAL TREATMENT ART. 13 EC</b>																											
<i>Directives in force:</i>																											
00/43 - race	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/78 - general framework equal treatment in employment & occupation	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
DIRECTIVES	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LI	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
<b>4. FREE MOVEMENT OF WORKERS</b>																											
<i>Directives in force:</i>																											
98/49 - supplementary pensions rights	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

DIRECTIVES	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LI	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
<b>5. HEALTH AND SAFETY AT WORK</b>																											
<i>Directives in force:</i>																											
83/477 - asbestos	C	C	NR	C	C	NR	C	C	C	C	C	NR	NR	NR	C	NR	NR	C	C	NR	C	C	NR	NR	C	C	C
89/391 - framework directive health and safety at workplace	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/654 - work places	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/655 - work equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
89/656 - personal protective equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
90/269 - manual handling of loads	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
90/270 - display screen equipment	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
91/322 - chemical, physical and biological agents 3	C	C	C	C	C	C	C	NR	NR	NR	C	C	C	C	C	C	C	NR	C	C	NR	C	C	C	C	C	C
91/382 - asbestos 2	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/104 - mining	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/29 - medical assistance on board of vessels	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/57 - construction	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/58 - health and safety signs	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
92/91 - drilling	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
93/103 - work on board fishing vessels	C	C	NR	C	C	C	C	C	C	C	C	C	C	C	NR	C	C	C	NR	C	C	C	C	NR	C	C	C
95/63 - work equipment 2	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
98/24 - chemical agents 5	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
99/92 - explosive atmospheres	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/39 - chemical agents	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
00/54 - agents biologiques (7ème - 89.391) [codification]	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
01/45 - scaffolding (modification 89/655)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
02/44 - vibration	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
03/10 - noise	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	IC	C	C	C	C	C
03/18 - asbestos	C	C	C	C	C	IC	C	C	C	C	C	C	C	C	C	C	C	C	IC	C	C	C	C	C	C	C	C
04/37 - carcinogens	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
06/15 - occupational exposure (deadline: 01/09/2007)	C	C	C	C	IC	C	C	C	C	C	C	C	C	C	N	C	C	C	IC	C	C	C	C	C	C	C	IC
07/30 - practical implementation reports	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

**Directives Directives whose  
implementation deadline has not  
yet expired:**

04/40 - electromagnetic fields

(deadline: 30/04/2012)

06/25 - physical agents (deadline:

27/04/2010)

08/46 - amending 04/40

electromagnetic fields (31/12/2050)

**BE BG CZ DK DE EE IE EL ES FR IT CY LV LI LU HU MT NL AT PL PT RO SI SK FI SE UK**

*C = Communication of national legislation*

*D = Derogation*

*IC = Incomplete / partial communication*

*NR = Directive not relevant to a particular country*

*N = No communication of national legislation*

## Chapter 7

# Building capacity of social partners through the European Social Fund and European social dialogue

*Despite the unquestionably positive developments and initiatives<sup>100</sup>, there is still scope for further improvement in the capacity of social partners in the 12 new member States (EU-12) to take part in social dialogue and in social, labour market and economic governance. Since 2007 the EU has provided financial support for capacity building of social partners in Member States through the European Social Fund. This represents a significant change in comparison to previously available support instruments and will improve the capacity of European social partners to enhance social dialogue at national level and improve links with the EU level.*

## The rationale for capacity building

A well-developed and constructive social dialogue can provide a significant contribution to economic and social performance, as shown in earlier chapters of this report. Chapter 2 demonstrates how social partners can contribute to improving working conditions and competitiveness and Chapter 3 shows that strong and encompassing collective wage bargaining institutions are one element of improved macroeconomic performance and equity.

The role of social partners is also reflected in EU employment and social governance. In its European Employment Strategy the EU calls on social partners specifically to ‘promote flexibility combined with employment security and reduce labour market segmentation’ and to ‘ensure employment-friendly labour cost developments and wage setting mechanisms’ (Employment Guidelines 21 and 22). European social dialogue gives social partners the opportunity to shape EU legislation and to act autonomously. The implementation of more autonomous actions and process-oriented outputs of European social dialogue (see Chapter 5) and the responsibilities of social partners in the Employment Strategy require greater interaction between the different levels, more effective industrial relations systems and improved social partner capacities at national level.

The accession of 12 new Member States in 2004 and 2007 has increased the variety of industrial relations systems within the EU as there is little tradition of social partnership and autonomous, bipartite collective bargaining in the EU-12 (see Chapter 1). Trade union density rates are among the lowest in the EU and employers’ organisation density rates even more so, leading to a particularly low coverage of collective agreements. In addition, in Cyprus, Slovakia, UK, the Czech Republic, Greece, Spain, Poland, Hungary, Portugal, Latvia, Estonia, Lithuania, and Malta less than 50 % of workers were represented by a trade union and/or a workers’ council at the workplace level in 2003 (*Industrial relations in Europe 2006*, p. 71)<sup>(101)</sup>. In most new Member States, tripartite concertation prevails while bipartite and sectoral social bargaining is rarely well developed. Whereas the formal institutions of tripartite councils are established in all the EU-12, the analysis in Chapter 2 shows that the ‘established and validated expectation’ of effective and routine participation in tripartite policy arrangements is not yet fully established, in particular with regard to trade unions.

<sup>100</sup> See *Industrial Relations in Europe 2004* (ch. 3.4) and *2006* (ch. 4) reports

<sup>101</sup> No information for Bulgaria and Romania.

Compared against the background of the four pillars of industrial relations in Europe, this situation was confirmed in a joint capacity-building project of the cross-industry social partners (see Box 7.1).

### **Box 7.1: The capacity-building challenges in the EU-12**

The cross-industry European social partners organised a discussion process in all Member States that joined the EU in 2004 and 2007, as well as in Croatia and Turkey, on what needed to be done in order to strengthen national social partners' capacity to represent the views of their members in the European social dialogue. These discussions were regularly extended to more general joint analyses and action plans. The following is a summary of the main results of the expert's report:

While being country-specific, the action plans reflect general development needs:

- coordination among trade unions or employers and reporting to members;
- establishing a regular national level dialogue between the social partners;
- securing more financial and material resources;
- the quantity and quality of human resources;
- early identification of priority issues; and
- developing cooperative approaches with national social partner organisations in other Member States

With regard to bipartite dialogue the final expert report concluded that initially 'given the existence of tripartite dialogue in some form or other in every country, the national social partners felt little 'demand-side pull' either from members or from government for an additional national and bipartite social dialogue. They often struggled to see bipartism and tripartism as complementary processes; they could not see an independent agenda for bipartite dialogue, particularly when the legislative role of the state left little flexibility for independent operation; they saw difficulties in resourcing bipartite dialogue, given that the state supported the administrative arrangements for the tripartite version; and they could not see beyond a tripartite dialogue that was often adversarial in nature. By the end of the phase one seminars, every country had concluded that not only was an autonomous system of bipartite social dialogue necessary to link effectively with the European level equivalent, but that effective bipartite dialogue could increase the influence of the social partners in the existing tripartite system' (p.6).

In its final comments intended to 'inform and provoke further discussion' the expert's report stresses that inter- and intra-organisational cooperation is the prerequisite for any successful social partnership (given the widespread organisational fragmentation) and discusses inhibitors of an effective bipartite social dialogue.

#### *'(i) Poor inter- and intra-organisational cooperation*

Put simply, where one or both sides are unable to represent their worker or employer constituency without significant challenge, agree priorities, establish common positions and deliver outcomes, effective bipartite dialogue cannot happen. Adequate cooperation within the respective sides of the social dialogue is "building block one".

#### *(ii) Domination of tripartism and the encouragement of adversarial relationships*

Tripartite committees are well established in each of the Central and Eastern European Member States. Indeed, tripartism has an extremely important role to play in providing a

way for the state [to] listen to the views of the nation's most important stakeholders representing workers and business when making key decisions. Where the tripartite system evolved prior to the establishment of effective bipartite dialogue between the social partners it can make both joint cooperation and autonomous decision-making difficult.

Dialogue in the tripartite form can easily become a forum where either side plays, or is played by, Government and each debate results in a clear winner and a loser. Unless Government decides otherwise, consensus is not needed to move forward. When the most important decisions on the national agenda are discussed in this way, it is extremely difficult for the social partners to develop genuinely cooperative approaches outside the tripartite system on what are often seen as lesser priorities. The comments reported from Hungary and Poland on the social partners difficulty in moving from an exclusively adversarial relationship to one where compromise is possible on certain issues is a good example of this effect.

In some countries the problem does not arise as the social partners have their own well-established agenda where they have to resolve complex problems between themselves. This is normally through multi-employer wage negotiations but can be in other areas where multi-employer agreements have to be reached. Other than in Slovenia, and to an extent in Slovakia, there is no history of widespread multi-employer bargaining or discussion in these countries.

*(iii) Lack of Government enthusiasm for autonomous social dialogue*

Government can support bipartite dialogue primarily by creating the space for dialogue on things that matter. It is equally open to Governments to stifle dialogue by filling the available space with detailed and prescriptive regulation and approaching tripartite dialogue as a form of "pendulum arbitration" where Governments of particular affiliation generally agree with the same social partner. It would seem from the seminars that not all governments are convinced of the case for strong and autonomous social dialogue in their country.

*(iv) Weak employer commitment or ability to engage*

Where there is no tradition of multi-employer bargaining, and where employers are happy with Government views dominating the legislative agenda, business sees no compelling reason either to invest in membership of employers' organisations or to mandate such bodies to represent them in discussions or negotiations. Recent research <sup>(102)</sup> suggests that employers who seek to avoid either multi-employer or company-level collective bargaining actively shun membership of employers' organisations. This factor is reinforced where membership and influence of trade unions in a sector or a country is low.

The identification of this problem is complicated by the fact that trade unions are quite likely to accuse employers' organisations of lack of enthusiasm, but employers' organisations themselves are unlikely either to accept this criticism or admit the analysis to be fair.

*(v) Declining trade union membership and insufficient representativeness, notably of workers in small family businesses*

There are genuine concerns with the representativeness of both sides of the social partnership.

<sup>(102)</sup> 'Peak' Employers' Organisations; towards adaptation or extinction? Croucher, Tyson and Wild Economic and Industrial Democracy (2004).



Other than in Slovenia, [where the compulsory chamber of commerce system existed], there is no history of employer solidarity through high levels of membership of employers' organisations. Prior to the early 1990s the state was the nation's primary employer in central and east European countries and employers' organisations as we know them today did not exist. In particular employers' organisations have found it difficult to attract small business members.

In six of the eight states studied (the exceptions being Slovenia and Slovakia) trade union membership has fallen to around or below the 20 % level and is focused on larger enterprises in the state sector and "heavier" industries. In virtually every country, the trade unions spoke of the difficulties of organising in the workplace and finding a parallel social partner at the sectoral level. [...]

In summary, the promotional work being undertaken by the European social partners [...] is extremely valuable. However, in those cases where group coordination is chronically poor and bipartite dialogue fails to emerge or to thrive, more fundamental country-based analysis and work is needed. The first priority in these cases is to find ways to improve in-group coordination. The second is to find a formula that works in the national context to improve the effectiveness of bipartite dialogue.'

*Quoted from Alan Wild (2006), 'CEEC social partners' participation in the European social dialogue: What are social partners' needs?', Final report, Joint project of the European social partner organisations (Phase Two — Follow-up meetings, May 2005 to June 2006).*

## **Social partners and the European Social Fund**

Social partners are involved in the European Social Fund (ESF) in many ways. They participate in programming and management, but they are also beneficiaries for networking activities, joint actions and — as of 2007 — capacity building.

The European Social Fund (ESF) legislative framework for 2007–13 reinforces both the importance and the responsibility of social partners. It not only continues to emphasise the need for the active involvement of relevant stakeholders, and in particular the social partners, in programming and implementing ESF programmes, but makes specific reference to partnership and capacity building in a number of new instances.

### **Partnership**

EU cohesion policy, of which the ESF is a part, is an example of good governance through partnership. Sustainable development and conflict avoidance require a partnership between different interests, based on mutual trust and shared values. Several issues need to be addressed if government, private sector and civil society are to work efficiently to improve service delivery. Development issues and challenges have become too complex and interdependent and the financial and managerial resources for addressing them too scarce, for any one single institution, public or private, to be able to respond effectively to all these socioeconomic challenges alone. Given the ESF's relationship to employment and social affairs, the social partners have a central role in the broad partnership for change, and their commitment to strengthening economic and social cohesion by improving employment and job opportunities is essential.

The partnership principle implies close cooperation between the Commission, the authorities at national, regional and local levels in the Member States and other governmental and non-governmental organisations and bodies during the different stages of the implementation cycle of the Structural Funds.

The ESF Committee at the EU level itself reflects the importance of involving social partners in the monitoring of the ESF. Since its inception it has been a tripartite committee with equal representation of social partners and governments. This allows the social partners to be actively involved in the operation of the ESF at EU level as well as in the Member States.

## **Box 7.2 Legislative framework – ESF and social partners**

### ***Article 11 of the general regulation***

*Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999*

*1. The objectives of the Funds shall be pursued in the framework of close cooperation, (hereinafter referred to as partnership), between the Commission and each Member State. Each Member State shall organise, where appropriate and in accordance with current national rules and practices, a partnership with authorities and bodies such as:*

- (a) the competent regional, local, urban and other public authorities;*
- (b) the economic and social partners;*
- (c) any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women.*

*Each Member State shall designate the most representative partners at national, regional and local level and in the economic, social, environmental or other spheres (hereinafter referred to as partners), in accordance with national rules and practices, taking account of the need to promote equality between men and women and sustainable development through the integration of environmental protection and improvement requirements.*

*2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial powers of each partner category as defined in paragraph 1.*

*The partnership shall cover the preparation, implementation, monitoring and evaluation of operational programmes. Member States shall involve, where appropriate, each of the relevant partners, and particularly the regions, in the different stages of programming within the time limit set for each stage.*

*3. Each year the Commission shall consult the organisations representing the economic and social partners at European level on assistance from the Funds.*

### ***ESF regulation***

*Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European*

*Social Fund and repealing Regulation (EC) No 1784/1999*

### **Article 3 Scope of assistance**

*'1 (e) promoting partnerships, pacts and initiatives through networking of relevant stakeholders, such as the social partners and non-governmental organisations, at the transnational, national, regional and local levels in order to mobilise for reforms in the field of employment and labour market inclusiveness.'*

### **Article 5 Good governance and partnership**

*'1. The ESF shall promote good governance and partnership. Its support shall be designed and implemented at the appropriate territorial level taking into account the regional, regional and local level according to the institutional arrangements specific to each Member State.*

*2. The Member States shall ensure the involvement of the social partners and adequate consultation and participation of other stakeholders, at the appropriate territorial level, in the preparation, implementation and monitoring of ESF support.*

*3. The managing authority of each operational programme shall encourage adequate participation of the social partners in actions funded under Article 3.*

*Under the Convergence objective, an appropriate amount of ESF resources shall be allocated to capacity-building, which shall include training, networking measures, strengthening the social dialogue and activities jointly undertaken by the social partners, in particular as regards adaptability of workers and enterprises referred to in Article 3(1)(a).'*

Article 11 of the general regulation requires Member States to apply the partnership principle right from the beginning of the **preparation** of Structural Funds interventions and to involve the most representative partners at national, regional and local levels in the economic, social, environmental and other spheres. This requires an active, broad, balanced and transparent participation of the relevant partners resulting in a visible and measurable value-added to the whole process. The ESF regulation stresses that the managing public authorities must actively seek the involvement of social partners (Article 5.2). The Commission's assessment of the now completed programming phase for 2007–13 concluded that there has been an increased participation of social and economic partners in most Member States and that there has been an involvement of social partners outside 'traditional' activities.

With regard to **implementation**, the partnership principle is linked to the principle of **subsidiarity**, which implies that decisions should be made at the level most competent to carry them out, within the context of a broader cooperative network that pools resources and experiences. Over the last few years, various evaluations on the impact of partnership in the Structural Funds showed that partnership can improve the implementation of cohesion policy through enhanced legitimacy, greater coordination, guaranteed transparency, and better absorption of funds through improved selection of projects and dissemination of information to potential project promoters <sup>(103)</sup>.

<sup>(103)</sup> 'The thematic evaluation of the partnership principle: final synthesis report', Tavistock Institute, 1999; 'A study on the efficiency of the implementation methods for Structural Funds', OIR in association with LRDP and IDOM, 2003; 'Opinion on the partnership for implementing the Structural Funds', European Economic and Social Committee, 2003; and 'The EU "partnership principle": still a sustainable governance device across multiple administrative arenas?', Michael W. Bauer, 2002.

In the previous programming periods, the participation of partners in **monitoring** committees was one of the more visible aspects of the application of the partnership principle in the Structural Funds. In most cases, the social partners had the same participatory or voting rights as other members of the monitoring committee. The setting up of the monitoring committee falls within the exclusive competence and jurisdiction of the Member States. Its composition should reflect the principles of partnership. From the assessment by the Commission of the operational programmes it can be concluded that the working groups (where social partners were represented) established during the elaboration of the operational programmes form the basis of the monitoring committees of those programmes, resulting in a stronger sense of ownership amongst the members.

### **Social partners as beneficiaries**

The ESF regulation calls upon the national managing authorities to encourage the adequate participation and access of social partners to the activities funded under the ESF (Article 5.3). In addition, in convergence regions <sup>(104)</sup> an appropriate amount <sup>(105)</sup> of the ESF resources shall be allocated to capacity-building and activities jointly undertaken by the social partners (second subparagraph of Article 5(3)).

### ***Joint actions***

Social partners can implement — jointly or as individual organisations — projects for workers and employers. Experience shows that social partners have mostly implemented successful actions whenever they were involved as promoters in projects financed by the ESF. In the programming period 2000–06, social partners have been particularly visible in the area of adaptability of workers and enterprises, especially in the provision of training and lifelong learning. In Belgium, the social partners were strongly involved in the implementation of three key priorities representing approximately 45 % of the global ESF budget in Flanders — ‘Developing entrepreneurship’, ‘Encouraging flexibility of business and their employees’, ‘Strengthening policies for equal opportunities’. In the Netherlands, the social partners are responsible for and finance (vocational) training of employees through the sector funds. The national government provides for additional incentives in the tax system. Sector funds managed by the employers’ organisations and the trade unions can apply for ESF funding in order to up-grade low-skilled workers. The ESF finances 40 % and the remaining 60 % is paid by the sector funds. For 2007–13, three groups are targeted in the grant scheme:

- employees who need vocational education to attain the basic vocational qualification; they can also obtain an ‘Accreditation of Prior Learning’ (APL);
- employees who need secondary vocational education to attain a higher level of vocational education;
- employees who need trans-sectoral vocational education to facilitate their mobility.

One of the requisites for financing is the participation of 5 % of women in the actions. On the whole, the measures in which social partners implement the bulk of projects represent 13 % of the ESF budget in the Netherlands.

<sup>(104)</sup> The convergence objective aims to stimulate growth and employment in the least developed regions. It highlights innovation and the knowledge-based society, adaptability to economic and social changes and the quality of the environment and administrative efficiency. It is financed by the European Regional Development Fund (ERDF) and the European Social Fund (ESF) as well as the Cohesion Fund (CF) and targets the least well-developed Member States and regions. The areas eligible for the convergence objective combine the regions eligible on a regional criteria basis (GDP is less than 75 % of the Community average) and on a national criteria basis (GNI is less than 90 % of the European average).

<sup>(105)</sup> The initial proposal of the Commission was the fixed amount of 2 %.

The ESF is an important source of financing for sector training funds as referred to in Chapter 2 on lifelong learning. The English Unionlearn scheme and sector skills councils also benefited from ESF funding. Wales has established a 'Social Partners Unit' (a limited company jointly owned by the main employer and trade union organisations) to provide the social partners with the capacity to input to the policy work of the National Assembly.

### ***Capacity building***

Capacity building is a process of developing organisational, financial and personnel capacities of trade unions and employer organisations and enhancing their contribution to governance on both national and regional levels. Actions to enhance their capacity for social dialogue could consist of training on information, participation and negotiation mechanisms, strengthening the role of social partners in shaping working conditions and the functioning of the labour market, consolidating sectoral structures, improving the link between the national and EU-level social dialogue, assisting the implementation of European social dialogue outcomes and others.

The ESF managing authority together with the relevant partners and in a dialogue with the European Commission decide during the preparation phase which kind of actions are eligible for ESF funding at national level. The activities to be developed cover areas such as human resources development, institutional capacity building, including campaigning, sectoral, cross-industry and regional cooperation, with activities such as professional training, the development of education and training systems, as well as of labour market systems, research projects, surveys and studies feeding into collective bargaining, enhancing the work of economic and social councils, setting up websites, joint actions regarding restructuring and anticipating and managing of economic change, migration, or legal aid services run by employers' organisations and trade unions.

The support to social partners can take the form of support to individual social partner organisations as well as to actions jointly undertaken by organisations representing both sides of industry. The right of freedom of association and the autonomy of the social partners must be respected. Capacity building is therefore a bottom-up process and depends largely on the efforts of the social partners themselves. The ESF regulation does not establish an individual right for financial support, but it obliges managing authorities to allocate a specified amount and define areas of support.

### ***Networks***

Last but not least, the ESF promotes networking in partnerships, pacts and initiatives that can involve and mobilise social partners and organised civil society in the modernisation of employment and social policy. Social partners are expressly mentioned as potential beneficiaries under such activities anywhere in the EU (Article 3(1)(e)).

The FPPZ (Western Poland Employers Federation) project 'Partnership as a form of active labour market policy' is an example from the EU-12 of the past programming period. Just after accession a partnership of different partners was set up, such as local labour agencies and local administrative authorities, lobbying organisations, universities, information centres for unemployed workers and social partners. The main objective is to develop dialogue and concrete strategies for the development of the local labour market within the partnership.

### ***ESF allocations for capacity building of social partners***

The European Commission has supported the process of programming by initiating an ad hoc group within the ESF Committee that worked from March to November 2007. It served as a clearing house for questions and good ideas for the inclusion of capacity-building measures in operational programmes. Member States, which were represented by government and social partners, were asked to present their approach to programming and the types of actions foreseen and indicate the estimated amount they were planning to allocate to social partners. The ad hoc group adopted three technical fact sheets on 'Partnership', 'Social partners as beneficiaries' and 'Complementarity and consistency with other EU financial instruments'. This process raised awareness of the new capacity-building facility and provided concrete examples to the practitioners in charge of programming. Clearer ideas on the types of activities to be developed have emerged.

The latest data available from the operational programmes shows that some EUR 1.200 million have been allocated to social partner activities in convergence Member States and regions. Allocations range from around 1 % to much higher figures. With a 20 % allocation, Spain is a notable case: most actions will be undertaken in the framework of the tripartite Training for Employment Agreement of 2006. It includes training for workers (joint actions) as well as measures for capacity building of social partners.

When analysing this outcome, two aspects need to be stressed. From a positive point of view, and although the position of Member States was one of reluctance and doubts as to the importance and goal of this facility, the encouraging response given and results achieved should be highlighted. While there are differences in terms of scale and means, all Member States either have a concrete allocation of funds, or intended to launch actions specifically for social partner applications. Moreover, some Member States plan to increase the initial allocation if social partners prove to be capable of absorbing it, but also to decrease if proposals are too weak. To overcome this weakness, some ESF managing authorities are issuing pre-announcements of the calls and organising 'information sessions' for the prospective applicants to help them prepare applications and in consequence to enhance the quality of the projects and proposals (e.g. Malta).

However, there is a need for some improvement, for instance the clarification of the partnership principle, or the differentiation between social and civil dialogue, and social partners and NGOs. Not all the amounts allocated are exclusively dedicated to social partner activities. Some Member States make no distinction between social partners and NGOs when implementing the second subparagraph of Article 5(3) of the ESF regulation. This is most often the case in the EU-12.

### **Conclusion**

With the operational programmes now adopted and calls being launched it is clear that although Member States and regions chose different ways for guaranteeing the support to social partners, progress is visible. In spite of this progress, there remains plenty of scope for improvement. Enhancing the capabilities of social partners will increase the probability of success of the projects in which social partners act as promoters and, ultimately, of the Growth and Jobs strategy.

Outputs and results from cohesion policy programmes take some time to deliver and then to be reported on. The first annual implementation reports (AIR) from the current period are required for mid-2008, but concrete actions are only expected for the 2009 reports. Although the ESF regulation does not require reporting on the implementation of the social partner capacity-building provision, the Member States have agreed to do so in the ESF Committee.

## **European social dialogue's contribution to capacity building**

Over the last two years, European social partners continued and, in some cases intensified, efforts to increase the capacity of national social partner organisations and to involve them in the European social dialogue committees. These activities focus on but are not limited to the Member States that joined the EU in 2004 and 2007.

### **Cross-industry**

The European cross-industry social partners (ETUC, BUSINESSEUROPE, CEEP, UEAPME) recognised very early that their capacity to effectively carry on their social dialogue and implement its results in an enlarged European Union depended on their ability to sufficiently prepare their new member organisations. Even before the first wave of enlargement in 2004, they launched a pilot project in 2003 with their members in the Czech Republic, Lithuania, Hungary, Poland and Slovakia to prepare their participation in European social dialogue.

In 2004–06 this 'integrated programme' was extended to cover all new Member States and consisted of several components<sup>(106)</sup>. Two rounds of seminars were held in each country (except in Malta and Cyprus where there was only one) to assess the needs of national social partner organisations to successfully participate and contribute to social dialogue and to ensure the interaction with national industrial relations. National studies, which were discussed in national seminars and a final European conference, were carried out into the scope of economic and social change and the role of social partners in the restructuring process. Resource centres were set up for trade unions and the employers to provide information, notably via websites, as well as targeted training and mentoring for representatives from the new member federations.

Given the importance of this work and the need to continue efforts in particular for the Member States joining in 2007 (Bulgaria and Romania) and the candidate countries (Croatia and Turkey), European social partners decided, in their work programme for 2006–08, to continue the integrated programme and notably to:

- 'complete the national studies on economic and social change in the EU-10, enlarge them to cover the EU-15 and on that basis promote and assess the orientations for reference on managing change and its social consequences and the joint lessons learned on EWCs;
- continue their work of capacity building for the social dialogue in the new Member States, extend it to candidate countries, and examine how the employers and trade union resource centres providing technical assistance to the 10 new Member States could provide help to social partners of all EU countries.'

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<sup>(106)</sup> See in more detail in *Industrial relations in Europe 2006*, Chapter 4, Section 3.

The new ‘integrated programme’ 2006–08 was again co-financed by the EU budget and managed by the ETUC and BUSINESSEUROPE on behalf of all European social partners. As the need for better cooperation and support between the European and national level was felt throughout the EU, the new programme clearly did not focus on just the new Member States, but also extended to the EU-15 as well as the candidate countries.

The programme pursued the initiatives launched earlier. Concretely, a first round of seminars concerning the needs of national social partners participating in the EU social dialogue was held in Bulgaria, Croatia, Romania and Turkey. National studies and seminars on restructuring were carried out in Denmark, Ireland, Greece, Spain, France, Italy, Austria, the Netherlands, Sweden and the United Kingdom. The two resource centres were opened to all member federations and enlarged their activities: websites<sup>(107)</sup> with relevant and extensive information about the programme and social dialogue in general; a translation fund to translate the results of European social dialogue in all 23 EU languages upon the national social partners’ request; training and mentoring programmes as well as the possibility to organise seminars or other activities related to European social dialogue on an ad hoc basis for those members that joined European social dialogue in 2004 (EU-10).

For the social dialogue seminars, a final conference was held in Brussels in January 2008 (see Box 5.1 for conclusions) and a synthesis seminar on restructuring in June 2008 (see Chapter 4 for conclusions). Given the success and resonance of the programme among members, the European social partners were already planning, at the time of writing, a follow-up for the period 2008–10, which will involve, among others, a second round of social dialogue seminars in the south-east European countries, the organisation of restructuring studies in the remaining EU Member States (Belgium, Bulgaria, Germany, Luxembourg, Portugal, Romania and Finland, ) and a continuation of the resource centres.

### Sectoral initiatives

European sectoral social partners have been working with their new members in the EU-12 and the candidate countries for many years. Projects, technical seminars, round tables and the development of tools for capacity building increased over the last two years. Several social dialogue committees have also adopted joint declarations and opinions on social dialogue.

#### *Round tables, tools and country visits*

After a first project in 2006 and 2007, the European social partners in the **textiles, clothing and leather** sectors currently continue their joint work on the reinforcement of sectoral social dialogue at sector level in the 10 central and east European Member States and its interaction with the EU-level social dialogue. Following round tables in each country, both sides of industry agreed national action plans and presented them at the final conference in May 2007. A new one-year project, which also includes the shoe sector, first took stock of the progress achieved at national seminars. By way of example, the project had facilitated sectoral wage bargaining and the extension of the new agreement in the Czech Republic. Furthermore, social partner representatives had the chance to learn about European and national social dialogue structures at expert seminars with their Belgian, Italian and UK counterparts. Lastly, practitioners in social partner organisations will be trained in the areas of social dialogue techniques, vocational training and promotion of the sector’s image at national seminars. A

<sup>(107)</sup> Employers’ resource centre (<http://www.erc-online.eu/>); ETUC resource centre (<http://resourcecentre.etuc.org/>).



website is intended to promote exchange on social dialogue in the sector within Europe (<http://www.buildingtrust-tcl.org>).

The European social partners in the **furniture** industry implemented a capacity-building project in 2006 and 2007 that targeted Bulgaria, Croatia, Romania and Turkey. The aim was to promote social dialogue and contribute to a level playing field in Europe through concrete results. A guide to collective bargaining in the EU-27 + 2 gives an overview of the existing collective agreements at national level. In addition, bipartite visits were carried out in the four countries. As a result, the Croatian social partners agreed to establish a permanent sectoral social dialogue and the Bulgarian social partners asked for an extension of their agreement from the government. Both initiatives were supported in a joint declaration by EU employers and trade unions. The partners agreed to build upon the positive results of the project. The approach of country-based support had been successful and should be maintained.

The **rail** social partners held information seminars in Tallinn and Bucharest (2006). The seminars gathered participants from across the enlarged EU and the accession countries and aimed at improving the social partners' knowledge of their counterparts, holding an exchange of views on the work of the European social dialogue in the sector and identifying the social partners' needs after enlargement. This capacity-building action helped to develop trust and mutual understanding and has already led to an increased participation of the new Member States in European social dialogue. A brochure was published summarising the debate and the wealth of information gathered during the two seminars (available also in the languages of the countries involved: <http://www.itfglobal.org/etf/publications.cfm>).

Social partners from the **insurance** and the **banking** sector launched projects targeted at the Czech Republic, Hungary and Slovakia. The projects aim at increasing awareness of European social dialogue, exchanging information on different industrial systems and addressing obstacles that prohibit social partners from these countries from taking active part in social dialogue at the EU level. First meetings of these projects in central Europe took place in March and April 2008. These are to be concluded at the end of 2008 and lessons learnt are to be used in similar actions directed at other new Member States. Currently affiliates from EU-12 participate only sporadically in both committees.

The social partners of the **culture and live performing arts** social dialogue committee implemented a project in 2006 consisting of a series of regional conferences to promote European social dialogue in EU-12. The conferences took place in Tallinn (covering the Baltic countries), Krakow (covering central European countries) and Budapest (covering south European countries). The second pillar of the project consisted of study visits of social partners from the EU-12 to their EU-15 counterparts. Social partners in this committee are implementing a similar project in 2007 and 2008 focusing on Romania and Bulgaria. National conferences have been organised in both countries and, as a result, the first Bulgarian employers' organisation in the sector was created. This process was accompanied by the Budapest, Krakow (2006), Bucharest, and Sofia Declarations (2007) that encourage development of sectoral bipartite negotiations.

The social partners in the **audiovisual** sector followed up on a joint declaration of 2006 with a project aiming at raising awareness in the EU-12 on the importance of social dialogue as a tool to manage change, with the audiovisual sector undergoing constant change and developing new business models. Social partners in the committee are currently implementing

a second project consisting of an awareness-raising conference in Prague in June 2008, followed by study visits from social partners in the EU-12 to their counterparts in the EU-15.

Social partners in the **telecoms** sector organised a conference in Warsaw in December 2007 targeting telecoms social partner organisations in the EU-12. It mirrored a telecoms European sectoral social dialogue plenary session. The objective was to identify topics of discussion that can be relevant and attractive for social partners in the EU-12, and to familiarise them with the logistics and organisation of a plenary session of a social dialogue committee in order to improve participation of social partners from the EU-12 in the telecoms European social dialogue.

The social partners in the **temporary agency work** sector organised round tables in Poland and Hungary in cooperation with TAIEX (the Technical Assistance and Information Exchange Office of the Enlargement DG). The objective was to bring together social partners who do not have established sectoral dialogue at national level and discuss the problems they face.

Also in cooperation with TAIEX, technical seminars were organised in the **road transport** sector in Hungary, Poland and Slovenia in 2006 and in Estonia, Lithuania and Latvia in 2007. Their objective was to bring to the national level the European social partners' approach to understanding EU driving and rest time rules, the digital tachograph and Driver Training Directive.

The social partners of the **private security** sector launched a project to build capacity for their sector in Bulgaria, Lithuania, Poland, Romania and Slovenia (as well as in Croatia and the former Yugoslav Republic of Macedonia). The project is funded by the European Commission and managed by the Slovenian employer organisation ZRSZV. The aim of the project is to strengthen cooperation, to create a network and to look at best-practice models.

The social partners in **commerce** pursued their series of round table meetings in new and future Member States with a meeting in November 2007 in Zagreb. At these occasions social partners can discuss working conditions in the sector and exchange information on social dialogue at national and EU level. The next round table is planned for December 2008 in Istanbul.

The common declaration on social dialogue in the **local and regional governments** sector of November 2006 aims to help members to better explain the bases of social dialogue in the EU-12. The European social partners (a) reiterate their commitment to the social dialogue processes; (b) highlight the benefits of social dialogue in local and regional government; and (c) commit themselves to support the further development of social dialogue activities at national and local level, between members of CEMR and EPSU.

From 2006 to 2008, the European Association of **Sport** Employers together with the sports section of EURO-MEI implemented a project to reinforce the link among each other, to strengthen their respective representative status and to structure employers' and workers' organisations in those countries where they are missing. Round tables in Spain, Austria and Portugal brought together for the first time social partners from all sports subsectors. Country visits to Poland, the Czech Republic, Hungary and Bulgaria showed that social dialogue in the sector barely exists. A feasibility study on the creation of social dialogue in these countries, as well as information provided in numerous meetings, has raised awareness. Finally, a database

of all social partner organisations in the sports sector has been set up (<http://easesport.org/ease/rbt-db/>) in order to facilitate networking. A follow-up project will start at the end of 2008.

### ***The western Balkan countries and the Memorandum of Understanding for the Energy Community***

The European Commission organised a conference on 'Building capacity to enhance social dialogue in the western Balkan countries' in October 2007 in Belgrade. The conference targeted social partners and public authorities responsible for social dialogue from the countries of the western Balkan region: Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia (also a candidate country), Montenegro, Serbia, and Kosovo under United Nations Security Council Resolution 1244. As many as 120 participants, including 20 speakers and 13 panellists, represented employer organisations, trade unions and public authorities from the western Balkan region and the EU.

At the conference, social partners and public authorities responsible for social dialogue from the region exchanged views and best practices on the elements that make social dialogue successful. Subjects such as the institutional set-up, the autonomy principle and the balance between bipartite and tripartite dialogue were discussed. Moreover, the role of social dialogue in the management of change was underlined. Participants also debated the ways social dialogue can contribute to bringing Balkan countries closer to the European social model.

The conference reinforced links between European social partners and their counterparts in the Balkans. It raised awareness of the social dialogue at the European level and provided participants from Balkans with practical examples of how social dialogue can contribute to the effective anticipation and management of change.

The second day was dedicated to the Memorandum of Understanding (MoU) related to the Energy Treaty signed two days earlier in Vienna. Presentations addressed to social partners from the sector described main provisions of the MoU that gives a prominent role for social partners in the implementation of its provisions.

### ***Memorandum of Understanding on social issues in the context of the Energy Community***

A MoU was signed by the contracting parties of the Energy Community, Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, UNMIK and the European Community, on 17 October 2007 in Vienna. The MoU addresses possible social consequences of the necessary reforms of the energy markets in the participating countries following implementation of the European rules on competition. The MoU focuses on the role of social partners, the social *acquis communautaire* and the protection of vulnerable customers. It underlines the role for consultation of social partners in the process of management of change. Signatories singled out four main areas they intend to focus on: Workers' fundamental rights; labour laws; health and safety; and equal opportunities. The memorandum of understanding will be the basis for developing a structured dialogue on social issues within a regular social forum. The first is planned for 18 and 19 November 2008 in Tirana.

## **Conclusion**

Capacity-building measures in the framework of the European social dialogue range from one-off meetings to more sophisticated projects that involve research, seminars and technical delegation visits to the EU-12 and vice versa. The cross-industry social partners organised more than one seminar in each country and encouraged national social partners to analyse the situation and agree on action plans themselves. This process has developed into two resource centres for all Member States that will strengthen the interaction between the European and the national level.