COUNCIL OF THE EUROPEAN UNION

Brussels, 22 November 2006

15670/06

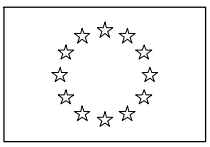
COMPET 353
IND 93
MI 199

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 November 2006
to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Commission Staff Working Document – Industrial relations in Europe 2006

Delegations will find attached Commission document SEC(2006) 1499.

Encl.: SEC(2006) 1499



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.11.2006
SEC(2006) 1499

COMMISSION STAFF WORKING DOCUMENT

INDUSTRIAL RELATIONS IN EUROPE

2006

Industrial Relations in Europe 2006

European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit F.1

Manuscript completed in June 2006

The contents of this publication do not necessarily reflect the opinion or position of the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities.

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FOREWORD BY THE COMMISSIONER

Last year marked the 20th anniversary of social partnership at EU level. In 1985 the three cross-industry social partner organisations (UNICE, ETUC and CEEP) engaged in the European social dialogue initiated by Jacques Delors, President of the European Commission at that time. Since then the social partners have embarked on a large number of activities aimed at successfully building and strengthening the social dimension of the European Union. They have promoted active and participative democracy in their specific policy areas by developing and using a large range of different tools adapted to the relevant circumstances at cross-industry and sectoral level. These results affect millions of workers throughout the whole Union at their respective work places and hence accompany, support and strengthen or even initiate Community action through legislation. European social dialogue is a tool for workers and employers' representatives to participate in the European decision-making process and to increase ownership of the European project. It can play its part in regaining trust and involvement. The partnership has produced very good results as this report shows. This should inspire practice in the Member States. However, let me also add that these efforts should still be stepped up in a consensual manner and implemented with more vigour at all appropriate levels, in order to demonstrate to all employers, workers and the public at large the important added value social partnership is able to deliver. This will help in our quest to modernise our economies and societies while respecting the commonly shared European values.

Last year was also decisive for the relaunch of the Lisbon Strategy. This included an appeal to the social partners to assume their indispensable role to reach the Strategy's ambitious objectives by way of fostering partnerships for change at national and European level. With the adoption of their second joint work programme 2006-2008 discussed at the Tripartite Social Summit in March 2006, the social partners have increased their commitment to jointly address major challenges ahead. These include issues related to the globalisation of economic activities and the ageing of the population and the impact of these phenomena on employment and working conditions in Europe. Greater involvement of social partners at national level is required to make the growth and jobs strategy work and to underpin the efforts undertaken by the governments within their national reform programmes.

This is the fourth report on Industrial Relations in Europe. After the enlargement of the Union in 2004 and the integration of the new Member States into the Lisbon agenda it is of major importance to look again in this wider context at ways to develop the contributions social partners can deliver to reach the ambitious objective of the growth and jobs strategy. This aims to see Europe become the most dynamic and competitive knowledge-based economy capable of sustainable development with more and better jobs and greater social cohesion – a global objective shared by all major actors on the labour market. The crucial role social partners have to play in this context depends significantly on their representative strength and capacity to join forces in a balanced way with each other and government at all levels, be it at European, national, sector, regional and company level. These themes are reflected in various ways in most of the chapters of this report, which builds on the research and articles presented in its predecessors, notably in 2004. It equally continues reporting on recent developments of the European social dialogue and Community legislation regarding the labour market in a wider sense.

I hope that the material presented in this report and the often complex interplay between the various policies, instruments and actors it identifies will again provide relevant information to foster mutual understanding, learning and discussion. This will contribute in a concrete way to not only more but also better jobs in a competitive economic environment. The importance of this exciting policy area for advancing the European project and the results it is set to harvest can hardly be overestimated.

Vladimír Špidla
Commissioner for Employment, Social Affairs and Equal Opportunities

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EDITORIAL

With the relaunch of the Lisbon Strategy in 2005 the European Union has made growth and jobs its priorities for the coming years. All political actors as well as all stakeholders at the European and national levels are called upon to mobilise the potential that lies in European societies and in their social models in order to create stronger growth, more jobs and social cohesion while respecting environmental sustainability. In this context employers and workers, the social partners, play a key role.

The mid-term review filled the Lisbon Strategy with new life as the Annual Progress Report 2006 confirmed. The National Reform Programmes (NRP) of autumn 2005 outlining the three-year strategy on macro and micro economic as well as on employment policy are promising signs that the new partnership is already beginning to work. However, the strategy can only work when the partnership is not only between EU institutions and Member States but also includes the social partners. In its Annual Progress Report of January 2006 the Commission concluded that social partner involvement still falls short in many Member States. This might be due to the short timeframe given to draw up the NRPs. But social partners have a key role both as participants in the process and as communicators of the message. Therefore, the Commission expects stronger involvement of the social partners in the governance and implementation process.

In particular, the priority action three proposed by the Commission (responding to globalisation and ageing) that addresses the employment dimension, will need the active participation of social partners. While all Member States attach a high importance to attracting and retaining more people in employment few of them have comprehensive strategies. Meanwhile, social partners in some Member States have become active in the fields of active ageing, reconciliation of family and work or integration of young people. Some sectoral social dialogues at the European level have also addressed these issues. The Commission consulted social partners on better ways to reconcile family and professional life and on the active inclusion of the people furthest away from the labour market in 2006. Many NRPs largely neglect further measures to improve the adaptability of workers and enterprises. The Commission, therefore, called on the active involvement of social partners when it comes to developing active labour market policies, flexibility, and reliable and responsive lifelong learning systems. A real breakthrough and sufficient investment are still lacking on this last point. Social partners are called upon to contribute to this.

The UK Presidency launched a discussion on how European values can drive modernisation in our economies and societies and help to tackle key challenges in a distinctively European way at the occasion of the meeting of heads of States at Hampton Court in October 2005. In its contribution ([1]) 'European values in the globalised world' the Commission identifies as one common characteristic of the Member States' social models that 'there is a strong tradition of social dialogue and partnership between governments, industry and trade unions – even if the detailed mechanisms vary considerably between Member States'. But like many elements of our social systems, the social dialogue must also constantly reform and modernise itself to play a role in the governance systems of the Member States and the European Union. Therefore, the Commission calls for a 'renewal of the social dialogue at all levels. It should play a full role in mobilising broad support and a

([1]) Commission Communication of 20 October 2005 (COM 2005)525 final.

common understanding of the challenges we face and the solutions proposed. Given the close linkage between action at EU and national level, the social partners should better articulate what they do at each level.'

The need to combine sufficient flexibility of the labour market and of employment contracts with employment security for workers is key for adaptation to change while, at the same time, ensuring social justice. The Austrian Presidency put the issue of 'flexicurity' on the agenda in the beginning of 2006 and the Spring European Council agreed that the Commission, jointly with Member States and social partners, will explore the development of a set of common principles on flexicurity in 2007.

At the Tripartite Social Summit in March 2006, the European social partners presented their second multi-annual work programme for 2006-2008 and reconfirmed that they 'want to contribute to and promote growth, jobs and the modernisation of the EU social model'. They will strive to develop convergent views on the most pressing economic, labour market and social issues starting from a profound analysis of key challenges facing Europe's labour markets. On that basis, they will put forward joint recommendations and define a framework of actions on employment of the social partners. In addition, they intend to negotiate an autonomous agreement, either on the integration of disadvantaged groups on the labour market or on lifelong learning. They will also keep on contributing to policy development in the EU and they are committed to making progress on quality of work. Within this overall context this report addresses a number of issues which are at the core of the challenges social partners face in all parts of the EU.

They will only be able to live up to the high expectations that are put on them if their organisational structure, their representativeness and their interaction patterns are adequate to play a role at the workplace and in participative democracy. This report reviews trends in membership and on the interaction of social partners, particularly in Chapter 1. While there is a general trend of decreasing employer organisation and trade union membership, both are still well established in the societies and economies of most Member States. The important issue of capacity building in those Member States that have gone through a transition period to a market economy and democratic system is treated in Chapter 4. Trade unions' and employer organisations' density as well as collective bargaining vary between Member States. Enlargement has contributed to this diversity.

The diversity of social dialogue in the Member States shows that standardised European solutions cannot work. Common standards and shared objectives have to be implemented according to national traditions. The Lisbon Strategy acknowledges that the focus for action in many areas lies at the national level (or regional or local), e.g. for employment and labour market policies where social partners must be involved. But each action has an impact across borders as European societies and economies are interdependent in many ways in the single market and the monetary and economic union. This report should contribute to the mutual understanding of how industrial relations work elsewhere.

The relationship between collective bargaining and labour law will play an important role in the attempt to move to 'flexicurity'. Increased decentralisation and involvement of the legislator have implications for the autonomy of collective bargaining and the challenge is to arrive at an appropriate institutional setting that allows for an economically viable and

socially acceptable compromise. Chapter 2 reviews trends in the interaction between collective bargaining and public policy.

For many employees flexibility is a reality. Self-employment, telework, flexible and long working hours, fixed-term contracts or agency work are spreading on Europe's labour markets. Trade unions must reach out to new types of employees and the social partners have a joint responsibility to create the conditions for 'flexicurity' and, while doing so, having an eye on the possible downsides of increased flexibility without new forms of security. The Commission has invited the sectoral as well as the cross-industry social partners to actively contribute to the debate on 'flexicurity'. Trends and potential risks in the labour market are the topic of Chapter 7.

Collective bargaining and employee participation at the company level can be an important tool to manage change and to involve the workforce in the development of the enterprise. Restructuring can be more efficient and less disruptive if negotiated solutions at company level are possible. Chapter 3 draws a picture of employee representation at the workplace.

Social dialogue at the European level has developed an array of instruments that can ensure that actors on different levels work towards shared objectives while respecting the specific governance structure and the social and economic situation in their Member States (or region). Chapter 5 describes how the European social partners engage in the Lisbon Strategy and how the results of social dialogue contribute to quality of work, training systems, youth integration into the labour market, gender equality, active ageing as well as to corporate social responsibility. Starting from the European Social Dialogue, social partners can make a real difference with respect to ownership of the Lisbon Strategy. Their members must get the feeling that they can contribute – in their field and at their level – to a European reform project. At the same time, they will only make the effort to engage in reforms when they are convinced that these are needed and pay off. Social partners have a dual task of involving people in the process and of delivering their contribution to reforms.

Chapter 6 reviews EU labour legislation in the period from 2004 to 2006. The developments concerning working time, health and safety regulations, instruments to fight anti-discrimination and foster equality for men and women as well as the further development of legal measures fostering the free movement of workers are all necessary components to enhance the quality of work and to develop a true European labour market. As such they are a direct contribution to the successful implementation of the Lisbon Strategy.

Growth and more and better jobs rely on competitiveness, which has many components. Chapter 8 considers the contribution the social dialogue makes to economic performance. It shows that social dialogue can make a real contribution if it is imbedded in a functioning structure of labour, employment and social protection policies. The social partners will have to embrace strategies to speed up the transition to the knowledge economy while maintaining workers' employability, even if they are faced with differentiation and individual acquisition of skills rather than with rigid organisational structures. The knowledge economy is central to competitiveness and prosperity. Implementing lifelong learning, embracing education, training and adult learning, particularly for the low-skilled, requires a coherent policy and it is a prime example of a responsibility that is shared between the State and the social partners.

EXECUTIVE SUMMARY

The Industrial Relations in Europe Report 2006 builds on the work of the previous report of 2004 ([2]). The first three chapters focus on industrial relations in the Member States: developments with regard to national industrial relations actors, the interaction between collective bargaining and the law in the Member States and developments in workplace representation mechanisms and practices. The next three chapters deal with European developments: concerning the promotion of social dialogue capacity building in the new Member States and candidate countries, as well as European social dialogue developments at cross-industry and sectoral level and European legislative developments. The seventh chapter addresses forms of non-standard working conditions in the enlarged EU, including trends and industrial relations perspectives on tackling potential risks to social cohesion and sustainability, and the last one endeavours to discuss the complex relationship between the industrial relations, and economic performance.

Chapter 1: Social partners as membership organisations: overview of forms and trends

Most unions continue to be organised on a sectoral or occupational basis, with the traditionally more powerful blue-collar unions losing influence and the white-collar unions gaining significance. In most countries there is more than one peak organisation or confederation, with divisions on occupational, religious or political lines. In general, however, confederations are increasingly distant from their political party counterparts.

Large differences in trade union density – the ratio of actual to potential membership – continue to exist between the Member States, ranging from 80 % in Denmark to 8 % in France. The density rate is high in the Nordic countries, while Spain, France and most of the new Central and Eastern European Member States have comparatively low rates. The overall weighted average density rate in the EU is now between 25 % to 30 % of wage earners, and the trend in union density is clearly downward across Europe. Ten years ago, one in three European workers was a member of a trade union, now it is one in four. Most of the EU Member States experienced a fall in density over the period from 1995 to 2004, with unions in Central and Eastern Europe facing dramatic membership losses. Union density varies notably according to certain characteristics such as sector, age and gender: men are more likely to be unionised, as are older workers. The highest union density is usually found in public administration, health and social services with membership in the services sector the lowest. Minority ethnic groups and workers in small workplaces also tend to be less organised.

Confronting the challenge of declining membership in many countries has led the unions to introduce numerous innovations. An organising model – seeking more 'empowerment' of the workforce, for example, by targeting specific workplaces – is one approach. Alternatively, delivering new services such as legal and careers advice has been attempted to attract and retain members. Social movement unionism attempts to transcend the shop floor, focusing on community-based activism and campaigning about local issues.

([2]) *Industrial Relations in Europe,* Office for the Official Publications of the European Communities, 2004.

Challenges to proposed welfare reforms in, for example France (2005 and 2006) and Italy (2005) have also been used to promote the profile of the unions. Mergers to promote economies of scale and enable expansion into growing sectors are also common. Recent significant mergers, both in 2004, include that of two unskilled workers' unions in Denmark to form the country's largest union and the amalgamation of six blue collar public sector unions in Finland.

The power and structure of employers' organisations also varies across the Member States. Some countries, such as Italy – with 12 cross-sector peak organisations – have difficulty in establishing a unified front of employers' umbrella organisations. In some countries, macro-sectoral organisations are more significant than general peak federations, and peak organisations do not always play a significant role in bargaining. While there is a substantial role for the peak organisations in the small west European economies, in the large economies – such as Germany – sectoral organisations are more important. Employer organisation density (the proportion of employees working in companies which are members of an employers' organisation) suggests that they are generally well-established actors in industrial relations. Except for the Nordic countries, density is higher for employers' organisations than unions. The (weighted) average employer rate of organisation is approximately 55 to 60 %. However, there are significant variations between countries. Small west European c untries like Austria and Belgium have a high degree of associational power on the employers' side, while the Czech Republic, Estonia, Latvia, Slovakia, Portugal, Lithuania and Poland have lower than average rates. In the last two countries, employers' organisations density is 20 %.

There is a variety of trends in membership structures of employers' confederations in Europe. Mergers and rationalising have happened in several countries in recent years, for example in Luxembourg (2000) and Finland (2004), and the two major Dutch confederations have recently announced an alliance. These developments result from a push for economies-of-scale or the integration of industrial relations interests and trade interests. Splits and disagreements on representativeness have also occurred in some countries. The principal general peak organisation in Denmark, for example, is in a phase of restructuring because a major member organisation has expressed doubts about the need to be serviced by a central employers' confederation. In central and eastern Europe mergers and splits happen on a larger and occasionally more turbulent scale.

While the employers' organisations appear not to be confronted with declining membership density – probably since they are also active in networking and lobbying activities in other areas such as competition policy – they do face certain recruitment and organising challenges. Promoting membership of SMEs is often difficult, the role of (con)federations in countries where decentralisation of collective bargaining is significant is potentially in question and there remain capacity-building issues in new Member States. Furthermore, employers' organisations face increasing pressures from their members to economise on resources, enhance the accountability of the leadership and be more assertive in promoting entrepreneurship. Nonetheless, employers' organisations, with few exceptions, are well established actors in the industrial relations systems of the EU.

Chapter 2: The evolving relationship between collective bargaining and law in the European Union

In the European tradition, collective bargaining is autonomous, enabling a free definition of wage policies and working conditions. The legal principles underpinning the autonomy of collective bargaining are: freedom of association, the presence of collective parties, the generalised enforceability of agreements through legislation or other administrative measures and the procedural function of collective agreements, which may, for example, pre-determine the contents of collective agreements at a lower level. The institutional context for autonomous collective agreements remains solid, but in certain areas covered by EU law in particular – such as working time – and where derogations from the law and collective agreements are increasingly frequent, there are ongoing discussions about the proper relationship between autonomous bargaining and the law.

Current trends in the relationship between law and collective agreements include an almost universal move toward decentralisation to the company level. The forms of decentralisation vary quite significantly, however, from country to country and are often highly changeable. In Spain, works councils operate with a clear mandate and sign 74 % of plant agreements, in Germany single employer agreements have tripled since 1990 and the spread of 'opening clauses' increases decentralisation. In Austria, commentators observe 'organised decentralisation', a phenomenon linked to 'delegation' or 'opening' clauses, enabling some flexibility on certain economic and working conditions.

Other developments include the use of collective agreements to tackle issues of restructuring, non-standard workers and social rights. According to the Swedish Employment Protection Act, for example, agreements on redundancy must include measures to facilitate redundant employees' return to work. Sweden has also been innovative in extending the benefits of collective agreements to agency workers. In Finland too, agencies must comply with the minimum wages used by the company. Collective agreements are also being used to establish certain social rights. In France, for example, an inter-professional agreement on life-long access to learning was signed in 2003, guaranteeing an individual right to training. Other examples have included measures in agreements in Denmark and Greece to reconcile work and family life.

In understanding and interpreting the main trends in collective bargaining, the chapter proposes three 'regulatory schemes'. Firstly, collective agreements may precede law. That is, an agreement in collective bargaining may prepare the ground for the adoption of the same norm in law. Examples include the 2004 French statute on training which was inspired by the 2003 agreement on life-long learning. Alternatively, there may be a vertical hierarchy between law and collective agreements, with a number of possible variations. In some countries collective agreements are subject to extension by decree. In Italy, for example, collective agreements in the public sector are generally enforceable. On the other hand, this scheme can allow for derogations from the law. For example, the Spanish Workers' Statute provides for derogations from legal standards on working time, some conditions and wages when the employer can prove that economic, technical or productive reasons may damage the firm's competitive position. Recent developments suggest that in the name of 'modernisation' and labour market flexibility, such as in Italy, there has been expansion of the areas in which derogations are allowed. A final regulatory scheme is

horizontal subsidiarity between law and collective agreements, with the regime of semi-mandatory law in Denmark being one example.

The increasing trend towards derogation by collective agreement has led to critical reflection in certain countries on the new powers of social partners, particularly where derogation from legislation occurs that is designed to protect fundamental rights. The 2004 French law establishing the majority principle – consensus of organisations representing the majority of workers to allow plant bargaining in derogation from branch agreements – is one example of how a civil law system is attempting to handle the increasingly prominent tension between the public relevance of certain rights and the available private means to achieve them. Poland sees a lively debate on possible criteria for current derogations from statutory standards through collective bargaining.

The chapter notes that while the basic rules of national labour systems have not been shaken in recent years, there are certain tendencies which challenge the traditional relationship between the law and collective bargaining. As well as the discussions on the comparability of standards arising from increased derogations from the law and higher collective agreements, it emerges that strengthening the legal ground on which voluntary sources must rely involves the need to clarify criteria for the negotiation of binding agreements, particularly when there is a departure from higher standards. The increasing recourse to non-legal terminology, like in 'experimental' or 'temporary' legislation, as well as legislation aimed at 'modernisation' often leaves significant space for manoeuvre to the relevant social partners and collective agreements can be crucial in setting standards adaptable to different contracts of employment. Finally, increasing decentralisation of bargaining that sometimes deals with fundamental rights implies the need to strengthen the procedural rules coordinating company and plant bargaining as well as transnational company bargaining. As part of its new social agenda, the Commission is exploring this latter question.

Chapter 3: Employee representation at the workplace in the Member States

Workplace representation has been legally established and formally installed in most of the EU countries and is a distinctive feature of the EU industrial relations system. There is, however, a great range of forms of representation, reflecting the specific characteristics of industrial relations in particular countries. The most significant European legislation on workplace representation is the framework directive of minimum standards for informing and consulting employees at company level in all Member States (Directive 2002/14). This generalised the obligation to inform and consult employees and, in effect, institutionalised mandatory workplace representation in the European social model. However, the directive is drafted in very broad terms, leaving considerable scope for individual States to implement its terms. Thus it creates a general framework for informing and consulting employees, without harmonising workplace representation. There remains, therefore, a patchwork of information and consultation requirements, although most countries have adopted a system in line with the EU directive, with implementation leading to a policy debate in several countries. The biggest statutory changes as a result of the directive are occurring in the previously non-statutory countries of the UK and Ireland and in some central and eastern European countries.

The principle differences in workplace representation in the EU are to be found in the structures of the national models and in the levels of participatory rights. The legal basis of representation is also variable: while it is mostly statutory law which creates the national framework, in the Nordic countries, collective agreements form the legal basis. Structurally, differences arise in whether representations are elected by all employees, are elected or nominated by trade union members within the company or whether there is a combination of the two channels (dual channel system). While in Cyprus, Ireland and Sweden, for example, single channel representation by a trade union is the norm, in France, Greece, Portugal and Spain, the works councils are seen as complementary bodies to the trade union representation. Very significant variations are also obvious in minimum thresholds for representation. While in Portugal and Sweden there is no minimum, in Belgium at least 100 employees are required for a works council. Rights to participation also vary. While statutory prescriptions in many Member States require employers to give information on financial and business matters, employment levels and closures and so on – as well as to consult on structural changes – co-determination or joint decision-making is less common. In Austria, Germany and Sweden, however, there are strong participatory rights extending to substantial co-determination.

The presence and impact of workplace representation also varies according to a range of factors such as sector, establishment size and occupational category. Coverage – the share of employees working in an establishment with a workplace representation – is quite variable. While the EU average is approximately 50 %, over 80 % are covered in Sweden, while the Baltic States have coverage of only 25 % or under. Coverage also varies substantially by sector, with 80 % represented in the education sector across Europe, compared with only approximately a third in sales, hotels and restaurants. There is, broadly speaking, a linear relationship between size of establishment and coverage of representation, with 87 % coverage in establishments of 500 workers or more, compared to only 24 % in workplaces with under 10 employees. Occupational category also has some bearing on the chances of representation, with professional and managerial staff more likely to have representation than manual workers. In terms of the perceived impact of workplace representation in influencing conditions at work, those covered by representative arrangements seem to discern only a relatively moderate influence. Broadly speaking, employees in the new Member States perceive representation to be less influential.

While the overall structures of workplace representation vary significantly from country to country, the limited available research suggests that the practice – the processes and dilemmas faced by representatives – is often broadly similar. Nevertheless, certain differences at a national level can be seen. In Germany, research suggests that the institution of the works council retains strength, but that the role of the representative has become increasingly difficult with increased company restructurings, economic problems and organisational changes. The research also suggests that works councils have a moderate positive impact on economic performance, but that that those in particular which have a strong cooperative role in organisational or technological changes may have a more noticeable positive effect. In the Netherlands it appears that the institution of works councils has matured with legal obligations and procedures being more closely followed, but that influence on strategic matters remains relatively limited. Barriers to enhanced impact include a certain degree of mistrust on the part of the business side and the challenge of changing organisational structures. In Nordic countries research suggests that

the well-established structures of workplace representation are increasingly developing into more involvement and co-determination.

Representation remains broadly speaking low or lacking in influence, however, in the central and eastern European countries and southern Europe. Recent research on the Czech Republic, for example, suggests that lack of enthusiasm among employees and indifference from employers are barriers to expansion in representation. While France has a well-developed and increasingly institutionalised, professional and influential system of workplace representation, Portuguese and Greek representation remains relatively weak in terms of impact and influence. Despite the fact that workplace representation has been strengthened and professionalised in recent years in countries with an already institutionalised tradition, and despite the growing evidence from north-west Europe that a well-functioning representation can play a significant role in modernisation and performance, there remains therefore a weak system of employee representation in several countries, with significant gaps in the private sector. This poses a challenge for those advocating representation in countries with less well-established traditions, while in countries with strong institutions, the challenge is more to adapt representation to the increasingly complex landscape of internationalisation and the network economy to ensure its ongoing contribution.

Chapter 4: Social dialogue capacity-building initiatives in new and potential Member States

The Commission has, the chapter notes, continually stressed the importance of social dialogue for better governance and made various recommendations for the improvement of the capacity and involvement of social partners in new Member States, accession and candidate countries. The industrial relations traditions in the new Member States, however, pose something of a challenge for the EU approach, since they have tended to emphasise more tripartite bargaining and national level concertation than bipartite, collective bargaining. Collective bargaining has largely been limited to the company level and both trade unions and employers' organisations in eastern and central Europe are weak. The Commission is particularly concerned about the capacity of social partners in these countries, because of the difficulties it poses in terms of involvement in the various fora of the European social dialogue. This encouraged the Commission to request accession countries to include social dialogue projects in the context of the Phare programme.

Between 2001 and 2005, social dialogue capacity-building projects were established in all former and current accession countries of central and eastern Europe. Each country could choose one or two twinning partners from the EU-15 – typically social affairs and labour ministries and national experts – with whom they would work. Examples included the Czech Ministry of Social and Labour Affairs' collaboration with Danish twinning partners which produced an initial assessment report, developed recommendations on procedures for extending collective agreements and promoted activities aimed at strengthening the extension of collective agreements at enterprise level. Similar capacity-building activities such as seminars and working groups were reproduced in the other CEE countries, with the partners' monitoring reports often emphasising positive impacts on public awareness and on the strength of employers' and employee associations. However, as well as some fluctuating political support, projects faced the difficulty that employers' organisations

were generally less well represented – something project partners believed needed to be remedied if the projects were to be sustainable.

The European cross-industry social partners also initiated their own projects funded by the EU either through the Phare programme or the Commission's social dialogue budget headings. These included business support programmes such as the European Association of Craft, SME (UEAPME) designed project – SME-FIT – which focused on helping small enterprises familiarise themselves with the *acquis*. The cross-industry partners 'Integrated Programme', launched in 2003 aimed to enhance the capacity of social partners to participate in European social dialogue through, for example, developing competencies and providing resource centres.

The Commission also financed capacity building initiatives organised by the ITC-ILO. The EMPACT project set up training programmes for staff of participating employers' organisations, leading to changes in the internal structure of the employers' organisations, with new committees being established, for example. ACTRAV was the corresponding project aimed at strengthening the capacity of workers' organisations. The European Foundation for the Improvement of Living and Working Conditions (EFILWC), an EU agency, also launched a number of projects preparing the national social partners for enlargement, including a project on social dialogue and EMU in the candidate countries.

Social dialogue capacity-building projects in the candidate countries and potential candidate countries are also being increasingly emphasised. For example, a conference organised by the Commission in Skopje in October 2005 on strengthening social dialogue in the Western Balkans highlighted the key role of social dialogue as a social policy tool.

Broadly speaking, evaluation of the projects suggests positive and encouraging results. However, there remain important weaknesses. The availability of independent, structured and representative organisations, particularly on the employers' side, is still limited. Bipartite social dialogue, particularly at the sectoral level, can be strengthened. The on-going viability of the improvements that have been made and the capacity to respond to these challenges will depend on the will of the social partners, since social partners are autonomous, and will also be significantly influenced by the determination of national governments to promote social dialogue.

Chapter 5: European social dialogue developments

The chapter offers an overview of recent developments in social dialogue at European level. 2005 was a notable year, marking the 20th anniversary of the launch of European social dialogue by the then Commission President Jacques Delors. A special Social Dialogue Summit was held in September 2005, chaired by Commission President Jose Manuel Barroso, looking back over the previous 20 years and considering future challenges. The leaders of the European Social Partners also officially launched their discussions on the next multi-annual work programme for European social dialogue (2006-2008).

In terms of tripartite dialogue, the mid-term review of the Lisbon Strategy called for enhanced ownership of the process through improved governance, streamlined processes

and stronger involvement of all stakeholders. The European cross-industry social partners issued a joint declaration on the mid-term review of the Lisbon Strategy and supported the refocusing exercise. Tripartite social summits continue to meet ahead of every Spring European Council, and all EU presidencies have so far held extraordinary autumn meetings on specific issues. These have been seen as valuable opportunities for the Commission and the Council to monitor progress and discuss various aspects of the Lisbon Strategy. In almost all Member States, social partners were informed and consulted to varying degrees on the national reform programmes, outlining their strategy on employment and macro- and micro-economic policy. The Commission's 2006 Annual Progress Report again emphasised the importance of the involvement of social partners in the implementation phase of the Lisbon strategy.

At the bipartite level, the 'flexicurity' model of employment relations, combining labour market flexibility and employment security, has been promoted through various social dialogue activities. Implementation of the 'autonomous' European framework agreement on telework, for example, has been ongoing in the Member States; European social partners have continued to monitor the process and will draw up a report. Subsequent to the 2002 cross-industry framework of action on lifelong learning, annual reports have monitored social partner initiatives at the national level. An evaluation report examined the impact of the framework on both companies and workers, arguing that it has both supported pre-existing actions and helped to bring about new initiatives. Sectoral social dialogue committees have also developed instruments to improve training systems and provision in ways adapted to their economic activities. In response to the Commission's encouragement to work more on the anticipation of change and restructuring, the cross-industry social partners agreed in the joint work programme for 2006-2008 to complete national studies of economic and social change for all Member States and, on that basis, promote and assess the 2003 'orientations for reference'. Sector-level initiatives include the innovative 'tool box' of the ship-building sector, containing guidance on best practice on dealing with cyclical fluctuations in demand. The sugar sector also developed various initiatives such as an electronic practical guide to accessing structural funds. In 2005 the cross-industry social partners also discussed the functioning of European Works Councils (EWC) on the basis of case studies and drew conclusions in their join text 'Lessons learned on EWC'.

The social partners have considered the challenges arising from demographic change, with youth integration and active aging taken up by the 2006-2008 cross-industry work programme. Sectoral social dialogue committees also developed proposals for integrating young people into the labour market. In promoting gender equality the Commission roadmap of March 2006 and the 'European Pact for Gender Equality' endorsed by the 2006 Spring Council underline the role of social partners. In March 2005, the cross-industry social partners agreed a framework of actions on gender equality, addressing gender roles, promoting women in decision-making, supporting work-life balance and tackling the pay gap.

One of the areas in which social partners have been most active is quality of work. The Council adopted in July 2005 a directive which implements the agreement on certain aspects of the working conditions of mobile railway workers. In the area of health and safety at work, the Commission launched several article 138 consultations (carcinogens, mutagens and substances which are toxic for human reproduction; musculoskeletal

disorders), and some sectors responded with their own initiatives. Seventeen European social partner and industrial organisations in various sectors concluded the first multi-sector agreement on protecting workers against silica crystalline dusts in April 2006. The agriculture sector also signed a framework of actions on musculoskeletal disorders in 2005. In the area of well-being at work the cross-industry social partners signed a second autonomous agreement on stress in October 2004 which has to be implemented by member organisations by 2007. On violence and harassment, they started negotiations on an autonomous agreement in February 2006. Corporate social responsibility (CSR) continues to attract and retain considerable interest, with sectoral initiatives including websites and the collection and dissemination of best practice.

Steps have also been taken to strengthen working methods. In line with the Commission communication of August 2004 identifying future challenges, social partners have devoted efforts to improve their working methods and the functioning of European social dialogue. According to the cross-industry social partners, their first joint work programme for 2003-2005 has helped to focus European social dialogue and to enhance its autonomy. A second work programme has therefore been drawn up for 2006-2008. This programme foresees social partners developing a common understanding of their instruments and how they can have a positive impact at the various levels of social dialogue. The adoption of annual or multi-annual work programmes by all sectoral social dialogue committees (SSDCs) has also been a positive development. Three new SSDCs have been set up with the social partners of the chemical industry, the steel industry and the hospital sector. Other requests for the creation of SSDCs (gas) are being considered by the Commission. An external evaluation of the use of financial instruments in support of European social dialogue, carried out in 2005, confirmed their positive impact. The 1 011 projects carried out by 525 social partner organisations in research, capacity-building, conferences and seminars were aimed principally at increasing participation, supporting the European Employment Strategy and increasing awareness of legislation. Added value and additionality of projects were found to be generally high. The evaluation suggested increasing participation of organisations from Member States that recently joined the EU, of knowledge intensive growth sectors and of sectors with predominantly small and medium-sized companies.

Chapter 6: Review of legislation 2004-2006

This chapter notes that legislative action in the reference period was carried out in the areas of labour law, health and safety at work, equality between men and women and free movement of workers, including social security issues. A number of legislative acts were proposed or adopted with a view to recasting existing legislation regarding health and safety, equality and free movement of workers, in line with European policy aiming at better regulation and simplification. The Commission continued to make considerable efforts to monitor the implementation and application of EU law, particularly in the context of the enlargement.

In the field of labour law, a Commission proposal on working time, currently under discussion before the Council and the European Parliament, involves amending the existing directive as regards mainly the issues of on-call time, reference period, opt-out and reconciliation of work and family life. In the railway sector, the EU social partners concluded an agreement on certain working conditions of mobile workers engaged in

interoperable cross-border services which was implemented, at their request, by way of Directive 2005/47/EC. The Commission Communication on restructuring of March 2005 outlines measures that should be developed or strengthened around the various means that the Union can use in anticipation and management of corporate restructuring. It constitutes the second stage of consultation of the European social partners, calling on them to become more involved in anticipating and managing restructuring. The new cross-border mergers directive regulates, among other things, the issue of employee participation in the company resulting from the merger.

The Commission undertook several actions in order to ensure the effective implementation of Community labour law, including launching a series of studies concerning the transposition and application of the relevant acquis in the enlarged Union. Looking forward, the Commission plans to publish a Green Paper on the evolution of labour law analysing trends in new work patterns and the role labour law can play in tackling these developments. The publication of this paper, and the ensuing public debate that it will launch, will play a key strategic role for future developments in this field.

There have been several developments in the area of health and safety at work. These include the adoption of two directives in 2004 concerning the exposure to risks arising from electromagnetic fields and the exposure to carcinogens or mutagens respectively. In November 2004, the Commission launched a consultation of the European social partners on musculoskeletal disorders at work. A Commission directive adopted in February 2006 established a second list of indicative occupational exposure limit values in implementation of earlier directives on chemical agents. Furthermore, in April 2006 a directive on minimum requirements regarding the exposure of workers to risks arising from artificial optical radiation was adopted. Other developments included the December 2004 launch by the Commission of the first stage of consultation of the social partners on the protection of workers from violence at work, and the 2004 communication on the practical implementation of six health and safety directives.

In the area of anti-discrimination, the Commission focused its efforts on the full and correct transposition into national law of the two anti-discrimination directives (the racial equality directive and the employment equality directive) as well as upon their effective application in practice. These directives have helped to raise significantly the level of protection in the EU and have led to the introduction of legal provisions covering certain grounds for the first time in some Member States. In the field of equality for women and men the Commission adopted in April 2004 a proposal for a directive on the implementation of the principle of equal treatment in matters of employment and occupation that aims at simplifying and updating existing Community legislation. A directive was adopted in December 2004 on access to and supply of goods and services establishing for the first time the principle of equal treatment outside the employment field.

The complex body of EU legislation on the mobility and residence rights of workers exercising their fundamental right to free movement was simplified and improved by way of a directive adopted in April 2004. Member States had until April 2006 to transpose this directive. In the framework of the regular up-dating of EU legislation on the coordination of social security schemes, a 2005 Regulation reduced the number of special non-contributory benefits to which special coordination rules apply. In October 2005, the Commission presented a proposal for a directive on improving the portability of

supplementary pension rights. This directive intends to support the 'Jobs and Growth' strategy by making it easier for workers to move jobs and countries. The European Health Insurance card formally replaced the E-forms in all EU and EEA States from the beginning of January 2006 (end of the transitional period regarding some Member States).

Chapter 7: Trends and potential risks in the EU labour market

This chapter considers the increasing trend towards enhancing flexibility of labour markets and towards non-standard working conditions in terms of greater diversity in employment contracts and working time arrangements, as well as the potential associated benefits and risks. Some countries gave preference to one form of flexible contract over others, such as Spain, which remains the country with the highest proportion of employees – one third – on temporary work contracts, followed by Poland, Portugal, Slovenia and Finland. However, while between 1998 and 2005 this percentage slightly decreased in Spain and Finland, and did not significantly increase in Portugal, it doubled over the same period in Poland (from 5.4 % to 25.5 %) and increased substantially in Slovenia (from 11.5 % to 17 %). In other EU countries where it was still only marginally developed in 1998 the increase was more significant, as in Sweden, the Netherlands and Italy. In the UK, the share or temporary jobs grew during the 1990s and then decreased from 7 % to around 5.5 % of the workforce. The EU-wide trend is towards more temporary contracts (12.8% in 1998 and 14.2% in 2005) although permanent contracts remain more common. Interim agency work and part-time work also show upward trends. While these different contract forms can be summarised as *external* numerical flexibility, flexible working time arrangements – *internal* numerical flexibility – continue to become more important. These developments are found with regard to overall flexibility in working time, as evidenced in a recent survey of the European Foundation for the Improvement of Living and Working Conditions, as well as concerning increased proportions of employees reporting shift and night work and those working during weekends.

The motivation for greater flexibility comes from both employers and national governments. At the company level, the perceived need for increased competitiveness in the context of globalisation as well increasing expectations of consumers is leading to more flexible and atypical forms of employment and work organisation. National governments promote flexibility measures with the aim of boosting employment. In particular, governments try to facilitate exit and entry to the labour market. There is evidence, furthermore, to suggest that measures to enhance flexibility have had success. For example, in Sweden recent data suggests that interim agency work led to employment with the agency's client for the majority of employees and also provided an integrative role for immigrants and young workers. More generally, part-time work has become very important in a large number of countries and has enhanced employment opportunities, while one fifth of part-time workers would prefer to work full-time.

Focusing on the risks associated with more flexible work it has been found that it is mostly employees aged under 30 who are on temporary contracts and exposed to the greater risks associated with enhanced labour market flexibility. 54.6 % of workers under 30 are on such contracts in Spain, 49.3 % in Poland and 42.3 % in Slovenia. Women tend to be more likely to be employed on a temporary basis, especially in Slovenia, where 48 per cent of women under 30 are affected compared to 38 % of their male colleagues, but also in

Finland (48 % and 36 %) and Sweden (46 % versus 36 %). Certain sectors appear to be more affected by 'flexible' and atypical forms of employment, such as those exposed to international competition and the retail sector.

Increasing labour market flexibility does not, however, necessarily lead to higher job quality. There are many virtuous combinations leading to increases in jobs and job quality, but there are also the potential risks of increased poverty and inequality in working conditions, weakening social dialogue, and reduced worker motivation. Concentration of unskilled jobs in contingent employment, shortening of contract duration and involuntary part-time work are forms of employment which can lead to reduced possibilities to find and retain a secure place in the labour market. They also offer more limited prospects of upward mobility, particularly where access to training is limited and can, on the contrary lead to higher segmentation on the labour market and an underutilisation of human capital. Uncoordinated working time arrangements may, for example, impede an optimal work/life balance. These uncertainties on the labour market may also have a demographic impact as they can lead young people to postpone the decision to set up a family. While each of the individual risks does not necessarily imply exclusion, in combination they may lead to workers being trapped in 'vulnerability vectors' and facing long term exclusion. The chapter observes that certain groups are most at risk of facing exclusion through an accumulation of risks: women, young people, older people, minority groups and those with lower levels of education.

In attempting to balance flexibility, job quality and employment security, governments and social partners have implemented measures to limit excessive forms of flexibility, including enhanced quality of training and lifelong learning. The chapter urges for more efforts in this respect. For example, there has to be monitoring and, where appropriate, action needs to be taken by both governments and social partners with regard to limiting certain forms of inequality in working conditions, including those related to health and safety, access to training and combining work with family life. Certain groups on the labour market such as female contingent employees on low pay and young workers facing possible vicious circles of exclusion need particular attention. More generally, the incidence of low pay is high in a number of Member States (notably where more than 30 % of all employees receive less than 60 % of the average/median wage as in most of the new Member States, but also in the UK and Portugal). While statutory minimum wages have been in place in most Member States, the percentage of workers covered by them is very variable among Member States. But the aim endorsed by the European Council of substantially reducing the incidence of poverty including the working poor requires further forceful action. Overall, the chapter underlines the importance of ensuring that employment growth is not pursued at the expense of social cohesion and sustainability and that the possible risk factors are counteracted in the promotion of economic growth and job creation.

Chapter 8: Industrial relations and economic performance: an overview of research results

The aim of the Lisbon agenda is to promote Europe as the most competitive knowledge economy, while retaining social cohesion. The social partners are encouraged to participate in this process, and this chapter examines the social foundations of

competitiveness, addressing the role of industrial relations in promoting economic growth and efficiency.

The contested nature of indicators of economic performance and classifications of industrial relations systems makes a definitive statement of the relationship – particularly in quantitative terms – difficult to achieve. Indicators of international comparisons of competitiveness and performance are numerous and subject to some dispute, while the diversity of industrial relations and national social-protection systems in Europe resist any straightforward quantitative classification. Nevertheless, there is a substantial body of research addressing the relationship between industrial relations systems and competitiveness. No single model of social dialogue emerges as the best for promoting competitiveness. Indeed, the findings of comparative studies are relatively modest on the impact of industrial relations on growth and economic performance. Rather, the importance of complementarity between industrial relations systems and other institutions of labour, employment and social protection seems to be decisive.

Nevertheless, drawing a distinction between systems with high levels of unionism and/or a high degree of coordinated collective bargaining and those with low unionism and low levels of coordinated bargaining enables some broad, high level observations. While the existing empirical research on productivity, employment growth, product market competition and research and development spending gives either indeterminate or non-robust results, it appears that certain macroeconomic indicators display more favourable outcomes in systems with high unionism and/or high coordinated collective bargaining. Unemployment appeared broadly speaking to be lower and less persistent in systems with high unionism. The most robust results, however, are on incomes. Union density and high coverage by collective bargaining go hand in hand with more limited income inequalities and a more limited wage distribution as well as higher average wages, fringe benefits and training.

A definitive statement of the single best system is therefore impossible. However, the research does suggest that low coordination generally leads to poorer results than high coordination or no coordination at all. The most crucial dimension is the *complementarity* between industrial relations system and other institutions which constitute a 'package of institutions'. Research also suggests that the participation of industrial-relations players in political and institutional debates can offer a decisive means of improving the environment necessary for economic growth, where the parties see the coordination as a common good.

In the context of the changes occurring in the European polity as it moves towards the competitive knowledge economy envisaged by the Lisbon Strategy, the social partners face a number of challenges. The development of the knowledge economy implies an individualisation of the employment relationship and emphasises the importance of individual skills and competencies and constantly replenishing knowledge to ensure employability, rather than rigid organisational routines. This implies an emphasis on industrial relations agreements on qualifications and on the definition and organisation of careers. In general, the creation of methods of training and acquisition of skills are becoming critical challenges for the social partners.

Other developments also pose challenges. The increasing emphasis on greater individual responsibility for insurance against risk in the context of the difficulties faced by European

welfare States poses a problem for unions which are more accustomed to defending members' rights rather than assuming specific individual duties of their members. And an increasing re-orientation of industrial relations activity to the company because of diversification of productive activities limits the notion of sector. There is arguably an increasing weakening of the role of sectoral negotiations 'from hard law to soft law', with an increasing number of firms negotiating opt-outs or drop-outs. Tensions between the national context of industrial relations and the globalisation of the economy tend to increase, raising the question of the need of further Europeanisation of industrial relations.

CHAPTER 1
THE SOCIAL PARTNERS AS MEMBERSHIP ORGANISATIONS: AN OVERVIEW OF FORMS AND TRENDS IN THE MEMBER STATES ([3])

In this first chapter, the two key collective actors of industrial relations in the EU Member States are introduced: trade unions and employers' organisations.([4]) Both are so-called intermediate organisations. They act as an interface between the state, the economy and their membership. Both organisational types are driven by the logics of membership and influence. They aggregate the interests of their diverse rank and file and represent these interests at different forums and levels. They are furthermore driven by logics of efficiency and effectiveness. Taking these logics into account implies that they are involved in four types of activity: participation for members, representation of members, services to members and control over members.([5]) In a model of organised industrial relations – typical of the traditional European social model and social dialogue – these associations are cornerstones.

1. Trade unions

A trade union can be defined as an independent association (coalition) of workers, who have united for the representation and defence of their interests in the workplace, but also at the general level of the economy and politics. This free and independent association of workers is a statutory right recognised throughout the European Union. Unions can be further typified by the following features:

- They are mass organisations with a centralised structure and a division of work between a network of volunteers (activists or militants) and a professional apparatus (trade union officers).
- They are organisations recognised by the law maker and have a quasi public status.
- They have a distributive function in the economy (settling wages) but also a normative function (through an involvement in deciding labour regulations).
- They are representative organisations: they speak in the name of their members and can mobilise these members, but they also have the power to convince this rank-and-file of a negotiated compromise.([6])

([3]) This chapter is drafted by Guy Van Gyes, Hoger Instituut voor de Arbeid, University of Leuven.

([4]) A significant part of the information in this chapter has been compiled by a project on industrial relations profiles of the 25 Member States, commissioned by the European Foundation for the Improvement of Living and Working Conditions and conducted by HIVA-K.U.Leuven (G. Van Gyes & T. Vandenbrande), Institut Arbeit und Technik (S. Lehndorff, S. Schief & G. Schilling) and BwP (H. Kohl).

([5]) P.C. Schmitter & W. Streeck (1999), The organisation of business interests: studying the associative action of business in advanced industrial societies, Max Planck Institute for the study of societies, discussion paper 99/1.

([6]) W. Muller-Jentsch (1997), Soziologie der industriellen beziehungen, Frankfurt, Campus, part 2.

We will first present an organisational overview of these trade unions for the EU-25, followed by a discussion of membership figures and trends. The section concludes with an overview of recent revitalisation strategies, deployed by unions in Europe.

1.1. Organisational structure

Table 1.1 presents the main structural characteristics of the trade union movement in each of the Member States: the number of union peak organisations and the reason for divisions between them; an indication of the most important confederation and its affiliation structure.

Most of the unions are organised on a sector or occupational base throughout the EU. Traditionally, blue-collar unions were the most powerful, but they are losing ground everywhere in Europe and white-collar unions or public sector unions are increasingly more important. In many of the Member States unions exist, which are not part of a confederation, but are so-called 'autonomous' unions. Often these autonomous unions organise professional and managerial staff or certain rural regions.

Austria, Ireland, Latvia, Slovakia and the UK have only one confederation, which unites all the unions in the country. In Germany and the Czech Republic, one confederation is strongly dominating the others in membership figures and power. In southern countries like Greece, Portugal and Spain two main confederations are active. Unions in France, Hungary, Italy and Slovenia have a rather complicated and fragmented confederate structure. In Greece, Ireland, Poland and the UK the (main) confederation is composed of a fragmented network of affiliated trade unions, which can be organised on the company, occupational or local branch level. In other countries, the union structure is more and more dominated by large 'super-unions', like GPA in Austria, Verdi in Germany and FNV-Bondgenoten in the Netherlands.

Splits at the confederate level throughout the EU are very often based on political and/or religious divisions. Exceptions are the Nordic countries (Denmark, Finland, and Sweden). Confederations in these nations are organised on an occupational basis. In countries like Estonia, Greece, Malta and Slovenia the divide between public and private sector is important in distinguishing the confederations. In the countries with several trade union peak organisations socialist or social democratic confederations are normally dominant. An exception is Belgium with its strong Christian trade union. Confederations of communist origin are still very important in the south (Italy, Spain, Portugal and to a lesser extent France). Nonetheless, an overall pattern is a growing distance between trade unions and their counterparts in the political party spectrum and vice versa.

Box 1.1: Ongoing merger process between two most important international trade union confederations

A new international trade union confederation will be formed through the merger of the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL).
Claiming 155 million members in 236 affiliated organisations in 154 countries the ICFTU came into being after the Second World War as a split of the communist-dominated World Federation of Trade Unions. The latter has meanwhile declined precipitously since the fall of the communist regimes in Europe.
The WCL was founded in the 1920s under the name of the 'International Federation of Christian Trade Unions'. It chose to remain independent of both the ICFTU and the WFTU. The WCL claims to unite 144 organisations from 116 countries and to represent internationally 26 million members, mainly from Third World countries.
The unification process is aimed at more than a structural merger of two confederations. It is part of moves to install a new dynamism in the international trade union movement. The new centre will be the global advocate for over 170 million working people in some 160 countries around the world. In addition, discussions are underway with a 'contact group' of trade union centres from 10 countries which are currently not affiliated to either the ICFTU or the WCL, as these organisations are expected to join the new centre.

Table 1.1: Trade union structure in the Member States, EU-25

	No	Confederations	Main division between confederations	Unions in largest confederation	Main division affiliates	Remarks
BE	3	ACV-CSC; ABVV-FGTB; ACLVB-CGSLB	Political	13	Sector/status	Christian trade union the largest
CZ	1+3	CMKOS; ASO; KUK; CMS; KOK	Political; religious; regional; occupational	33	Sector	One dominant confederation, namely CMKOS
DK	4	LO; FTF; LH; AC	Occupation	18+7	Occupation/sector	
DE	1+2	DGB; CGB; DBB	Macro-sector; religious	8	Sector	CGB and DBB are only small; Verdi & IG Metall important
EE	3	EAKL; TALO; ETMAKL	Macro-sector/status/profession	18	Sector	Rural workers in a separate small federation
EL	2	GSEE; ADEDY	Public/private	62	Occupation/sector	Public and private union, planning a merger in 2007
ES	2	CC.OO; UGT	Political	12	Sector	Equal strength
FR	5+2	CGT; CFDT; CGT-FO; CFTC; CFE-CGC + UNSA & G10-SUD	Political, religious & occupational (status)	20	Sector	5 'representative' confederations and 2 new ones pushing for national recognition
IE	1	ICTU		60	Occupation/sector	Trade unions with members in Northern Ireland and affiliation with UK unions
IT	3+8	CGIL; CISL; UIL and other smaller peak organisations	Political; religious	15	Sector	Autonomous unions and regional unions active
CY	4	PEO; SEK; DEOK; POAS	Political	8	Sector	Confederations of the private sector
LV	1	LBAS		26	Sector	Restructuring
LT	3	LPSK; Soldarumas; LDF	Political; religious	25	Sector	Independent trade unions active
LU	3	OGB-L; LCBG; CGFP	Political; religious; status; macro-sector	16	Sector	Strong autonomous unions in service sector; CGFP important confederation in public sector
HU	6	MSZOSZ; SZEF/ESZT unió; LIGA; MOSZ; ASZSZ	Macro-sector; political	36	Sector; branch, profession	The union of SZEF-ESZT unió, (started in 2002) is only a cooperation framework, but not a formal merger.
MT	2	GWU; CMTU	To some extent private/public	7	Sector	Weak confederations
NL	3	FNV; CNV; MHP	Political, religious, occupational status	15	Sector	FNV-Bondgenoten as 'super-union' in the private sector
AT	1	ÖGB		13	Sector/status	Political factions as other organisational pillar
PL	3	OPZZ; NSZZ Solidarnosc; FZZ	Political	102	Sector, local branch	New third federation which wants to be politically neutral
PT	2	CGTP; UGT	Political	15+29	Sector+region	28 sector federations & 39 regional branches registered law
SI	4	ZSSS; KNSS; Pergam; Konfederacija'90	Macro-sector (mainly private/public and industry/services)			Two new peaks established recently (Alternativa & Solidarity) in the railway sector, but not represented in national tripartite social dialogue
SK	1	KOZ		37	Sector	Also very small Christian trade union federation
FI	3	SAK; STTK; AKAVA	Occupation	23	Sector	
SE	3	LO; TCO; SACO	Occupational (status)	16	Sector & occupation	Several mergers announced for 2006
UK	1	TUC		71	Occupation & sector	General unions as TUC affiliates; small independent union sector

* Macro-sector: for example industry, services or construction; Source: Industrial relations country profiles, compiled by HIVA-K.U.Leuven, IAT and BwP for the European foundation for the Improvement of Living and Working Conditions.

1.2. Trade union density

Box 1.2: Trade union membership as comparative indicator of trade union mobilisation strength

Union membership is useful as a proxy for union power. However, as a full measure of the organisational capacities of a union movement it is inadequate ([7]). For example: membership is for the Spanish unions not their main source of legitimacy. Representativeness is much more built upon their electoral strength in the works council elections. Around 57 % of the Spanish workers voted in these elections between 2001 and 2003. This electoral strength is seen as much more decisive for the socio-political power of the unions, which is certainly not considered as low as the density rate of 16 % would suggest. Spanish observers speak in this regard of a 'voters' trade unionism instead of a 'members' trade union movement.
Comparison of trade union membership between EU Member States is difficult, because the method of calculation and the quality of the data source can be totally different. Not to speak about the difference in status of a membership within the national culture and tradition of trade union participation. In some countries (for instance France) almost only the 'real' activists join the union as member, in other countries (for instance in Scandinavia or Belgium) some rank-and-file are even politically against a trade union, but are members, because of the social security services provided by the union. Nevertheless, membership density rate is still the most important usable and used indicator to make comparisons between EU countries on the level of trade union participation.

1.2.1. Gross absolute membership figures

As an introduction to the density figures that are presented in the following point, we give an overview of total membership figures in the EU Member States. These membership data are based on administrative sources or files reported by unions (as an obligation for official registration in some countries, as documentation to national statistical offices or through self-reporting). These figures include to the largest extent possible the whole membership (employees, but also unemployed, self-employed, students, pensioners or disabled).

([7]) See for this discussion: J. Visser (2003), 'Unions and unionism around the world', in: J.T. Addison & C. Schnabel, eds., *International handbook of trade unions*, Cheltenham, Edward Elgar, pp. 366-413.

Table 1.2: Total union membership, 2004 or 2003, in thousands

Country	Total union membership	% of adult population
BE*	2723	32 %
CZ	866	10 %
DK	2059	47 %
DE	8581	12 %
EE*	90	8 %
EL*	640	7 %
ES*	2342	6 %
FR*	1990-2270	5 %
IE	633	20 %
IT	11589	23 %
CY*	175	30 %
LV	180	9 %
LT	200	7 %
LU*	110	30 %
HU	976	11 %
MT	86	26 %
NL*	1921	14 %
AT	1358	20 %
PL*	1900	6 %
PT*	1165	13 %
SI	465	27 %
SK	590	13 %
FI	2061	48 %
SE*	3732	51 %
UK	7559	15 %

* year 2003; BE: 14.7 % correction coefficent used; IT: data of autonomous unions not included.

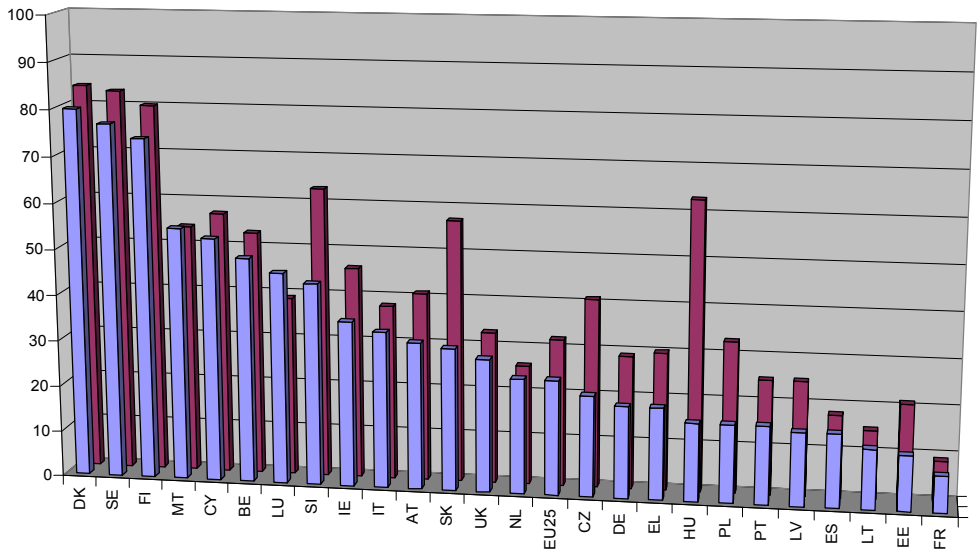
Sources: CY, EE, EL, LV, LT, PL, PT, ES = EIRO; CZ, FI, HU, LU, SI, SK = Industrial relations country profiles, European Foundation, Dublin; DK, NL, SE: = national statistical office; DE = Hans-Böckler Stiftung; FR = Andolfatto Les syndicats en France; UK, IE and MT = Certification office; IT = CISL national library; BE = ACV; AT = ÖGB; population figures used for calculating percentage from Eurostat and 2004 (population older than 14 years).

The biggest union movement is in Italy with more than 11 to 12 million members (half of these are retired people). It is also important to see that unions from countries like Belgium and the Nordic countries have a bigger rank-and-file than unions from Spain, France or Poland. In the Nordic countries, based on a rough comparison between these absolute membership figures and the population above 14 years old, approximately half of this 'grown-up' population is a member of a union. This percentage is, of course, influenced by national traditions of membership (whether unemployed people have an administrative incentive to be member of a union, whether unions also representing retired people in the country or not and so on) and by the labour market composition of the country population (for example the percentage of people that are employed, self-employed or not on the labour market).

1.2.2. General union density figures

As a measure of the associational power or organisational representativeness, 'union density' is defined as the ratio of actual to potential membership. Rather than absolute membership figures (or size), union density rates allow us to compare the trade union mobilisation of different groups at different times, within and across countries, keeping the changing labour force constant ([8]). For the same comparative reasons, figures of net union density are presented: the total figure of gainfully employed members (excluding unemployed, students or retired) divided by the total wage earners population of the country. For comparing the union density we use survey data as far as possible (for country details see annex 1 to the chapter). Large differences in (net) trade union density exist between the Member States, ranging from 80 % in Denmark to 8 % in France. The density rate is high in the Nordic countries, closely followed by the two small Mediterranean islands, Cyprus and Malta. Spain and France, with throughout the 1990s a very low membership level, are joined by a lot of the new east-European Member States. Slovenia and Slovakia are the only eastern nations with an above-average density rate. The overall weighted average density rate in the EU is now between 25 to 30 % of wage earners. It is especially the lower density in the large countries (France, Spain, Poland and Germany), which have a significant downward effect on this average.

Figure 1.1: Trade union density, EU-25, 1995 and 2004



	DK	SE	FI	MT	CY	BE	LU	SI	IE	IT	AT	SK	UK	NL	EU25	CZ	DE	EL	HU	PL	PT	LV	ES	LT	EE	FR
2004	80	77	74	55	53	49	46	44	36	34	32	31	29	25	25	22	20	20	17	17	17	16	16	13	12	8
1995	84	83	80	54	57	53	39	63	46	38	41	57	33	26	32	41	29	30	63	33	25	25	18	15	21	9

The total figure of gainfully employed members (excluding unemployed, students or retired) divided by the total wage earners population of the country; Figure 2004: CZ from 2003, CY from 2002; Figure 1995: FR from 1996; LV and LT from 1998; EU-25: weighted average based on employee population figures from Eurostat LFS data 2004 and ILO paid employment data 1995.

([8]) B. Ebbinghaus & J. Visser (2000), The societies of Europe. Trade unions in Western Europe since 1945, London: Macmillan Reference LTD.

The trend in union density is clearly downward across Europe ([9]). Ten years ago, one in three of the European workers was a member of a trade union, now it is one in four. Most of the EU Member States experienced a fall in density over 1995-2004. Unions in eastern Europe in particular have been confronted with dramatic membership losses: Hungary (75 %); Poland (55 %), Estonia and Czech Republic around 50 %. In the former EU-15, membership losses have been considerable in Austria, Ireland, Portugal, Germany and Greece (20 to 30 %). In Belgium, Denmark, Finland, France, Italy, the Netherlands, Spain, and Sweden, losses in density rate have been limited in the recent decade. British density losses were mainly in the period before 1995. Strangely, we only observe a rise in density rate for the smallest EU countries — Malta and Luxembourg.

1.2.3. According to key characteristics

Table 1.3 presents descriptions of membership density for the Member States (not for Malta) according to some key characteristics. We continue to use net density rates: membership or not of employees ([10]).

Union density differs very often by age in the Member States. In 15 of the 24 cases, we find a strong significant effect. Only in Belgium the age factor has no importance. The pattern of the age differences is not always the same between the Member States. In EE, FR, DE, EL, LU, NL, SK, ES and UK, the relationship looks very linear with membership probability going hand in hand with rising age. In the other countries, the age factor is more a divide between young people (aged under30) and the other (older) workers.

In many of the Member States (14) union density rate is still higher among male workers than among female workers. However, the gender gap is not always so clear. In the Nordic countries (DK, FI, SE) density rate is higher among women. This is also the case in the UK and some CEE countries (HU, LV, PL). In countries like the Czech Republic, Lithuania and Portugal density rate is the same among men and women. The gender gap is the highest in Germany, Austria, Spain, Italy and the Netherlands (based on our survey material) ([11]).

([9]) Which does not mean that in absolute terms union membership could not have risen in recent years. In many EU Member States, the workforce has grown in recent years. The lowering densities can in other words also being a situation of not keeping up with the growing employee country figures. A good example is Ireland. Trade union membership rose in this country by around 20 % from 1994 to 2004. However, union density as a proportion of all employees fell from 46 to 35 %. For Ireland this paradox can be mainly explained by the fact that the number of employees has increased dramatically, from 945 000 in 1994 to 1 500 000 in 2004. Furthermore, we analyse net density, i.e. density rate among working people. In many of Member States the unions managed to extend there membership among other social groups (especially retired people, students and to a lesser extent self-employed persons).

([10]) The figures are based on survey material, mainly from the European Survey, but also for three countries from the International Social Survey Programme (Cyprus, Latvia and Slovakia) and for two countries (Estonia and Lithuania) from the Work Life Barometer of the Baltic countries. For comparative reasons, we choose to work as much as possible with the same data source and year. The recent year with the most available data is 2002/2003. The correlation coefficient between the density rate from the survey material and the density rate based on the other sources is high (0.92, see appendix 1). Nevertheless, the figures have to be read taking some confidence intervals into account (95 % upper and down limit). Figures from countries with a very low density rate (for example France) are more sensitive to the survey design. Another element of 'bias' can be that people have problems to define their current job as an employee job. In countries with important 'grey zones' in employment status between self-employed and employee or formal/casual/informal work, this can be sometimes more problematic.

([11]) This last remark is also confirmed in the data of the Industrial relations in Europe 2004 report, p. 19.

The following columns in table 1.3 present union density rates by (macro-)sector ([12]). Sector is certainly a major factor of union density differences in the Member States, but again the pattern is not always the same, although the service sector is most of the time the weakest union sector. For the countries, where we have only a private/public divide (CY, EE, LV, LT, SK) the pattern is always very strong with a huge difference between a high density rate in the public sector and a low density rate in the private sector. In seven countries (DK, FI, FR, EL, NL, PL, UK) the density is high in the administration, health and social services (mainly public sector, abbreviated AHS), medium in industry and low in the services. In four mostly southern countries (HU, IT, PT, ES), density rate is very high in the AHS, compared to a low density in industry and services with no differences between these last two. In countries like Luxembourg, Slovenia and Sweden density is as high in industry as in the AHS, but considerably lower in the service sectors. Three countries have a separate pattern. Germany has its highest density rate in industry. Density rate differs not much by sector in the Czech Republic. Although still high, Belgium has its lowest density rate in the AHS.

The density rate by occupational class or group is also very interesting and may be distinct from popular beliefs. Based on a recoding of the ISCO-variable in the survey, we constructed a simplified occupational grouping. Professional and managerial staff is the first group. Routine non-manual workers (clerks), sales and other service workers compose the second, white-collar group. Skilled blue collar workers (supervisors, operators, crafts men) are the third group. Unskilled blue collars are the last group (including agricultural workers and seasonal workers).

These figures indicate that union membership is today not a case of blue collar workers alone, on the contrary. In almost every Member State trade union membership of professional and managerial staff (PMS) is higher than or as high as the average density rate in the total employee group ([13]). The lowest density rates are mostly registered in the occupational group of (lower) service workers. Again, different patterns exist between the countries. A first pattern is a higher density rate among PMS and skilled blue collars (DK, EL, ES, SE), sometimes accompanied with also a medium density rate among unskilled blue-collars (AT, IE, LU, PL, SI). Latvia, Portugal and Slovakia have a high(er) density rate among PMS and no strong differences in density rate between the other groups. Hungary has especially a lower density rate among the unskilled blue-collar workers, the Czech Republic a higher among the skilled blue-collars. Germany and the Netherlands have the highest density among the skilled blue-collar workers, followed by PMS and unskilled blue-collars. Italy is characterised by a strong divide in density rate between skilled and unskilled blue-collar workers. Finland attracts attention because of its high density rate of white-collar workers, which is as high as the density rate of the skilled blue-collar workers in the country. The UK has also a distinct pattern with the highest density among PMS, followed by unskilled blue-collars and white-collars. It has relatively a very low density rate among the skilled blue-collar workers. Belgium has the only density rate

([12]) For the ESS survey data, the three categories are based on a recoding of the Nace code. Nace sectors from A to F are coded as industry; E to K, plus O as services and L to N as administration, health and social services (abbreviated AHS). This coding doesn't lead to a strict divide between public and private sector. In service sectors like transport and industry sectors like energy or mining State enterprises can still be very active in a country. For the countries with ISSP data, only a variable, which makes a division between public and private, is available.

([13]) On this question of organising and recruiting professional and managerial staff as union members, see the report: G. Ebner (2005), Organising professional and managerial staff, Brussels, Eurocadres.

which seems to follow traditional class lines with the highest density rate among unskilled blue-collars and the lowest among PMS.

Table 1.3: Net trade union membership density according to various characteristics

Country	Total	Age			Gender		Sector			Occupation				Chi-quadrate test of difference			
		-30	30-49	50+	M	F	Industry	Services	AHS	PMS	White-collar	Skilled blue	Unskilled blue	Age	Gender	Sector	Occ.
BE	47	45	49	43	49	43	55	45	42	33	49	60	67			**	***
CZ	21	7	24	24	22	21	21	23	21	19	22	26	19	*			
DK	84	61	90	90	82	86	85	77	91	86	81	89	80	***		***	
DE	22	14	22	29	30	14	29	16	24	23	14	32	22	**	***	***	***
EE	14	7	15	19	14	15	5		28					***		***	
EL	22	16	23	30	24	19	20	14	36	36	12	27	11	(*)		***	***
ES	16	7	17	27	20	12	14	14	25	20	13	18	14	***	*	*	
FR	12	4	13	21	13	11	9	12	15					***			
IE	40	23	47	48	44	36	44	23	62	46	30	37	46	***	(*)	***	***
IT	28	16	31	32	34	23	25	26	35	31	28	37	23	(*)	(*)		
CY	50	34	58	57	54	46	37		86	61	44	42	52	***		***	*
LV	18	11	20	19	14	21	4		35	29	14	10	12	***	(*)	***	***
LT	11	11	13	8	14	15	5		19					**		***	
LU	41	27	44	50	47	34	51	29	54	41	25	48	48	***	**	***	*
HU	18	7	21	24	16	21	15	13	27	21	22	17	14	**		*	
NL	28	15	28	44	33	23	32	19	42	31	16	42	26	***	***	***	***
AT	36	26	38	41	43	29	40	27	46	41	29	38	42	**	***	***	**
PL	20	6	27	22	18	23	19	12	36	24	12	23	19	***		***	(*)
PT	16	11	17	21	16	17	13	13	27	27	16	13	11			**	*
SK	31	16	33	49	33	30	19		41	39	30	33	28	***	(*)	***	
SI	45	19	53	57	40	51	52	33	53	49	34	50	45	***	*	***	(*)
FI	76	59	81	82	69	83	78	64	89	73	81	81	72	***	***	***	(*)
SE	77	55	82	83	74	81	88	65	88	80	72	85	74	***	*	***	*
UK	30	15	30	43	28	31	22	15	52	35	26	19	29	***		***	*

For a comparison of these totals (form the used surveys) and other data, see appendix. Correlation coefficient = 0.92

ESS 2002/2003 survey data for most of the countries; ISSP 2002 survey data for Latvia and Slovakia; Estonia and Lithuania: Working Life Barometer of the Baltic countries; No survey data available for Malta; Cyprus, because of strong difference between the membership density of the ISSP 2002 survey and density based on administrative data; average of ISSP survey data of 2002 and 1998 (with a density rate much closer); for more information on this Cyprus data, see appendix 1.

AHS: Administration, health & social services; Sector data CY, EE, LV, LT, SK: division between public and private sector. For example: State companies with activities in transport sector are part of public sector; in other sector figures, they would be part of services. Sector data HU: LFS data of 2004; because coding problem of variable in ESS.

No occupational data for EE, FR and LT; PMS: professional and managerial staff; Occupational class: categorisation of ISCO-88 job codes in surveys based on a simplified EGP class scheme (adapted from coding scheme developed by Ganzeboom).

Chi quadrate test of difference: (*) <0.05; * <0.01; ** <0.001; *** < 0.0001

1.2.4. Multivariate analyses of density differences

This quick overview of country patterns by occupational group highlights that there is probably a lot of interference between the described variables, for example between sector and occupational group. Higher density rate in the public sector has the effect in many Member States that density is high among the group of professional and managerial staff. Many jobs of public administration or health/social services are categorised as professional jobs. Faced with these simultaneous relationships between different parameters on union density, we want to analyse these differences in a multivariate way: considering the effect of many variables together. For this purpose we analyse the data from the European Social Survey.([14])

Box 1.3: European social survey as main data source

The European Social Survey (ESS) is designed to analyse the interaction between Europe's changing institutions and the attitudes, beliefs and behaviour patterns of its diverse populations. The survey, based on face-to-face interviews, covers 23 European States and is funded by the European Commission, the European Science Foundation and national funding bodies. The ESS is now in its third round. Waves 2002/2003 and 2004/2005 (partly) are available. Twenty-two countries participated in the first round of the ESS; data are currently available for 17 countries in the second round.
References: Jowell, Roger & Central Co-ordinating Team (2003). European Social Survey 2002/2003: Technical Report. London: Centre for Comparative Social Surveys, City University. For further information, the ESS data homepage is at: http://www.europeansocialsurvey.org/.

A considerable body of theoretical and empirical research exists on the determinants of trade union membership ([15]). The most frequently mentioned potential determinants are the following. Unionisation can partly be explained by economic effects. Employment growth, consumer price inflation and nominal wage growth enhance union density. Unemployment tends to inhibit union growth, but it is not clear whether it is the level or the change in unemployment rate, that plays a role. These economic determinants can also be described as cyclical effects (depending on the business cycle). Socio-structural explanations concentrate on individual characteristics of union or non-union employees. These characteristics can be demographical (age, sex, ethnicity and education), occupational (blue-collar or white collar, full/part time, temporary contract or open-ended, income) or workplace factors (sector, establishment size). These structural explanations are complemented with attitudinal determinants: the political beliefs and feelings of dissatisfaction with various aspects of work and pay. The influence of peer groups is another factor taken into consideration: parents, spouses, friends or colleagues and their commitment to a union. Finally, and especially in cross-country research, institutional factors are mentioned: a Ghent system (a union-affiliated unemployment insurance), union access to the workplace, legal protection of union rights and the presence of left-wing governments.

([14]) This means that we have data for 19 EU countries. Not included are Cyprus, Estonia, Latvia, Lithuania, Malta and Slovakia. These are smaller Member States, so we cover with a broad and representative sample of the EU. To enlarge the sample, we use also the data from Norway and Switzerland, which are available in the European Social Survey. Stepwise regression analysis has been the method applied. For readibility of the chapter, the analysis is not included, but can be obtained from the author.

([15]) For a recent synthesis: C. Schnabel (2004), 'Determinants of trade union membershp', in: J.T. Addison & C. Schnabel, eds., International handbook of trade unions, Cheltenham, Edward Elgar, pp. 13-43.

Based on the available variables, we tried as much as possible to incorporate these determinants in our individual-level analysis of the ESS data. The focus is on demographic and occupational components ([16]). Age, gender and nationality remain throughout our analysis determining variables of union membership. Women, foreign workers and young people (aged less than 30 years) have a considerably lower probability of being a union member in Europe, even after controlling for workplace, occupational and other effects. The age effect is mainly situated in the younger categories. Education is also an important determinant, but its effect drops, when political and attitudinal factors are taken into account.

People working full-time and/or with an open-ended contract have a significantly higher chance of being a union member. Occupational class differences can be mainly reduced to the traditional pattern of a lower density of managerial staff and a relatively higher density of skilled blue-collars. Density differences between other occupational groups are not significant. This is not the case for the sector variables. A pattern of diminishing union density runs from the public sector (administration, health and social services) over industry to the two service sectors, namely distribution and financial/business services. A clear cut in union density can be discerned by size of the establishment, where people work. Union membership is especially lower among the employees that work in a micro-company (less than 25 workers). Subjective job perceptions are less important. We see only a consistent relationship throughout our analysis between lower job satisfaction and union membership.

To visualise these distinguished differences, we contrast in the following table two groups based on the ESS data. One group combines a range of negative effects on membership, the other positive effects. As the table shows, the probability difference in union membership is quite distinctive. When you ask a young, female, part-time, contingent worker employed in a small hotel or restaurant if she is a union member, the answer will almost always be no. in Europe. In contrast, 2 out of 3 older male workers with a full-time open-ended contract in the public sector and with a union at their workplace are union members according to figures of the European Social Survey.

Table 1.4: Two contrasting groups of union membership probability in Europe

Group with low probability of union membership Female young workers (age -30), working part-time, on a temporary contract in the distribution sector (sales, hotels & restaurants, transport) and in a micro-plant (less than 10 employees)	3 % membership	Without union in the company: 1 % membership
Group with high probability of union membership Worker above 30 years, male, full-time, open-ended contract, public sector (administration, health & social services), larger establishment	56 % membership	With union in the company: 65 % membership

Weighted ESS survey data 2002/2003

([16]) For country-specific analyses of union membership based on the ESS data (although with another variable from the questionnaire on union membership), see: C. Schnabel & J. Wagner (2005), Determinants of union membership in 18 EU countries: evidence from micro data 2002/2003, IZA Discussion paper No . 1464, Bonn, IZA.

With regard to political beliefs and practices, we find in a further analysis of the ESS data a clear relationship between union membership and political leftism. No relationship is found with feeling discriminated on grounds such as sex and religion, or with political dissatisfaction. We also detect a strong relationship between positive trade union beliefs (the belief that employees still need unions) and membership. The question can be raised about the direction in which these effects run. Is it because one holds left-wing views, is satisfied about the political economy (and unions' role in it) and believes in the need for unions, that one is unionised, or is it the other way round: Are union members more on the political left and share a higher trade union belief? More important seems to be the link between forms of civic engagement (voluntary work is important, engaging in political activities) and a higher probability of being a union member.

Social network factors do not play a strong role in our analysis, but we could only operationalise them in a limited way. The ESS survey has no data on union membership of respondents' peer group (spouse, parents, friends or colleagues). Institutional factors on the contrary have a strong effect. Unemployment insurance through unions – respondents of the Nordic countries were assigned one for this dummy variable – and a trade union present at the workplace (a question of the ESS itself) have a very strong effect ([17]). For the latter variable, again the question can be raised of the direction in the relationship. Nevertheless, recent accounts of the membership challenge stress the importance of heightening the union presence at workplace as a very important union strategy for increasing membership ([18]).

1.3. Union revitalisation strategies

Unions throughout Europe are introducing reforms to confront this recruiting and organising challenge ([19]). New issues are tackled in collective bargaining (see chapter 2 of the report) and new methods are introduced at company-level representation (see chapter 2). Other union reforms can be divided into four principal types:

- *a servicing model*: to deliver new kinds of services to the membership*;*
- *an organising model*: to seek more 'empowerment' of the workforce by targeting specific workplaces or occupational groups. A new group or network of activists has to be created, which can act as a kind of 'nucleus' around which recruitment can occur;
- *social movement unionism*: this form of unionism tries to transcend the shop floor and is more focused on community-based activism and campaigning about local employment problems, green issues, social exclusion and other similar concerns;
- *new structures*: mergers as economies of scale to counteract the loss of membership.

([17]) A recent analysis of the Finnish membership decline (around 5 %) in the last ten years mentions as important reason, besides changes in the composition of the labour force, the erosion of the Ghent system in the country. An independent unemployment insurance fund has been created which requires no union membership. P. Böckerman & R. Uusitalo, Union membership and the erosion of the Ghent system: lessons from Finland, Labour institute for economic research, discussion papers No 213, Helsinki.

([18]) See: C. Schnabel & J. Wagner, o.c.; See also: J. Waddington (2005), 'Trade unions and the defence of the European social model', Industrial relations journal, 36, 6, p. 518-540.

([19]) C. Frege & J. Kelly (2004), Varieties of unionism: strategies for union revitalisation in a globalising economy, Oxford, Oxford University Press.

1.3.1. New services

Unions have always developed services to support and assist their members at their job. The provision of these 'selective' services to their members has traditionally been a way to attract and retain members. The provision of welfare benefits has historically been an important pillar of the union growth in Europe. Today, in countries or sectors where they retained a certain role in these social services, they have secured their membership much better than in countries or sectors where these tasks were overtaken by state provisions.

As an answer to the recruitment challenges, unions have in recent years been creative in developing new services, which very often try to offer a response to new employee risks. Legal and professional services are an important part of these new services. Help in training, career guidance specialised job agencies, work-related private insurance provisions are the tools and instruments. Besides the growing use of Internet facilities, telephone service hotlines and call-centres are another important way for unions today to increase their service quality. The Internet is used to market the services offered more efficiently and to increase the range of services provided to the members. Research shows that offering financial services is not always successful as a union recruiting strategy. Nevertheless, many unions have also experimented with these types of services (insurance discounts, credit card facilities, discounted holidays and so on).

Based on a study of the revitalisation efforts of the Swedish white-collar union SIF Björkman and Huzzard speak of a new type of union services ([20]). They call it 'membership interface unionism', which has the following key components:

- extensive listening to members – direct member involvement in service development and the utilisation of market research (satisfaction surveys and image positioning surveys);
- high-profile advertising campaigns marketing the union membership and union opinions;
- new individual, proactive, enabling services, often offered through Internet solutions;
- more responsibilities for lay members at company level;
- collective services designed to include group or individual choices, such as collective agreements with possible group or individual options.

The target group has been young and highly educated people (for example engineers) in particular.

1.3.2. Organising efforts

The organising model as a different recruitment strategy emerged in the United States with the creation of the Organising Institute in 1989, and by around 1995, following the election of a new AFL-CIO leadership, it had led to a distinct modernisation strand in union policy. Organising involves the switch in union resources from providing services to existing

([20]) H. Björkman & T. Huzzard, 'Membership interface unionism: a Swedish white-collar union in transition', Economic and industrial democracy, 26, 1, pp. 65-88. In their conclusion they warn, however, that such a individualisation of services can be detrimental for the unions collectism, when it is not combined with a heightened participation in union activities and decision-making. The union becomes then less and less indistinguishable of other service providers

members to recruiting new members. It lays heavy emphasis on the role of workplace representatives in attracting other workers to the union and on mobilisation/campaigning. In Europe, the British TUC and its affiliates have promoted this revitalisation model strongly since the mid-90s ([21]).

Unions can differ in terms of their level of commitment to organising. The commitment may be apparent in the manifest attribution of plans, budgets, training and coaching facilities. The goal can be consolidation or expansion. A consolidating tactic focuses primarily on 'internal' organising: trying to raise the density where the union is already present. Expansion has the ambition to expand membership in new and unorganised companies, sectors, or regions. A third goal can be an organising strategy that wants to enlarge the membership in specific targets: women, ethnic minorities, young people, and contingent workers. The institutional context determines the model of organising. In many European countries, unions use the periodic elections of workers' representatives to acquire legitimacy and to create an organisational presence at the workplace. This 'voters' unionism does not stimulate aggressive organising. This type of organising is more needed in countries, where unions have to strive for local recognition. Campaigning is needed to develop a majority support for a union presence at the workplace (for example in the UK).

Box 1.4: Students and self-employed as new target groups for union organising

Students
Offering free membership for students is a practice more and more introduced by European unions. Belgian unions report considerable success in this regard (for example the biggest unions ACV-CSC with its Enter youth programme). In Germany, the science and education union GEW has been able to increase its membership by intensifying its membership recruitment at universities and offering free membership to students. Recently, three Swedish white-collar trade unions formed a new students' organisation, Tria, with the aim of supporting students on their way towards working life.
Self-employed
Within the EU-25, 16 % of the workforce is self-employed ([22]). Taken the whole economy into account (and for example agriculture),. In a lot of countries grey areas in the labour law exist between the statute of self-employed or employees. Union organising of the self-employed is not new and has for example always existed in the media, entertainment and cultural sectors, where free-lancers have always been an important part of the workforce. In recent years, unions in other sectors have increasingly started to show interest in organising this type of employed people. For example: SIF in Sweden, FNV in the Netherlands and GPA in Austria decided respectively in 1996, 1999 and 2001 to set-up specific union activities for self-employed. The push for this organisational change comes often from the desire to retain members, which have become self-employed as a result of (more and more) business restructuring and outsourcing. Especially specific professional occupations are attracted to the union. Examples of union services offered to self-employed are legal advice, forms of work-related insurance, training and (exceptionally) loans.

1.3.4. Social movement unionism

Unions are re-launching themselves everywhere in Europe as 'political actors', engaged not just in collective bargaining and workplace regulation, but also in the broader aggregation of socio-political interests. Traditionally, in most of the (western European)

([21]) For recent accounts: R. Milkman & K. Voss, eds. (2004), Rebuilding labor: organising and organisers in the new union movements, Ithaca, ILR Press; J. Kelly & P. Willman, eds. (2004), Union organisation and activity, London, Routledge.

([22]) For this paragraph: A. Bibby (2005), *Opening the doors wide to the self-employed: how trade unions are recruiting and organising self-employed workers as members*, Brussels, UNI.

Member States, it has been an accepted practice that unions are not just (economic) bargaining players, but engaged in representing larger social interests in democratic politics. Today, unions are strengthening their role as political intermediaries to obtain more support and influence. Reconstituting the union as a key actor in (local) grass-roots politics is one element of this strategy. Another more institution-related component is the involvement in broad social pacts. These types of pacts have been signed in many EU countries throughout the 90s, but recently also in Italy, Spain, Ireland and many CEE countries at the national level. At the local level this kind of political activity has been crystallised in territorial employment pacts or regional growth agreements.

Furthermore, leadership of protest movements against welfare reforms have been an important union strategy in recent years. National strikes and mass demonstrations have been organised in Austria (2003), Belgium (2005), France (2003 and 2005), Greece (2003 and 2005), Italy (2002 and 2004) and the Netherlands (2004). In particular, propositions to reform the pension system met considerable public opposition, supported and led by the unions.

A point of discussion and debate remains the nature and level of coalition-building with (leftist) political parties. In the (old) EU-15 the trend definitely seems to be one of distancing. In the CEE countries the trend is less clear. Initially at the period of regime transformation, conflicts arose between those with lesser and those with greater sympathy for the former political system, supporting respectively radical opposition and the reforming communist parties. In the first half of the 90s unions in CEE countries moved very often to support for certain political parties (without establishing most of the time formal affiliation links). Gradually, unions are distancing themselves again from party politics and are attempting to occupy more independent positions.

Box 1.5: Polish union debate on political independence

The greatest confederation is the All Poland Alliance of Trade Unions *(Ogólnopolskie Porozumienie Związków Zawodowych – OPZZ)*, springing from the former monopoly socialist peak and today inclined to the political social-democrat spectre. The independent self-governing trade union confederation NSZZ Solidarność *(Niezależny Samorządny Związek Zawodowy Solidarność)* was founded in 1980 as part of the (Christian) dissident movement. In the transition period it had an explicit political role as it was involved in the government by the AWS alliance ('Solidarność Electoral Action'). In 2000 this alliance was hit by a massive electoral defeat. After this setback Solidarność withdrew from party politics and refocused on directly representing employee interests. Due to the predominant practice of links between trade unions and political parties, in April 2002 the third largest national confederation, the Trade Unions Forum *(Forum Związków Zawodowych, – FZZ)* was formally established with an explicit strategy of neutrality vis-à-vis political parties. Its 17 founding organisations came most of the out of the OPZZ.

Trade unions can also relate to other social movements. This can happen in three ways. First, they can enter into an alliance or joint campaign that will allow both to better obtain their strategic goals. Second, unions can expand their objectives to embrace social and/or non-work issues, so that they try to expand their socio-political legitimacy and power base. Topics covered are questions of race/ethnicity, community, gender and environment. Third, unions can adapt into their portfolio of tactics methods and instruments borrowed from other movements. Professionalised campaigns and shorter, more sensational protest methods are used to attract media attention and public support.

Box 1.6: International social movement unionism and social forums

At the international level, one speaks of a new labour internationalism, which is characterised by international networking, information-sharing, and new recruiting targets. Increasing numbers of international union bodies are addressing themselves to 'social movements', to democratically-inclined and labour-friendly NGOs, and to ideas of 'civil society' — locally, nationally, regionally, globally. Important expressions of this 'International social movement unionism' are the World Social Forum and the European Social Forum.

The European Social Forum (ESF) is an annual conference held by members of the alter-globalisation movement (also known as the Global Justice Movement). It aims to allow social movements, trade unions, NGOs, refugees, peace and anti-imperialist groups, anti-racist movements, environmental movements, networks of the excluded and community campaigns from Europe and the world to come together and discuss themes linked to major European and global issues. It is emerged from the World Social Forum. The first forum was held in Florence in November 2002. The slogan was 'Against war, racism and neo-liberalism. The third ESF, organised in 2004, took place in London ([23]).

1.3.5. New structures

Union mergers are not a new phenomenon ([24]). They have taken place since the beginnings of the labour movement and generally occur in waves. Early waves of mergers have been identified in Europe around the First World War. However, their character has changed. Early mergers predominantly replaced craft with occupational or industrial unions, today these types of unions are merging into multi-sector unions with, very often, a (semi-autonomous) divisional structure. As a revitalisation strategy mergers are primarily a method of escaping the vicious circle of membership decline and financial problems. Economies of scale are sought to tackle the problem of resources. A second reason for mergers is the strategy of expanding the union jurisdiction into growing sectors without having to engage in organising rivalries and recruiting disputes with other unions. The merger is very often a fusion of equals or a new conglomerate of existing unions, which are active in different sectors, but it can also be a kind of take-over or acquisition. In this latter case, a stable and stronger union, coming from a sector like industry, transport or public services, transforms itself into a multi-industry union by integrating more weak unions. The idea underpinning this kind of merger is to use resources from unions in relatively densely organised sectors to fund union activities in new or underdeveloped union sectors ([25]).

([23]) See on these Forums: S. Böhm, S. Sullivan & O. Reyes, eds. (2005), The organisation and politics of social forums, *Ephemera: theory & politics in organization,* 5, 2. And further: P. Ghigliani (2005), 'International trade unionism in a globalising world: a case study of new labour internationalism', *Economic and industrial democracy*, 26, 3, pp. 359-382.

([24]) G. Chaison (2004), Union mergers in the U.S. and abroad, Journal of labor research, 25, 1, pp. 97-114; J Waddington, ed. (2005), Restructuring representation: the merger process and trade union structural development in ten countries, Brussels, PIE.

([25]) An example of extensive organisational restructuring is the German union movement. Between 1987 and now the numbers of unions within the largest confederation reduced from 18 to 8. This peak federation DGB merged in 2001 also with another, namely DAG. It means that today the two largest union, Verdi (service sector) and IG Metall (industry) make up 70 % of DGB membership.

Box 1.7: Some of the recent union merger activities in the European Union

In **Denmark** a significant merger happened in 2004 between the National Union of Female Workers (Kvindeligt Arbejderforbund, KAD), representing unskilled female workers, and the General Workers Union in Denmark (Specialarbejdderforbundet i Danmark), representing (mainly) unskilled male workers. The new trade union is called Fagligt Fælles Forbund (3F) and is now with around 370 000 members the largest union in the country (and belonging to the LO confederation).
In December 2004, six **Finnish** blue-collar public sector trade unions affiliated to SAK decided to merge. The new union will start functioning in 2006 and will be one of the largest in Finland, with about 230 000 members.
A new **French** union federation for banking and insurance staff was set up in June 2005. It resulted from a merger between the previous CGT federation and the union created in late 2004 by former activists from the CFDT federation, and is affiliated to the General Confederation of Labour (CGT).
In autumn 2004, the **Swedish** Metalworkers' Union (Svenska Metallindustriarbetareförbundet) and the Industrial Labour Union (Industrifacket) decided to merge at the beginning of 2006. The two LO unions have lost around 100 000 members between them in recent years. When the merger is concluded, the new industrial workers' union will have about 470 000 members, making it the second largest union in LO.
The finance union UNIFI and the Graphical, Paper and Media Union (GPMU) both merged in 2004 with the manufacturing and professional union Amicus, bringing Amicus's membership close to that of Unison, the **UK**'s largest trade union.

Running counter to these merger processes, unions also look for revitalisation in the other direction. Facilitating the representation of specific occupational or other interests, many unions have introduced project activities and sectional forms of representation. An important example of this kind has been the restructuring of the Austrian white-collar union GPA. It created a new structure of interest groups. These groups had to make GPA more attractive by:

- combining the successful branch and regional organisations with a new professional focus;
- building new direct relational networks between members and traditional works council structures;
- enforced use of new communication media as e-mail and Internet services;
- establishing direct elections of the leading bodies with personnel responsibilities without any political focus;
- opening the communication network and (partly) the services to non-members.

Another trend in this regard is the creation of so-called independent unions, which focus on a relatively strict membership jurisdiction, mainly in the service sector or public sector. These organisations want to organise their specific target group detached from a larger, heterogeneous and more 'distant' union structure. Afterwards they also want to press for national recognition, for instance in tripartite bodies of social concertation.

Box 1.8: Union representativeness: recent examples of national discussions

In 2004, eight trade unions not directly represented on the **Malta** Council for Economic and Social Development (MCESD), the country's highest forum for tripartite concertation, joined forces in an attempt to persuade the government to change legislation and include their representative on the council. These unions are the MUMN, the University of Malta Academic Staff Association (UMASA), the Airline Pilots Association (ALPA), the Association of Airline Engineers (AEE), the Union of Cabin Crew (UCC), the Union of Architects and Engineers within Government Organisations (Union Periti u Inginiera tal-Gvern u Parastatali), the Union of the Planning Authority Professionals (Union Professjonisti Awtorita' tal-Ippjanar u Ambjent) and the Union of Central Bank Employees (Union Haddiema Bank Central, UHBC). However, the government rejected the request of these unions, which together have around 3 000 members.
To be representative at a general national level in **Luxembourg**, the trade union must at the previous two elections to the Chambers of Labour have won an average of 20 % of the vote among blue-collar and white-collar workers, and an average of 15 % of the vote in each of the two categories. A trade union claiming nationally representative status must also be functionally active in most branches of economic activity. These conditions for obtaining a national representativeness status have been formulated by the new Industrial Relations Law of 2004. The detail stipulations followed after a period of consecutive court case of unions, representing specific categories of professional and managerial staff (first FEP-FIT and afterwards ALEBA) to obtain this national status of representativeness (and the accompanying membership in institutions of social concertation).

2. Employers' organisations

Employers' associations are the managerial counterpart of the trade unions. In this capacity, they act as an interest group, play an important role in collective bargaining, and are involved in political lobbying. Furthermore, they provide their members with expert services on industrial relations matters ([26]).

2.1. General remarks

The power and structure of these employers' organisations play an important role in determining the form and content of national industrial relations practices.

A first case in point is collective bargaining. Multi-employer bargaining can most of the time only be institutionalised when employers' organisations engage in bargaining. For similar reasons, statutory provisions of the EU Member States for 'extending' collective agreements to non-signing employers depend very often on the clause that the signatory party on behalf of the employer side is an employers' organisation. In other words, the level and coverage of collective bargaining in a EU country strongly depends on what kind of employers' organisations are active in the country, how many workers are employed by its members, and if they have a formal mandate specifically for sector collective bargaining. There is also a relationship in the other direction: employers seem to be pushed to organise themselves more extensively and on a higher level in countries with an elaborated legal system for extension of collective agreements.

The level and degree of social concertation also relates to the organisational functioning of employers' organisations. In countries with a highly developed and centralised tripartite concertation, employers' organisations will specialise in representing business collective

([26]) An additional important source of information for this section has been: F. Traxler, eds. (2004a), Small and medium-sized enterprises and business interest organisations in the European Union, Brussels, UEAPME-Academy for Europe Avignon.

interests in this social partnership. The role of confederations will be strengthened in these countries. In countries where social concertation is low, they will be mainly involved in political lobbying activities ([27]).

Box 1.9: Employers' organisations and active labour market policies

In a recent analysis Martin & Swank show that a higher representational power of employers' organisations, a higher degree of coordination efforts by them and their involvement in tripartite policy concertation results in greater support and participation by employers in active labour market policies. The relationship runs in two directions or steps. Because of their involvement in an organised system of industrial relations, more emphasis is laid on active labour market policies in developing employment policies. In the implementation phase, the employers are in a strongly associational setting more instructed and mobilised to engage in active labour market programmes ([28]).

An important characteristic of employers' organisations is furthermore the tendency towards fragmentation, specialisation and diversity. These associations have the difficult task of organising enterprises with divergent interests: for example from small companies to transnational conglomerates which are very often competitors to each other or critically intertwined in a buyer-supplier relationship. In other words, although the employers' side at first sight have it easier than the employees' side to organise because of smaller numbers, lower turn-over, stronger (elite) networks and resources, in reality a more fragmented organisational structure exist in many Member States on the employers' side than on the workers' side ([29]).

Since this results in a very large number of employers' associations in most of the EU-25, a cross-national comparison is feasible only by focusing on a certain type of these organisations. In most of the EU countries, if there exists multi-employer bargaining, this type of bargaining is organised below the national level. Sector or branch organisations play the pivotal role most of the time in bargaining. However, the power and the role of national peak federations are an important factor in the centralisation and coordination of a nation's industrial relations system. We thus limit our comparison on the one hand to the category that can be seen as the most inclusive, namely the umbrella organisation(s) or national employer peak associations. On the other hand, we will provide density rate figures on the membership of the employers' organisations, regardless of the type or level of association.

([27]) See further on this remark: A. Wilts (2001), 'Europeanization and means of interest representation by national business associations', European journal of industrial relations, 7, 3, pp. 269-286.

([28]) C.J. Martin & D. Swank (2004), 'Does the organization of capital matter? Employers and active labor market policy at the national and firm levels', *American political science review,* 98, 4, pp. 593-611.

([29]) See: L. Lanzalaco (1992), 'Coping with heterogeneity: peak associations of business within and across Western European nations', in: J. Greenwood, J. Grote & K. Ronit, (eds.), Organised interests and the European Community, London, Sage, pp. 173-205.

Table 1.5: Structure of employers' confederations in the EU Member States, 2004-2005

	Num-ber	Coordina-tion role*	Main determinator of constituency							Remarks
			General	Macro-sector			SMEs	Social economy	Agri-culture	
				Industry	Constr.	Services				
BE	1+5	strong	FEB/VBO				UCM; Unizo	CSPO	UPA/BB	Regional organisations involved in tripartite dialogue; FEB/VBO most important in industrial relations
CZ	2+2	weak	SPCR; KZPS		SPS		AMSP			
DK	1+2	strong	DA			FA			SALA	DA reorganising
DE	1	weak	BDA							Regional and sectoral more important
EE	1	medium	ETTK							
EL	3	medium		SEB		ESEE	GSEBEE			
ES	1	medium	CEOE							Mixed association of sectoral and territorial organisations and an SME organisation associated
FR	1+3	weak	MEDEF				CGPME;UPA	Usgeres		MEDEF much more important than others
IE	1+1	strong	IBEC		CIF					
IT	1+1+10	weak	Confindustria			(2)	Confapi (+ 2)		(3)	In service sector, artisan and agriculture sector confederations exist and are structured by political divisions (right-left)
CY	2	weak	OEB; *CCCI*							Other imortant organisations at sector level
LV	1	medium	LDDK							Several other, smaller confederations exist; LDKK is recognised actor in national social dialogue
LT	2	medium	LPK				LVDK			Cooperation agreement between LPK and LVDK for representation in national and international social dialogue
LU	1	strong	UEL							Chamber system with obligatory membership plays a role in tripartite dialogue
HU	8	medium	MGYOSZ	OKISZ; VOSZ; STRATOSZ		KISOSZ	IPOSZ	AFEOSZ	AMSZ; MOSZ	MGYOSZ is the product of a merger of MMSZ and GYOSZ and now the greatest employers' peak; CEHIC act as umbrella organisation for international representation
MT	0+5	weak	MEA, COC	FOI		MHRA	GRTU			No umbrella organisation exists, creation in the 80s failed, federations are based (mostly) on individual membership
NL	2+1	strong	VNO-NCW				MKB		LTO	Small organisation in the agriculture sector; alliance announced between VNO-NCW and MKB
AT	1	strong	*WKO*	VOI						Compulsory membership; provincial level important
PL	4	weak	KPP; PKPP; BCC				*ZRP*			KPP is the oldest with roots in the Chambers of Commerce and (formerly) State-owned enterprises
PT	4	medium	*(AEP, AIP)*	CIP		CCP CTP			CAP	CIP and CCP main peak federations for industrial relations; AIP & AEP created recently a confederation to enlarge their influence
SI	4	strong	*GZS;* ZDS				*OZS;* ZDODS			Compulsory membership of chambers, which dominate (but system under debate)
SK	2	medium	RUZ; AZZZ							Split up in 2004
FI	1+2	strong	EK				(SY)		MTL	Important employers' organisations in public sector; EK is mer ger of TT & PTand mainly involved in bargaining system
SE	1+2	weak	SN					SFO; KFO		SN is the former SAF; important local employers' confederation in the public sector (SKL)
UK	1	weak	CBI							

* Coordination role of the peak organisations in collective bargaining on the employers' side; Underlined: most important employers' confederation, when more than one in existence; *Italics:* Chambers (brackets): not important in collective bargaining; Source: Industrial relations country profiles, compiled by HIVA-K.U.Leuven, IAT and BwP for the European foundation for the Improvement of Living and Working Condition

2.2. National employers' peak federations

Historically, two different logics of organisational development can be distinguished. Firstly, in many of European countries a system of chambers has been established with quasi-legal status. However, in most of the countries, these chambers became pure service organisations or they specialised in lobby-activities related to the product market. Only in countries like AT, SI, LU and to a lesser extent in CY, do these chambers play a role in the industrial relations system. Secondly, all the EU countries have seen the development of 'volunteer' employers' organisations, which most of the time need a kind of registration or recognition for being active in the field of industrial relations.

Every EU Member State has one or more national employers' peak federation operating in the system of industrial relations. Mainly in the south and the east, there are countries with difficulties of establishing a unified front of employers' umbrella organisations. Italy, Hungary and to a lesser degree Poland and Portugal are the prime examples with respectively 12, 8, 4 and 4 cross-sector peak organisations. Malta has five important employers' organisations, which are not confederated.

Every Member State has employers' peak federations, which are organised on a general basis. These confederations try to organise members of the whole private sector in their country. However, they are not successful in every EU country in doing this. In Germany, Greece, Malta, Portugal, Sweden, umbrella organisations which organise a macro-sector (for instance industry, services, metalworking or financial sector) are more important. Another factor of division on the employers' side is a peak federation, which represents a specific constituency, and has gained considerable power as well as the general peak federation. The alternative constituency is very often based on firm size. SMEs are organised separately with reasonable industrial relations power in Belgium, France, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal and Slovenia. The construction federation is an important, separate player in the multi-sector national industrial relations of Ireland and the Czech Republic. Finally, separate federations with some impact at the national level exist in several countries based on a rank-and-file from agriculture, cooperatives or the social economy. However in most of the Member States a leading employers' organisation can be discerned (underlined for each country in table 1.5).

The availability of a general and/or leading employers' confederation does not guarantee, however, that this confederation plays a strong role in coordinating the activities of the employers' organisations in the nation collective bargaining processes. A strong coordination role is mainly taken up in the small economies of Western Europe (Austria, Belgium, Denmark, Finland, Ireland, Luxembourg, and the Netherlands). In the large countries of the EU-15, such as the UK and Germany and to a lesser extent Italy and France, national peak federations struggle to play a significant role in collective bargaining or social dialogue. In Germany it is understood that the sector associations, rather than the national umbrella organisation, are in charge. Medium-roles are taken up by employers' confederations in the south (Greece, Portugal and Spain) because they play a role in (most of the time) ongoing tripartite social agreements. In the new Member States the picture is more mixed. A strong role, although under attack, exists in Slovenia (Chambers). Medium importance can be assigned to the employers' confederations of Estonia, Hungary, Latvia,

Lithuania and Slovakia. Weak involvement is the norm in the other new Member States (Cyprus, Czech Republic, and Poland). This weakness is also apparent for Sweden, but there the confederation SAF (now SN) deliberately ceased its coordination activities at the end of the 80s and has promoted decentralised collective bargaining since this period. Malta has no overarching confederation, but only peak federations at the macro-sector level.

2.3. Trends in membership structures

Opposite evolutions in the organisational structure of the employers' confederations can be distinguished within the European Union in recent times.

Mergers and rationalising happened in Ireland (1993), France (1998), Luxembourg (2000) and Finland (2004). Economies-of-scale or the integration of industrial relations interests and trade interests are very often the incentive for merging The two major Dutch confederations, VNO-NCW and MKB, recently announced an alliance. In Belgium the regional and federal employers' confederations have been working more closely together in the last couple of years.

Splits and rows on 'representativeness' occurred in other countries, not only on the peak level, but also on lower levels. The Danish DA is in a phase of restructuring, because its major member organisation Danish Industry expressed serious doubts about the need to be serviced by a central employers' confederation. In recent years, due to the declining number of members, some German employers' organisations have tried to attract, or retain, members by offering a special membership without attachment to collective agreements (so-called *Verbände ohne Tarifbindung — OT*). Portugal witnessed a (renewed) attempt by the trade associations AEP and AIP to gain more influence within the institutionalised social dialogue. They created in 2004, the Entrepreneurial Confederation of Portugal (Confederação Empresarial de Portugal, CEP).

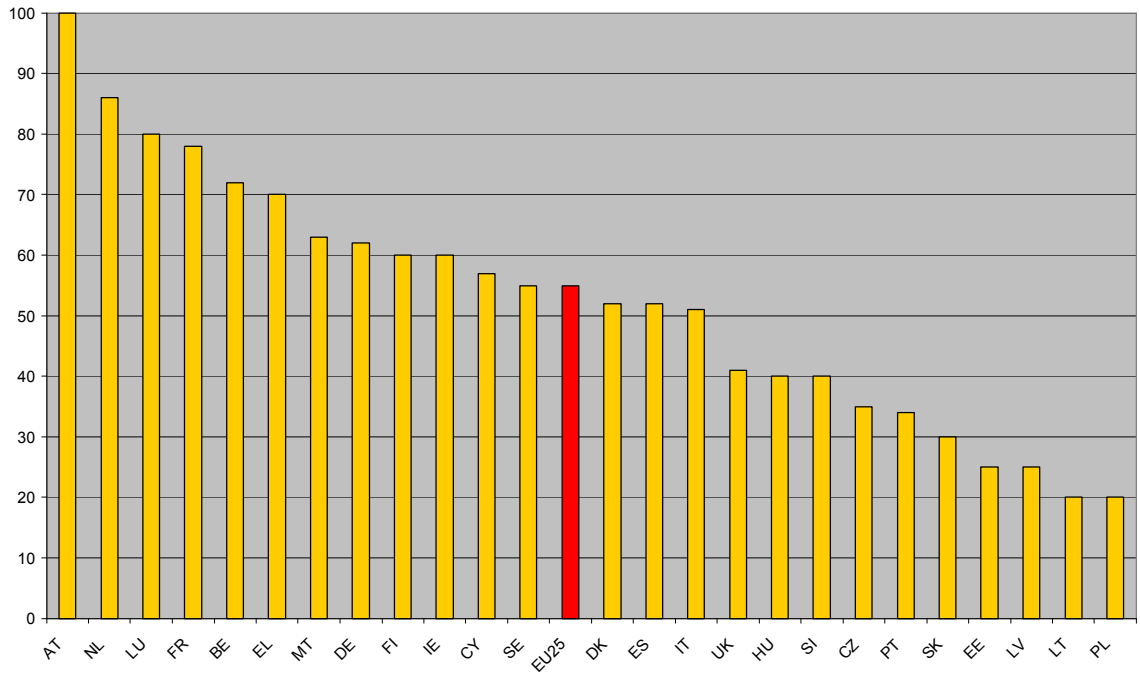
In eastern Europe, these opposite changes – merger and splits – occur today on a larger scale and with more turmoil. In Slovenia, discussions have started to remove the chambers from their leading position and to abolish the 'dual' representation by chambers and voluntary employers' organisations. In Poland, the Czech Republic and Slovakia the oldest employers' organisations, which originated in the early transition period, have confronted fierce competition from other peak federations in recent years. Other new Member States witnessed more centrifugal trends. The Cypriot OEB established itself more and more as a coordinating body at the employers' side. Although fragmentation is still high, the Hungarian peak federations managed to create a coordination body for international representation (CEHIC). Both Lithuanian confederations (LPK and LVDK) signed an agreement for more mutual assistance and cooperation.

2.4. Employers' organisation density

Employers' organisations density is an indicator comparable with trade union density. A simple measure of density would be how many companies are members of an employers' organisation. However, looking at it from the power perspective of industrial relations, it is more relevant to calculate how many employees these companies have as personnel.

Data on employer density are particularly difficult to collect, for three reasons.([30]) First, employer associations are much more reluctant than unions to make such data public. Secondly, they themselves often lack precise information on their membership strength. This has to do with the fact that the membership unit is the firm. Accordingly, membership files concentrate on registering the number of firms organised. Thirdly, union density figures are very often based on survey data. This type of data collection is most of the time not available in a country. Figure 1.2 presents estimates of aggregate employer density, defined as the proportion of employees covered by all employer associations within a country's private sector. As already stated, these data have to be read with caution and are used as a proxy for associational power on the employers' side in the Member States.

Figure 1.2: Density rate of employers' organisations, EU-25



* Density = % of employees working in the country for an employers, which is member of an employers' organisation. Most recent figure (ranging from mid-nineties to 2004); Slovenia: not the membership rate of the compulsory chamber, which is 100 %; EU-25: weighted average. Most figures date from the Industrial Relations in Europe 2004 report

The (weighted) average employer rate of organisation is approximately 55 to 60 % in the EU. In other words, on average a considerable majority of private sector employees in the EU-25 work in a company which is a member of an employers' organisation. However, this average hides huge variations in the employers' organisation density rate between Member States. Small west-European countries like Austria, Belgium, Luxembourg and the Netherlands have a high degree of associational power on the employers' side. They are joined by France and Greece. A low density rate, compared to other EU Member

([30]) F. Traxler, 'Employers and employer organisations in Europe: membership strength, density and representatitiveness', Industrial relations journal, 31, 4, pp. 308-316.

States, is found in the Czech Republic, Estonia, Latvia, Slovakia, Portugal, Lithuania and Poland. In the last two countries, employers' organisations density is only 20 %. These low-density countries are all Member States with a catching-up political economy, where the employers' organisations just like trade unions have difficulties of establishing themselves firmly. The other Member States have a middle-range density rate of employers' organisations. In other words, only with the exception of seven, mostly east-European countries, employers' organisations are well-established actors in the industrial relations systems of the European Union. Except for the Nordic countries, this employers' organisation density rate also exceeds the union density rate of the country.

Employers' organisations density seems furthermore – although we must not forget the empirical data are scarce – not to be hampered by a strong downward trend like the union density. Observers believe this has to do with the fact that employers' organisations developed and professionalised their services in other matters than industrial relations in recent years, especially with regard to product-market-related questions. However, the same literature also pinpoints the following facts: ([31])

- there still exists a 'representation gap' for the growing population of SMEs in many national industrial relations systems;
- trends of decentralisation of collective bargaining could in the long-term harm the membership levels of employers' organisations. Although one could also argue that this would only lead to a change in tasks, namely less collective representation in (sector or national) bargaining and more coaching and consulting in HRM and social affairs of the member companies, it probably has a negative effect on membership density of employers' organisations;
- In countries where the employers' organisations are strictly specialised in employment and social affairs and coexist with other trade associations/chambers, which specialise in other functions, these organisations seem to struggle more as membership organisations. ([32])

Furthermore, employers' associations (primarily in the EU-15) have been confronted in the recent decade by other pressures. Employers, confronted with new economic challenges, may not choose to 'exit' their employers' organisations, but rather to 'voice' a perceived requirement for modernisation of their associations. On the one hand, employers, especially large companies, have put strong pressures on their associations to restructure for the sake of economising resources. On the other hand, demands have been made to defend in a more self-confident and straightforward style the values, spirits and importance of entrepreneurship in society. Lower membership dues and demands for more accountability of the leadership have been key points of discussion in this respect. ([33]) Functional adaptations with a stronger focus on product market issues have been another important dimension of this organisational restructuring of employers' associations as membership organisations (and as a result in some countries a merger has resulted between employers associations and trade associations like in Ireland and Sweden).

([31]) F. Traxler (2004b),: 'Employer associations, institutions, and economic change: A cross-national Comparison', Industrielle beziehungen, 11, 1-2, pp. 42-60; F. Traxler (2004a), o.c.

([32]) The prime example is Germany, see: W. Schroeder & S.J. Silvia (2005), Why are German employers associations declining? A challenge to conventional wisdom, The Minda de Ginzburg Center for European studies, Harvard University, Programme for the study of Germany and Europe, working paper, 05/3.

([33]) More details on these trends in organisational restructuring at the employers' side from a perspective of economic internationalisation: W. Streecek et al. (2006), Governing interests: business associations facing internalisation, London, Routledge.

Box 1.10: The French MEDEF as prime example of restructuring as employers' confederation

The 'Mouvement des entreprises de France' (MEDEF): the new name of the French employers' association, formerly the 'Conseil national de patronat français' (CNPF), was adopted in 1998. MEDEF enlarged its executive council to include more representatives of the national network and to make it 'a body truly representative of the French enterprise'. The organisational restructuring was the culmination of a process dubbed 'en avant l'entreprise' ('forward with the enterprise'). In its founding charter MEDEF stressed the promotion of the entrepreneurial spirit in France as its primary goal. In the economic and social parts of its plan, it puts forward state reform as an absolute priority.

3. Conclusion

This chapter charted the structure and degree of membership organisation on both sides of the industrial relations system in the Member States.

Unions are confronted in most of these Member States with a declining membership, especially in density. They have recruiting and organising problems in expanding areas of the service economy. They are furthermore confronted with the challenge of better representing the following groups in a more and more diverse workforce: women, (young) people in atypical jobs, minority ethnic groups, workers in small workplaces. In other words, today's changing face of work has a profound impact on the organising and recruiting potential of trade unions. In recent years, unions all over Europe have as a consequence taken up this membership challenge by developing new revitalisation strategies and methods.

On the employers' side the picture is less clear. Membership losses seem not so widespread, because these organisations very often not only specialise in defending industrial relations interests, but are also active in servicing, networking and lobbying activities in other segments of the economy (competition and market regulation, industrial policy). Nevertheless, these associations are also confronted with recruiting and organising challenges:

- a 'representation gap' with a growing number of SMEs, which have a traditional, but enhanced scepticism towards the industrial relations role of employers' organisations;
- the putting into question of role and task of (con)federations in systems, where decentralisation of collective bargaining is appearing strongly;
- (still) capacity-building problems in new Member States, where they had to start as organisations from 'scratch' in the post-communist period.

Appendix data sources union density

General

Trade union density rates are based on surveys, wherever possible. Otherwise, figures were calculated using administrative data (preferable from statistical offices) and adjusted for non-active and unemployed members, according to rules, compiled by Ebbinghaus & Visser (2000). In case of (strong) contradicting data, an average is calculated.

Country details

- Austria: Average of calculation (33 %) based on administrative data from the Austrian trade union confederation, adjusted following E&V rules (excluding unemployed and retired members) and ESS survey data (31 %).
- Belgium: ESS survey data, cross-checked by estimate based on administrative data of the unions (adjusted for unemployed persons, students, retired persons and corrected for a the known overstating of the figures, the known correction quotient is from the largest union and dates back from the end of the 1980s).
- Cyprus: Average of ISSP survey (35 %) and 70 % reported by Visser in Industrial relations in 2004 report, which is based on administrative data, provided by the Industrial Relations Service of the Ministry of Labour. These administrative figures are crude data. Both figures are from 2002. The distance between the both figures is extremely large. In an previous ISSP survey the density came closer to the official figures (64 % in 1998). In other words, the Cyprus data have to be read with great caution.
- Czech Republic: Average of ESS survey data of 2003 (21 %) and CVVM national opinion survey data (reported by EIRO) of 2003 (22 %).
- Denmark: ESS survey data of 2004 (80 %) and data reported by EIRO and based of an LO report on active membership in the country (79 %).
- Estonia: Average from ESS Survey and EIRO reporting (which is comparable with the figure from 2002, Working life Barometer of the Baltic countries).
- Finland: ESS survey data 2004, controlled calculation based on administrative data (adjusted for employed members (like E&V do) based on information from survey conducted by the Labour Ministry in 2001.
- France: Data from DARES/INSEE, Source: Enquêtes permanentes sur les conditions de vie et menages.
- Germany: Average from ESS survey 2004 and ALLBUS survey 2004, cross-checked by calculations from Ebbinghaus for the year 2002.
- Greece: ESS survey data 2004.
- Hungary: Labour force survey 2004.
- Ireland: Central statistical office, Quarterly national household survey 2004.
- Italy: Figure based on administrative data only from the three confederations (CGIL, CISL, UIL).

- Latvia: Administrative data corrected for unemployed, reported by EIRO.
- Lithuania: 14 %, figure reported by EIRO based on administrative data of the union self, without corrections, thus probably overestimated. Figure based on the Working life Barometer of the Baltic countries is 11 % in 2002.
- Luxembourg: ESS survey data 2004.
- Malta: Crude density rate stands at 62 % in 2004. It is based on the membership of the registered unions (34), divided by the full-time gainfully occupied people at the time of registering (June). The membership figures come from the annual report of Industrial and Employment Relations department of the Ministry of Education. The employment figures come from the national statistical office. Because Malta has a range of (small) unions, which have a mixed membership (employees and self-employed), the total employment figures are used. Non-active members are estimated at 8.4 % in 1999 and 11.2 % in 2003 by the Department of Industrial and Employment Relations, based on figures for the two largest unions (which covered 85 %-86 % of total union membership). Therefore we estimate the non-active membership in 2004 at 11.5 %. Taken this correction into account, we have an estimated net density rate of 55 % for Malta.
- Netherlands: CBS, Permanent Onderzoek Leefsituatie (POLS), survey (controlled for CBS data published based on administrative data from the unions).
- Poland: ESS survey data (17 %), cross-checked by information reported by EIRO (annual review Poland).
- Portugal: ESS survey data
- Slovakia: Figure reported by Handiak, Peter (2005) The Evolving Structure of Collective Bargaining in Europe 1990 — 2004. National report. Slovak Republic. Project Report 'The Evolving Structure of Collective Bargaining. A Comparative Analysis Based on National Reports in the Countries of the European Union', University of Florence — European Commission. Confirmed by survey data of International Social Survey Programme of 2002.
- Slovenia: ESS survey data 2004.
- Spain: 2004 data from survey Encuesta de Calidad de Vida en el Trabaja organised by the Ministry of Labour and Social Affairs.
- Sweden: Labour Force Survey 2004, reported by statistical office.
- United Kingdom: Labour Force Survey 2004, reported by statistical office.

Comparison of member figures from the surveys that we use and other data sources

Table 1.6: Membership according to surveys, that we use in the chapter, and other sources

Country	ESS Survey	Others	Data source others	
BE	47	49	Adm.	
CZ	21	22	Survey	CVVM opinion survey
DK	84	82	Adm.	
DE	22	23	Adm.	
EE	14*	17	Adm.	
EL	22	27	Adm.	
ES	16	17	Survey	Ecuesta de Calidad de Visa en el Trabajo
FR	12	9	Survey	Enquêtes permanentes sur les conditions de vie et menages
IE	40	38	Survey	QNHS
IT	28	34	Adm.	
CY	35	70	Adm.	
LV	18	19	Adm.	
LT	11*	16	Adm.	
LU	41	34	Adm.	
HU	18	20	Survey	LFS
MT		57	Adm.	
NL	28	24	Survey	POS, CBS
AT	36	35	Adm.	
PL	20	19	Adm.	
PT	16	23	Adm.	
SI	45	41	Adm.	
SK	31	35	Adm.	
FI	76	74	Adm./Survey	
SE	77	78	Survey	LFS
UK	30	29	Survey	LFS

* EE, LT: Working Life Barometer of Baltic countries 2002.

** CY, LV, SK: ISSP 2002 (for Cyprus also ISSP 1998).

Correlation coefficient between the two data arrays: 0.929

CHAPTER 2
THE EVOLVING RELATIONSHIP BETWEEN COLLECTIVE BARGAINING AND THE LAW IN THE MEMBER STATES ([34])

This chapter aims at providing an analysis of the evolving relationship between collective bargaining and the law in the last ten years within the European Union.

Box 2.1: Synthesis of a comparative labour law project

This chapter summarises the results of a research project called 'The Evolving Structure of Collective Bargaining. A Comparative Analysis Based on National Reports in the countries of the European Union'. The project has been coordinated by Silvana Sciarra from the University of Florence and co-financed by the European Commission. It aimed at providing a legal analysis of collective bargaining and of its evolutions in a large number of European countries (the Member States, Bulgaria, Romania and Turkey). It focused on the role of labour law in shaping the evolving structure of collective bargaining. A network of labour law experts has been drawn on to compile national reports based on a common format of questions. Throughout the chapter references will be made to these reports. These national reports and a general report can be downloaded at the following website:
http://www.unifi.it/polo-universitario-europeo/ricerche/collective_bargaining.html
Involved national experts: Ulrich Runggaldier (Austria), Guy Cox, Filip Dorssemont, Jan Rombouts (Belgium), Teodor Dechev, Rumiana Gladicheva, Vesselin Ilkoy (Bulgaria), Evangelia Soumeli (Cyprus), Igor Tomeš (Czech Republic), Ruth Nielsen (Denmark), Margarita Tuch (Esthonia, Latvia and Lithuania), Ange Moreau (France and Luxembourg), Maximilian Fuchs (Germany), Niklas Bruun (Finland), Stamatina Yannakourou (Greece), József Hajdú (Hungary), Bruno Caruso (Italy), Anthony Kerr (Ireland), Loredana Zappalà (Italy), Peter George Xuereb (Malta), Evert Verhulp (The Netherlands), Michal Sewerynski (Poland), Julio Gomes (Portugal), Serghei Mesaros (Romania), Peter Handiak (Slovakia), Marie-Metka Penko-Natlačen (Slovenia), Antonio Ojeda Avilés (Spain), Birgitta Nystrom (Sweden), Nurhan Sural (Turkey), Paul Davies, Mark Freedland (United Kingdom).

Collective bargaining may take place at the national, sector or company-level. In no European country does it take place exclusively at one level. However, the existence of centralised trade unions and employers' organisations in most of the EU Member States has resulted in many agreements being concluded at the national or sector level, supplemented by company-level bargaining.

If we look at the evolution of national legal systems, we notice that the status of voluntary collective bargaining has evolved significantly everywhere. This is, on the one hand, a sign of the vitality of national constitutional traditions, accompanied by frequent interventions of the legislature in this field with a clear intention to fortify — not to diminish — the scope and the functions of collective bargaining. On the other hand, as emerges in between the lines of some national reports prepared for this chapter, one can sense in the current debate the fear that the autonomy of collective bargaining will be diminished by too invasive interventions on the part of the legislator. This fear must be measured against national legal traditions which have in the past proved able to support the evolution of free and autonomous collective bargaining. These national traditions could, on the one hand, be based on the principle of only allowing improvements in the regulation of the individual's working conditions (known as *favor* towards the worker). On the other hand, they might

([34]) This chapter was drafted by Professor Silvana Sciarra, University of Florence, Jean Monnet Chair; tables 2.1. and 2.2. have been added by the editor.

achieve a legal rationalisation of bargaining levels, coordinating overlapping sources of regulations, and aim to avoid the infringement of individual guarantees, e.g. where plant agreements derogate from nationally or sectorally agreed standards.

1. Collective bargaining as a key component of the European tradition

In this first section we will highlight the main legal foundations of the European tradition of collective bargaining. Autonomy is the key underpinning value of this tradition.

1.1. Autonomy of collective bargaining

In the European tradition autonomy of collective bargaining means the development of collective agreements as sources for the free definition of wage policies and working conditions. The function of standard setting in national labour markets was originally assigned to collective actors as a direct expression of freedom of association. As a consequence of this powerful solution, legislation on minimum wages was even not considered essential in certain countries (for example: **Italy**, **Sweden**, **Germany**).

In many countries — **Germany** and **Italy** after World War Two to quote two examples — the autonomy granted to the collective bargaining system was associated with the abandonment of an authoritarian State intervention. The same was true for **Spain**, when the 1976 Constitution came into effect after the abolishment of Franco's regime. The recognition of the right to collective bargaining in art. 37.1 of the Spanish Constitution, strictly linked to freedom of association, opened up an autonomous space for collective parties empowered to confer enforceability to collective agreements for all workers (known as *erga omnes* effect).

A similar development took place in most of the new Member States, where autonomous collective bargaining arose in connection with the setting up of free markets in the Nineties. Democratic constitutions proclaimed after 1989 restored freedom of collective bargaining, while setting the conditions for collective representation of worker's interests and granting trade union freedom. Substantial modifications also occurred in national labour law systems, while adjusting them to renewed constitutional principles. To quote an example, the **Bulgarian** Labour Code was amended in 1992 and the comparison between the current and previous Article 50, dealing with contents and scopes of collective bargaining, shows a significant conceptual difference in the legislative approach used before and after the reform ([35]).

In this picture the **UK** tradition takes its own place, not easy to compare with many continental countries. The repeal of legislation providing the extension of collective agreements to non-union firms — the 1946 Fair Wages Act — took place in the early Eighties with the advent of Thatcherism. The abolition of the Wages Councils, an equally traumatic change for the British legal system, took place in 1993 ([36]). Offering a broader view of the evolution of collective bargaining in this country, one can argue – as the authors of the national report do – that purely voluntary systems show their weak side when external changes occur, either because of – a different political agenda, or because of market demands, as in the case of privatisation of relevant sectors in the economy. This

([35]) Bulgaria, National Report, section 1.1.
([36]) United Kingdom, National Report, section 4.2.1 with references to the relevant literature.

may explain why the formula of 'collective *laissez faire'*, central in developing a British approach to the relationship between law and collective bargaining, is not comparable to the continental notion of 'autonomy'. The latter has strong constitutional roots, either in connection with freedom of association, or as a principle in itself, when the constitutional right to collective bargaining is separately mentioned.

The notion of 'autonomy' should be the starting point for a critical reflection on the boundaries of regulating collective bargaining by law. It can also help analysts to ascertain when and whether there has been a violation of democratic rules governing the organisations representing employers and labour.

1.2. Core legal principles backing the autonomy of collective bargaining

In the European tradition of labour law four core principles support the development of autonomous collective bargaining.

(1) Freedom of association: all national systems base the legal relevance of collective agreements on this principle**.** This right is the fundamental pre-condition for entering a more sophisticated system of norm-setting by collective agreements.

(2) The presence of **collective parties:** bargaining of an employer (single or together with others) with a trade union or other workers' organisations. They represent the collective interest in the bargaining process.

(3) The **normative function** of collective agreements is a core principle bringing about different — and yet functionally equivalent – implications, by granting a generalised enforceability of the agreements either through legislation or other administrative measures (see for an overview table 2.1).

There are at least two EU countries – **Italy** and **Denmark** – in which these core principles are guaranteed despite the lack of specific legislation.

For example: In **Denmark** there is scarce legislation on core collective labour law issues and no statutory definition of a collective agreement. Collective agreements cannot be extended to cover employers who are not signing parties. However, as a result of the obligation to implement EU Directives a new version of the interrelationship among law and collective agreements developed in the country. For example, collective agreements on the implementation of the Part-Time Directive were extended through legislation, in order to cover employers who are not parties to collective agreements ([37]).

([37]) Denmark, National Report, section 8.1.3.

Table 2.1: Normative function of collective bargaining: legal status and extension procedures as examples

Country	Legal status	Extension possibility off above company collective agreements (mostly sector)
BE	Not in the constitution, but statutory recognition by a specific law	On request of signatory party but virtually automatic (ex lege); All employees and employers in a given sector; Royal Decree issued by the competent Minister.
CZ	Mentioned in the constitution and organised by a specific collective bargaining act, changed in 2005	Joint request (at least one of them representing the biggest number of employees in the branch); Branch agreement can be declared for other employers with similar activities in the branch; Most representative party has to support the request; Ministerial decree (Minister of Labour and Social Affairs)
DK	No statutory definition of collective agreement; Collective labour law is in general only scarcely regulated by law, but by basic agreements dating from the early 20th century	No, agreements only binding for signing parties; extension refers mainly to the transposition of EU Directives, whereby collective agreements have given legal status
DE	Constitutional right; Collective Bargaining act of 1949	Request of at least one party to the collective agreement; All employees and employers in a given sector; Minimum of 50 % of all employees in field of application must be covered prior to extension, extension must be in public interest, approval by a special collective bargaining committee (Tarifausschuss) required; Declaration by the Ministry of Labour and Social Affairs.
EE	No reference in the constitution; specific acts, whereby major revisions in 2000-2001	An agreement is extended by a joint declaration of parties, while public authority is responsible for publishing this agreement; No ministerial decree or act is needed; Pre-conditions: above the company level; employers' organisation and trade union(s); parties must decide in writing the scope of the extension; registered collective agreement; comes into force after publication by the Ministry; only terms of remuneration and working hours can be extended.
EL	Constitutional rights; Development of new and important law in 1990	Mostly on initiative of the Ministry of Labour but also on request of social partners; All employees and employers in a given sector; Employers already covered by agreement must employ at least 51 % of employees in sector or occupation; Declaration by the Ministry of Labour after receiving opinion from tripartite Supreme Labour Council.
ES	Guaranteed by the Spanish constitution; Workers Statute	Extension is automatic throughout the agreement's domain if signed by a majority of the representatives of each party to the agreement (first type or level of extension). Upon request by unions and/or employers, the Ministry can enlarge the agreement in cases where no bargaining exists (second type or level of extension).
FR	Constitutional right; recent decades saw important revisions to the law, especially by the Fillon Law of 2004	On the request of one or more of the bargaining parties, addressed to the National Commission on Collective Bargaining, the Minister can extend agreements to entire sectors and/or enlarge agreements to different geographical regions or other economic sectors. The extension is carried out by government regulation. The agreement is submitted to a control by a judge over its legality and over its opportunity, the latter being its ability to constitute a professional statute which expresses the collective interest of the sector. Majority rules are already applied in the legally prescribed process of concluding an agreement.
IE	Voluntaristic system or principle of legal abstention	Application by the parties to an agreement; All employees and employers in a given sector/region or company; Parties to the agreement must be 'substantially representative'; Decision of Labour Court to grant a Registered

		Employment Agreement (REA); This facility is, however, little used.
IT	Constitutional reference, but never enacted. No special law to regulate bargaining activity	Implicit form of extension. Collective agreements are seen as private law and have only a legally binding effect between the stipulating parties and their members. However, although judges are not legally obliged to apply the (pay) standards of contracts; they do so for reasons of fairness.
CY	Gentleman's agreements because no law has regulated until now the constitutionally guaranteed collective bargaining right, bargaining is organised by a procedural basic agreement (industrial relations code)	No procedure for extension
LV	Constitutional amendment of 1998; Law on Labour (2002)	Extension does not require ministerial decree, though certain pre-conditions have to be met: the agreement must be concluded at the sector level; parties must file a joint request; all terms become general binding once the agreement covers 60 % of workers already employed in that sector. The number of sector-level agreements is rising, but in practice they are very often a kind of policy document, rather than a bargained solution.
LT	Right to bargain collectively protected by several ratified ILO instruments, new Labour Code of 2002	Article 51 of the Labour Code of 2002 allows collective agreements above the enterprise level to be extended by a decision of the Minister of Social Security and Labour. The only pre-condition is that either party to the agreement must request the agreement or its part to be extended. No practices have already been reported due to the recent operationalisation of the Code.
LU	New act since 2004	Automatic (ex lege); All employees and employers in a given sector; Declaration issued by Grand-Ducal Regulation following a unanimous proposal of the parties represented on the Joint Conciliation Commission on advice of competent professional chambers; only agreements which have been subject of conciliation or arbitration can be ask to be extended. NB: any employer asked to bargain by a representative union has the obligation to do so (single or with others). If he fails to do so, well-defined rules and procedures of the National Conciliation Service have to be followed.
HU	Hungarian labour code of 1992; Collective bargaining is heavily regulated by legislation, especially in terms of provisions on the bargaining parties	Application by contracting parties; All employees and employers in a given sector; Applicants need to present proof of their majority status; Decision by Minister of Employment and Labour after consultations with the Wage and Labour Committee of the tripartite National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT); However, sector bargaining is still mainly in a stage of early development
MT	Employment and Industrial Relations Act 2002	The extension of collective agreements can be achieved via the enactment of subsidiary legislation by Legal Notice if the government can be persuaded that certain conditions should be made applicable more generally in such a manner. However, no structured practice or regulation of extension.
NL	Collective Labour agreements acts of 1927 and 1937	Request of one or more bargaining parties. All employees and employers in a given sector. Agreement must cover 'sufficient majority of relevant employees'. Decision by Ministry of Social Affairs and Employment.
AT	Legal based system of chambers on the employers' side to structure collective bargaining with obligatory membership	Extension can be ordered by the Austrian Federal Arbitration Office, on application of one or both bargaining parties. In practice of little importance, because obligatory membership of employers in Austrian Economic Chambers guarantees include coverage
PL	Full freedom of collective bargaining granted by the 1997 Polish constitution and followed by the 2000 substantial amendment of the Polish labour	Minister of Labour may extend the application of supra-establishment collective agreement to employees to whom no agreement applies, when the overriding social interest so requires, upon the demand of an appropriate trade union or employers' organisation. However, the practice of generalising the binding power of

	code	branch agreements has not occurred so far. Reservations to this procedure are presented by some social partners and by a part of the legal doctrine, saying that it is not fully compliant with the freedom of collective bargaining. Anyhow, sector agreements are a rare exception in Poland.
PT	New Labour Code since 2004	Ministry of Labour; All employees and employers in a given sector or geographical area; Extension order (Portaria de extensão) by the Minister of Labour. Employers, their associations, and unions have opportunity to object to the decision (but not to stop it); Only allowed if there are economic and social circumstances that justify such an exceptional measure.
SI	New law on collective agreements currently in the process of adoption	As all private employers are obligatory members of the bargaining chambers all sectoral agreements are automatically extended with validity for almost all employees. This situation can be changed by the new law (still in enactment).
SK	Constitutional reference; material provisions regulated by the Labour Code; the procedural provisions by a special Act	The legal obligation of the sectoral collective agreement can be extended in accordance with the above Act on collective bargaining. Extension can be enforced only to employers whose business activities and employment and working conditions are similar, are established in the Slovak Republic and for whom the existing sectoral collective agreement does not apply yet. The extension process is usually realised on request of the respective trade union or employer association. The Ministry of Labour, Social Affairs and Family can stipulate by Decree that the sectoral collective agreement is binding also for employers who are not members of employers' organisation, which has concluded this agreement. According to the last amendment to Act on collective bargaining, since 1 December 2004 the consent of employer concerned by extension is a necessary precondition for decision on extension of the collective agreement.
FI	Collective bargaining act (extended in the 70s to the public sector); better regulation of extension in 2001	Automatic (ex lege); All employees and employers in a given sector; National coverage of the agreement and 'representativeness' in a given sector are necessary conditions and checked; Special committee set up by Council of State needs to confirm representativeness of the agreement. Extension decision published in a public register.
SE	Basic collective agreements and Co-determination act	It is not possible under Swedish law to extend collective agreements by some kind of decree or legislation. However, practices with an extended effect are used: (1) union signs an 'application agreement' with a previously non-signatory employer that the agreement applies also to his company; (2) The employer has to apply the provisions of the collective agreement also to outsiders (non-unionised employees and employees, belonging to another section of the signing union, but without an agreement), unless otherwise has been agreed with the signatory union.
UK	Britain has no codified constitution. No major statutory regulation (principle of voluntarism applies) although Employment Relations act (1999) defines the recognition and establishment of bargaining units	The possibility to extend collective agreements by means of official order or ministerial decree does not currently exist in the UK; Legislative support for collective bargaining has mainly focused on reinforcing and structuring single-employer bargaining.

Source: Industrial relations in Europe 2004, EIRO Comparative study on changes in collective bargaining; adjusted by information of the national reports.

In **Ireland** too we encounter a regime of non-binding collective agreements that can be registered by the Labour Court, if the signatory parties so require. The Court checks a wide range of conditions in order to be satisfied for the registration. The latter makes the agreement generally binding in the same class or group. Very seldom is this option used. However, it is worth mentioning such an opportunity, since it confirms that core principles are looked at by the Court as essential elements to qualify the collective agreement and consequently register it. The 2001 Industrial Relations (Amendment) Act, amended in 2004, empowers the Labour Court even further to regulate by binding decision pay and conditions of employment, when no collective agreement applies to the employer in question. One central criterion the Court must be satisfied with is independence, namely the fact that parties of equal standing are not controlled by one another ([38]). In the Irish example the law shows its supportive nature and in a sense its respect for autonomous bargaining. Independence of the bargaining agents can be regarded as an essential and inherent element of freedom of association and at the same time as an element of their capacity to put in action the normative function of a collectively agreed source.

(4) The fourth core principle has to do with the **procedural function of collective agreements** and marks the recent evolution of collective bargaining in original ways. Although this fourth principle may be considered as optional, since it is merely complementary to the normative function, it may acquire a distinct legal relevance in systems in which the approach is highly formalised, either in law or in voluntary sources.

It may pre-determine the contents of collective agreements at a lower level, or indicate criteria according to which certain subject matters will be assigned to a decentralised negotiation. When procedural agreements dealing with the organisation of bargaining levels and the distribution of competences are part of wider agreements, this core principle becomes even more relevant in the bargaining process and in the creation of complying mechanisms. It can legitimate or give impulse to lower bargaining levels in countries where the cohabitation with upper levels is more difficult.

We can quote the **Italian** 1993 Protocol of Agreement ([39]), the 1997 and the 2003 **Spanish** *Acuerdo Interprofessional.* Equally, the tripartite agreement reached by the Spanish Socialist government in July 2004 tries to achieve a rationalisation of the bargaining system as a whole. Also the **Dutch** 1993 Agreement reached within the Labour Foundation, significantly entitled 'A new direction', aimed at further decentralisation in setting employment conditions and allows derogations, sometimes in consultation with works councils.

In **Hungary** the articulation of collective bargaining at different levels is left to the contracting parties, despite the fact that the law provides for a normative function of collective agreements both at sector and plant level, creating some uncertainty in the hierarchy of sources.

([38]) Ireland, National Report, section 1.ii.

([39]) Italy, National Report, p. 29.

2. Trends and emerging legal questions in the relationship between law and collective agreements

After discussing the core legal status of collective bargaining in Europe and its supporting principles, we will now give a case-based overview of recent trends in these national systems of collective bargaining in Europe.

2.1. Decentralisation

The tendency to decentralise collective bargaining at the company or enterprise level is reported in almost all country studies. However, many different solutions are adopted in countries and the functions assigned to decentralised agreements are not a static feature, but something that can change rapidly.

Table 2.2: Levels of collective bargaining involved in wage-setting, EU-25

	Inter-sectoral	Sector	Enterprise
BE	**	***	*
CZ		*	***
DK	*	***	**
DE		***	**
EE	*	*	***
EL	**	***	*
ES	*	***	**
FR		**	**
IE	***	*	*
IT	*	***	**
CY		**	***
LV	*		***
LT		*	***
LU		**	**
HU	*	**	***
MT		*	***
NL	*	***	*
AT		***	*
PL	*	*	***
PT	*	***	**
SI	**	***	**
SK		***	**
FI	***	**	*
SE		***	*
UK		*	***

* existing level of collective bargaining
** important but not dominant level of collective bargaining
*** dominant level of collective bargaining
Inter-sectoral = Tripartite wage coordination or national bilateral agreements between peak federations.
Sources: Industrial relations in Europe 2004 and national reports.

'The key picture which emerges from the table is that the setting of wages and employment terms in the EU involves bargaining activities at different levels – the sector or branch of economic activity, supplemented with company or enterprise bargaining and, in nearly half of the EU economies, also with some form of national bargaining.' ([40])

([40]) Industrial Relations in Europe 2004, p. 38

In **Poland** decentralisation coincided with the emergence of free trade unions – *Solidarnosc* in particular — and is still considered a choice which avoids possible excessive interferences from sector level ([41]). Pressure is put on State-owned enterprises by the Ministry of Finance to enter sector agreements, overcoming the fears shown particularly in privately owned enterprises to be forced into a proper collective representation mechanism and then to be bound to observe normative terms and conditions of employment. ([42])

We have to highlight cases in which bargaining agents at plant level are provided for by law. In **Spain**, for example, works councils operate with a clear mandate and sign 74 % of plant agreements. Unions have recently requested to have wider control over decentralised bargaining. ([43])

In **Germany** single-employer agreements have tripled since 1990, particularly in the former GDR. Furthermore, the spreading of 'opening clauses' in sector agreements increases decentralisation. This phenomenon brings about differentiation as a new regulatory pattern, different from the uniform standards provided for in sector or industry agreements. ([44])

In **Austria** 'organised decentralisation' is described as a phenomenon mainly linked to 'delegation' or 'opening' clauses, which allow some flexibility on economic and working conditions – in particular working time – at company level ([45]).

The **UK** report proposes the image of 'centralisation at the company level' to indicate how the fulcrum of collective bargaining has moved away from the sector or industry level. ([46])

The **Irish** report indicates that decentralised company level agreements are the effect of decreased unionisation in multinationals.([47])

The same may be true for the expression decentralised agreements. In the **UK**, for instance, the tendency to decentralise, namely to move towards single employer bargaining, has been counterbalanced by a centralisation consisting in a move from shop-floor to company level ([48]).

In **Italy** a long lasting disagreement – both in academic circles and among the social partners – shows the difficulty of intervening in formalising the role of decentralised agreements. In the 2001 'White Paper' presented by the newly elected centre-right administration it was suggested that national agreements should be reduced in their scope, in order to liberalise recourse to decentralised bargaining. Once more, as previously underlined, the practice of collective bargaining is going into a different direction from the

([41]) Poland, National Report, section 5.d.
([42]) Poland, National Report, section 5.d.
([43]) Spain, National Report, section 2.
([44]) Germany, National Report, section 3 of the Conclusions.
([45]) Austria, National Report, section 3, quoting Traxler for the expression 'organised decentralisation'. Delegation clauses in the metal industry allowed also for derogation in pejus on wages, but were not considered a suitable solution and therefore disappeared at the end of the Nineties (see section 5).
([46]) See United Kingdom, National Report, section 3.2.2, for references to decentralised collective bargaining taking place in privatised industries, as part of a wider decentralisation of decision-making, bringing about in some cases the weakening of unions' bargaining position.
([47]) One among seventeen major multinational companies set up in Ireland recognise a trade union, as indicated in Ireland, National Report, section 2.i.
([48]) United Kingdom, National Report, section 3.2.2.

one shown by the government. A nation-wide agreement signed in 2004 by the main confederations, covering the artisan sector confirmed the role of national collective agreements and indicated a wider scope for decentralised agreements, not only at the company level, but also within certain territorial areas, in order to redistribute productivity and fill the gap between planned and current inflation ([49]).

To conclude this point on decentralisation, comparative analysis reveals a picture of different bargaining levels, combined with different legal regimes for the coverage of the agreements in question. Particularly when plant agreements are not bargained and signed by management and labour organisations having a precise mandate to adjust standards and even to depart from previous agreements, the outcome may be problematic in as much as it generates uncertainty in individual employment contracts.

2.2. Collective agreements and the consequences of restructuring

Changes in the status of collective agreements are also caused by looking for innovative measures to cope with restructuring.

(1) Other actors are implicated

For example: In **Austria** we see a distinct form of decentralisation, not governed by a collective agreement, but by a so called 'work foundation'. The latter, functionally comparable to a social plan, mainly deals with the consequences of restructuring. It brings together the social partners and other actors, such as the Chamber of Commerce and the Labour Market Services, in order to favour programmes for re-training workers and facilitate their return to the labour market ([50]). When companies undergo serious economic constraints, even temporarily limited wage reductions can be dealt with in works agreements — not collective agreements — at company level ([51]).

(2) Different groups are targeted

For example: Collective agreements on training may also be referred to people seeking employment, as it is reported in **Greece**, where the role of LAEK, an Independent Fund for Employment and Professional Training run by the social partners, is highlighted ([52]).

(3) New roles are assigned to collective agreements

For example in the **Swedish** Employment Protection Act – an example of legislation providing an active role for the social partners — it is stated that agreements on redundancy must include measures on just cause and notice for dismissals. Agreements signed in 2004 for the public sector also take into account measures to facilitate the return to work of redundant employees ([53]).

([49]) Italy, National Report, section 3.5 and 9.3.
([50]) Austria, National Report, section 6. It is reported that the first work foundation was established in 1987, in the restructuring of nationalised steel industry.
([51]) Austria, National Report, section 6, quoting field research by Blum et al.
([52]) Greece, National Report, section II.D, specifying that the need to target specific groups of workers or unemployed started in the early Nineties.
([53]) Sweden, National Report, section 5.5.

2.3. Collective Agreements and non-standard workers

Whereas autonomous collective bargaining brought about solid innovations in the past, both in norm-setting and in rationalising internal procedural machineries, recent developments can provoke a dispersion of the results achieved, unless new solutions are found. Large (new) groups of workers may either be excluded from collective bargaining or create new separate domains of norm-setting.

In this point 2.3 we summarise how some countries have been very innovative in creating new ways of collective norm-setting for a particular new group, namely agency workers.

We can refer to **Sweden**, as for the pioneering 1998 agreement guaranteeing agency workers hours equal to 75 % of ordinary full-time work. The spreading of agency work brought about an increased number of national collective agreements, guaranteeing from 75 to 90 % of salary of full-time work. Open ended contracts are becoming the general rule, leaving fixed-term contracts as an exception. In 2000 LO chose to be involved in negotiations with the Swedish Service Employers' Association and in the 2002 agreement the wage guarantee went up to 85-90 %. Working conditions applied by the user company are also extended to comparable agency workers.

Sweden must also be quoted for the spreading effect of the innovative solutions agreed upon for agency workers. LO set a model for SACO, which signed a similar national agreement in 2002, introducing 100 % salary guarantee, even when agency workers are not sent to user companies. ([54])

In **Finland** too the tendency is not to treat agency workers as a separate group and to expand to them all guarantees provided for in collective agreements. It is the 2001 Employment Contracts Act that specifies duties and obligations of the user company. Agencies must comply with the minimum wages applied by the user company, unless a separate collective agreement is applicable for the agency sector. ([55])

In **Italy** collective agreements can intervene in crucial matters, according to the new legislation on agency work provided for in the 2003 Decree reforming the labour market. For open ended contracts intervening between the user company and the agency, collective agreements can expand the list of activities indicated in art. 20 of the Decree, namely cases in which there can be recourse to agency work. This empowers the contracting parties beyond the letter of the law, allowing a wider recourse to agency work. They can also indicate quantitative limits for agency workers to be required by user companies and specify training obligations, financed by a special fund into which employers are bound to pay their contribution.

Collective agreements can also specify the amount of a special remuneration due to the agency worker when no work is required. In **Austria** workers must be available during working time up to 38.5 hours per week. For periods of non-work workers are entitled to the salary (*Stehzeiten*) paid for 7.7 working hours, based on the average salary paid in the last 13 weeks preceding the period of non-work. ([56])

([54]) Sweden, National Report, section 5.5.
([55]) Finland, National Report, section 2.
([56]) I am grateful to Prof. U. Rungaldier for information on latest developments in collective agreements. Minimum standards for this special form of remuneration vary according to the skills of the workers.

2.4. Collective agreements and social rights

Collective agreements can also be the most appropriate tool to interpret widespread needs in society and to translate these needs into social rights. We have to mention the right to training. A recent example: In 2003 the **French** inter-professional agreement on life-long access to training was signed, following three years of intense negotiations among the social partners. ([57]) Innovative contents characterised this text, mainly in providing tools for shaping an 'individual right' to training and creating new tools to enforce such a right

Another significant example is to be found in measures on the reconciliation of family and working life.

In Denmark the main bargaining agents in the private sector (LO and DA) reached an agreement in 2004 on a central fund for parental leave, also covering small and medium-sized companies. Decentralised agreements may provide an extension of the period during which full pay for parental leave is granted ([58]).

In Greece measures on the reconciliation of family and working life are also related to the protection of health and safety and referred to the Greek Institute for Health and Safety at Work (ELINYAE), run by the social partners ([59]).

In the Netherlands in the years 1994-2002 legislation on the conciliation of work and care was approved by governments with different orientations. Solutions range from an Act on the adaptation of working hours – entitling each worker with a right to reduce working hours after one year of employment – to the Work and Care Act, which mostly relies on collective agreements for the regulation of various kinds of leaves. ([60])

3. Interpreting trends with regulatory schemes

To understand and interpret the main evolutionary trends in collective bargaining, summarised in the previous section, three 'regulatory schemes' are proposed from a legal point of view. Schemes are thought of as schemes of action for the collective parties; the adjective 'regulatory' describes the function of the schemes, namely the creation of rules, be they binding or not binding, normative or procedural. Regulatory schemes are connected to one another and in some cases they may overlap. ([61])

3.1. Collective agreements precede law

The first regulatory scheme indicates that collective agreements may influence legislatures. A powerful expression of autonomous norm setting by collective bargaining, although not strictly binding for the legislature, may prepare the ground for the adoption of the same norm in law. Legislation will in such cases be enriched by previous implementation in the

([57]) CGT signed the agreement together with the other main confederations, breaking a tradition of opposition in previous negotiations. See EIRO Observer, Issue 1/2004, p. 5.
([58]) Denmark, National Report, section 6.2.
([59]) Greece, National Report, section II.D.
([60]) The Netherlands, National Report, section 5.
([61]) This is an indication of how complex legal analysis is in this field. Many variables intervene in marking the territory of a collective agreement and in integrating it in national legal systems. The enlarged EU presents in this case further challenges to comparative analysis.

contractual arena ([62]). A few examples have been selected and will be mentioned as indicative of existing practices.

The previously mentioned 2003 French nation-wide agreement on life-long training inspired a 2004 statute, which links up training with employment policies, thus showing the influence of European guidelines in this matter ([63]). The ground for the adoption of the 2004 *Loi Fillon* in France was prepared by cross-sector national collective agreements, dating back to 1995, renewed in 1999 and formulated in 2001 as a joint opinion, aiming at a reorganisation of the bargaining levels. All these voluntary sources brought forward the two inspiring principles then enshrined in the *Loi Fillon*, namely the majority principle for the valid signature of a collective agreement and the guarantee that collective agreements be negotiated even in non-unionised companies. ([64])

Greece and **Sweden** offer two other and different examples of how legislatures may draw inspiration from collectively agreed sources.

In some fields, such as healthcare, unemployment measures, vocational training for part-time workers, **Greek** statutes simply ratify what is in the collective agreements and appear to be a mere 'auxiliary source of regulation'. ([65])

In **Sweden** a most interesting case is reported, whereby a collective agreement providing normative and economic conditions for temporary workers was signed in the mid eighties, when such employment contracts were still illegal. Subsequently, in 1991 and in 1993 all restrictions on temporary work have been loosened. Innovative agreements have also been signed in the years 2000, aiming at shortening the gaps between standard employment contracts and agency work.

The **Irish** centralised agreement 'Sustaining progress (2003-2006)' includes the government's commitment to changing maternity, adoptive and parental leave legislation. This led the government to 'protect' the maternity Bill 2003, using the argument that it reflected previous agreement among the social partners. ([66])

In **Italy** the recourse to a nation wide collective agreement on EWC proved to be the right way to set the ground for legislation transposing the Directive. ([67])

([62]) A different matter is to provide for consultation of the social partners before adopting legislation. An extreme example is provided for in the recently enacted Portuguese Code (art. 525), holding unconstitutional legislation approved without prior consultation of the social partners at all levels, including works councils. See Portugal, National Report, section 1.

([63]) J. Pelissier, A. Supiot, A. Jeammaud, Droit du Travail, Paris 2004 (22nd ed), p. 283, underlining the European style in the expression granting individual employees the right to training 'tout au long de sa vie'. About the influence of the national cross-sector collective agreement on the legislature see p. 30 ff. The agreement was itself influenced by the 2001 joint opinion signed by the European social partners.

([64]) A. Supiot, La riforma del contratto collettivo in Francia. Riflessioni sulla trasformazione del diritto, Giornale di diritto del lavoro e di relazioni industriali, 2005.

([65]) Greece, National Report, section III.7.

([66]) Ireland National Report, section 3.

([67]) Transposition of the directive on EWCs was greatly delayed in Italy and was only achieved with Legislative Decree No 74 of 2 April 2002, which was enacted just in time to avoid an infringement procedure by the Commission to the European Court of Justice The process of implementing the directive was, however, rapidly activated by the main confederations on both sides, who signed a nation-wide agreement on 27 November 1996. The agreement paved the way to company-level agreements to set up EWCs long before the transposition of the directive. See Italy, National Report, sections 2.5.B and 8.1 more broadly on the recourse to collective agreements for the transposition of European Directives. A similar solution is expected for legislation transposing the Directive on Workers' Involvement in European Companies. See the agreement signed in March 2005 by the main Italian Confederations. Comments in F. Guarriello, La partecipazione dei lavoratori nella società europea, in DLRI, 2003, p. 1 ff.

Notwithstanding different attitudes shown by national legislatures, this regulatory scheme signifies that an optimal equilibrium among legal and voluntary sources may be reached. Such a balance indicates that the legislature trusts the system of collective bargaining and acknowledges its stability and assigns credibility to the social partners.

3.2. Vertical hierarchy between law and collective agreements

In some countries collective agreements are subject to registration ([68]) or extension by decree. ([69]) Conferring an *erga omnes* effect to collective agreements is the outcome achieved following a majority rule, namely recognising a general coverage to agreements signed (or approved) by unions representing a majority of workers.

Germany represents a clear example of how meticulous the legislature can be in determining criteria for the extension of collective agreements to non-organised employers and employees. It is worth recalling that in this country the request addressed to the Ministry (either at the Federal or at the *Land* level) originates from at least one of the collective parties and must be approved by a committee composed of three representatives of organisations of both employers and employees. A simple majority vote takes place within the committee. In addition, extension is only possible if at least 50 % of the workforce that would be covered by the extended agreement is covered by the negotiated agreement. ([70])

In **Italy** collective agreements in the public sector, unlike in the private sector, are generally enforceable, due to the power recognised to a peculiar negotiating agent (ARAN), representing all public employers. Equal treatment for all employees covered by the agreement follows as a result of legislation, setting clear binding rules for the employers. ([71])

On the contrary, in **Denmark**, where the tradition of voluntary agreements has traditionally prevailed, some exceptions are made for agreements transposing EU Directives, which must acquire a binding nature. ([72]) Despite differences in the legal solutions adopted, the same holds true for other Nordic countries and for **Sweden** in particular.

A striking 2004 decision of the Constitutional Court of the **Czech Republic** is reported, holding unconstitutional the ministerial procedure to extend nation-wide collective agreements. ([73]) The argument is that extension beyond the signatory parties breaches contractual freedom, a principle connected to the protection of property rights. It is expected that this decision will open the way to legislative intervention.

In **Poland** too procedures to grant the extension of sector collective agreements to non-signatory parties generates criticism among scholars and social partners, worried by an excessive invasion of private parties' freedom to bargain. ([74])

([68]) This happens, for example, in some new Member States such as Romania and Slovenia.
([69]) Bulgaria, Hungary.
([70]) Data are reported in Table 1 and 2 annexed to the National Report.
([71]) See Art. 45.2 Legislative Decree 2001/165 and Italy, National Report, section 1.4.5.
([72]) Threats from the Commission to start an infringement procedure on the implementation of the Working Time Directive convinced the Danish government and the social partners to accept an extension of the agreement by law.
([73]) See Czech Republic, National Report, Conclusions.
([74]) Poland, National Report, section 1.

The most common solution across all countries is that collective agreements can only improve economic and working conditions. This is confirmed in recent legislation in **Bulgaria**, the **Czech Republic**, **Hungary**, **Malta**, **Poland**, **Romania**, **Slovakia**, **Slovenia**, **and Turkey**.

In the Baltic countries too this principle is enforced. In **Estonia** the National Court pointed out in a 1998 ruling that improving statutory rights can go as far as creating new rights in collective sources, provided that there is no contradiction with the spirit of the law ([75]).

In **Cyprus** and **Greece** sources are hierarchically organised and leave limited space for manoeuvre to weaken working and economic conditions set by statutory law.

Exceptions are frequent in all systems. For example, in **Poland** derogations take place at plant level via collective 'accords' – rather than 'agreements' – on issues related to economic constraints forcing the employer to reduce employment. As previously mentioned, legal scholarship does not disregard the recourse to derogations, when it is necessary to introduce elements of flexibility in the legal system.

Even in the **UK**, where collective agreements are not regulated by law, a hierarchical principle governs the relationship with statutory law, not allowing for derogations *in pejus*. However, the latter have become frequent in working time regulations, even in individual contracts of employment.

As one can see, collective agreements under this regulatory scheme can specify legal commands and implement them. They can also, under special circumstances, introduce pejorative measures, departing from the law. This last variable is the most problematic and gives origins to contested debates at national level in a variety of countries.

The **Spanish** Workers' Statute (art. 41) provides for derogations from legal standards – on working time, certain working conditions and wages – whenever the employer can prove that 'economic, technical, organisational or productive reasons' may imperil the firm's 'competitive position in the market' or its response to market demands. Derogations may occur both at the individual and collective level. Art. 82.3 opens up spaces for negotiations *in pejus* at plant level, provided that collective agreements at a higher level indicate 'conditions and procedures' according to which wages can be reduced for reasons of economic stability ([76]).

The **French** legislature shows in the *Loi Fillon* that trade unions signatories to plant agreements must gain their credibility – either with a majority of unions signing or with no opposition by the majority — in order to introduce derogations both from the law and from agreements at a higher level. It is worth underlining that such alternative criteria are dealt with in national agreements, which are made binding by a ministerial decree.

The most recent evolution goes into the direction of expanding the areas in which derogations are allowed. In fact, it can be argued that derogations are now the rule, since only four subject matters – minimum wages, job classifications, complementary systems of

([75]) Estonia, National Report, section 1.
([76]) It is worth mentioning that all such derogatory measures have been introduced by recent legislation on bankruptcy (Ley Concorsual 2003), unusually granting powers to the Bankruptcy court (Spain, National Report, section 1).

social protection, the regime of funds for professional training — are not subject to derogations. ([77])

In **Estonia**, Article 4(2) of the Collective Agreements Act states the invalidity of collectively agreed terms and conditions less favourable for employees than those prescribed by law. However, in connection with the need for more flexibility, legislation on working time expressly allows collective agreements to impose flexible conditions (such as flexibility in daily breaks regulations; shifts over 12 hours long, but not longer that 24 hours; splitting the payment of holiday allowances in two parts). ([78])

The **German** debate on the so called opening clauses inserted in sector agreements, to allow derogations at the lower plant level, must also be quoted.

Art 77.2 BetrVG (Act on Works Councils) introduces the notion of works agreements, different from those signed by trade unions and employers' organisations or individual employers. Despite the indication in the law that works agreements should not deal with normative issues covered by collective agreements, art. 77.3 allows for a departure from such a principle and empowers the employer and the works council to derogate from sector agreements both *in melius* and *in pejus* on a discretionary basis. ([79])

Opening clauses have been at the centre of political and academic debates. From the beginning of the Nineties onwards, the recourse to opening clauses has been spreading, in response to the need for more flexible employment relationships. This practice also led to the introduction in several companies of so called 'company pacts for employment', often in the form of concession bargaining, at times contravening sector level standards. ([80])

The need to regulate this new phenomenon and to amend existing statutory law has been expressed by the social partners, albeit with different accents on the solutions to be found. It is interesting to notice that proposals put forward in 2003 by the opposition parties refer to the introduction of a majority principle, namely consensus expressed by two thirds of the personnel and the absence of objections, after four weeks from the notification of the agreement to all individual employees.

Resemblances with the **French** debate and with the 2004 reform are striking and so is the recourse to the catchword 'modernisation', presented in both countries as a political programme and, at the same time, as a theory of legal reforms.

Modernisation is also the aim pursued by the **Italian** legislature in the 2003 reform of the labour market, enhancing more flexible forms of employment. In some 'new' employment contracts, such as job-sharing, collective agreements cannot deviate from legislation. In others, such as in contracts providing apprenticeship, collective agreements range from a maximum to a minimum regarding the length of the contracts themselves. In this very complex piece of legislation several spaces are opened to collective bargaining, albeit with some uncertainty on the bargaining agents and on the levels of negotiation. Unlike in previous statutes, where reference was made to most representative unions, the language now adopted by the legislature is 'comparatively representative unions', thus indicating

([77]) A. Supiot, cit, section 2 B).
([78]) Estonia, National Report, section 1.
([79]) Germany, National Report, sections 3.1 and 3.2.
([80]) Collective bargaining system under pressure, in EIRO Observer 1, 2004, p. 7.

that even some unions (not necessarily all) may act as bargaining agents. Furthermore, national collective agreements, covering wide areas of economic activities, are no longer the main point of reference for the legislature and some form of competition among different levels may also be envisaged. ([81])

It is also worth mentioning that collective agreements are often presented as sources competing with individual contracts of employment, in as much as the latter intervene if the former are not stipulated. One can insinuate that, in some delicate matters – such as part-time and working time regulations – there might be an interest on the employers' side not to enter negotiations, in order to give space to individual bargaining. ([82])

Evidence shown in recent surveys, covering collective agreements in some relevant economic sectors, indicates that the most representative social partners are defending their space of manoeuvre, dealing intelligently with the numerous statutory norms referring to collective bargaining.

3.3. Horizontal subsidiarity between law and collective agreements

An original example is the regime of semi-mandatory law in **Denmark**, closely interrelated with the transposition of EU Directives. In this country the proud defence of a voluntary system created a regime of legislation that can be derogated by collective agreements, but not by individual contracts of employment. In the combination of statutory law and collective agreements the former has a 'subsidiary' role, once it is ascertained that standards are at least equal. This original solution has been assumed valid for the transposition of EU Directives and, at the same time, respectful of Danish traditions. ([83])

The Netherlands and **Sweden** offer similar solutions.

In the **Dutch system**, first in the 1953 Civil Code, then in a more accentuated way in the 1999 Flexibility and Security Act, semi-mandatory law indicates possible deviations to be agreed collectively ([84]). The Supreme Court ruled it lawful to derogate from mandatory law in individual employment contracts, by referring to the collective agreement, thus indicating that the function of a collective source is parallel to the law.

A similar example can be drawn from **Sweden**, where the 1982 Employment Protection Act on fixed-term contracts states that derogation can also take place at a decentralised bargaining level.

Legislation on fixed-term contracts often includes references to collective agreements and may be intertwined with the EU Directive and its transposition into domestic law. For example, the excessive increase of fixed-term contracts in **Spain**, **(**[85]**)** saluted as one relevant feature of the new dynamic labour market enhanced by the Conservative government's reforms, had to be counterbalanced by disincentives to enter into such

([81]) Italy, National Report, sections 1.2.1 and 9.5.
([82]) Italy, National Report, section 9.5.
([83]) Denmark, National Report, section 1. Mention is made in particular of the difficult transposition of the Working Time Directive (section 8.1.4.2).
([84]) For example collective agreements can deviate from the mandatory rule according to which the stipulation of four consecutive fixed-term contracts give rise to a permanent employment contract. The Netherlands, National Report, section 1.3.
([85]) Nearly a third of Spanish employees are on temporary contracts (http://www.eiro.eurofound.eu.int/2004/09/feature/es0409104f.html). See comments by F. Valdés Dal-Ré, Recenti riforme del diritto del lavoro in Spagna, Giornale di diritto del lavoro e di relazioni industriali, 2005.

contracts. Collective agreements were chosen as the right sources in which to specify the objective reasons for employing such contracts.

In **Portugal**, too, in the new 2003 Labour Code, the attitude is not in favour of fixed-term contracts. ([86])

In **Italy**, on the contrary, in the transposition of the Directive — one of the first manifestations of the centre-right administration in the labour law field – the recourse to such contracts has been widened, so as to raise the suspicion that the way in which 'technical, productive, organisational and substitutive reasons' has been interpreted may far transcend the purpose of the Directive. ([87]) In this last example the most debatable innovation consisted in abandoning the previous legal technique – implying a legal definition of cases in which fixed-term contracts were allowed – in favour of a wide formula leaving ample space on this issue to the parties to individual contracts of employment. One of the limits set by the Directive at clause 3 of the annexed framework agreement – namely the existence of 'objective conditions' for entering the fixed-term contract – is therefore left to the individual parties entering into a contract of employment. However, the social partners are not exploiting this possibility of enhanced legal flexibility and have, so far, favoured more formalised solutions – at times binding — for entering fixed term contracts. ([88])

In the **UK** the apparent compliance with the Directive in indicating a maximum number of years when stipulating subsequent contracts may be overcome by Article 8(5) of the Regulation, allowing the removal of this limit in collective or workforce agreements. ([89]) A lot would need to be said in this regard on the scope of such agreements and on how legislation connected to employment policies forces a hierarchy among legal and voluntary sources, allowing the latter ample room for manoeuvre, even when their effect is to lower legal standards.

In **Ireland** registration of collective agreements by the Labour Court is required when collective agreements introduce flexible standards, for example on working time regulation, in compliance with the limits set in the EU Directive. Reference periods for the average of the 48 hours limit are the leading example. The Court must be satisfied that such agreements are not in breach of EU law and have been negotiated by representative parties. ([90])

In **Belgium** the adoption of the Maastricht criteria led to legislation which allows the government to intervene in collective bargaining, if it is envisaged that collective bargaining may endanger the competitiveness of Belgian economy. This analysis is based on a comparative evaluation of wage policies in neighbouring countries (France, Germany and the Netherlands). However, the social partners may take the initiative to determine the

([86]) On new developments in the Portuguese Labour Code see: http://www.eiro.eurofound.eu.int/2003/05/inbrief/pt0305101n.html. Additionally, on the basis of order No 255/2002 of 12 March 2002 there are financial incentives for employers who convert a fixed-term contract, on expiry, into an open-ended contract.
See: http://www.eiro.eurofound.eu.int/2002/05/feature/pt0205102f.html.

([87]) Decree 368 of 6 Sept. 2001, transposing European Directive 99/70 and comments in S.Sciarra, The Evolution of Labour Law in Italy. 1992-2002, in The Evolution of Labour Law, vol. 2: National Reports, Luxembourg, OOPEC 2005, at http://ec.europa.eu/employment_social/labour_law/docs/ell_italy.pdf. See also L. Zappalà, in B. Caruso and M. Fuchs (eds), Labour Law and Flexibility in Europe, Baden Baden — Giuffrè 2004, p. 98 ff.

([88]) Italy, National Report, section 9.5.

([89]) C. Kilpatrick, 'Has New Labour Reconfigured Employment Legislation?', 32 ILJ (2003), 135.

([90]) Ireland, National Report, section 1.ii.

maximum acceptable increase in wage negotiations, taking into account the biannual survey produced jointly by the *Conseil National du Travail* and the *Conseil Central de l'Economie,* with respect to the economic performance of the Belgian economy. (91)

3.4. Tensions between public relevance and private means of collective bargaining

The three regulatory schemes presented in this section confirm that collective bargaining is placed at the intersection of an old legal divide, the public/private divide, which can still have relevant implications. This point is particularly central in the present comparative analysis. Collective agreements generate individual rights, as does the law. However, as voluntary sources they maintain a certain degree of adaptability in norm setting and may even derogate from legal standards.

This is the reason why a critical reflection is emerging in several countries on how to combine freedom of association with the new powers that bargaining agents acquire in matters dealt with in legislation. It is even more critical to establish whether such powers should be measured or be specifically entrusted, when the final aim of legislation coincides with the protection of fundamental rights.

For example, the 2004 **French** Law, introducing the majority principle – namely consensus of organisations representing the majority of workers to allow plant bargaining in derogation from branch agreements – is a clear sign of how a civil law system tries to solve the tension between the public relevance of certain rights to be guaranteed and the available private means to achieve these goals. (92) Solutions aimed at guaranteeing the enforceability of derogatory measures, gaining a full consensus from the majority of workers, are also aired in the debate taking place in **Germany**, with regard to the expanding scope of bargaining at plant level. (93)

Italy offers an interesting example in the law regulating collective bargaining in the public sector. Unlike in the private sector, where it all depends on voluntary sources, the legislature intervened in the public sector with a strong emphasis on rationalising decentralised bargaining and setting limits to the same. (94)

A different example can be found in **Poland**, where scholars have been debating the legal status of collective agreements signed by workers' representatives and buyers of companies undergoing the process of privatisation. In 1993 the Polish Constitutional Court held these agreements constitutional in view of guaranteeing free collective bargaining. (95) The debate in this country is also very lively in view of establishing criteria for derogations from statutory standards, a practice which is currently taking place in collective bargaining, despite it being considered against the law. (96)

4. Conclusion

This chapter has looked into some of the most recent and controversial debates taking place at national level on the relationship between law and collective agreements. It has

(91) Belgium, National Report, section 11.1.
(92) France, National Report, section 9; J. Pelissier, A. Supiot, A. Jeammaud, Droit du Travail, Paris 2004 (22th ed.), p. 956-957.
(93) Germany, National Report, section 5.2.
(94) Italy, National Report, sections 1.2.2 and 1.4.5.
(95) Poland, National Report, section 4.
(96) Poland, National Report, section 5.b.

done so by emphasising the role of core legal principles assisting the evolution of collective bargaining. The overall analysis emerging from the present study confirms that the institutional context in the EU is solid. The ground rules of national labour law systems have not been shaken in recent years. However, some tendencies can be discerned which challenge the traditional relationship between the law and collective bargaining,

(1) An ongoing discussion is taking place in most Member States on the comparability of standards and on sources concurring to maintaining or lowering the standards, especially in some areas covered by EU law – working time, fixed-term and part-time work. It is a fact that in all such areas examples of derogations from the law and from higher level collective agreements have occurred more frequently. The same is true in areas of labour law – traditionally covered by collective agreements – in which enterprise restructuring gives rise to derogatory measures and to concessions, mainly at company level. ([97])

In all such cases, it is important to see and to stress that procedural clauses strengthen normative clauses, in as much as they create a more rational regime of contractual obligations, particularly when they clarify references among levels of bargaining and specify different — at times diverging — scopes of collective agreements.

(2) Another tendency emerging from the present study shows that strengthening the legal ground on which voluntary sources must rely involves clarifying criteria for the negotiation of binding agreements, particularly when a departure from higher standards takes place.

This is not a diminishing or backwards feature in the evolution of collective bargaining. On the contrary, the evaluation we can give now of this phenomenon is very different from the one shared in some European countries at the end of the Sixties, when spontaneous orders were supposed to play a most innovative role in shaping legal institutions. One of the reasons for this has to do with the fact that national labour markets nowadays require more legal certainty and more formalised rules when it comes to establishing a relationship between law and collective agreements.

The critical point, therefore, is to ascertain that within this new 'autonomy' of collective bargaining individual contracts of employment do not become a separate source of negotiation, departing from the standards set at a collective level. The spreading of such a practice would weaken the normative function of collective agreements, up to the point of making this core principle lose all its relevance, thus giving rise to an uncontrolled regulation of individual contracts of employment. A related consequence, should an escape from regulatory schemes become a widespread phenomenon, would be the weakening of freedom of association, since no control in standard-setting would be left in the hands of representative organisations.

(3) A third important tendency has to do with the role assigned to 'experimental' or 'temporary' legislation, as well as to laws aiming at 'modernisation'. The frequent recourse to such non-legal terminology indicates that legislation sets itself goals which are intentionally undefined, leaving ample space for manoeuvre to law-makers and to the

([97]) Some of these points are also highlighted in the research project on the evolution of labour law (1992-2003) and in S. Sciarra, The Evolution of Labour Law (1992-2003), vol 1: General Report, Luxembourg, OOPEC 2005 at http://ec.europa.eu/employment_social/labour_law/docs/generalreport_en.pdf

relevant social partners. In this context the role of collective agreements can be crucial in setting standards adaptable to different contracts of employment.

(4) Decentralised bargaining, associated in the early European tradition with healthy and dynamic bargaining systems, is a widespread phenomenon in all countries of the EU. It does not, however, necessarily indicate a rational and well-balanced attitude of the bargaining agents. When legislatures leave references to collective agreements unspecified, all bargaining levels may be considered suitable, regardless of the subject matter to be dealt with. The hierarchy of voluntary sources becomes as a result less relevant, irrespective of the coverage of agreements and of the mandate given to bargaining agents.

Decentralised agreements very often deal with critical subject matters related to fundamental labour rights (the right to health and safety, the right of dignity and equal treatment to mention a few). They are basic labour standards to which a range of EU Directives refer to. It is therefore of utmost importance that the procedural rules coordinating company and plant bargaining are strengthened. In this regard, one can also refer to the need to look into the procedural regulations of a specific type of decentralised collective bargaining, namely transnational company bargaining. As part of its new Social Agenda 2005-2010 the Commission is reviewing this question. The development of an optional subsidiary framework for transnational company bargaining is one of the options being studied.

CHAPTER 3
EMPLOYEE REPRESENTATION AT THE WORKPLACE IN THE MEMBER STATES ([98])

Forms of information and consultation at the workplace have been legally established and formally installed in most of the EU countries. This workplace representation can be organised by works councils and/or trade union representatives. Workplace representation is a distinctive feature of the industrial relations system in the current European Union. However, there is a great diversity of situations within the European Union, reflecting specific characteristics of industrial relations with sometimes large variations in practice from one country to the other. These systems of workplace representation have been developed in Western Europe as a form of organisational or economic democracy, mainly since World War Two. In their transition to modern market economies the central and eastern European countries have also been setting-up these forms of employee participation. This trend coincided with the EU becoming more and more legally active in this field of industrial relations. The 90s were also a period in which this form of employee participation was confronted with a management-led 'empowerment' movement and a stronger dissemination of financial participatory schemes (e.g. profit sharing). These are reasons enough to undertake a comparative analysis of this feature of European industrial relations, especially at a moment when the EU Directive which gave employee representation an institutional anchor within the European model of industrial relations became fully operational.

In this chapter, the concept of employee representation will first be clarified within a broader theory of employee participation. A second section sketches the (new) EU framework directive, dating from 2002. A third section gives an overview of the different statutory regulations that exist in the Member States on workplace representation. Proof will be given of how these systems have developed in recent years within the framework provided by the EU Directive. In a fourth section, a brief overview will be put together of recent research into the practice of workplace representation in the Member States. Fragmented national research and (limited) cross-country data from the European social survey will be used in this final section. Based on this overview, some comments will be made in the conclusion of the chapter on how much progress has been made recently in this particular arena of the European social model.

1. Representation: a specific type of employee participation

Employee participation can in general be defined as: '… the exercise of power by workers or their representatives over decisions within their places of employment, coupled with a modification of the locus and distribution of authority within the workplace.' ([99]) This definition encompasses a wide variety of participation channels and practices that differ with respect to whether the participation is statutorily prescribed or voluntary, formal or

([98]) This chapter is drafted by Guy Van Gyes, Hoger Instituut voor de Arbeid, University of Leuven.

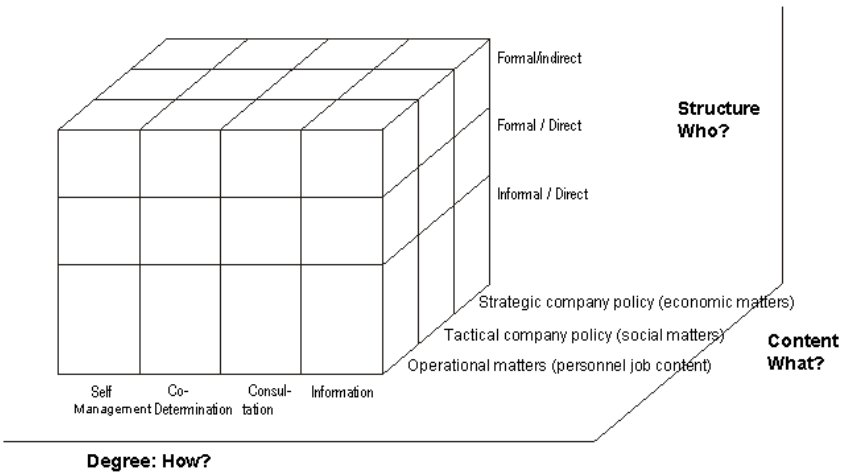
([99]) M. Poole, R. Lansbury and N. Wailes (2001), 'A comparative analysis of developments in industrial democracy', Industrial Relations Journal, vol. 14, No 3, p. 491.

informal, direct or indirect (by representation). ([100]) Importantly, participation may also vary in intensity based on the combined incidence or not of the following factors:

- the *degree* of influence from simple consultation to full authority in decision-making or redistribution of power;
- the *scope* of participation ranging from day-to-day operational issues of the job at the shop floor level, over tactical decisions concerning work organisation and personnel management at the plant level, to long-term strategic organisational decisions at the company level;
- the *timing* of the participation, being pro-active in the preparation phase of decision or re-active in the implementation phase of a decision.

The most important dimensions are be visualised by the following employee participation cube. ([101])

Figure 3.2: Employee participation cube



Advocates often point out that employee participation has the following advantages, when organised in a sound way:

([100]) For general introductions on the issue of employee participation: A. Sagie & M. Koslowsky, M. (2000). Participation and empowerment in organisations: modeling, effectiveness and application. Thousand Oaks, Sage; F. Heller et al. (1998). Organisational Participation: Myth and reality. Oxford, Oxford University Press.

([101]) Adapted from: J. de Leede & J.C. Looise (1997). 'Participatie en Besluitvorming', In: F. Kluytmans, Leerboek personeelsmanagement, Deventer, Kluwer bedrijfswetenschappen, pp. 429-449.

- fewer industrial disputes resulting from better communication between management and staff;

- improved decision-making processes resulting in higher quality decisions;

- increased creativity, enthusiasm and commitment to corporate objectives;

- lowered stress and increased wellbeing;

- better use of time and resources;

- improved productivity including service delivery;

- increased job satisfaction resulting in reduced absenteeism;

- improved personal fulfilment and self esteem.

In practice two types of employee participation have become dominant in Europe throughout the Twentieth Century, besides collective bargaining where a trade union acts as a countervailing power to negotiate wages and working conditions. The two types are:

- Systems of indirect participation or workplace representation, which mostly first acquired statutory recognition after World War II, although the first legal experiments had already occurred directly after the previous World War, with Germany as the prime example. These indirect forms of participation are structures whereby workers' representatives generally try to influence decision-making at higher organisational levels on tactical and strategic decisions;

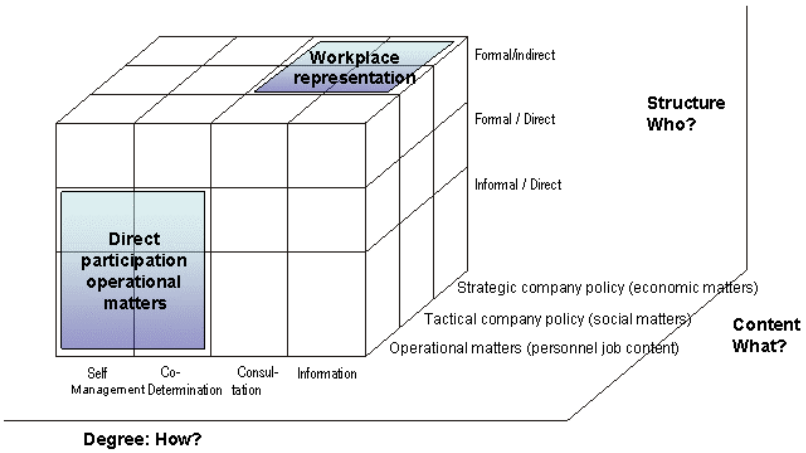
- Forms of direct participation on shop floor matters, which developed especially through the quality of working life and human relations programmes of the Sixties and seventies and as part of the HRM approach of empowerment and high-performance work systems since the eighties and nineties. Examples of direct participation are suggestion schemes, survey feedback, project groups, task forces, quality circles and self-steering team work.

Two ground types of indirect participation or workplace representation can be distinguished:

- Board-level representation or the right to have employee representatives on a governing body of the undertaking or company board;

- An employee representation which has to be involved in a specific range of management matters, whereby the intensity of involvement can go from pure information, through consultation to codecision.

Figure 3.3: Dominant forms of employee participation in Europe, conceptualised in the analytical cube of employee participation



The chapter focuses on the second type of employee representation: information, consultation and/or co-determination by a works council and/or trade union delegation at the workplace. The chapter does not deal with the participatory regulations of the public sector in the EU Member States, nor with the existing systems of board-level representation in the Member States. ([102])

2. More than ever part of the European social model

Within European social dialogue, the issue of employee representation has a long history and has proven to be a highly controversial issue between employers' organisations and trade unions, but also between Member States. Despite the policy complexities surrounding the issue, the European Commission and the Council have continued to make progress on a number of initiatives to promote employee participation. A first breakthrough came in 1994 with the establishment of the European Works Council Directive. More recent milestones are:

- The revisions of the directive on employee information and consultation in case of collective redundancies (Council Directive 98/59/EC);

- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

([102]) For recent contributions on these matters: D. Farnham, A. Hondeghem & S. Horton (2005), Staff participation and public management reform: some international comparisons, Basingstoke, Palgrave; on board-level representation: SDA & ETUI-REHS (2005), Worker board-level representation in the new EU Member States, download January 2006: www-seeurope-network.org; HBS & ETUI, ed. (2004), Workers' participation at board level in the EU-15 countries, download January 2006: www-seeurope-network.org.

– The European Company Statute which provides the possibility of some form of employee participation at board level (Council Directive 2001/86/EC);

– A framework directive of minimum standards for informing and consulting employees at company level in all Member States (Directive 2002/14/EC).

It is especially the latter (Directive 2002/14), which can be seen as highly significant since it is the first EU law generalising the obligation to inform and consult employees. Arguably, it establishes a European model of mandatory workplace representation.

The directive is drafted in fairly broad terms and allows Member States considerable flexibility in implementing its terms ([103]). Individual Member States have discretion over the scope of the consultation directive, which applies to either/or:

– undertakings employing at least 50 employees in any one Member State;

– establishments employing at least 20 employees in any one Member State.

It does not specify what information and consultation arrangements should be established. However, the establishment of a standing body of employee representatives is implicit. Individual Member States are allowed to entrust employers and employee representatives to negotiate their own information and consultation arrangements, when in compliance with the general principles of the directive. The right to information and consultation covers:

– information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

– information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;

– information and consultation on decisions that can lead to substantial changes in work organisation or in contractual relations.

The scope of the directive is therefore very wide and could include information relating to mergers and acquisitions and business reorganisations, as well as changes in terms and conditions of employment.

The directive states that information must be given in a timely manner and in such a fashion that its content would be appropriate to enable employee representatives to prepare for consultation, if necessary. As for consultation, the directive requires that the timing, method and content of the consultation are appropriate and that it takes place:

– at the relevant level of management and representation;

– in such a way as to enable employee representatives to meet the employer and obtain a motivated response;

([103]) For more information and background from a legal point of view: R. Blanpain (2004), Involvement of Employees in the European Union, Works Councils, Company Statute, Information and Consultation Rights, Deventer, Kluwer Law International.

– with a view to reaching an agreement on decisions, within the scope of the employer's power, that are likely to lead to substantial changes in work organisation or in contractual relations.

The directive includes specific provisions regarding confidential information. Employers are not obliged under the directive to communicate confidential information, or undertake consultation, where the nature of that information would seriously harm the functioning of the undertaking or establishment. Also, the directive prohibits employee representatives from disclosing to employees, or third parties, any information which, in the legitimate interests of the undertaking or the establishment, has expressly been provided to them in confidence.

The directive's purpose is thus to establish a general framework for informing and consulting employees in Europe. However, while a new trans-European emphasis is placed on the importance of employee participation in company decisions, the directive will not harmonise the mechanics of this workplace representation across the European Union. The reality is that there will be a continued patchwork of different information and consultation requirements in Europe.

3. Legal provisions of information and consultation

Within the European Union various legal models and institutional forms of workplace representation exist ([104]). Differences exist with regard to structures of representation and rights of information and consultation. The first differences concern who participates and where, the second with how to participate. The legal basis for the systems can be statutory law or central collective agreements. Mostly the law creates the national framework of workplace representation, only in the Nordic countries collective agreements are the main legal basis. In Belgium, part of the system is regulated by law; other parts are defined by national collective agreement. Ireland and the UK were until recently the only Member States with no general statutory system. However, in concordance with the new EU directive they have been establishing new information and consultation laws (see infra for details).

([104]) For first introductions: LRD (2004), Worker representation in Europe, London, LRD Publications; ETUCO (2004), Worker representation systems in the European Union and the Accession countries, Brussels, ETUCO; Eversheds (2005), Information and consultation survey, download January 2006: www.eversheds.com.

Table 3.6: Legal provisions of workplace representation in EU-25: bodies for information and consultation

	Bodies	Main body	Composition of general body, when applicable	Legal basis	Threshold	Collective bargaining rights	Bargaining hierarchy (higher levels have the prerogative)
BE	Trade union delegates Health & safety committees Works council	Dual channel, trade union dominates works council	Mixed composition: Management & Workers	Legislation and collective agreement	Ranging from 20-50 50 100	Trade union delegation and official	Yes
CZ	Trade union delegates Works council possible when no union presence	Single channel, trade union;works council rare exception	Workers' representatives only	Legislation	25 (works council) 3 (TU representation)	Trade union, works council not; joint union representation or largest	Yes
DK	Shop stewards Cooperation committees	Dual channel, trade union dominates works council	Mixed composition: Management & Workers	Collective agreement	5 (shop stewards) 35 (cooperation committee)	Shop stewards	No (voluntary system of collective bargaining)
DE	Works council	Single channel, works council, for information and consultation (union can have 'vertrauensleute' in a company, regulated by collective agreement); specific bodies exist for young people and senior management under specific conditions	Workers' representatives only	Legislation	5	1. Collective agreements: union and employer; 2. Work agreements: works council and employer (prerogative of 1)	Yes (but practice of opening clauses)
EE	Trade union representation Workers trustee**	Single channel: union or non-union trustee	Workers' representatives only	Legislation	5 (trade union and/or workers trustee)	Union, if not present, authorised workers' representatives	No
EL	Works council Primary unions	Dual channels exists alongside, in practice not many works councils are set-up	Workers' representatives only	Legislation	For works council: 50 (when union active) 20 (no union active)	Most representative primary union; employer can only sign a valid collective agreement when employing at least 50 employees.	Yes (between the national agreements and others)
ES	Personnel delegation (SMEs) Works council Trade union delegation (large companies)	Dual channels exists alongside	Workers' representatives only; union and non-union	Legislation	6 (personnel delegation) 50 (works council)	Union and works council, but latter predominant, this council has also the right to call a strike	Yes
FR	Employee delegates Works council Unique delegation (merger of the two previous) Trade union delegates	Dual channels exists alongside	Mixed composition: Management & Workers	Legislation	11 (employee delegation 50 (works council)	Representative trade union (with some majority rules)	Yes (but with well-defined derogation procedures)
IE	Trade union representation	Single channel, trade union	Workers' representatives only	Collective agreement, voluntary;		Local union	No (voluntary system of collective bargaining)

				minimalist legal framework in stage of enactment			
IT	Elected/nominated trade union representative bodies (RSU or RSA)	Single channel, trade union body (RSU) elected by all employees, only when non existing than trade union delegation (RSA)	Workers' representatives only	Legislation and collective agreement	15	RSU with a non-repeatibility clause regarding national agreements	Yes
CY	Trade union delegates	Single channel, trade union		Legislation (minimal)		Trade union delegation and official	No (voluntary system of collective bargaining)
LU	Joint management committee Personnel delegation (union)	Dual channel, trade union dominates works council	Mixed composition: Management & Workers	Legislation	150 (joint committee) 15 (delegatin	Trade union	Yes
HU	Works council Trade union representation	Dual channel works council dominates (esp. in cases of TU pluralism)	Workers' representatives only	Legislation	15 (one person)/ 50 (works council)	Local union section, otherwise works council	No (in practice yes, but deviations allowed)
LV	Trade union representation Employees' council possible	Dual channel (works council as rather rare exception)	Workers' representatives only	Legislation	5 (works council)	Union or when not present, authorised workers' representative	No
LT	Trade union delegates Works council possible (Czech model):	Single channel (dual channel for a limited time)	Workers' representatives only	Legislation	20 (employees' council)	Union, authorised sectoral union or representative authorised by staff; staff has to approve the agreement in a general assembly	Yes
MT	Trade union representation 1 works council elected in 2005	Single channel (usual practice)	Workers' representatives on	Legislation; a non-mandatory shop agreement between TUs		Registered union	No (voluntary bi-partite bargaining at company-level)
NL	Works council Employee representation (SMEs)	Dual channel, works council dominates	Workers' representatives only	Legislation	50 10	Trade union, but indirect ways of works council involvement	Yes (but deviation practices)
AT	Works council	Single channel, works council	Workers' representatives only	Legislation	5	(external) collective agreements by union; (internal) work agreements by works council (limited in scope or explicitly allowed by collective agreement)	Yes
PL	Trade union representation	Single channel***	Workers' representatives on	Legislation	100 (draft act of government	Collective agreements and collective accords by	No

	works council in State-owned companies				2004)***	union (monopoly, needs to be at least one representative union)	
PT	Trade union delegation or (inter-union) committee Workers' commission	Dual channels exists alongside	Workers' representatives only	Legislation	None	Only union, not workers' commission	On the contrary (the specific prevails above the general)
SI	Works council Trade union representation	Dual channel works council slightly more frequent	Workers' representatives on	Legislation	20 (works council)	Company trade union	Yes
SK	Trade union representation Works council	Dual channel, but works council rare exception	Workers' representatives on	Legislation	5/50 (works council) 5 (trade union)	Union	Yes (within the limits of the labour code)
FI	Employee representation	Single channel, in practice union-related although other structures are legally possible (for example co-determination committee)	Workers' representatives only	Legislation (minimal) and collective agreement	30	Shop stewards (organised by another regulation)	Yes (but practice of delegation clauses)
SE	Trade union representation	Single channel, trade union(comprising different degrees of participation based on the signed collective agreement)		Collective agreement	None	Union	Yes
UK	Employee representation	Single channel, trade union; in the new law the employee representation can be also non-union	Workers' representatives only	Collective agreement, voluntary with minimalist legal framework since 2005	50, undertakings	Registered union	No (voluntary system of collective bargaining)No

* Alternative Czech model': either trade union or a works council may exist (the latter must stop its activities if a union representation is elected in a company).

** Elected by all employees (in non-unionised companies), as rare exception. In 2005 the Estonian government sent a draft of an Employees' Representatives Act to the social partners with a dual channel representation to implement the Directive on information and consultation which found no approval by them.

*** In privatised enterprises by law (in State-owned enterprises still exist some works councils). In 2004 the Polish government proposed to introduce a dual channel model but the social partners are more in favour of the Czech model': No decision as yet.

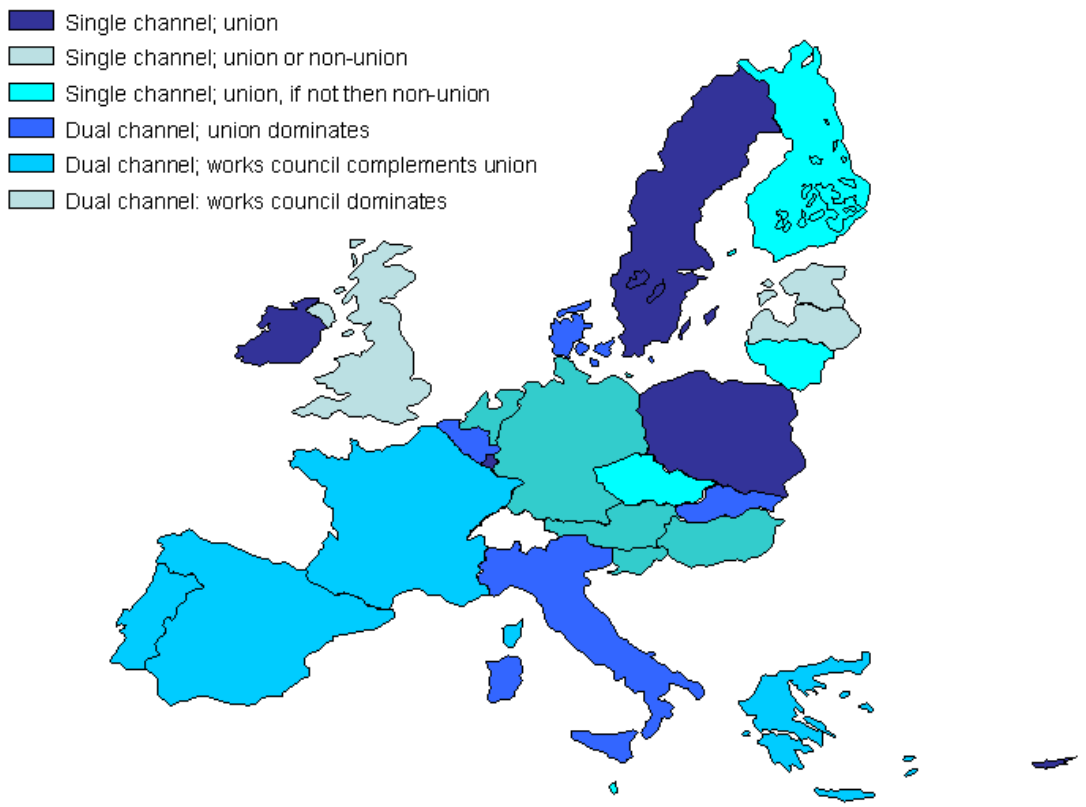
Source: Industrial Relations Country profiles compiled by HIVA, IAT and BwP for the European Foundation for the Improvement of Living and Working Conditions.

3.1. Differences in structure

3.1.1. Available channels and composition

First of all the basic composition can be totally different. The body can have a general status, which means that it is a representation elected by all employees, or it is trade-union related, which means the representation is elected or nominated by the trade union and its rank-and-file in the company. The representation can be based on a single channel, i.e. only one of the above types exists, or a dual channel structure, i.e. both types of representation together. Finally, the general type can sometimes also have a mixed composition: the employer has an equal representation at the body.

Figure 3.4: Basic channels of workplace representation in the EU Member States



Based on these structural dimensions the following basic types of workplace representation can be distinguished in the Member States:

– Single channel employee representation by a trade union is the norm in Cyprus, Ireland, and Sweden. It is for the moment not clear how legal revisions in Cyprus and Ireland will affect

their current system. In Poland until now (see infra) a single union channel has been dominant, except in privatised State companies, where works councils still exist.

– The UK, Estonia and Latvia are countries with a single channel of representation, but where the law also contains provisions for the election of non-unionised employee representatives, alongside union delegates. The new UK law on information and consultation provides both possibilities. In Estonia and Latvia the single channel representation is a union delegation, but can also be a non-union workers' trustee.

– In the Czech Republic and Lithuania, works councils are allowed to exist as the single channel representation, but cease to exist when a trade union representation is chosen in the company. In other words, works councils are a complementary secondary channel to a single channel trade union representation. Poland also wants to introduce this system. In Malta the Law states that where there is no recognised union, an employee representative may be elected which exercises the rights of information and consultation. These cases resemble the situation in Finland. The Finnish legislation on 'cooperation within undertakings' provides information, consultation and cooperative negotiations rights to an employee representation, which (most of the time) is the trade union delegation at the workplace, but can be any other representation elected by the employees. This type of non-union employee representative exists also in France (personnel delegation), Slovakia (workers trustee) and the Netherlands (personnel representation) for small establishments.

– A dual channel system monopolised or dominated by the unions is the case in Belgium, Denmark, Italy, Luxembourg and Slovakia.

– Hungary and Slovenia have also a dual channel system, but in these countries the works council is more important.

– In France, Greece, Portugal and Spain the works councils can be seen as complementary bodies to the trade union representation.

– The works council may also be the only statutory body of workplace representation. This is the situation in Austria, Germany and the Netherlands, where the union delegation plays only a secondary role at workplace level.

A mixed composition of the works council exists in Belgium, France and Luxembourg. The cooperation committee in Denmark also is such a body, where representatives of the employer and the employees meet each other to discuss company matters.

A second point of structural differentiation between the Member States is the appropriate company-level to instigate the representative body of employees. In many EU countries the production unit or plant is seen as the main unit for establishing the employee representation. In other Member States the appropriate unit is defined as the enterprise. Other countries like Belgium, the Netherlands and Sweden have a more flexible way of defining this right unit of organisation. This 'technical' unit can in Belgium for example be one plant or several plants of one company or even several companies together if they have their activities at the same place or when these companies have the same ownership.

Possibilities to complement the representation with a body at group-level exist in several Member States.

3.1.2. Workforce thresholds

The minimum number of employees statutorily required to establish a workplace representation is a next factor of variation. Only in Portugal (for workers' committees) and Sweden (trade union representation) is there no minimum. In Italy the threshold varies by agreement from sector to sector, but is in general fixed on 15 employees. In Belgium this sector variation is important for determining the threshold for a trade union delegation (ranging from 20 to 50 by agreement). Very low thresholds exist in Germany and Austria, where five employees are enough to compose a works council. Fifty employees appear to be a common threshold. It is the norm in France for a works council, in Belgium for a health and safety committee (which can have also a range of works council rights), and in Spain. In the Netherlands it is also the threshold for a works council, but a more 'lean' personnel delegation can set up in a plant with a minimum of 10 workers. In Greece the threshold for a works council is also 50, but can be 20, when no trade union is present in the company. Thirty and 35 are respectively the rule in Finland and Denmark. High thresholds for a works council exist in Belgium and Luxembourg with 100 and 150. In Luxembourg a workforce delegation is possible from 15 employees on.

Box 3.1: Recent legal initiatives in the new Member States

In the **Czech Republic** a secondary, complementary channel of representation was established in 2001 (employee councils). In Latvia the new Labour Law of 2002 created two types of employee representation: a trade union delegation or an authorised employee representation that may be elected if an undertaking has five or more employees. The Employment and Industrial Relations Act of 2002 took steps in **Malta** to establish a secondary channel of employee representation in cases where no union is recognised at the workplace. Since 2003 **Slovakia** has had a dual channel system.
A new law is at a draft stage in **Estonia** and **Poland**. In Poland the system of works councils would be restricted. In Estonia, the discussion concentrates on a proposition to abolish the union monopoly and turning the representation into an employee delegation, which has been appointed by a general meeting of the workers. The **Cypriot** government in 2005 prepared a new law establishing a general framework for information and consultation of employees, which for the first time will create a legal basis for information and consultation rights. In practice these rights will mainly go to local trade union representatives. ([105])

The new Member States add additional features to this mixed picture of thresholds. In Malta and Cyprus, with a union channel system, no threshold is in place. No threshold rules for the trade union presence exist also in Latvia, Lithuania, Poland and Slovenia. Only a very low threshold exists in the Czech Republic (3), Estonia (5), and Slovakia (5). Works council thresholds, where the system exists, range from 20 (SI) over 25 (CZ) to 50 (HU, SK). Poland is preparing works council legislation with a threshold of 100 employees.

It is not always clear what the existence of such a minimum workforce-size threshold means in practice. The crossing of the threshold makes it only statutorily possible that the provisioned body can be activated or 'triggered' by the employees, although in some countries it means the employer has to make some legally prescribed efforts to set-up the body and to check with the

([105]) Several national EIRO features.

employees if there is some enthusiasm to activate their information and consultation rights. Of course, this kind of activation procedure only exists for statutory bodies of the general type (works councils). No sanctions exist in Member States for employers, who meet the threshold, but do not have an active works council in practice.

3.2. Differences in participatory rights

The European picture of workplace representation gets even more complicated, when the possible statutory rights for information, consultation and co-determination are taken into account. One certainly has to make a clear distinction between two levels of participation rights: on the one hand representative participation by means of information and consultation and on the other hand stronger rights by means of joint decision-making or co-determination. In all the Member States these provisions are to a greater or lesser extent accompanied by rules covering:

- The confidentiality of information provided to employee representatives, especially for information, which is defined as highly sensitive for the competitiveness of the company;
- Protection rights for the representatives from dismissal or employers' harassment on grounds related to the execution of their representational duties;
- Resources to fulfil the task (training possibilities, material, communication facilities etc.).

Box 3.2: Union learning representatives in the UK

The UK Employment act of 2002 sets out the statutory rights of union learning representatives in firms that recognise trade unions. These union learning representatives are allowed paid time off for the following functions:
Analysing learning and training needs
Providing information and advice about learning or training matters
Arranging learning or training
Promoting the value of learning
Consulting the employer about such activities
Undergoing training for their union learning representative role.

3.2.1. Information and consultation rights

In many Member States and in line with EU Directives the statutory prescriptions establish nowadays that the employer has to give information on:

- Financial and business matters;
- Employment levels and conditions;
- Structural changes (closure, relocation, merger, takeover), especially when collective redundancies are at stake.

Consultation rights on structural changes and employment matters are also common. The introduction of new technologies and new working methods are also often a matter for

consultation. The degree of formality and the procedural steps to follow for such a consultation may differ markedly between Member States.

Rights beyond information on financial and business matters are less common and very often accompanied by a lot of formal procedures and checks and balances. However, they do exist in countries such as Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain.

3.2.2. Co-determination rights

Extensive co-determination rights are rather rare. In countries like France and Belgium they are related to very specific topics (for example holiday regulation at the workplace). Co-determination rights are generally regulated by collective agreements in Sweden and Denmark. It is mainly Austria, Germany, the Netherlands and Sweden, which have strong participatory rights in existence. They mainly apply to economic and social matters, although a German works council can also, for example, object to an individual dismissal (under certain conditions). ([106]) Social matters have to do with personnel management and policies: regulations on career management, working hours, training, dismissal and so on. The co-determination rights are mostly accompanied by the possibility of an appeal for the employer (at an arbitration committee in Germany, a mediation commission or court in the Netherlands). In Austria this co-determination right is the strongest and almost looks like a veto right in certain matters. In Sweden, co-determination is more an obligation for the employer to negotiate on the matter with the local or national union, when a dispute has risen.

Rights of co-determination in the area of economic matters are found in the Netherlands and Sweden. In the Netherlands the law establishes a right of the works council to delay the implementation of measures for one month on important questions. In Sweden the union right to veto exists for outsourcing questions. In Germany and Austria influence in economic matters is more indirect through a referral to powers in social matters. This tactic can also be used in many other countries (for example France and Belgium), when restructurings with collective redundancies are at stake. Unions have certain negotiation and consultation rights and can intervene in the management process of restructuring (for example in Belgium by the so-called Vilvoorde Law, instigated after the unilateral closing down of the Renault plant in this Belgium town).

In the new Member States, the Czech and Latvian regulations grant some specific co-determination rights to the local trade union (for example setting of holiday periods and work rules). In Hungary, the works council has rights of co-determination on the allocation of welfare funds and the utilisation of welfare facilities of the companies. Comparable rights exist for the

([106]) Under these provisions, the employer must inform the works council or staff council of a proposed dismissal, specifying the reasons, and give it the opportunity of stating its position on the matter. If the employer pronounces a dismissal before the council has responded or before a set period has elapsed of one week in the case of ordinary dismissals with notice and three days in the case of summary dismissals, the dismissal is invalid irrespective of whether or not it is lawful in other respects. The works council or staff council has the right to object to a dismissal if it contravenes one of the agreed company guidelines on personnel policy, if the employee could continue to be employed in a vacant job in the same establishment or another establishment of the same company, or if re-training or further training which the employer could reasonably be expected to provide or amendment of the contract of employment (subject to the consent of the employee concerned) would make continued employment possible. An objection by the works council or staff council has no direct effect on the validity of a dismissal. However, if a dismissed employee then makes an application to the courts for protection against dismissal an objection issued by the works council or staff council, if deemed by the court to be justified, means that without any further assessment of the interests involved the court rules the dismissal to be unfair. An objection also secures for the employee the right to continued employment during dismissal proceedings. See EMIRE at www.eurofound.eu.int

Polish local trade union representation, which has also a say in the system of rewards and bonuses. Both these cases resemble to a certain extent the French case, where the works council manages the 'social works' of the company and has also important management power in the regulations of employee financial participation schemes. Probably the largest co-determination rights within the CEE countries exist in Slovenia. Employers must submit for approval by the works council draft decisions on additional health and safety measures, regulations on absence from work, performance assessments schemes, the system of merit pay, worker welfare facilities, promotion criteria and social plans in the case of collective redundancies. In this last case, approval or disapproval is regulated by a strict procedure and the possibility of arbitration.

3.2.3. Bargaining rights

As a result of decentralisation trends in collective bargaining, a question of growing importance is who has the right to bargain a collective agreement at company level. As a general rule, local trade union branches or sections have this authority on the employee side. In many Member States this rule is accompanied by settings to decide which union or how the unions have to work together at company level to reach a collective agreement. It has to be, for instance, registered unions, representative unions or the largest union.

Furthermore, other points of institutional difference can be noticed in this regard between the Member States (see last columns of table 3.1):

- First of all, there is the German and Austrian tradition of differentiation between collective agreements (between employer(s) and union) and work agreements (between the employer and works council). The latter agreement has more limited scope, does not normally deal with pay settlements and is very often the result of an explicit delegation clause in a (sectoral) collective agreement. In the Netherlands, works councils are in a comparable technical way increasingly involved in processes of collective bargaining.

- General works-council type bodies have full bargaining rights at company level only in Spain. In Italy this body (RSU) has bargaining rights, but the mandates are the monopoly of the union. In Hungary the works council has the right to bargain when no union is present.

- In countries like Belgium, the Czech Republic, Greece, France, Luxembourg, Poland, Portugal, Slovakia they are explicitly forbidden to be involved in signing collective agreements.

- In the Baltic countries, 'authorised' non-union representatives have the legal right to bargain collectively with the employer at company level, when a union is not present. In Lithuania, the company collective agreement has to be approved on the employees' side in a general assembly.

3.3. Conclusion

This overview has shown a great variety of regulations. However, similarities can also be detected throughout the EU. The available structures can be simplified into 5 or 6 types of channels. A basic pillar of information and consultation rights – nowadays embedded in a range

of EU Directives – has been laid down in all the Member States. Points of great difference are still the minimal thresholds to establish the statutory body and the possibilities of co-determination rights. Although the recent EU Directive definitely does not choose a low threshold compared to existing national rules, its guidelines will certainly lead to a higher incidence of statutorily prescribed thresholds. Nevertheless, the Directive says nothing about co-determination rights and even on social or strictly HRM matters the powers of workplace representations are still limited in many Member States (with the exception of some countries).

Box 3.3 Overview of recent and important legal initiatives in the (previous) EU-15

Although the recent debate in **Germany** focused on board-level representation, an important change in the works council law took place in 2001. The principal changes run as follows:
— Different types of works councils are introduced (for example works councils at the divisional level of a company);
— In small establishments (5-50 empl.) the procedure for setting-up a works council is simplified. The streamlined procedure consists of a nomination of candidates by an electoral board, followed one week later by another company meeting, in which the works council members are elected directly in a secret ballot by the employees.
— The compositional size is increased by a reduction in the employment thresholds used to determine the number of councillors.
— New topics of influence have been determined (regarding employment protection, vocational training, team work, environmental issue, combating racism at the workplace);
— Broadening of facilities (ICT-access, consultation of experts, setting-up of working groups);
— Equity quota: a gender minority in an establishment has to be represented on the works council at least in proportion of the employment share.
In the **Netherlands,** the government issued an evaluation of the current Works Councils Act in 2003. A previous amendment with a new specific regulation for small enterprises dated from 1998. Major revisions were announced, but in the autumn of 2005 the government revoked its reform plan. Meanwhile the works council obtained the right to have full information on the remuneration policy of the company towards the top management.
New legislation of 2005 altered in **France** partly the system of workplace representation. Firstly, the terms of office for elected employee representatives have been increased from two to four years. However, sector and company-level agreements may alter this term of office. Secondly, employees under the age of 26 will no longer be counted for the purposes of calculating the thresholds triggering mandatory elections of employee representatives — these thresholds are 11 employees for workforce delegates and 50 employees for works councils. However, these younger workers will continue to be entitled to vote and to run for office in such elections.
The Information and Consultation of Employees regulations came into force in **the UK** on April 6 2005. The Regulation will be implemented in stages, with the final implementation for undertakings with 50 employees or more in April 2008. The obligations will only arise when a request is made by at least 10 % of the employees, subject to a minimum of 15 and a maximum of 2 500 employees. It means this trigger is even higher than 10 % in undertakings with between 50 to 149 employees. If a valid request is made, there are two potential scenarios. Pre-existing arrangements may already satisfy the requirements of information and consultation. This has to be checked by a ballot of the employees, whereby minimum 40 % has to support the existing arrangement. The employer can also choose to negotiate a new agreement. If no arrangement exists, negotiations have to be started to reach an I&C agreement. All employees are entitled to a part in appointing or electing negotiating representatives. After an agreement is reached, it has to be approved by 50 % of the employees (in writing or in a secret ballot). The negotiating parties have a relative freedom to determine the subject matters, methods and frequency of the information and consultation practice in the company. If no negotiated agreement is reached within the required time (six months mainly), a default statutory scheme will apply.
In 2004, the **Danish** social partners (LO and DA) signed an agreement on the incorporation of the EU Directive into their existing cooperation agreement. The implementation means that company-level cooperation committees will now have a duty to consult all groups of employees in the enterprise and not only those who are covered by a collective agreement between LO and DA member organisations. It is further clarified that it should be possible for employee groups outside LO to obtain representation in the cooperation committee if there is consensus about such representation

In **Belgium**, an initiative of the unions to use the new EU directive to strengthen information and consultation rights in small companies failed until now. In **Ireland** the government has chosen to make a minimal transposition of the EU directive, comparable to the British case. Nevertheless, it will be the first statutory recognition of workplace representation on a general base. Until now, Ireland has a voluntarist system of employee participation, which only requires information and consultation in some specific areas (based on previous EU directives). The parliamentary approval goes with great difficulty and was at the end of 2005 still not okay.
The new **Portuguese** Labour Code introduced considerable limitations on workers commissions' participation rights, at the same time abolishing legal protection for their members (which existed before). Their right to elect representatives to the governing bodies of companies was explicitly restricted to public companies, independently of the will of both parties. The workers commissions' right to be involved in enterprise restructuring was withdrawn. Further, the amount of time granted to members of workers commissions to exercise their duties was drastically reduced, as well as being redistributed among members.

4. Practices

Among cross-country studies of industrial relations, company-level worker representation has received only little attention. Comparative studies on workplace industrial relations are very often limited to a study of the institutional arrangements and not the actual practices. If these studies have actual practices as their subject, the research is mostly carried out by case studies. The variation in institutional complexity could be mentioned as an important cause of this lack of information. On the other hand, one of the interesting comparative investigations based on case studies concludes firmly that the shop floor representations of France, Germany, Britain and Italy are to a large extent confronted with the same processes and dilemmas, regardless of the differences in institutional settings. ([107])

4.1. Presence

Based on the European social survey and other comparable data, the following density rate of workplace representation can be constructed for the EU Member States. ([108]) We focus on coverage and not presence. Coverage denotes the share of employees working in an establishment with a workplace representation; presence refers to the share of establishments with a representation. ([109])

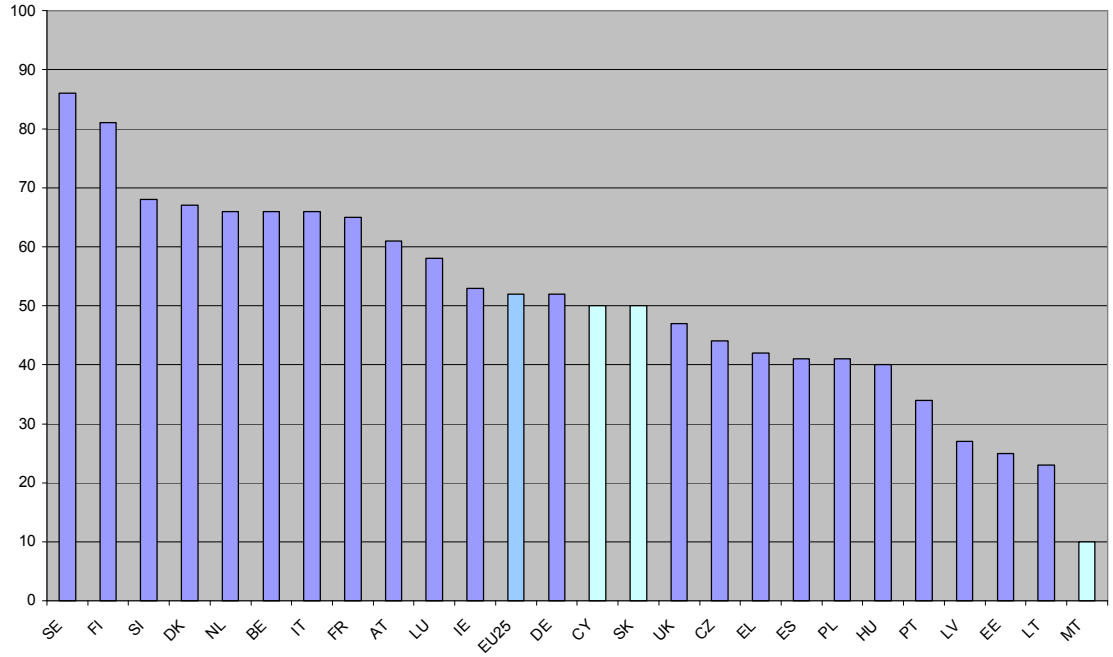
4.1.1. In general

([107]) C. Dufour & A. Hege (2002), L'Europe syndicale au quotidien, Brussels, PIE Peter Lang.

([108]) The European Social Survey (ESS) is designed to analyse the interaction between Europe's changing institutions and the attitudes, beliefs and behaviour patterns of its diverse populations. The data of 2002/2003 contained a couple of question on workplace representation, which will be used in this section 4 of the chapter. Reference: Jowell, Roger & Central Co-ordinating Team (2003). European Social Survey 2002/2003: Technical Report. London: Centre for Comparative Social Surveys, City University; For further information, the ESS data homepage is at: http://www.europeansocialsurvey.org/.

([109]) Many employers/establishments have only a few employees and are micro-enterprises. Workplace representation is most of the time not established in these micro-companies. As a result presence is always much lower in a country than the coverage. For example: in Germany coverage is above 50 %, presence is around 15 %. (IAB-data). We have only for a limited set of countries (absolute) figures on presence. As we focus in this chapter on European comparison, we limit the density question of workplace representation here to the employee coverage.

Figure 3.5: Trade union or similar at the workplace present, % of employees (private and public sector)



EU-25: weighted average

Sources: survey data: AT, BE, CZ, DK, FI, FR, EL, IT, LU, PT, ES, SE only ESS data 2002/2003; DE average of ESS (51 %) and IAB data (53 %); HU: average of ESS (43 %) and LFS'04 (37 %); IE: average of ESS (53 %) and Changing workplace survey (53 %); NL average of ESS (64 %) and AVON Monitor (68 %); PL: average of ESS (43 %) and CBOS data (39 %); SI average of ESS (73 %) and expert estimate (64 %); UK: average of ESS (47 %) and WERS'04 (recognised union at workplace, 48 %); expert estimates (lighter colour in graph): CY, MT and SK (based on survey of '00).

Around half of the workers in the European Union seem to be covered by a trade union or similar representational channel at the workplace. The Nordic countries Sweden and Finland have a strong density rate of workplace representation (above 80 %). They are closely followed by Slovenia, Denmark, the Netherlands, Belgium, Italy, France and Austria. Countries with a medium density rate (40 to 60 %) are Luxembourg, Ireland, Germany, Cyprus, Slovakia, the UK, the Czech Republic, Greece, Spain, Poland and Hungary. In Portugal only one in three of the employees indicate that a trade union is active in their workplace. This percentage is even lower in the Baltic States. Malta – the figure is an expert estimate – has a very low implantation of workplace representation.

These data do not tell us which of the workplace representations – works councils or trade union representatives – are the most important in Europe. Previous survey research – the EPOC survey dating from the mid-90s and limited to 10 (old) Member States – showed that overall trade union representation was more important than works councils as a type of employee representation. Taking into account the fact that many works councils are dominated by union representatives (as

in the Netherlands or Germany) or are statutorily the monopoly of unions (as in Italy or Belgium), workplace representation is, when available to a worker, still to a large extent a union matter in Europe.

These figures are already ranging considerably between the Member States. The presence of employee representation varies furthermore widely by sector and establishment size.

4.1.2. By sector

Table 3.7: Workplace representation by sector, % of employees covered

Sector	% employees with trade union or similar organisation present at workplace
Agriculture, mining, energy	55
Metal industry	59
Other manufacturing	53
Construction	34
Sales, hotels & restaurants	32
Transport & communication	67
Business services	48
Cultural and personal services	37
Health & social work	66
Education	80
Civil service	76

Data of HU not included, due to missing sector variable

Source: ESS 2002/2003, weighted, 18 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, NL, PL, PT, SE, SI, UK)

In industry about half of the employees are covered by a workplace representation according to the European Social Survey. The metal industry still has a higher coverage compared to the other manufacturing industries. In the service sector the picture is more mixed. Together with the construction sector, the sales sector, hotels & restaurants and the sector of personnel services have a low density rate of workplace representation. Only one in three employees indicates that a trade union or similar body is present at his workplace in these sectors. In the transport and communications sector this ratio is two in three. This sector is more strongly dominated by larger companies (rail, air) and still has a considerable amount of publicly owned or privatised companies. High density rates can be seen in the public and semi-public sectors as health, education and civil service.

Table 3.8: Workplace representation by macro-sector and country, % of employees covered

	BE	CZ	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PL	PT	SI	FI	SE	UK
Industry	64	44	63	51	35	36	61	58	67	63	66	61	39	33	80	85	88	36
Services	58	38	57	43	33	32	57	37	51	48	51	49	31	21	56	74	78	31
Public sector	78	56	81	63	64	67	78	75	87	68	84	75	68	57	88	86	95	72

*Data of HU not included, due to missing sector variable; (semi-)public sector: health, social work, education and public administration

Source: ESS 2002/2003, weighted, 18 Member States

This picture is most of the time confirmed, when analysed by country. We simplify the sector structure for this purpose, reducing it to three macro-sectors: industry (construction included), services and the (semi-)public sector. In every country the (semi-)public sector has a much higher density rate of workplace representation. Consistently low density rates are seen in the private sector for countries such as Greece, Poland, Portugal, Spain, and the UK. In these countries only around one third of the employees in industry and services have an employee representation at the workplace. In the public sector these figures are most of the time doubled for these countries. Other countries have a more differentiated density rate between industry (higher) and services (lower). This is the case for Austria, Ireland, Luxembourg, the Netherlands and Slovenia. Smaller density differences exist between the two sectors in Belgium, Finland and France. In Sweden, the public sector tops everything with a density rate of 95 %. The lowest density rate in the table is of the service sector in Portugal (only 21 %).

Trade union representation or works council implementation is especially low in the private sector in many countries of Eastern Europe. ([110]) A recent Czech survey gives some explanation for this situation. ([111]) 40 % of employees subscribed to the argument that nobody is willing to form and run a trade union representation at their workplace. 30 % agreed with the statement that employees believe a workplace representation is not necessary. 11 % mentioned employers' hostility as a reason. Indifference on the employees' side is in other words an important reason for non-implementation.

([110]) See for an overview of workplace industrial relations in the CEE countries, Chapter 4 in:H. Kohl & H.-W. Platzer, Industrial relations in central and eastern Europe: transformation and integration, Brussels, ETUI.

([111]) EIRO (2005), Feature 'Trade union officials in the firm', cz0504103f.

4.1.3. By establishment size

Table 3.9: Workplace representation by establishment size, % of employees covered, EU

Establishment size	% employees with trade union or similar organisation present at workplace	
	All	Private sector
Under 10	24	18
10 to 24	41	32
25 to 99	58	49
100 to 499	76	71
500 or more	87	86

* Private sector: industry and services (Nace A-K), no data for HU

Source: ESS 2002/2003, weighted, 18 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IT, LU, NL, PL, PT, SE, SI, UK)

Large differences exist in the presence of a workplace representation by establishment size. A presence in establishments with under 10 employees is furthermore probably due to the fact that the establishment in this case is part of a larger company or organisational structure.

Density difference related to establishment size is a likely effect, due to the institutional thresholds which exist in many EU countries and which could work as a barrier. Furthermore, the recruiting potential is higher in larger companies: there are more people to recruit as representatives and more topics are an HRM issue. Other arguments could be related to the type of ownership and personnel policy. On the one hand, a kind of paternalist personnel policy with a strong adversarial attitude against unions is more common in SMEs. On the other hand, although working conditions are very often worse in SMEs, job satisfaction and organisational loyalty are most of the time higher, reducing the need for employees to organise a 'countervailing' power at the workplace.

4.1.4. By occupational category

Table 3.10: Workplace representation by occupational class, % of category with representation at the workplace

Occupational class	% representation at the workplace
Higher professional and managerial staff	60
Lower professional and managerial staff	62
Routine non-manuals	55
Lower sales & services	46
Manual supervisors	62
Skilled manual workers	45
Unskilled manual workers	45

Source: ESS 2002/2003, weighted, 17 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, HU, IE, IT, LU, NL, PL, PT, SE, SI, UK); Data of France not included due to lack of sufficient occupational coding.

Workplace representation is also 'biased' by occupational class. A 'voice' divide runs along hierarchical lines. Specific groups of professionals and managerial workers (white and blue-collar) have the highest probability of having an employee representation at the workplace. We could definitely see it as a factor of social inequality that lower-skilled manual workers in agriculture, industry and services have the lowest coverage rate of employee representation.

4.2. Influence or impact

4.2.1. (Limited) comparative figures

In the European Social Survey, people who indicated a trade union or similar organisation was present at their workplace were asked to rate the difficulty or ease this trade union has in influencing conditions at work on a scale ranging from 0 to 10. Overall, mixed feelings dominate with a majority of medium ratings (4, 5 and 6 on the ten-point scale). Secondly, the figures show consistently lower scores for the CEE countries in the sample. Thirdly, the figures look to be influenced by the institutional context. Countries with a non-union related single channel system like Austria, Germany and the Netherlands all have below average scores. Countries with a union-exclusive system like Ireland, Denmark, Sweden, Finland, Italy and the UK all have above average scores. A methodological 'bias' could have caused this difference, because this question was more strongly targeted to the influence of the union, and not to another or similar form of workplace representation.

Comparative research, conducted at the end of the 90s, but limited to four countries (UK, DE, FR, IT), found a result more in line with the institutional prerogatives of participation, which we described in the previous section ([112]). The survey detected little difference in the amount of consultation, but significant differences between the countries in the impact or influence of the workplace representation, when consulted. German workplace representation with an average of 3.17 on a scale range from 0 to 5, came top in this survey, followed by Italy, France and the UK. In this survey, the country with the strongest statutory participation rights, Germany, thus also had, in practice, the highest score.

4.2.2. Additional insights from recent national research

We complement these cross-country figures on impact with some recent insights from national research. We start with two countries with an elaborated system of works councils that has been researched extensively in recent years: Germany and the Netherlands. Afterwards, we make a quick tour of research using the quarters of the compass.

Broad, full of life, intense and stressful – this is the way a recent German survey describes the works council activities in **Germany** ([113]). Company restructurings, economic problems and organisational changes are the main topics dealt with in recent years. This transformational pressure made the works councillor's job more difficult. ([114]) At the end of the Nineties, research

([112]) I. Kessler, R. Undy & P. Heron, 'Employee perspectives on communication and consultation: findings from a cross-national survey', International journal of human resource management, 15, 3, pp. 512-532.

([113]) C.M. Frege (2002), 'A critical assessment of the theoretical and empirical research on German works councils', *British journal of industrial relations*, 40, 2, pp. 221-248.

([114]) C. Schäfer et al., Zur Lage der Interessenvertretung: Die aktuelle WSI-Befragung von Betriebs- und Personalräten WSI Mitteilungen, 58,

had already established that in contrast to the weakening of the German labour movement, the institute of the works council had gained strength over the last decade. The studies showed significant improvements in the status, functioning and power status of the works council. The scope of tasks and the required competences had been extended. Nevertheless, consistent problems were also recognised: the presence in SMEs, especially in the service sector; the transfer of the system to the former East Germany and the costs of the system.

A growing, reported 'bottleneck' of the German works council system is the relationship with the system of collective bargaining. Traditionally, the German system was based on a division of roles: the union was involved in distributive collective bargaining at the supra-company level, the works council dealt with productive issues at the company level. This task demarcation meant also that a works council has no legal right to call a strike. In recent years, the German bargaining system has been characterised by a strong decentralisation. The number of collectively agreed 'opening clauses' allowing deviation from sector collective agreements has increased sharply. An important area of application is that of flexible working time arrangements. In a recent survey, the majority of members of works councils remained sceptical about the process of decentralisation of collective bargaining. Four out of five works council members believed that the decentralisation of collective bargaining strengthens the position of the employer.

Table 3.11: Decentralisation of collective bargaining – assessment by members of German works councils (in %)

Decentralisation of collective bargaining	Agree	Disagree
▪ strengthens the position of the employers to assert their interests	81	17
▪ leads to different work and pay conditions for employees covered by the same collective agreement	75	22
▪ does not allow the works council to exert an effective influence	53	42
▪ gives the works council more influence and scope to make arrangements	49	49
▪ better takes into account the different conditions at establishment level	48	49
▪ overestimates the works council	48	50

Source: WSI Works council survey 2004/2005, WSI-Mitteilungen 6/2005.

A lot of recent German research focused furthermore on the link between the 'Mitbestimmung' system and the economic performance of companies.([115]) In general, the presence of a works

6, 2005.

([115]) J.T.Addison, C. Schnabel & J. Wagner, 'The course of research into the economic consequences of German works councils', *British journal of industrial relations*, 42, 2, pp. 255-281.

council seems to have a slight positive, but never a negative effect on business performance. Indicators, used for measuring economic performance, are meanwhile diverse: managerial perceptions of the business strength, profits, turnover, personnel fluctuations, and innovations. Three of the leading contributors to this performance research conclude in a recent overview from the economic point of view: 'excessive admiration of the institution is as misplaced as excessive revulsion towards it'. They also stressed that systematic differences can be detected by establishment size (more relevant for larger companies), collective bargaining coverage (it helps decoupling distribution and productive issues), pressure of other employee involvements schemes (direct and indirect participation can help each other in creating the high-involvement, high-performing workplace). Recent research on works councils in the German machine tool industry stresses another point. ([116]) It finds in the first place no statistically significant relationship between the presence of a works council and (innovation) performance. However, it concludes that a specific type of works council, namely one which is frequently asked by management to play a strong cooperative role in organisational or technological changes, has a positive effect on the performance.

In the last ten years much research has also been conducted in the **Netherlands** on the effectiveness of workplace representation (i.e. works councils) in the country. ([117]) A first conclusion of this research was that the institution has 'grown-up'. Legal obligations and procedures are more strictly followed. However, the influence or impact has not increased and only stabilised. The impact on strategic company matters stays limited. The influence of the works council on the company's commercial, financial and technological policy appears still to be very limited. Nevertheless, where the works council used to be considered as defensive and oriented toward established rights, it is now increasingly involved in the content and form of organisational development. A series of 'bottlenecks' have been detected in the concrete practices of the works councils. Besides enduring mistrust by parts of the Dutch business world, which can significantly hamper the works councils' activities, the following points are stressed, which cause an insufficient use of the information and consultation rights by the works council members: skill and expertise problems, lack of time and resources, growing work load, lack of support from the rank-and-file. Changing organisational structures are also an important factor in causing difficulties for the workplace representation:

– Decentralisation of labour regulations and opening clauses in regulations, which make the task more broad and complex;

– Competition of direct participation;

– Internationalisation and loss of responsibilities to the trans-national level.

Since the election of the Labour government, **the UK** field of workplace representation has been dominated by a 'partnership' policy stream. Training and information have been organised on a large scale to mainstream this 'practice' in the field. It led to a stream of partnership agreements,

([116]) A. Dilger (2002). Okonomik betrieblicher Mitbestimmung: die wirtschaftlichen Folgen von Betriebsraten. Munchen-Mering, Rainer Hampp.

([117]) For an overview (in Dutch): M. van der Aalst, J. van der Veen & M. van Ewijk (2004), Monitor medezeggenschap: trendrapport 2000-2003, Leiden, Ministerie van Sociale Zaken en Werkgelegenheid.

which sometimes attracted considerable attention. Although a precise definition is difficult and the actual impact of the phenomenon is difficult to assess, the notion is related to an approach of workplace industrial relations based on two basic propositions:

– First, that an emphasis on cooperative relations around production as opposed to distributional issues between management and employees (and their representative organisations) is the most effective route to meeting changing business imperatives and attaining performance gains.

– Second, that such cooperative industrial relations facilitate mutual trust and, most significantly, mutual gains.

Partnership thus represents an attempt to shift the industrial relations culture away from adversarial relationships. It is a key feature of the modernisation, which the present British government wants to establish in industrial relations. ([118])

In **Ireland**, there have been attempts to extend the national social partnership at company level. Substantial funding has been made available to mainstream cooperative industrial relations at company level – not with great success until now. ([119]) Currently, a National Centre for Partnership and Performance has been set up to stimulate these mainstreaming efforts. In a recent survey 23 % of the Irish employees – 18 % in the private sector — indicated this kind of partnership arrangement existed in its workplace. The arrangement was defined as a committee on which unions work with management to promote partnership and cooperation, or to improve organisational performance. In the same survey a high proportion of the employees reported being excluded from major decisions which are made at their workplace. This exclusion was much higher for low-skilled workers and the lower occupational classes. In line with previous research, the impact of employee 'voice' on higher-level strategic decisions is considered low in Ireland. ([120])

The functioning of workplace representation is generally not questioned in the Nordic countries. Research in **Denmark** suggests that the role and responsibilities of shop stewards and cooperation committees has developed into more involvement and co-determination. ([121]) The shop steward appears to have moved away from acting as a traditional 'employees' to a more of a go-between role between employees and management. The same remark also probably applies for **Sweden and Finland**, where these representation bodies are perceived to function well ([122]).

([118]) For a critical evaluation of this partnership stream: M. Stuart & M. Martinez Lucio, eds. (2005), Partnership and modernisation in employment relations, London, Routledge.

([119]) T. Dundon et. al. (2003), Organisational change and employee information and consultation. CISC, National University of Ireland, Galway.

([120]) P. O'Connell et al. (2005). The Changing Workplace: A Survey of Employees' Views and Experiences, National Centre for Partnership and Performance, Dublin. Download January 2006: http://www.ncpp.ie.

([121]) EIRO feature 'The shop steward of the future – LO conducts major survey', dk9811191f

([122]) See for Sweden: T. Huzzard & T. Nilsson (2004), 'Dancing queen? Partnership, co-determination and strategic unionism in Sweden', in: T. Huzzard, D. Gregory & R. Scott eds., Strategic unionism and partnership: boxing or dancing, Basingstoke, Palgrave, pp. 86-106.

Box 3.4: Task description of a Swedish shop steward

In a recent research the main tasks of Swedish shop steward were summarised, that probably can be also seen as informative for the local tasks of a well-functioning (union-related) worker representation in other countries ([123]). The important duties are:

- *Formal negotiations*: they represent the members in negotiations and other settlements with the employer. Tasks include reading and interpreting laws and agreements, planning and strategic thinking;
- *Being an informant*: they inform members and employers about workplace-related events, rights and duties of the parties and about the union organisation and ideology;
- *Arguing for union values*: shop stewards are often obliged to act as debaters for and defenders of the union. They have to provide the information necessary to sustain their arguments, but desirable skills also include eloquence and the ability to argue;
- *Personal conflict management*: apart from formal disputes, shop stewards have to act as conciliators in personal conflicts between members, and between members and employer. They are also often exposed to conflicts themselves. Empathy is an important skill for this mediation role.
- *Continuous knowledge acquisition*: they have to acquire knowledge and support, most often from their own union, but also from external resources.

As already stated, trade union representation or works council implementation is especially low in the private sector in many countries of eastern Europe ([124]). Nevertheless, a **Czech** study suggests that employees and personnel management are largely satisfied with the role a trade union representation plays, when it is present in the company. Personnel management particularly appreciates the ability to harmonise the interests of management and staff. A small study by the **Estonian** employers' organisation showed that participation depended heavily on the interests of top management in the issue. ([125]) The non-union workers' trustee, a specific type of workplace representation, was present in two of the eight case studies and was occupied by a lower-level manager. Employee representation was mostly seen by the managers questioned as formalistic, inefficient and not as a serious discussion partner.

After the transformation at the beginning of the 90s, **Slovenia** opted for a dual channel system, which has resemblances with the German system ([126]). Works councils are particularly present in manufacturing and less developed in newly established firms. The councils seem to work well and have developed a modus vivendi with the local trade unions. In **Hungary,** which also chose a dual channel system, works councils only seem to function well in unionised firms. In these firms, the works council is used as a kind of duplication of the trade union representation, although in some cases it has led to competition between the two forms of representation. A recent survey shows that information and consultation runs in one-third of the cases as planned, but in one-third of the cases it completely fails to do so. Only 21 % of the established councils meet regularly. A key point of discussion in Hungary remains the question of whether works councils have to be granted collective bargaining rights or not. In **Slovakia**, works councils, which are proposed as a second channel, have not been implemented in practice, due to trade

([123]) S. Pilemalm, N. Hallberg & T. Timpka (2001), 'How do shop stewards perceive their situation and tasks? Preconditions for support of union work', *Economic and industrial democracy*, 22, 4, pp. 569-99.

([124]) See for an overview of workplace industrial relations in the CEE countries, Chapter 4 in: H. Kohl & H.-W. Platzer, Industrial relations in Central and Eastern Europe: transformation and integration, Brussels, ETUI.

([125]) E. Kalleste & K. Jaakson (2005), Employee participation: case study of Estonian companies, Talinn, EESTI-Praxis.

([126]) Paragraph based on A. Toth & Y. Ghellab (2003), The challenge of representation at the workplace in EU Accession countries: Does the creation of works councils offer a solution alongside trade unions?, ILO Report Tripartite Conference Warsaw.

union opposition and the low level of obligation placed on employers (employers only have to set-up the body when employees make a request for it).

France has a complex, but well-developed system of workplace representation, which has grown in importance due to the role representations played in the far-reaching changes in working time regulations (35-hours working week bargained with flexibility arrangements). Research has identified growing institutionalisation and professionalism, but also problems of legitimacy. ([127]) There has been a continual decline in voter turn-out since the 1960s in the works council elections. Non-union candidates have experienced over the past 10 years an increase in their score to 23 % in 2003. In this regard research stresses that legitimacy is founded on the ways in which representatives maintain their links with the workforce and are able to express the identity of the workforce in their dealings with management.

Recent contributions sketch a bleak picture of the actual impact and influence of workplace representation in **Portugal**. 'There is an enormous contrast between legislation on workers' participation rights and social reality in Portuguese companies. (…) Portugal is one of the western European countries with the lowest indicators in terms of de facto participation in decision-making.' ([128]) The same argument has been made for **Greece** concerning the statutory provisioned works council. In practice, the implementation has been minimal. Partly because unions have always seen it as a kind of threat for their own powers, partly because management distrust the disclosure culture connected to the institution ([129]).

5. Conclusion

Most of the EU countries have adopted a system in line with the EU Directive. Very often this is the case because the EU Directive is only a basic framework, with national legislation already going further in its statutory stipulations on workplace representation. However, implementation still leads to a continuing policy debate in some countries (for example Belgium and Ireland). The biggest statutory changes connected to the Directive are happening on the one hand in the previously non-statutory systems of the UK and Ireland and on the other hand in some eastern European countries, where the Directive is used to create a secondary channel of workplace representation besides the union. Previously weak statutory systems are in other words pushed by the directive to revise their positions; stronger statutory systems are not hampered by the Directive.

In the practice of employee representation throughout Europe, we can detect the same division.

Workplace representation has in recent years been strengthened and professionalised in countries with already an institutionalised tradition (see the examples of Germany, the Netherlands and the

([127]) C. Guillaume & B. Mouret (2004), 'Les élus de comité d'entreprise: de l'institutionnalisation à la professionalisation?', Revue de l'IRES, 44, 1, pp. 39-65. See for a same point of view on the German case: D. Tech (2003), Modernisierung und professionalisierung der betrieblichen interessenvertretung. Zum organisationswandel einer institution der industriellen beziehungen, Dortmund, SFS.

([128]) R. Naumann (2004), 'Portugal', in: HBS & ETUI (ed.), Workers' participation at board level in the EU-15 countries, electronic publication, p. 99. See also: A. Stoleroff, The balance between managerial unilateralism and joint regulation in company level employment relations: what the Portuguese case reveals regarding the compatibility of HRM and industrial relations. Paper IREC Conference, Utrecht, The Netherlands, 2004.

([129]) G. Romanias, 'The workers' councils in Greece', G. Bruisnma et al. (1999), The Workers' Councils and the social dialogue for the Continuous Vocational Training, INE, Athens, p. 31-78.

Nordic countries). In these countries, the scope of the system has been broadened and deepened due to decentralisation tendencies in the industrial relations system. However, problems are also encountered in these countries:

- The role workplace representation plays and can play in small enterprises: in different countries legal changes have been implemented to answer this question (Germany, the Netherlands, France).

- The coverage of the system in certain branches of the service sector, where it is confronted with management-led forms of direct participation as competitor.

- The status of the representation in a growing multi-level field of corporate governance, caused by the network economy and internationalisation.

- Rising skill needs and work load of the representatives' job due to a growing task complexity and to increasing business pressures.

- Women are relatively underrepresented in the group of workers' representatives.

- Coverage of employee representation is also severely biased by occupational class in Europe. Low-skilled workers have fewer opportunities for employee 'voice'.

No breakthrough has recently been detected in countries which have a weak system of employee representation. In countries like Portugal, Greece and many new Member States workplace representation is struggling. Certainly in the private sector, severe representational gaps can be distinguished in these countries. Resistance and mistrust are important factors in the explanation of these 'gaps'. Many managers see forms of employee participation mainly as cost-inefficient and hindering for decision-making. Unions resist the introduction of a dual-channel model or works councils as a complementary secondary channel, because they see these general bodies as a form of competition and a way to undermine the own powers. This resistance and mistrust survives well in a context of (probably growing) employee indifference. Employees see no point in taking the risk of setting up forms of workplace representation.

However, cumulating evidence from north-western Europe shows that a well functioning employee representation can play an important role in the modernisation and performance of a workplace. Recent findings show also that modern human resource management can go perfectly hand-in-hand with an elaborated (union-related) model of employee representation. Social partners have picked up this evidence in several countries to make a plea for partnership (UK and Ireland), cooperative modernisation (Germany), high-quality co-determination (the Netherlands) or the developmental workplace (Nordic countries). ([130])

([130]) H.K. de Bodt-Kloosterziel (2003), Kwaliteitsbevordering medezeggenschap – gezamenlijke aanpak gewenst. Ministerie van Sociale Zaken en Werkgelegenheid. Directie arbeidsverhoudingen.Afdeling Collectieve arbeidsvoorwaardenvorming en medezeggenschap; P. Totterdill, S. Dhondt & S. Milsome (2002), Partners at work? A report to Europe's policy-makers and social partners. Report of thet Hi-Res project. www.hi-res.org.uk; Ennals, R. & Gustavsen, B., eds. (1999). Work organisation and Europe as a development coalition. John Benjamins, Amsterdam; N. Kluge & B. Riess (2004), Mitbestimmung für die zukunft: ergebnisse und fazit aus der arbeit des 'Forum Mitbestimmung und Unternehmen' 1999-2003, Gütersloh, Verlag der Bertelsmann stiftung.

In this regard the important interplay with the union presence is stressed and the need for strong statutory rights of employee representation emphasised ([131]). A division of work between channels involved in distributive bargaining and in production issues is important for the performance of a workplace representation. Who has bargaining rights at the workplace level (and the accompanying right to strike) is therefore an important question to address in debating workplace industrial relations. Reasoning on the same lines, a lot of authors underline the importance of strong participatory rights, especially when trade union power is low.

([131]) See for example: T. Huzzard, D. Gregory & R. Scott eds., Strategic unionism and partnership: boxing or dancing, Basingstoke, Palgrave; K. Dörre (2002), Kampf um beteiligung: arbeit, partizipation und industrielle beziehungen im flexiblen kapitalismus, Wiesbaden, Westdeutscher verlag.

CHAPTER 4
SOCIAL DIALOGUE CAPACITY-BUILDING INITIATIVES IN THE NEW MEMBER STATES, ACCESSION AND CANDIDATE COUNTRIES

1. Responding to the challenge of enlargement

As explained in the 2004 Industrial Relations in Europe report, the different industrial relations traditions and practices in the new Member States present a considerable challenge for European industrial relations. In contrast to the EU-15 Member States, who tend to put more emphasis on bipartite collective bargaining, the main form of social dialogue in the new Member States is tripartite and national concertation. Where it does occur, collective bargaining is largely limited to company level bargaining. Furthermore, especially in the new Member States of central and eastern Europe the social partners are confronted with organisational weaknesses and limited financial resources. From the European perspective, this current aspect of industrial relations practices in the central and eastern European countries poses a challenge in terms of effective participation in European social dialogue and their ability to implement and monitor new generation texts, as well as their capacity to make use of the possibility to implement certain provisions in EU directives by collective bargaining.

In helping prepare the former and current accession countries for enlargement, the Commission has therefore consistently highlighted the need for the national social partners to develop stronger sectoral and bipartite social dialogue structures. In its 2002 and 2004 communications, the Commission also stressed the importance of social dialogue as a tool for better governance and made various recommendations for improving the capacity and involvement of the social partners, as well as for monitoring the impact of the results of social dialogue in the new Member States.

This chapter will first review past and current social dialogue capacity-building initiatives in the new Member States, organised and/or funded by European Community programmes, the European social partner organisations, the International Training Centre of the International Labour Organisation (ITC-ILO) and the European Foundation for the Improvement of Living and Working Conditions in Dublin. In a final section an overview will be given of running programmes for the current accession countries (Bulgaria and Romania), candidate countries (Croatia, Turkey) and the former Yugoslav Republic of Macedonia. All initiatives have produced interim and final evaluation reports, which contain details regarding the specific activities undertaken during the course of the project and which comment on the efficiency and relevance of the projects in respect of strengthening social dialogue and preparing their country for EU accession. The chapter uses the main conclusions from these reports.

2. Commission Initiatives in the new Member States

In the run-up to enlargement, the Commission encouraged the new Member States to include social dialogue projects within the context of the Phare programme ([132]). The Commission's 2004 communication ([133]) mentions the various projects that have been developed to promote national, sectoral and/or regional social dialogue and to assist in the implementation of labour market regulations and EU directives in these countries.

Table 4.1: Overview of past and current social dialogue twinning projects in the central and eastern European countries

	Project title	Duration	Twinning partner	Level	Objectives
Bulgaria	BG04-SO-01: 'Support for Social Partners for Social Dialogue Activities'	19 months, May 2005-Nov 2006	United Kingdom (Belgium)	Cross-industry, sectoral	To enhance the organisational capacity and skills of the MLSP, trade unions and employers' organisations in order to ensure their full engagement in the creation of national labour market and social policy.
Czech Republic	CZ99/IB/CO-02: 'Development of Social Dialogue'	17 months	Denmark	N.A.	To help the social partners discuss and implement necessary reforms in social dialogue and assist in the implementation of autonomous social dialogue.
Estonia	ES2001/IB/SO-01 (EE): 'Promotion of Social Dialogue on the Employers' and 'Workers Organisations Level'	20 months, Aug 2002 – Sept 2004	Finland (Ireland)	Sectoral	To enhance the capacity of the social partners to implement the *acquis*; to strengthen dialogue between them and to align labour relations legislation with EU requirements.
Hungary	HU01/IB/2001/SO-01: 'Strengthening Autonomous Social Dialogue"	21 month, June 2002 to Jan 2004	Denmark	Sectoral	To create an institutionalised cooperation between the social partners; to reinforce bargaining activity at sectoral level; to establish a better linkage between bipartite and tripartite negotiations and to prepare the social partners for their role in the sectoral dialogue at European level.
Latvia	LV01/IB-SO-01: 'Promotion of Bipartite Social Dialogue'	17 months, 2002-03	Germany (United Kingdom-ACAS)	Sectoral, national	Strengthening autonomous social dialogue at the different levels.
Lithuania	LT01/IB/SO-02-TL: 'Strengthening Social Dialogue'	6 months, Aug 2003-Jan 2004	Germany	Sectoral	To enhance the efficiency of existing bipartite social dialogue structures and to strengthen social dialogue at sectoral and enterprise level.
Poland	PL00/IB-SO-01: 'Social Dialogue"	24 months Dec 2001-Dec 2003	Denmark	Cross-industry, sectoral	Creation of an institution for inter-sectoral dialogue and the development of autonomous social dialogue.

([132]) The Phare programme is a pre-accession instrument financed by the European Commission to assist the applicant countries of central and eastern Europe in their preparations for joining the EU.

([133]) COM(2004) 557 final, 12 August 2004, Communication from the Commission — Partnership for change in an enlarged Europe — Enhancing the contribution of European social dialogue

Romania	RO03-SO-03: 'Promoting Autonomous social dialogue' (Economic and Social Council – ESC)	20 months, Feb 2005-Aug 2006	United Kingdom (France)	All levels	To develop the capacity of the ESC to provide information, training and assistance to the social partners and to strengthen their capacity to participate in the implementation and development of the *acquis* and the national legislation, in the field of social dialogue.
	RO03-SO-02: 'Promoting Autonomous Social Dialogue"	20 months, July 2004-March 2006	Germany	N.A.	The setting-up of a management information system on collective agreements and labour conflicts within the Ministry of Labour, enhancing the social partners' knowledge base and tools for collective bargaining.
Slovakia	SK00/IB-SO-01: 'Development of Social Dialogue on the Bipartite Level"	24 months, Nov 2001-Nov 2003	Netherlands (United Kingdom-ACAS)	National, sectoral, company	Implementation of relevant European directives on works councils into Slovak legislation, as well as the overall improvement of the capacity and position of the social partners in Slovakia.
Slovenia	SI.0101.04: 'Enhancement and Development of Social Dialogue"	18 months, Sept 2002-April 2004	None, but some cooperation with Germany	N.A.	To support the social partners' capacity-building efforts through bipartite social dialogue; to assure an efficient implementation of social dialogue in Slovenia and to link the work of the social partners more closely to the implementation of EU policies.

Social dialogue capacity-building projects have been established in central and eastern Europe. As a vital element of the programme, each country could choose one or two twinning partners from the EU-15, typically the Social Affairs and Labour Ministries in the partner country, as well as national labour market experts with whom they would work closely on the development and implementation of the project activities. Project activities generally included the provision of support for setting-up sectoral dialogue committees, training the social partners in consultation, negotiation and language skills, as well as strengthening the public authorities' administrative capacity for social dialogue.

2.1. Short overview by country

(a) Under the project 'Development of Social Dialogue', the Ministry of Social and Labour Affairs of the **Czech Republic** and its Danish twinning partners endeavoured to help the national social partners discuss and implement the necessary reforms in social dialogue, assist in the implementation of autonomous social dialogue practices and increase the number of collective agreements.

An initial assessment report described the situation of social dialogue in the Czech Republic, as well as possibilities and barriers for further development of social dialogue. The report helped improve the social partners' information-base and common understanding of necessary actions to be taken in order to support social dialogue. Moreover, based on three reports analysing the Czech, German and Austrian systems of extending collective agreements, a list of

recommendations to optimise procedures concerning the extension of collective agreements in the Czech Republic, were approved at the relevant working group meetings.

An important aspect of the project was to make a contribution from the industrial relations side to the adaptation of the Czech labour market regulations to the European requirements, in order to ensure that EU directives are implemented in the Czech labour market and that Czech positions in relation to the directives are being discussed with the social partners.

A further major component of the project were activities to strengthen social dialogue at enterprise level. Initiatives in this field aimed at improving the dissemination of information on the new regulations, as well as the recruitment of more employers and employees to participate in social dialogue. However, the project showed that progress is still needed to secure comprehensive workers' representation at the enterprise level. The Danish experts recommended the creation of a forum in order to continue encouraging employers and employees at enterprise level to establish systems of workers' representation. According to the experts, the forum should consist of representatives from central unions and local shop stewards of companies, as well as of representatives from central employers' organisations and local companies.

A final important aim of the project was to strengthen social dialogue at national level. A vital step forward in this respect was an agreement between the social partners concerning the future development of social dialogue, including comprehensive recommendations for possible future steps to further improve social dialogue practices within both employer and employee organisations in the Czech Republic.

(b) In **Estonia,** a project to promote social dialogue at the employers and workers level was launched in August 2002 between the Finnish Ministry of Labour, the Department of Enterprise and Employment of the Republic of Ireland and the Ministry of Social Affairs of Estonia. The project focused on capacity-enhancing measures for the social partners and bringing Estonian legislation on labour relations in line with EU requirements.

The project notably led to the establishment of a tripartite working group in the Estonian Ministry of Social Affairs. Its main function was to prepare legislation facilitating the implementation of the *acquis communautaire* (henceforth '*acquis*') and to align the relevant labour legislation drafts with EU legislation. The twinning partners further conducted 12 training seminars for the trainers, involving both employee and employer representatives, as well as members from the Tripartite Regional Employment Council and organised several study tours to Brussels and Finland. The project also produced a social dialogue toolkit for branch and enterprise levels. During the project period the number of collective agreements increased from 30 to 164 and there are indications that this figure will continue to rise.

(c) The **Hungarian** project on social dialogue was started under the supervision of the Hungarian Ministry of Economy and Transport in 2001 and transferred to the Ministry of Employment and Labour (MoEL) in January 2003. Together with the Danish twinning partners who joined the project in November 2002, the social partners and the MoEL sought to develop an institutional basis for sectoral bipartite social dialogue. Coverage of sectoral collective agreements had previously been limited and sectoral social dialogue had been virtually absent in Hungary.

An important step in the development of sectoral social dialogues was therefore the signing of a framework agreement by the Sectoral Council in July 2003, which established the principles of operation of Sectoral Dialogue Committees (SDCs). By the end of the project, 28 SDCs and a supporting secretariat for each Committee were established. Legal regulation guarantees their independence. The government is, however, responsible for the basic principles of their operations providing a sort of quality assurance. The Sectoral Council has been a specialised body set up in 2002 by the Hungarian tripartite social dialogue with the responsibility of directing the sectoral dialogue twinning programme under the EU's Phare programme, and assisting in the establishment of bipartite sectoral social dialogue committees.

As a supporting activity, the twinning partners also organised a seminar on European works councils (EWCs), in order to increase the knowledge of the social partners on the nature and functioning of EWCs and on how EU directives are implemented in other EU Member States.

Overall, the twinning partners agreed that the project had a noticeable impact and was therefore rated positively by the participants and experts. However, the partners concluded in their evaluation also that the sustainability of the project results will depend upon how legal and financial conditions can be stabilised in the long run. Sustainability – it is stated – also requires further efforts to increase the participation and motivation of employer organisations in social dialogue. This is particularly true for small and medium-sized enterprises (SMEs).

(d) The **Latvian** project to promote bipartite social dialogue involved the Latvian Ministry of Welfare (MoW), the National Tripartite Cooperation Council (NTSP), as well as the Latvian social partners organisations, i.e. the Latvian Confederation of Employers Organisations (LDDK) and the Latvian Trade union Confederation (LBAS) together with the German Ministry of Economics and Labour and the Advisory Conciliation and Arbitration Service (ACAS) from the UK.

Among the activities organised by the project partners was a training seminar on industrial conflicts for public conciliators, managed by experts from ACAS and which resulted in the creation of a handbook for conciliators. The project has also led to the creation of a homepage for the social partners, www.socialaisdialogs.lv, which provides access to collective agreements and social acts concluded between the social partners.

In their final report, the project partners maintained that the project has contributed to the strengthening of employers' and employees' associations. Important in this respect was the creation of a policy document on bipartite social dialogue at national, regional and sectoral level. However, the German twinning partners emphasised the need to further strengthen bilateral structures, especially in the Latvian regions and municipalities.

(e) The **Lithuanian** project, which was launched in December 2002, aimed to enhance the efficiency of existing bipartite social dialogue structures and to promote social dialogue at sectoral and enterprise level. The main beneficiaries of the project were the Tripartite Council, as well as the key social partner organisations in Lithuania. The project partners developed an initial

report on the situation of social dialogue in Lithuania, which assessed three dimensions of the national industrial relations system:
— the organisational strength of trade unions and employers organisations;
— structures and activities at sectoral and enterprise level;
— possibilities and barriers to the future development of social dialogue in Lithuania. The report was followed by an action plan including recommendations for strengthening social dialogue in Lithuania.

During the project the social partners expressed their desire to hold seminars on the underdeveloped practice of sectoral wage agreements in Lithuania. Thus, during the six-month duration of the project, German wage contract experts organised a series of one-day workshops for the social partners on 'wage negotiations and wage contracts' in the textile and clothing, retail and building sectors. The German project leader provided an overview of collective bargaining practices and industrial relations in Germany and examples of actual wage agreements in the three sectors translated into Lithuanian. In May 2003 a major national conference was organised on the subject of 'Social dialogue within companies' and the role of works councils, management and unions.

The project contributed to the development of new legislation on social dialogue in Lithuania: the adoption of a new labour law in January 2003 and a revision of the legislation regarding works councils (finally adopted in October 2004). In June 2003 a consultation paper on the amendment of the Trade Union Law was developed by the project experts and submitted to the Ministry for Social Security and Employment.

(f) The **Polish** social dialogue project focused on the strengthening of autonomous social dialogue. The privatisation and restructuring processes in many sectors in Poland increased the need for social dialogue at the sectoral level and for independent social partners. Together with the Danish twinning partners, who joined the project in November 2002, the social partners and the Polish Ministry of Employment and Labour aimed to develop an institutional basis for a bipartite social dialogue.

The project notably resulted in the creation of the institution for inter-sectoral dialogue and the establishment of a social dialogue roundtable for European integration. The continuation of the roundtable was ensured by a regulation signed by the Minister of Economy, Labour and Social Policy, which defines its future role, competences and sources of financing.

The sectoral social dialogue was promoted through the establishment of a bipartite dialogue in four sectors: textiles, metals, chemicals and food industry. Further measures included a training-the-trainers concept which aimed to raise awareness of social dialogue practices among the Polish social partners and the setting-up of a mediation system to assist the process of settling collective labour disputes. Finally, a draft amendment to the law on mediation was prepared and the Danish partners produced a large number of recommendations to ensure the sustainability of the results.

(g) In **Slovakia**, the project sought to develop bipartite social dialogue at all levels. The twinning partners from the Dutch Ministry of Social Affairs and Employment (MSAE) and the British Advisory, Conciliation and Arbitration Service (ACAS) reported a satisfactory reinforcement of

permanent social dialogue at national, branch and company level, as well as collective bargaining practices at central branch/sector and company level.

A specific aim of the project was to contribute to the adaptation of the Slovak Labour Code to EU law and to facilitate the implementation of the European directive on EWCs into Slovak legislation. Due to protracted negotiations on the Labour Code and the apparent hesitation of Slovak companies to establish EWCs, the project was not able to give full substance to the implementation of works councils to the extent as foreseen in the Covenant. However, legislation now exists in Slovak law which covers the establishment and implementation of EWCs.

The project further resulted in the production of a manual to help maintain the network of social partners involved, various training seminars and a visibly improved overall position of social partners. The twinning partners expressed their hope that the knowledge acquired during the project will help to assure the permanent training of experts in social dialogue, contribute to the development of social dialogue in enterprises and organisations where social dialogue currently does not exist or is ineffective and help reinforce permanent social dialogue at national, branch and company level.

(h) In **Slovenia**, the main aim of the social dialogue project was to assure an efficient implementation of social dialogue and link the work of the social partners more closely to the implementation of EU policies. It further aimed to strengthen bipartite social dialogue and to support the social partners' capacity-building efforts.

In order to achieve its goals, the partners organised training seminars on, for example, European social dialogue, the importance and scope of social dialogue, collective bargaining, sectoral social dialogue as well as workshops on communication skills and the use of electronic media. The communication networks of the social partners were notably improved through the establishment of a central project website and two web portals for both, employer organisations and trade unions, a collective agreements monitoring system, as well as parameters for analysis and comparison of the nature of collective agreements. A report covering good European practice, organisation and working methods of the collective agreement register was also presented.

Finally, the programme provided support in the preparation of the Economic and Social Council Act (ESC). A report on 'Representativeness and ESC Eligibility Criteria' covering background documents, a review of EU and national practice, as well as the scope of tripartite and bipartite dialogue has been prepared and translated into Slovene. The project's final report included a number of recommendations on tackling the controversial issue of how to assess whether trade union and employers' confederations should be considered as nationally representative, and on the industrial relations role played by Slovenia's compulsory-membership business organisations, the Chamber of Commerce and Industry and the Chamber of Crafts.

In 2004 and 2005 projects to enhance the effectiveness of social dialogue practices were also launched in the two acceding countries Romania and Bulgaria.

(i) The **Bulgarian** project objective is to enhance the organisational capacity and skills of the Ministry of Labour and Social Policy (MLSP), trade unions and employers' organisations in

order to ensure their full engagement in the creation of national labour market and social policies. The project aims to have a social dialogue system in place, by January 2007, that identifies, analyses and implements labour market policy and social inclusion on central and local level.

With the help of the British twinning partner, a training programme for political decision-makers at national and local level, as well as employees in public administrations and social partner organisations was developed for implementation in 2005. The programme also foresees training seminars on social dialogue for 350 social partner representatives, training on specific management needs for individual senior managers, as well as the development of operational procedures, manuals and a computerised system for the monitoring and evaluation of the programme.

(j) In **Romania**, there are two simultaneous and mutually reinforcing social dialogue Phare projects. Launched in July 2004, the first project is a cooperation between the Romanian Ministry of Labour and Social Solidarity (MLSSF) and the German Federal Ministry of Economics and Labour and the German Confederation of Trade Unions (DGB). Its objective is to strengthen the MLSSF's capacity to facilitate and promote the development of bipartite social dialogue and to strengthen the social partners' capacity to contribute to and to participate in the implementation of the *acquis* and national legislation in the labour law field. It will further set up a management information system on collective agreements and labour conflicts, including the development of a national database and webpage within the Ministry, as well as the development of communication tools for the social partners through, for example, a webpage and e-mail accounts for the social partners.

After an initial country inception report on bipartite social dialogue assessing the situation of collective bargaining at all levels and the representativeness of existing social partner organisations, a draft strategy on the promotion of the development of social dialogue was developed. The project foresees the training of experts of MLSSF and social partners on all issues concerning the *acquis*, collective bargaining and practices of the EU Member States, as well as training on mediation and conciliation of industrial disputes.

The second twinning project involves experts from the independent British advisory service ACAS and the French Ministry of Employment, Work and Social Cohesion, as well as the French Economic and Social Council. The project aims to strengthen the capacity of the Romanian Economic and Social Council (ESC), to provide information, training and assistance to the social partners and to strengthen their capacity to participate in the implementation and development of the *acquis* and national legislation. It further supports the ESC's development into an organisation that is able to design and promote standards, as well as guides and methodologies for the social dialogue at different levels ([134]). The project has also contributed to the implementation of the body of EU labour law in Romania.

([134]) Details on the activities and progress of this project are available at the following website: www.ces.ro

2.2. Challenges faced by the social partners in the implementation of the projects

Feedback from the national twinning experts and the social partners has revealed challenges which reduced the effectiveness of the projects or delayed some of the planned project activities.

In Estonia, for example, high staff turn-over resulted in a loss of institutional memory, which resulted in different recommendations on revisions, leading to delays in their approval. Fluctuating political support was a further problem in Estonia, as the project was initiated and planned in early 2002, but a subsequent change in government had a negative influence on the project and contributed to straining relations between the social partners.

Similarly, in Slovakia many of the planned project activities were affected by elections and differing opinions about the introduction of the new Labour Code. This had a negative impact on the time and involvement which MOSLAF officials could allocate to the project. Moreover, economic difficulties in the run up to EU accession, such as high unemployment rates or necessary pension reforms, created tensions between the government and the social partners.

The Czech project leaders voiced concerns as to whether the positive results achieved under the project are presented to a broader audience. The report recommends the creation of a national institute for social dialogue, which conducts research, documentation, training and public relations to enhance the efficiency and visibility of social dialogue.

Finally, the project partners generally noted a lack of representation and participation of employers' organisations in workshops, training sessions and study tours. It was in general recommended that more efforts have to be made to involve the employer's side much more in social dialogue.

3. Social partner initiatives with regard to enlargement

Beside the European Commission and national administrations, the European cross-industry social partner organisations took initiatives on their own in recent years in support of national and European social dialogue in the new Member States, as well as the current EU accession and candidate countries. These projects received the financial support of the Community through either the Phare programme or through the Commission's social dialogue budget headings administered by the DG Employment, Social Affairs and Equal Opportunities ([135]).

In collaboration with its partner organisations, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) organised the 'SME-FIT' project designed to help small enterprises and SME organisations in the new Member States familiarise themselves with the *acquis*. It was part of the Business Support Project II (BSP II) and included participants from 24 SME associations coming from the new Member States, the EU-15 and the candidate countries.

([135]) As explained in the 2004 Industrial Relations in Europe Report, these three budget headings have different but reinforcing aims: to promote the development of the social dialogue at cross-industry and sectoral levels; to facilitate information and training measures for workers' organisations; and finally to strengthen trans-national cooperation in the development of employee involvement in multinational undertakings and promoting and supporting the Community *acquis*.

The project built on the achievements of the activities under BSP I ([136]) but went several steps further. The main objective of SME-FIT was to build up information and awareness at the level of SMEs regarding the *acquis* in the fields of standardisation, certification, quality management, safety at work, environment and social affairs and employability. It further aimed to strengthen the institutional capacity of SME associations in the candidate countries and new Member States.

Among the activities implemented were: 'train the trainers' seminars, providing training on relevant chapters of the *acquis* to a number of experts from the CEEC; an information campaign which provided enlargement-related sector and or branch-specific information directly to businesses through the development of brochures each covering another sector; the selection of twinning partners to provide experts on specific topics and branches; and seminars covering project management with a focus on European projects. ([137])

A further BSP II project is the UNICE-BOSMIP — 'Business Organisations as Single Market Integration Players', which ran from June 2003 to November 2004 ([138]). Its main objective was to strengthen the business federations in the new Member States and acceding countries. The programme specifically sought to allow business to support the reform process in their countries, enable federations to contribute to the legislative process and the formation of economic policy, create business and development opportunities for individual member companies, improve information and advisory services to individual member companies and reinforce federations as social partners.

In order to achieve these ambitious goals, training seminars were carried out on subjects such as capacity building, competition policy and taxation, environment, intellectual property rights, the internal market, public procurement and social affairs.

In the second round of seminars, the experts who were trained in the first round disseminated their acquired know-how and experience in their home countries. Seminars were held in each of the acceding countries and the federations in these countries arranged these seminars with support from EU-15 federations. Companies were also offered the opportunity to share information and experience on subjects related to the *acquis* and they have benefited from advisory and coaching services from their federations.

UNICE-BOSMIP has helped business federations in the new Member States and their members to familiarise themselves with the relevant parts of the *acquis*, and reinforced the capacity of business federations to deliver adequate services to their members (for example in EU lobbying and EU project management).

In 2003, the European cross-industry social partners (UNICE-UEAPME, CEEP, ETUC) launched their so-called 'Integrated Programme' aimed to enhance the capacity of the social partners to participate in European social dialogue ([139]). It receives financial support through the EC budget

([136]) For information about BSP I, see the following website: http://www.ueapme.com/business-support/
([137]) For further information on the project see the following link: http://www.ueapme.com/business-support %20II/index.htm
([138]) The following website contains detailed information on the project activities: http://bosmip.unice.org/Content/Default.asp?
([139]) For more detailed information on the project see the following website: http://212.3.246.118/Content/Default.asp?PageId=371

heading 01 for industrial relations and social dialogue and is open to social partners from all new Member States and Romania and Bulgaria, as well as other candidate countries. It consists of four pillars:

The first pillar of the programme is a joint project addressing the needs of the Member States' social partners in order to effectively participate in the European social dialogue. The pilot project started in 2003 with national seminars being held in Poland, Hungary, Czech Republic, Slovakia and Lithuania. The project was later extended to cover Slovenia, Estonia and Latvia.

Between December 2003 and June 2004 ([140]), a two-day seminar with representatives of the national social partners was held in each participating country with the aim of identifying what needed to be done at the national level in order to strengthen their capacity to represent the view of their members in the European social dialogue. Each national seminar included discussions in small working groups, regular plenary feedback forums and consensus building sessions. The social partners consequently developed action plans.

The second pillar of the integrated programme is a study on restructuring in the new Member States. It aims to provide the social partners with material on the specific challenges facing the new Member States in view of a prospective discussion on EU social and employment policies after enlargement to enable them to influence the social policy agenda and identify relevant issues for future joint work.

The third pillar focuses on competence development for the European social dialogue and aims to overcome the skills mismatch of the social partners in the new Member States which were identified during the 2004 national seminars. The project included a mentoring programme for employer representatives in EU social dialogue meetings, interactive training sessions on EU social dialogue issues for the same experts and the preparation of a tool to audit human resource competences.

As a fourth pillar two resource centres for employers and trade unions have been established in order to respond to the needs of the social partners in the new Member States, providing in-depth information on social dialogue issues and past and present activities of the European social partners, assistance on EU funding opportunities for projects and assistance on project tendering and management ([141]).

4. Initiatives by the International Training Centre of the International Labour Organisation

The Commission has further co-financed capacity-building initiatives organised by the International Training Centre of the International Labour Organisation (ITC-ILO) ([142]), such as the

([140]) A second round of national seminars is foreseen in all these countries between May 2005 and April 2006.
([141]) For further information on the resource centre consult the following website: www.unice.org/erc
([142]) The ITC was established in 1964 by the International Labour Organisation and the Italian government in Turin, Italy, as an advanced vocational training institute. The Centre provides training and related services that develop human resources and institutional capabilities. They thereby aim to contribute to achieving the ILO's goal of decent work for women and men.

'EMPACT' and 'ACTRAV' projects designed respectively to enhance the capacity of the employers' and workers' organisations to participate effectively in European social dialogue.

4.1. EMPACT oriented to employers' organisations

Launched in December 2003, the 'EMPACT' project for employer organisations set up training programmes for the administrative and professional staff of the participating employers' organisations. Several training workshops were organised, as well as study trips to Brussels attended by both specialists from the training centre and the national employers' representatives from the countries involved.

At the first workshop in Budapest the participants gave presentations on their current national situation and expressed their desire to enhance their skills in the areas of information management, strategic planning, lobbying and negotiation. Each country then developed an action plan, identifying the main challenges they faced and fields of activity. At a second workshop in Prague these action plans were revised and adjusted.

In April/May 2004 consultative missions were carried out to all participating countries, their main purpose being networking, as well as the follow-up of the action plans and consultations on a potential extension of the project. The implementation and validity of the national action plans was continuously evaluated and at the end of the project an external evaluator assessed their impact and sustainability.

Moreover, several bilateral cooperation agreements were signed between the different organisations and representatives of the various organisations have been sent to Brussels with the aim of establishing an office in Brussels and a permanent membership of UNICE to facilitate and increase lobbying at EU level. Following this project, almost all participating employers' organisations made changes to their internal structure, established new committees and developed services responsible for EU projects, as well as new policies on, for example, social protection and international relations.

The participants also expressed the desire for a second phase of the project, concentrating on strategic planning, training of staff and involving more of the new Member States, as well as stronger networking with their counterparts in the EU-15 Member States and with EU officials. They further argued that the nature of the transition process necessitated a constant review of the tools in order to ensure their continued relevance. National experts could be commissioned to undertake such assessments. It was also acknowledged that employers' organisations tend to target larger companies and that therefore more services targeting SMEs should be developed.

4.2. ACTRAV targeted to trade unions

Similarly, the ITC-ILO programme for workers' activities (ACTRAV) ([143]), aimed to strengthen the capacity of workers' organisations, particularly in the postal and telecom sectors, to participate effectively in social dialogue, collective bargaining and concertation at local, national

([143]) For further information on the project see: http://www.itcilo.org/actrav/english/index.htm

and European level. It sought to raise awareness and to facilitate exchange of practices and experiences amongst workers' organisations in the accession countries and their EU counterparts. It was hoped that this would identify best practices in economic and financial analysis of enterprises and promoting enterprise and sectoral agreements.

The project also encouraged and supported the creation of a workers' organisation network within the European Trade Union Confederation (ETUC). It was carried out in close cooperation with the European federation of Telecom and Postal sectors belonging to the Union Network International (UNI) and ETUC who provided teaching support and expertise.

There were several training seminars, a workshop in Brussels and a distance learning course via the Internet. Examples of seminar topics covered are 'social dialogue in Europe and the role of trade unions in the postal and telecommunications sector', 'industrial relations with a focus on collective bargaining systems in Europe', 'collective bargaining strategies' and 'globalisation and trade unions'.

The intermediate evaluations of the project revealed that the participants faced difficulties in the implementation of social dialogue due to national political developments, lack of coordination between local and national unions and national trade union confederations, different priorities within the organisation, as well as weak employers' organisations in the postal and telecom sectors. It was consequently proposed that any future activities should involve employers' organisations in the training sessions.

5. Projects set-up by the European Foundation for the Improvement of Living and Working Conditions

The European Foundation for the Improvement of Living and Working Conditions in Dublin, a European Union agency, also launched a number of projects in the industrial relations sphere to prepare for enlargement. In 2002, the Foundation established a project on social dialogue and EMU in the candidate countries together with the Swedish Work Life and the EU Enlargement project. Its aim was to bring together employers, trade unions, governments and researchers in order to assess how social dialogue can best be utilised in preparation for EMU and to assist the candidate countries in adapting to the Maastricht EMU convergence criteria by using social dialogue as a tool. The project specifically focused on the development of conflict resolution mechanisms in the ten acceding countries. It initially covered Estonia, Hungary, Malta, Poland and Slovenia and was extended to Cyprus, Czech Republic, Latvia, Lithuania and Slovakia in 2003.

After a first round of meetings at national level the Foundation invited the tripartite national teams consisting of representatives from governments, trade unions and employers' organisations to two workshops in Vienna in May 2002 and again in May 2003 in order to discuss and prepare national development projects. At a workshop in Prague in October 2003, the national reports on this topic were discussed together with government representatives and social partners from Estonia, Hungary, Malta, Poland and Slovenia, while a second workshop in January 2004 involved national tripartite teams from Cyprus, Czech Republic, Latvia, Lithuania and Slovakia.

The national conflict resolution development projects drafted during these two events were presented and analysed at a social dialogue and conflict resolution conference in Slovenia in March-April 2004. ([144])

As part of its 2005 Work Programme, the Foundation recently launched capacity-building projects for social dialogue in the new Member States (project No 0318) ([145]). The aim of these projects is to bring together social partners, government representatives and academic researchers to investigate how to develop social dialogue capacities for promoting employment, better working conditions and industrial relations in these countries.

6. Social dialogue capacity-building projects in the candidate countries and potential candidate countries in the Western Balkans ([146])

In October 2005, the Commission organised a conference on strengthening social dialogue in the Western Balkans in Skopje, specifically targeting Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, and Kosovo. The conference built on the success of the 2004 social partner conferences in Ljubljana and Istanbul, which aimed to highlight the importance of social dialogue as an instrument of social policy in the accession and candidate countries respectively in the run-up to enlargement.

The conference highlighted the importance of social dialogue as a vital pillar of European democracy, the need for the autonomy of social partners and the will to reach agreements. It further emphasised the need to anticipate and adapt to changing situations, a better balance between tripartite and bipartite social dialogue, to strengthen the mechanisms for the settlement of labour dispute, as well as the need to support the reform of labour legislation in order to bring it into conformity with ILO standards and European practices.

The social partner organisations in the Western Balkan countries stressed that the challenges for social dialogue in the region included the great diversity across the region: in some countries economic and social councils are more consolidated, the institutional framework is almost completed and current work focuses on capacity building. In other countries, however, economic and social councils are currently being created with the help of international organisations.

The social partners further noted a lack of respect of national governments for their autonomy, difficulties in implementing and enforcing agreements, the reluctance of foreign investors to facilitate the establishment of trade unions amongst their workforce, and the power exerted by the ministries of labour upon social partners.

The conference also devoted a session to European social dialogue at the sectoral and company level. The construction sector was chosen due to its importance for the Balkans region. Social

([144]) For further information and links to specific components and workshops, which took place during the programme, follow the link: http://www.eurofound.eu.int/areas/industrialrelations/socialdialogue.htm

([145]) For a list of all the Foundation's projects in 2005 see http://www.eurofound.eu.int/research/projects.htm

([146]) The candidate countries are Turkey, Croatia and the former Yugoslav Republic of Macedonia. Countries aspiring candidate status are Albania, Bosnia-Herzegovina, Serbia and Montenegro and the Kosovo.

partners from the sectoral committees of the European Construction Industry Federation (FIEC) and the European Federation of Building and Woodworkers (EFBWW), as well as the EWC of the Lafarge company presented examples of autonomous bipartite social dialogue in the fields of undeclared work and health and safety. The Commission declared that it would be ready to consider a follow-up to the event, provided that social partners found it useful.

A further important capacity-building tool in the region is the Stability Pact (SP) ([147]), which provides a bridge between the Western Balkans, the candidate countries in SEE, and the Republic of Moldova. The programme is co-financed by the Commission and is targeted at the south eastern European countries of Albania, Bosnia & Herzegovina, Croatia, FYR of Macedonia, Federal Republic of Yugoslavia (including Kosovo & Montenegro). Romania and Bulgaria may also participate in relevant projects.

The overall aim of the SP for south eastern Europe (SEE) is to foster an environment of lasting peace, democracy, prosperity and stability in the region of south eastern Europe. It reflects the will of the countries in this region to develop a shared strategy for stability and growth of the region and to cooperate with each other and major donors to implement that strategy.

There are three working tables under the programme, the first dealing **with** democratisation and human rights issues, the second with economic reconstruction, cooperation and development, and the third with security issues. ([148]) Under Working Table II, the '**Initiative for Social Cohesion**' **(**ISC), attempts to ensure the sustainability of the reform process by underpinning economic reform with improvement in the social sector and to improve the social systems throughout SEE countries. The initiative emphasizes the need for capacity-building measures and the strengthening of institutions. Projects are underway in the following areas: health, social protection, employment and labour market policy, social dialogue, as well as housing policy.

The Stability Pact's strategy and approach for its ISC was revised substantially during 2004. ([149]) Most notably, it redefined its overall mission statement, establishing concrete objectives for its five areas of activity – employment, social dialogue, social protection, housing, and health. The 2004 objectives in the area of social dialogue included the continued strengthening of the capacities of employers' organisations and trade unions, including the establishment of labour courts in the SEE region. Moreover, each labour administration developed a work plan on 'Strengthening social dialogue'.

In October 2005, a joint meeting between the European Trade Union Confederation Balkan Forum and the South East European Employers' Forum in Sofia discussed how to strengthen social dialogue in the region, and in particular how to settle labour disputes. Among the key

([147]) On 10 June 1999, at the EU's initiative, the Stability Pact for South Eastern Europe was adopted in Cologne. In the founding document, more than 40 partner countries and organisations undertook to strengthen the countries of SEE in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the whole region. The Stability Pact is a political declaration of commitment and a framework agreement on international cooperation to develop a shared strategy among all partners for stability and growth in south eastern Europe. The European Commission and World Bank were appointed to coordinate the economic assistance measures for the region. They jointly chair a High-Level Steering Group in which the finance ministers of the G8 countries and the country holding the EU presidency work together with the representatives of international financial institutions and organisations and the special coordinator.

([148]) Further information on the SP can be found at the following website: http://www.stabilitypact.org/about/default.asp

([149]) For further information on the ISC and Working Table II – Economic Reconstruction, Development and Cooperation, follow the link: http://www.stabilitypact.org/wt2/041117-progrep.asp

results, outlined at the meeting, were increased support for the introduction of mechanisms for labour dispute settlement, the publication of a comparative analysis of the treatment of labour disputes in selected Western European countries and SEE and the setting-up of twinning programmes for cooperation between employers' organisations, for example in Romania and Moldova.

Moreover, the participants agreed on the establishment of a joint working group between the Bulgarian social partners and the Ministry of Labour to develop the legislation necessary for the establishment of specialised labour courts. The responsible ministers participating in the Forum also committed themselves to increased regional cooperation in view of their common aim to improve employment policies.

The ISC Action Plan for 2005 prioritises the implementation of measures to deal with long-term unemployment, the creation of opportunities for women and young people, the integration of labour inspection and health and safety as principles to observe in all work environments, as well as the strengthening of institutionalised communication among governments, workers and employers on issues of employment policy.

7. Conclusion

The results and largely positive evaluations of the various social dialogue capacity-building initiatives in the new and prospective Member States described in this chapter are encouraging, and the various project activities have had a considerable impact on the development of social dialogue in the region. However, at the conference on the promotion of social dialogue in an enlarged Europe, organised by DG Employment and Social Affairs in Ljubljana in January 2004, important weaknesses were still detected. ([150]) A first conclusion was that despite progress an independent and voluntary social dialogue still needs to find its feet in many of the new Member States. Doubts were raised in this regard on the availability of independent, structured and representative organisations, especially on the employers' side. The weakness of bipartite social dialogue – particularly in the sectors – was strongly emphasised throughout the conference. A plea was made that sectoral dialogue should be the object of a particular effort, both on the part of the public authorities and of the social partners in the coming years. In line with these detected weaknesses, the point was also made that the involvement of social partners from the new Member States in the European (sector) social dialogue could still be improved. The fragmentation of organisations on both sides of industrial relations in some countries was seen as one of the major problems in this regard.

It should be noted, however, that the social partners are autonomous and that capacity-building continues to be a bottom-up process depending on the will and efforts of the social partners themselves. The project reports have also shown that the visibility and use of social dialogue, as well as the strength of the social partners often depends on the will of national governments to promote social dialogue practices and to implement the relevant labour market legislation.

([150]) European Commission DG Employment and social affairs (2004), Promoting social dialogue in an enlarged Europe, Lublijana, 9-10 January 2004, Luxembourg: Office for Official publications of the European Communities.

Nonetheless, the specific projects conducted by the European social partners and other European agencies have led to concrete achievements, strengthening the position of the social partners and increasing the use of social dialogue and collective bargaining practices throughout the region of central and eastern Europe. Capacity-enhancing social dialogue projects remain a vital tool in guiding the current and prospective candidate countries towards accession to the EU.

CHAPTER 5
EUROPEAN SOCIAL DIALOGUE DEVELOPMENTS

1. Introduction

2005 has been a notable year for European social dialogue ([151]). It has seen the 20th anniversary of the discussions, negotiations and joint actions by European social partners, which have been initiated by then Commission President Jacques Delors in 1985. Some weeks after taking office in January that year, he convened the presidents and secretaries-general of the European Trade Union Confederation (ETUC), of the European association of private employers UNICE and the European association of public employers CEEP in Val Duchesse, a castle on the outskirts of Brussels. This round of talks launched a series of meetings between European trade union and employers representatives at different levels, which led to the adoption of joint opinions, binding agreements and other joint texts and to an institutionalisation of bipartite social dialogue at European level *(see box 5.1 and table 5.1.)*.

Box 5.1: 20 years of European social dialogue

Consultation and cooperation between the social partners began in the 60s and 70s within the advisory committees, the standing committee on employment and the tripartite conferences on economic and social questions. However, it was in 1985, with the launch of a bipartite social dialogue on the initiative of the then President of the Commission, Jacques Delors, that the dialogue really began to evolve into a forum for negotiation on a European level.

When we retrace the evolution of the cross-industry social dialogue in Europe since then, we can see three distinct stages:

During the **first period** (1985-1991), the bipartite activities mainly led to the adoption of resolutions, declarations and joint opinions without any binding power.

The signing, on 31 October 1991, of an agreement between the social partners, which was later incorporated into the Protocol on Social Policy, itself annexed to the Maastricht Treaty (1993), marked the beginning of the **second period**. After this, agreements negotiated by the European social partners could, if they so desired, be given legal force through a decision by the Council, which would then be transposed into the legislation of each Member State. The agreement of 31 October 1991 was integrated into Articles 138 and 139 of the Treaty of Amsterdam, and led to the implementation of three agreements through Council directives (on parental leave in 1995, on part-time work in 1997 and on fixed-term contracts in 1999).

The **third period** was inaugurated in December 2001, when the European interprofessional social partners presented a '*joint contribution*' to the Laeken European Council. This phase is characterised by the growth in independence and autonomy of the European social dialogue. The foundations of this new era were bolstered the following year at

([151]) European social dialogue 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 has a clearly defined legal basis in Articles 138 and 139 of the EC Treaty. Social dialogue takes two main forms — a bipartite dialogue between the European employers and trade union organisations, and a tripartite dialogue involving interaction between the social partners and the public authorities. European social dialogue has resulted in a variety of outcomes, including the adoption of over 300 joint texts by the European social partners. Combining the values of responsibility, solidarity and participation, European social dialogue complements the national practices of social dialogue and industrial relations which exist in all Member States. Furthermore, it is the essential means by which the social partners assist in the definition of European social standards, and play a vital role in the governance of the European Union.

the Social Dialogue Summit in Genval on 28 November 2002 when the social partners adopted their first joint multi-annual work programme for 2003-2005.

This more autonomous social dialogue can also be seen in the second method chosen by the social partners for implementing the negotiated European agreements in Article 139(2), namely 'in accordance with the procedures and practices specific to management and labour and the Member States'. This method was chosen for the '*autonomous*' agreements concluded on telework (2002) and work-related stress (2004). In both cases, the social partners committed to directly implementing them at a national level through their member organisations. They also provide for monitoring procedures, notably through implementation reports.

The Commission has provided support and assistance throughout this evolution, in accordance with the role assigned to it by Article 138 of the Treaty.

Table 5.1: Key events 1985-2006

Dates	Key events
1985	Launch of the bipartite dialogue, initiated and supported by the Commission, traditionally called the 'Val Duchesse process', after the venue of the first meeting. The social partners begin to adopt non-binding joint opinions.
1991	As part of the intergovernmental conference of 1991, the social partners negotiate the agreement of 31 October which proposes reform of the Treaty's decision-making provisions in the field of social policy. These proposals are integrated practically word for word into the Protocol on Social Policy annexed to the Maastricht Treaty.
1993	Commission Communication on the implementation of the Protocol on Social Policy [COM(1993) 600 final].
1995	Conclusion of negotiations on parental leave, the first framework agreement concluded under Article 139 and implemented by a Council directive.
1996	Commission Communication on the development of the social dialogue at a European level [COM(1996) 448 final].
1997	Conclusion of a second framework agreement, implemented by directive, on part-time work.
	The provisions of the Protocol on Social Policy are integrated into the Treaty of Amsterdam under Articles 138 and 139.
1998	The Commission Communication entitled 'Adapting and promoting the social dialogue at a European level' [COM(1998) 322 final] defines the criteria for the creation, composition and management of the Sectoral Dialogue Committees and marks a new departure for the sectoral social dialogue within Europe.
1999	Conclusion of the third framework agreement, implemented though a directive, on fixed-term contracts.
2000	European Council of Lisbon (23-24 March): heads of state and government draw up a strategy for the European Union's economic and social development until 2010. Implementing the Lisbon agenda requires the active participation of the social partners.
	The Nice European Council (7-10 December) approves the Social Policy Agenda. This document emphasises the importance of the social dialogue in promoting competitiveness, solidarity and an appropriate balance between flexibility and security in employment.
2001	Joint contribution of the social partners to the Laeken European Council, demanding a more autonomous social dialogue.
2002	Commission Communication 'The European Social Dialogue, a force for innovation and change' [COM(2002) 341 final].
	A new generation of texts enlarges the social partners' role in implementation and monitoring:

	– in March, the social partners adopt a Framework of Actions for the life-long development of skills and qualifications, which will be implemented through the open method of coordination; – in July, they conclude an agreement on teleworking, the first 'autonomous' Article 139 framework agreement, which they will implement and monitor themselves.
	To develop their autonomous social dialogue, the social partners adopt their first joint multi-annual work programme (2003-2005) during the Social Dialogue Summit in Genval (28 November).
2003	First Tripartite Social Summit for Growth and Employment (20 March), with the Council Presidency, the President of the Commission and top-level representatives from the social partners (on the basis of the Council's decision of 6 March 2003).
2004	Commission Communication 'Partnership for change in an enlarged Europe — Enhancing the role of European Social Dialogue' [COM(2004) 557 final].
	Adoption of the second autonomous framework agreement on work-related stress.
2005	Mid-term review of the Lisbon strategy: The European Council (22-23 March) reiterates the importance of the social partners' active involvement in order to achieve the strategy's objectives on growth and employment.
	Conclusion of the Framework of Actions on gender equality, identifying work priorities for the national social partners.
	Social Dialogue Summit: 20 years of European social dialogue (29 September).
2006	First European sectoral social dialogue conference (13 March).
	Presentation of the second joint multi-annual work programme (2006-2008) at the Tripartite Social Summit (23 March).
	First multi-sectoral agreement signed on crystalline silica (25 April).

1.1. Twenty years of European social dialogue

The 20-year history of European social dialogue was commemorated at the **Social Dialogue Summit** on 29 September 2005 at Palais d'Egmont in Brussels, chaired by Commission President José Manuel Barroso. It was a moment of nostalgia for the 'pioneers' of social dialogue but also of forward-looking reflection. Jacques Delors recalled that European integration had never worked without a social dimension, of which European social dialogue was a crucial component. European and national social partner representatives recollected the considerable achievements over the past 20 years: the historical agreement of 31 October 1991, incorporated into the EC Treaty; the framework agreements of the second half of the 1990s, transformed into EU directives, the multi-annual work programme for 2003-2005 and the recent autonomous agreements and frameworks of action.

President Barroso and Commissioner Vladimír Špidla shared their thoughts on the fields that social dialogue should cover over the coming years, namely demographic change, restructuring and better integration on the labour market. The leaders of the European social partners renewed their commitment to tackle existing and coming challenges for the European labour markets through a constructive dialogue followed by concrete action. They also officially launched their discussions on the next multi-annual work programme for European social dialogue (2006-2008).

Sectoral social dialogue developed at a later stage than its cross-industry counterpart, but has risen in importance in the past few years. This development was honoured by the first European sectoral social dialogue conference which took place on 13 March 2006 in Brussels, bringing together trade unions and employer representatives from all sectors represented in the sectoral social dialogue committees with the participation of Commissioner Špidla. Three main themes were debated: anticipating and managing change; strengthening social dialogue in an enlarged Europe; and answers to demographic challenges. The conference highlighted the increasingly important role of the sectoral social partners in addressing issues such as better working conditions, vocational training and globalisation, central to the EU's Growth and Jobs strategy.

1.2. Social dialogue — a European value

European politics in the second half of 2005 was marked by the constitutional crisis in Europe and efforts by the UK Council presidency to create consensus among European leaders on the modernisation of the European social model and new forms of social justice in the face of globalisation and demographic change. In the run-up to the informal summit at Hampton Court, near London, the European Commission issued a contribution on 'European values in the globalised world, ([152]) well received by Member State governments and the press.

As one of the shared values underpinning all European social models, the paper names '*a strong tradition of social dialogue and partnership between governments, industry and trade unions – even if the detailed mechanisms vary considerably between Member States'*. Both workers and companies all over Europe are attached to their dialogue as a means of fixing working and pay conditions, of settling workplace issues, of ensuring adaptability of workers and of improving the situation on the labour market. More generally, social dialogue is thought to guarantee a fair balance between the interest of workers and companies.

In response to what should be done in a new partnership of the EU and Member States, the Commission communication recommends *inter alia* a '*renewal of social dialogue at all levels'*. Social dialogue should contribute to develop a common understanding of the challenges faced and mobilise support for the solutions proposed. The paper also calls on social partners to '*better articulate what they do at each level',* i.e. improve their capacities to implement European social dialogue results at national level and increase ownership of the Lisbon agenda by national social partner organisations.

The social model debate thus also strengthened the European approach of governance and partnership. Discussions and negotiations by employer and trade union organisations are widely considered to be crucial, on the one hand, to make Europe more competitive and, on the other hand, to guarantee a 'social dimension' to Europe in order reconnect it with its workers and citizens.

2. Contributing to the Lisbon objectives through tripartite consultation

([152]) Commission Communication of 20 October 2005 (COM(2005) 525 final).

2005 also saw the relaunch of the Lisbon strategy in a more focussed and actor-driven form. Following the rather negative assessment of progress by the high-level group under former Dutch Prime Minister Kok in autumn 2004, the Commission proposed a comprehensive mid-term review of the Lisbon strategy in January 2005, ([153]) based on two key principles: refocusing on the priorities of growth and jobs through a considerable reduction of objectives and targets; enhancing ownership of the Lisbon agenda through improved governance, streamlined processes and stronger involvement of all stakeholders. This aim implied a strengthened cooperation with social partners at all levels. The report called for a '*renewed partnership between the Member States and the Union – with the full involvement of the social partners'*. This approach was endorsed by the Spring European Council of March 2005 and followed by the adoption of the Integrated Guidelines on Growth and Jobs (2005-2008) ([154]) and the Community Lisbon Programme. ([155])

2.1. Declaration on mid-term review of the Lisbon strategy

The European social partners at cross-industry level (ETUC, UNICE/UEAPME, CEEP) supported this refocusing exercise and the new emphasis placed on governance and partnership. Their joint declaration on the mid-term review of the Lisbon strategy of March 2005 states that '*Europe's weakness in terms of growth and employment needs to be addressed'*. This can be only be done by '*improving our competitiveness in high added value products and services'* though innovation, technology and productivity. The declaration also states that '*Europe cannot compete with low wage countries for labour intensive products'*.

The trade union side insisted, however, that this refocusing on growth and jobs could not mean that social policy would be relegated to the second row. The social partners therefore developed in their declaration a joint understanding of a number of key elements of the concept of competitiveness: innovation, employability, efficient social protection systems, a supportive public environment and basic principles for environmental and macroeconomic policies.

The declaration further supported stepping up efforts on improving governance in the Lisbon process with a view to bridging the delivery gap. It also stressed the importance of involving social partner both at national and at the European level, both in the implementation and the assessment of results.

2.2. Tripartite Social Summit for Growth and Employment

Since its formal establishment in 2003, the Tripartite Social Summit for Growth and Employment has proved a useful tool for the Commission and the Council Presidency to evaluate progress and discuss particular aspects of the Lisbon strategy with EU and national social partners as well as heads of government and employment ministers of the troika (current and the two succeeding Council presidencies). Beyond the regular Tripartite Social Summit meetings ahead of the Spring

([153]) Commission Communication 'Working together for growth and jobs – A new start for the Lisbon Strategy' of 2 February 2005 (COM(2005) 24 final).

([154]) http://ec.europa.eu/growthandjobs/pdf/integrated_guidelines_en.pdf

([155]) Commission Communication 'Common Actions for Growth and Employment: The Community Lisbon Programme' of 20 July 2006 (COM(2005) 330 final).

European Council in March each year, all EU presidencies in the second semesters since 2003 (Italy, the Netherlands, United Kingdom, Finland) have decided to convoke extraordinary meetings in autumn on specific issues *(see table 5.2)*.

Table 5.2: Panorama of Tripartite Social Summits since 2003

Date	Council Presidency	Event	Themes
20 March 2003	Greece	Tripartite Social Summit for Growth and Employment	Presentation by the social partners of the first follow-up report of the framework of actions for the lifelong development of competencies and qualifications
11 December 2003	Italy	Extraordinary Tripartite Social Summit	Discussion of the report of the Employment Taskforce chaired by Wim Kok ('Jobs, jobs, jobs')
25 March 2004	Ireland	Tripartite Social Summit for Growth and Employment	Presentation of the second follow-up report on lifelong learning and of a report on national social partners' actions on employment
5 November 2004	The Netherlands	Extraordinary Tripartite Social Summit	Discussion of the report from the High Level Group on the Lisbon strategy chaired by Wim Kok ('Facing the challenge')
22 March 2005	Luxembourg	Tripartite Social Summit for Growth and Employment	Discussion on the mid-term review of the Lisbon strategy Social partners' contributions: - Joint declaration on the on the mid-term review of the Lisbon strategy. - Joint contribution on the European Youth Initiative - Presentation of the framework of actions on Gender Equality - Presentation of the third follow-up report on lifelong learning and of the second report on employment.
24 October 2005	United Kingdom	Informal Tripartite Social Summit (London)	Debate on the European economic and social model in the face of globalisation – preparation of the Hampton Court informal summit.
23 March 2006	Austria	Tripartite Social Summit for Growth and Employment	Discussion on the National Reform Programmes and the Annual Progress Report (Lisbon Strategy) and related dossiers Social partners' contributions: - Work programme of the European social partners 2006-2008 - Evaluation report of the Framework of actions for the

			lifelong development of competencies and qualifications

The social partners have valued the opportunity to address Europe's leaders ahead of important decisions in European politics and to make companies´ and workers´ concerns on current EU dossiers heard. They also regular informed the Commission and Council Presidents of new joint initiatives and progress made in their autonomous social dialogue. European heads of government have taken the habit of regularly consultation of social partners at EU level – a tradition shared by many Member States –, thereby enhancing the acceptance of European Council decisions by crucial stakeholders.

2.3. Involvement of social partners at national level

As proposed by the Commission and agreed by the European Council in March 2005, the 25 EU Member States drew up their National Reform Programmes (NRP) in autumn 2005, outlining their three-year strategy on employment, micro-economic and macroeconomic policy, on the basis of the integrated guidelines adopted at European level. In doing so, they were expected to closely involve the national social partner in recognition of the key contribution they can make to the objective of growth and jobs.

The national reform programmes for the Lisbon strategy indicated that in practically all Member States, the social partners have at least been informed and in most cases consulted in some manner in the process, although to varying degrees. However, the NRP are, in principle, government papers.

Sometimes, as in Ireland, where the partnership approach is very prominent, the major political document is the National Partnership Agreement, and the NRP is derived from this. The Finnish NRP has a large consensus based on the tripartite incomes policy agreement. The Slovak and Slovenian NRP are based on national medium-term strategies adopted earlier this year including the involvement of the social partners. In the case of the Netherlands, Sweden and Denmark, separate documents detailing the social partners' contributions have been annexed to the NRP. In Luxembourg a truly tripartite effort has been made, based on the tradition in this country. The importance of a partnership approach, reflected by more extensive consultation of the social partners, is also evident in the case of Belgium, Cyprus, Estonia, Spain, Latvia, Lithuania, Hungary and Malta, although it is not always clear how substantial their contribution has been at this stage and will be in the implementation phase. In a number of Member States, particularly the new ones, the tripartite bodies which exist and which could have formed the basis for a partnership approach, have apparently not been involved or only in a limited way. In France, social partners have been consulted only after the NRP had been submitted to the Commission.

2.4. Annual progress report

In its annual progress report, ([156]) the Commission has pointed out that it expects that the involvement of the social partners will be more substantial and visible in the implementation phase of the strategy. Stronger social partnership was also considered crucial by the Employment Committee in its report to the Council. In the field of adaptability of enterprises and workers, including labour mobility, comprehensive policy strategies have not yet been systematically developed in the national reform programmes. In this context, continuing strong inputs from social partners are needed and the Commission will develop, together with the Member States, a set of commonly agreed principles on flexicurity.

The Commission proposed to hold an extraordinary tripartite social summit in autumn 2006, an initiative taken up by the forthcoming Finnish presidency. The aim of this meeting will be to identify concrete steps to make progress with regard to the actions proposed in the annual progress report and in particular to deal with the impact of globalisation and demographic change on Europe's labour markets. The Spring European Council of March 2006 again insisted in its conclusions ([157]) that an '*effective renewed partnership for jobs and growth will require an active contribution and responsibility of the social partners'*.

2.5. Partnership in the implementation of European cohesion policy

The partnership principle is fundamental to the implementation of European cohesion policy. It implies close cooperation between the Commission, the authorities at national, regional and local level in the Member States as well as social partners and other non-governmental organisations in the different stages of the implementation cycle of the Structural Funds. The Regulations governing the 2000 – 2006 as well as the 2007 – 2013 programming periods call for "close cooperation" in the preparation, implementation, monitoring and evaluation, although it is for the Member States to establish national rules or practice for their inclusion. Annual consultations on cohesion policy take place between the European-level economic and social partners and the Commission.

Various evaluations on the impact of partnership in the Structural Funds have drawn attention to the added value that partnership can bring to the implementation of cohesion policy through enhanced legitimacy, greater coordination, increased institutional capacity of all actors, transparency, and better absorption of funds through improved selection of projects and dissemination of information to potential project promoters.

In the implementation of European Social Fund (ESF), in particular, the social partners are important direct actors on the ground. Therefore, the promotion of partnerships, pacts and initiatives through networking of relevant stakeholders, such as the social partners, is one of the priorities in the new ESF-Regulation. As social partners in many Convergence Regions still lack capacity (see chapter 4 in this report) an appropriate amount of the ESF resources shall be allocated to capacity building measures of social partners in those regions.

([156]) Commission Communication 'Time to move up a gear – The new partnership for growth and jobs' of 25 January 2006 (COM(2006)30 final, Part 1).

([157]) Council document 7765/06.

3. Policy developments in bipartite social dialogue

In their bipartite social dialogue at European level, social partners, both cross-industry and sectoral develop autonomous initiatives that contribute to the achievement of the Lisbon objectives in a wide range of areas: flexicurity, restructuring demographic change and quality of work.

3.1. Flexicurity

The concept of 'flexicurity' has gained prominence during the past few years, reflecting the fact that it can provide a response to the acceleration of economic change linked with technological change, globalisation and ageing. Flexicurity is defined as a set of policies that attempts to simultaneously enhance the flexibility of labour markets and employment security. The notion has been highlighted in the context of the remarkable performance of the labour markets in some Member States, in particular in Nordic countries and the Netherlands, which have introduced reforms that can be referred to as flexicurity models.

It is considered as a modern way of defining employment and social policy, guaranteeing a win-win situation for employers and workers. Thereby flexibility, encompassing external (i.e. recruitment and dismissal) and internal aspects (i.e. work organisation, working time) as well as wage aspects, is beneficial not only for the employer, but also the worker. On the other hand, security, in the form of job security, employability security or income security, can also be in the interest of the employer.

Flexicurity can be promoted through joint efforts in three related areas: ([158])
- labour laws and collective agreements allowing for sufficiently flexible work arrangements and reducing labour market segmentation und undeclared work;
- reliable and responsive lifelong learning systems and active labour market policies;
- sustainable social security systems combining the need to facilitate mobility and labour market participation with the provision of adequate income support.

Introducing such reforms is primarily the responsibility of public authorities, both at Member State and EU level. However social partners can make a serious contribution and they have done so at various occasions in the past: through the cross-industry agreements on part-time work (1997) and on fixed-term work (1999), through sectoral agreements on working time (maritime transport, civil aviation) and non-binding guidelines and recommendations.

3.1.1. Modernisation of employment relations: telework

Telework is considered as a possible tool to bring necessary flexibility into employment relations, which can be in the shared interest of the company and the worker. However, it has to be introduced in a way that is not detrimental to workers' rights and employment security.

([158]) These aspects are highlighted in the Annual Progress Report of the European Commission on the Lisbon Strategy: 'Time to move up a gear – The new partnership for growth and jobs' of 25 January 2006 (COM(2006) 30 final, Part 1).

Following this approach, ETUC (along with the Eurocadres/CEC liaison committee), UNICE/UEAPME and CEEP signed a European framework agreement on telework on 16 July 2002.

This agreement was their first 'autonomous' agreement, i.e. to be implemented by the member organisations of the signatory parties at national level. Article 139(2), which the agreement refers to, establishes the possibility to implement a social partner agreement 'in accordance with the procedures and practices specific to management and labour and the Member States'. The implementation should be carried out within three years after the date of signature, i.e. by July 2005. The agreement foresees that a joint report on the actions of implementation taken will be prepared in the fourth year by an ad hoc working group, under the responsibility of the Social Dialogue Committee. ([159]) This report drafted by the signatory parties is due in July 2006.

What can already be said at this stage is that implementation initiatives in various Member States have been ongoing over the past few years, including in some new Member States, although their social partner organisations, members of the European federations, had not joined the European social dialogue by the time of signature. The pace and extent of efforts has, however, varied considerably in different countries, depending on the motivation of actors involved as well as the traditions and the current context of industrial relations.
Also tools employed differ significantly in their nature and scope: In several countries, social partners chose the classic option of collective bargaining. Notably in Belgium, France, Italy, Luxembourg and Finland, national employer and worker organisations have conducted negotiations on separate agreements to transpose the European text into their national context. In other countries (e.g. Spain), the principles set by the telework agreement have been incorporated in framework agreements covering a range of issues. Due to national traditions, telework has been dealt with in Austria through sector negotiations, while the Finnish deal gives guidelines for sectoral collective agreements to be concluded on this issue.

Social partners in countries with little tradition of national social dialogue at central level have opted for different approaches. The UK social partners have issued, together with the government department, a brochure giving guidance to employers and workers introducing telework. It is intended to explain how the principles of the European agreement might best operate in the context of the UK labour market. In the Netherlands trade unions and employer organisations have opted for recommendations issued by the Labour Foundation, the Dutch social partners' permanent institution. In Ireland, social partners have updated their existing code of practice in the light of the EU-level text.

In Portugal and Hungary, the legislator has taken up the issue of telework in the context of recent reforms of the respective Labour Codes. It has to be verified to what extent these legislative changes have taken into account the principles contained in the European social partner agreement.

([159]) The Social Dialogue Committee, established in 1992, is the main body of cross-industry bipartite social dialogue at European level. It meets 3-4 times a year, allowing both sides of industry (employers and trade unions) to exchange views, formally adopt negotiated texts and plan their joint activities. It is composed of 60 members (30 per delegation) both from the European secretariats and the national social partner organisations.

Implementation of the telework agreement is, however, not only taking place at the national level. The European social dialogue committees in the **electricity** and the **local and regional government** sectors have adopted joint statements on telework, referring to the cross-industry agreement and calling upon their affiliated member organisations to contribute to the implementation of the agreement at national level.

The social partners' implementation report will provide more comprehensive information about the state of implementation. It will be based on the information provided by the national member federations on the content of their measures, the process followed, the main aspects taken into consideration while transposing the European text in the national situation, the reasons for the choice of a certain instrument and the impact at national, sector and company level. This report will be followed by in-depth analysis by the European Commission on the state of implementation and the impact on the ground.

Since the autonomous agreement on telework is the first in its kind, its implementation is a first-time experience and is being followed closely by stakeholders and researchers. In the light of the results of this exercise, European social partners will have to develop efficient working methods to monitor and follow-up the implementation of future European framework agreements and ensure tangible impact on the ground.

Table 5.3: Comparison between a framework agreement and a framework of actions

Text	Framework agreement on telework, 16 July 2002	Framework of actions for the lifelong development of competencies and qualifications, 28 February 2002
Follow-up provisions	*'In the context of Article 139 of the Treaty, this European framework agreement shall be implemented by the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) in accordance with the procedures and practices specific to management and labour in the Member States. This implementation will be carried out within three years after the date of signature of this agreement. Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement.'*	*'The member organisations of UNICE/UEAPME, CEEP and ETUC will promote this framework in Member States at all appropriate levels taking account of national practices. Meetings can be organised at national level for presentation of this document. Given the interest of the matter under consideration, the social partners also decide to transmit this document to all interested players at European and national levels. The social partners will draw up an annual report on the national actions carried out on the four priorities identified. After three annual reports, the social partners will evaluate the impact on both companies and workers. This evaluation can lead to an update of the priorities identified. The ad hoc group on Education and Training will be entrusted with this evaluation, which will be presented in March 2006.'*
Follow-up given	**Implementation** of the agreement by national social partners by July 2005	**Promotion and initiatives** by national social partners during 2002-2005
Monitoring	▪ Joint implementation report by European social partners, based on national reports, due by July 2006 ▪ Upon expiry of the implementation period, monitoring of the agreement by the Commission to assess the extent to which it has contributed to the achievement of the Community objectives	▪ Three annual follow-up reports by social partners (with national fiches), March 2003-2005 ▪ Evaluation report by social partners, March 2006

3.1.2. Lifelong learning and training

Efficient and responsive vocational education and training and lifelong learning systems are part of the concept of flexicurity. They are a means of enhancing workers' and companies' flexibility, enabling them to quickly adapt to new technologies and changes in demand on global markets. On the other hand, they provide some security to workers as they ensure their employability and facilitate occupational mobility. This positive impact of training and lifelong learning is recognised by the social partners who are involved in the organisation of vocational training in the Member States. At European level they have launched a number of initiatives to step up efforts by their national member federations in the field of lifelong learning.

Evaluation of the cross-industry Framework of actions on competence development

At **cross-industry** level, ETUC, UNICE/UEAPME and CEEP adopted in 2002 a 'Framework of actions for the lifelong development of competence of competencies and qualifications'. It identified four priorities and called upon their member federations to implement them:
- identification and anticipation of competencies and qualifications needs;
- recognition and validation of competencies and qualifications;
- information, support and guidance;
- mobilisation of resources.

The framework of action is a process-oriented text, inspired by the Open Method of Coordination. The priorities identified at European level are promoted in Member States at all appropriate levels by the national social partner organisations. Annual reports are drawn up on the national actions carried out to follow-up on the European text. Three annual follow-up reports have been issued (2003, 2004, and 2005), providing an inventory of social partner initiatives in national fiches of almost all EU Member States.

The framework of action required that after three annual reports, the social partners would evaluate the impact on both companies and workers. This evaluation, to be presented by March 2006, could lead to an update of the priorities identified. The **evaluation report**, adopted by the Social Dialogue Committee in January 2006, gives a positive assessment of the impact of the framework of action. Although it does not offer a quantitative analysis, the report states that the text has delivered 'a clear message and a sense of focus to national social partners in most countries', as well as an impetus for change.

The report first provides an overview of the various actions that have been implemented in 20 Member States and Norway. It shows that the issue of competence development has been intensively debated by social partners and that a variety of tools has been used for actions in all four priority areas: On identification and anticipation of needs (priority 1), social partners reported joint studies and surveys on companies' needs, monitoring of trends, action plans at sectoral levels and developing employers-led sector skills bodies. As regards recognition and validation (priority 2), the report mentions collective agreements including provisions to foster validation in companies, sectoral initiatives to develop occupational standards, further development of competence-based qualifications systems, initiatives to help low-skilled workers, unemployed, older workers and immigrants to step into the qualifications system and efforts to enhance the transparency of those systems. In the field of information, support and guidance (priority 3), social partner actions included awareness raising on training opportunities for workers, consultancy services for companies, and development and review of guidance facilities that offer access to tailored information. Concerning the mobilisation of resources (priority 4), national social partners developed approaches of shared responsibility and co-investment, notably through individual learning accounts or learning vouchers, the pooling of resources and the development of bipartite or tripartite training funds.

In total more than 350 examples of initiatives have been reported in the (non-exhaustive) national fiches of the three annual reports, of which over 70 represent good practices by individual companies. The framework of actions has both supported pre-existent actions and helped to bring

about new initiatives. In the new Member States, it has encouraged social partners to get involved in national discussions on the reform of lifelong learning systems. In several instances, it has led to the creation or the reform of tripartite fora on education and training as well as (re)launched social dialogue on lifelong learning. The report recognises, however, that the number of innovative solutions for mobilising resources (priority 4) was limited and that more has to be done to spread tailored information and raise motivation of both workers and companies for competence development (priority 3).

The evaluation report affirms that the follow-up and reporting work has lead to mutual learning across borders and has enhanced the perception of competence development as a shared interest for employers and workers. It has enabled European social partners to contribute in substance to the European cooperation process on vocational training ('Copenhagen process').

The report finally states that the four priorities identified remain valid, but does not give indications as to how European social partners will continue their work on education and training. This will be decided in the framework of their new work programme for 2006-2008, where lifelong learning features prominently.

Sector initiatives on lifelong learning and training

Vocational training and lifelong learning is not only an important topic for the cross-industry social dialogue, but increasingly for the sectoral social dialogue. Sector social partners can develop instruments to improve training systems and provision in a way that is adapted to their field of economic activity. Therefore many sectoral social dialogue committees have launched activities of their own.

Following the agreement signed on vocational training in **agriculture** in December 2002 by the European social partners, the agricultural employers' organisation (GEOPA) organised a seminar in September 2004 to carry out a first assessment of the implementation of the agreement. A questionnaire had been sent to GEOPA member organisations in the 'old' EU-15 Member States. The responses in the form of summary notes for each country outline the developments in four articles of the original agreement – organisation of vocational training, skills assessment, validation of vocational skills and transparency of diplomas. They also summarise the financing of continuing vocational training.

The report highlights the differences and similarities across the Member States. It emphasises that in five countries – Denmark, Sweden, Finland, the UK and Austria – the European agreement has led to negotiations on the possibility of transposing the agreement to the national context. In terms of organisation of training, the social partners are involved to varying degrees. In defining training policy, the social partners are involved to some extent in all countries except Greece. In almost all countries, the social partners are strongly involved in the implementation of training policy when training takes place in training centres.

The report notes that skills assessments, as advocated by the agreement, have not yet become widely implemented or understood outside France, although negotiations were planned or had started in Belgium, the UK and Sweden. All Member States have established or planned schemes

for the validation of vocational skills with varying degrees of sophistication, while national reference centres to establish the transparency of diplomas and certificates exist or are being developed in approximately half of the 'old' EU-15 Member States. In terms of financing continued training, several countries – such as France, the Netherlands, Belgium, Italy and Spain – have established mutual funds into which enterprises pay a certain proportion of the payroll.

Social partners in the **hospitality sector** (EFFAT and HOTREC) adopted in June 2004 specific guidelines for training and development in their sector, with particular emphasis on the needs of SMEs. These guidelines, based on a number of best practice examples, cover skills needs, training plans, motivation, career paths, mentor models, recognition of qualifications and partnership.

In March 2006, the sectoral social partners in the **road transport** sector (ETF and IRU) signed joint recommendations on employment and training in logistics, which is a constantly evolving sector. These recommendations build on the results of a European project on logistics jobs and aim at promoting specific actions in logistics in accordance with the four priorities identified in the cross-industry framework of actions *(see above)*.

In the **chemical industry**, social partners (ECEG and EMCEF) adopted in September 2004 a joint declaration that underlined the lack of skills facing the chemical industry and stated the mutual interest of employers and workers investing in them. A working party was set up to develop an in-depth analysis of the situation relating to skills, qualifications and lifelong-learning and to exchange good practices of the different national systems.

3.1.3. Active inclusion of the people furthest from the labour market

Most Member States have put in place comprehensive social assistance policies and activation policies to bring excluded people back to the labour market, but there is still a sizeable hard core of people with little prospect of finding a job who, for that reason, remain at risk of falling into poverty and social exclusion. The main challenge is to ensure that social protection policies effectively contribute to mobilising people who are capable of working while achieving the wider objective of providing a decent living standard to those who are, and will remain, outside the labour market.

In February 2006 the Commission has adopted a communication 'Concerning a consultation on action at EU level to promote the active inclusion of the people furthest from the labour market' (COM(2006) 44 final). This communication launched a public consultation based on article 138 of the Treaty on possible guidelines for action at EU-level. 'Active inclusion' has been defined as a comprehensive policy mix combining three elements, namely: (i) a link to the labour market through job opportunities or vocational training; (ii) income support at a level that is sufficient for people to have a dignified life; and (iii) better access to services that may help some individuals and their families in entering mainstream society, supporting their re-insertion into employment (through, for instance, counselling, healthcare, childcare, lifelong learning, ICT training, psychological and social rehabilitation).

The Commission invited social partners, public authorities and other civil society stakeholders to give their opinions on possible directions for future action at European level in support of national policies to promote more effective integration of people excluded from the labour market, including the issue as to whether the aspects concerning activation and access to the labour market could be subject of negotiation between social partners. After the first stage consultation and the analysis of the responses, the Commission will formulate its recommendations in 2007 on the basis of which it may proceed to the second phase of the consultation process.

3.2. Anticipation of change and restructuring

Flexicurity as a guiding concept for employment and social policy is particularly relevant in a context of constant economic change due to global markets and technological progress. Anticipating and managing change and restructuring of industrial sectors or companies has become vital for public authorities and social partners. Only by adapting quickly and efficiently to economic change can European enterprises remain competitive and workers remain employable.

In 2005, the Commission called upon the European social partners to become more involved in the ways and means of anticipating and managing restructuring. ([160]) The second-phase consultation (Article 138 EC Treaty) encouraged them to adopt mechanisms to apply and monitor their 'orientations for reference' in this field. ([161]) These best-practice guidelines had been drawn up by the **cross-industry** social partners on the basis of case studies, but did not foresee any implementation or follow-up activities.

The social partners reacted to the consultation with individual opinions, but did not present a joint approach. However, they continued their joint studies on economic and social change in the ten new Member States in the framework of their 'integrated programme' of technical assistance to their new member organisations. In their second joint work programme for 2006-2008, ETUC, CEEP and UNICE/UEAPME agreed to complete the national studies, enlarge them to cover the old EU-15 Member States and on that basis promote and assess the 'orientations for reference'.

3.2.1. Sector initiatives

Several economic sectors in Europe are facing restructuring due to the globalisation of markets, increased competition, deregulation and liberalisation pressures. The second-phase consultation called upon sectoral social dialogue committees to get more involved on restructuring issues, to develop ways of anticipating structural change and to ensure a monitoring and alert function at regional and sector level.

([160]) Communication from the Commission 'Restructuring and employment' of 31 March 2005 (COM(2005) 120 final), constituting the second phase of consultation of the European social partners.

([161]) 'Orientations for reference in managing change and its social consequences', adopted by the European cross industry social partners (UNICE/UEAPME, ETUC, CEEP) on 16 October 2003.

In response to the challenges of restructuring, the **ship-building** social partners jointly developed a 'tool box' containing information about legislation and best practice across Europe to help deal with cyclical fluctuations in demand. The tool box project aims to increase companies' capacity to react flexibly to changing market conditions while retaining employment and a highly skilled workforce. Carried out in collaboration with the European Monitoring Centre for Change (EMCC) of the Dublin Foundation, the project involves a survey of 11 countries to establish a comprehensive list of existing instruments, their legal basis and financial support as well as their effectiveness. In particular it aims to examine instruments in the areas of working time, work organisation, such as secondment schemes and financial measures, such as performance related pay. The intention is to provide a point of reference to the social partners and to facilitate discussions on the most suitable tools.

In addition to the general challenges of globalisation, the **sugar** industry faces very significant restructuring in the face of the reform of the EU sugar market entering into force in 2006. With a view to conform the EU to WTO commitments, sugar production will ultimately have to be reduced by 35 %.

The social partners in the sector have responded to the challenges posed by restructuring in a number of ways. The 2003 Code of Conduct developed by the European social partners deals with restructuring, encouraging the affiliate members to go beyond national and European legislation on information and consultation and recommending measures to improve the employability of workers. Annual reports on progress have been published each February.

In December 2005, the social partners developed an electronic practical guide to accessing structural funds for the sugar industry. It features an interactive facility enabling swift access to the applicable funds depending on the location of each individual factory. The work programme of the sectoral social dialogue committee of the sugar industry for 2006 continues to place an emphasis on the social aspects of restructuring.

Following the adoption in March 2004 of the Single European Sky, an ambitious Commission initiative to reform the architecture of European air traffic control, the air traffic management social partners (CANSO and ETF) in the framework of the sectoral social dialogue committee in **civil aviation** jointly organised a conference on functional airspace blocks (which aim at increasing the size of the airspace in order to make the provision of air traffic services more efficient, whilst maintaining a high level of safety). As these blocks involve the regional collaboration and/or integration of national service providers, such initiatives impinge on the future of the service providers and should be launched through a 'bottom-up approach'.

A joint statement, of September 2004, announced the development of an action plan addressing operational and technical issues, consultation procedures, institutional and cultural issues (to cultivate a blame-free incident reporting mentality). The social partners' reports on these four issues, presented in November 2005, developed joint solutions to the challenges facing air traffic management in Europe. They stressed that the air navigation services providers (the employers) have to play a central role in every stage of the development of the functional airspace blocks and that staff need to be consulted at every stage to respect the principles of the bottom-up approach.

3.2.2. European Works Councils

European works councils (EWC) ([162]) have an essential role to play in anticipating and managing restructuring operations in multinational companies and groups. ([163]) The abovementioned second-phase consultation on restructuring therefore also covered EWC and called upon social partners to promote best practice in the way that EWC operate, with a view to making them more effective, especially as regards their role as agents for change.

In 2004, after the first-stage consultation on EWC, the **cross-industry** social partners decided to discuss the functioning of EWC in the enlarged European Union on the basis of a number of company cases studies. From this experience, UNICE/UEAPME, ETUC and CEEP drew conclusions in a text entitled 'Lessons learned on European Works Councils', adopted in April 2005.

In this text, both trade union and employers acknowledge the '*positive role these bodies can play in improving the information flow between workers and management, allowing for consultation of workers on relevant cross-border issues affecting the group, developing a corporate culture in transnational groups and gaining acceptance for necessary change'*. The text, however, also referred to the cost and complexity of organising transnational information and consultation in EWC.

The 'lessons learned' further name a number of necessary conditions for effective functioning of EWC:
- the establishment of a climate of mutual trust and of informal relations between management and worker representatives in the EWC, which can be encouraged by openness on the side of management to release information at an early stage, and a constructive attitude in the search for solutions on the workers' side;
- the ability to understand complex issues discussed in the EWC and the quality of communication; this can be promoted through training action on language and content issues as well as assistance by experts on the workers' side;
- the reconciliation of different cultures and practices in industrial relations, which can be overcome notably by assigning an important role to European sectoral federations.

The social partners' joint text also points to the challenges ahead for EWC, namely the difficulty to find worker representatives in the new Member States and the need to organise meaningful information and consultation without creating undue delays and uncertainties and while at the same time respecting confidentiality requirements. The text finally recognises that the good functioning is a learning process in constant evolution and requires efforts from both sides to overcome possible misunderstandings and tensions. In a similar way to the 'orientations for reference', the text does not include any provisions for follow-up or monitoring, but the social partners have committed to promote their 'lessons learned on EWC' among their member federations.

([162]) European works councils have been established by Directive 94/45/EC.

([163]) See also section 2.2.1 in Chapter 6.

At **sectoral** level, synergies have been created in several cases between sectoral social dialogue committees and European works councils of large companies or groups active in that particular sector of the economy. Results of the social dialogue in commerce have thus been followed-up by EWC of multinational retail companies.

3.3. Demographic change

Ageing is one of the most urgent challenges facing Europe in the coming years. The Commission's Green Paper of March 2005 ([164]) has pointed to the basic demographic trends that can be observed in all Member States: low birth rates, increases in longevity and the overall ageing of the population. In terms of impact on the labour market, this implies the urgent need to better integrate young people, to develop a 'working life-cycle' approach and to find a new place in society and on the labour market for older people. The Hampton Court informal summit has confirmed demographic change as a priority area for the European Union and the Commission will adopt a Communication during the Finnish Presidency in the second half of 2006, outlining its approach.

Social partners at all levels are concerned with the challenges raised by demographic ageing. They have stepped up their efforts to increase entry into the labour market for young people, make it attractive for older workers to stay employed for longer and to achieve a better work-life balance. The new work programme of the European cross-industry social partners clearly recognises the urgency to develop actions in this field.

3.3.1. European Youth Pact and Active Ageing

In March 2005, the European Council decided to adopt the European Youth Pact ([165]) with a view to improving the education, training, mobility, vocational integration and social inclusion of young Europeans. The aim of the EU leaders was to ensure the overall consistency of initiatives in these areas and to define commonlines of action.

The social partners at **cross-industry** level and in several sectors broadly welcomed this initiative. In a joint declaration, ETUC, CEEP and UNICE/UEAPME recalled their achievements and commitments on integrating young people into the labour market and called for a '*truly intergenerational approach',* taking into consideration actions for youth and active ageing strategies at the same time. The questions of youth integration and active ageing have been taken up by the 2006-2008 work programme as a key challenge.

Their annual joint report on the follow-up to their framework of actions on the lifelong development of competences and qualifications and their joint report on national social partners' actions to implement the European employment strategy also highlight specific initiatives to improve the situation of young people in education, training and their integration into the labour market.

([164]) The Commission Green Paper: 'Confronting demographic change: a new solidarity between the generations' of 16 March 2005 (COM(2005) 94 final) launched a wide public consultation on the EU's role in facing up to demographic change.

([165]) 'European Youth Pact', annexed to the Presidency Conclusions of the Brussels European Council, 22 and 23 March 2005 (Council document 7619/1/05 REV1).

The **commerce** sector social partners (UNI-Europa Commerce and EuroCommerce) supported the European Youth Pact and informed the Commission about their intention to start discussions and negotiations on the integration of young people in the retail trade labour market. The commerce social dialogue committee had already adopted, in 2002, voluntary guidelines supporting age diversity in their sector of activity. These guidelines have been followed up through concrete actions by certain national social partner organisations as well as individual companies.

The European social partners in the **construction**, **hospitality** (hotel, restaurant, café) and **cleaning** industries also welcomed the European Youth Pact, stating that the recruitment of qualified young people is vital for the sustainability of their sectors. They announce activities to attract and retain young workers by improving the image of their sector. This shall be achieved through information and awareness-raising on job opportunities, promotion of education and training and the improvement of working conditions (e.g. more day-time work in the cleaning industry).

Although the ageing workforce has been a major concern of the European social partners over the past few years, it has not featured prominently among the themes of European social dialogue.

3.3.2. Gender equality

Ensuring equal opportunities for men and women in the professional context and guaranteeing a better work-life balance is the best way to bring more people, and women in particular, to the labour market and to promote higher birth rates. In this perspective, the European Commission adopted in March 2006 a Roadmap for equality between women and men, ([166]) outlining six priority areas for EU action on gender equality for the period 2006-2010: equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; and promotion of gender equality in external and development policies. This strategy document underlines the important role of social partners in reducing discrimination and gaps between men and women and encourages their work at both cross-industry and sector levels.

The March 2006 European Council adopted a 'European Pact for Gender Equality' ([167]) (following the model of the European Youth Pact of March 2005), encouraging action at EU and Member State level to close gender gaps and combat gender stereotypes in the labour market, to promote a better work-life balance and to reinforce governance trough gender mainstreaming and better monitoring.

In March 2005 the **cross-industry** social partners, UNICE/UEAPME, CEEP and ETUC, agreed on a framework of actions on gender equality. This is their second framework of actions, with the first one addressing the question of lifelong learning (see above). The document is intended as a

([166]) Commission Communication 'A Roadmap for equality between women and men 2006-2010' of 1 March 2006 (COM(2006) 92 final).

([167]) 'European Pact for Gender Equality', annexed to the Presidency Conclusions of the Brussels European Council, 23 and 24 March 2006 (Council document 7775/06).

social partner contribution to the implementation of the Lisbon objectives in terms of removing disincentives to labour force participation by women and reducing the gender pay gap. It is also intended to complement the EU legislative framework on equal treatment between women and men.

Prior to agreeing on the final text, the social partners held various seminars examining good practice cases of ways in which social partners are contributing to achieving gender equality on the labour market. On the basis of these case studies, they identified four priorities on which they ask national social partners to take action during the next five years:
- addressing gender roles;
- promoting women in decision-making;
- supporting work-life balance; and
- tackling the gender pay gap.

The member organisations of the signatory parties have undertaken to promote the framework of actions in Member States at all appropriate levels taking account of national practices. The national social partners will draw up an annual report on the actions carried out in the Member States on the four priorities identified. On this basis, the European Social Dialogue Committee will prepare an overall European report. After four annual reports, the European social partners will evaluate the impact on both companies and workers. This evaluation can lead to an update of the priorities identified and/or an assessment on whether or not additional action is required in one or more of the priority areas.

The first follow-up report will be prepared for the end of 2006. Social partners already held an exchange on action taken in Member States so far. It appeared that many national organisations had jointly or individually translated the framework of action in their respective language and disseminated the text among their members. In most countries, there were already initiatives ongoing with regard to gender equality, but the framework of action was considered as a useful additional tool. Some organisations had launched joint or unilateral projects, such as drafting manuals, guides and brochures, organising seminars and conferences, etc. In several cases the initiatives were tripartite, i.e. in cooperation with the government. In some countries, the framework of actions was being taken into consideration in collective bargaining rounds and some trade unions had formulated recommendations or clauses for their member organisations to be integrated in collective agreements.

The social partners in the **railway** sector carried out in 2004-2005 a project on the representation and better integration of women in the different professions of the sector. The final report takes stock of the situation and practices in the main railway companies of four countries. It identifies obstacles to be removed (such as cultural stereotypes, the low number of women workers in technical jobs, wage discrimination which is often linked to overtime and night shifts, the difficulty to reconcile work and family life and cases of mobbing and sexual harassment) and proposes an 'Equal Opportunities Path' with a list of actions to be undertaken. These include, for instance, the dissemination of a positive image of female railway workers and the development of non-discriminatory criteria for access to the different railway professions.

3.4. Quality of work

The Lisbon Strategy is not only committed to creating more jobs, but also better jobs. Quality of work has therefore been a focus of EU employment and social policy over the last few years. As recalled by the new Integrated Guidelines ([168]) in 2005, efforts to raise employment rates go hand in hand with improving the attractiveness of jobs, quality at work and labour productivity growth, and reducing the share of working poor. The quality of jobs, including working conditions, organisation of working time, health and safety at work and other workplace issues, is crucial to strengthen social inclusion and to attract more people to the labour market. Over the last few years, quality of work has been one of the areas where social partners have been most active.

3.4.1. Working conditions in the railway sector

The Council adopted on 18 July 2005 a Directive ([169]) which implements the agreement on certain aspects of the working conditions of mobile railway workers assigned to interoperable cross-border services concluded on 27 January 2004 between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF). The agreement seeks to establish common minimum health and safety standards for mobile workers in the European railway freight market, which was liberalised in March 2003.

The aims of the text are to avoid competition solely based on differences in working conditions and to contribute to the improvement of rail transport. The main provisions of the agreement annexed to the directive cover daily rest at home, daily rest away from home, breaks, the minimum weekly rest period and the maximum driving time of the workers concerned. Member States shall comply with the provisions at the latest by 27 July 2008.

3.4.2. Health and safety at work

Occupational health and safety are essential elements in terms of the quality of work, but a safe and healthy working environment and working organisation are also performance factors for the economy and for companies. The EU strategy for health and safety at work for 2002-2006 ([170]) recognises this by adopting a global approach to well-being at work, taking account of changes in the world of work and the emergence of new risks, especially of a psycho-social nature. It is based on consolidating a culture of risk prevention and on combining a variety of political instruments – legislation, social dialogue, progressive measures and best practices, corporate social responsibility and economic incentives.

([168]) See Council decision of 12 July 2005 on Guidelines for the employment policies of the Member States (2005/600/EC).

([169]) Directive 2005/47/EC.

([170]) Commission Communication 'Adapting to change in work and society: a new Community strategy on health and safety at work 2002–2006' of 11 March 2002 (COM(2002) 118 final).

Table 5.4: Article 138 consultations 2004-2006

Date	Subject	Social partners' contribution	Result
2004	Revision of the working-time directive	First phase of consultation launched in December 2003. Second phase of consultation May-July 2004. Social partners declined invitation to enter negotiations.	Commission adopted a proposal in September 2004 amending the working time directive. Discussions ongoing in the Council and European Parliament.
2005	Violence at the workplace and its effects on health and safety at work	First phase of consultation January-March 2005.	Social partners' negotiations at cross-industry level started in February 2006, with the aim of concluding an autonomous agreement by end of 2006.
2005	Revision of the European works councils directive (94/45/EC)	First phase of consultation April-May 2004. Second phase of consultation March-May 2005 in conjunction with second phase of consultation on restructuring (COM(2005) 120 final of 31 March 2005).	
2005	Simplification of the health and safety at work directives concerning the reports on their practical implementation	First phase of consultation April-May 2005. Second phase of consultation October-December 2005	
2006	Active inclusion of the people furthest from the labour market	First phase of consultation March-April 2006. COM(2006) 44 final	
2006	Extension of the scope of the directive on carcinogenic substances (90/394/EEC)	First phase of consultation April – July 2004.	Multi-sectoral agreement on crystalline silica.
2006	Musculoskeletal disorders	First phase of consultation November 2004 – January 2005.	Framework of actions ('Agreement') in the agriculture sector.
2006	Strengthening of maritime labour standards[171]	First phase of consultation June 2006 – September 2006	

Among the initiatives foreseen by the strategy are plans to extend the scope of the directive on 'carcinogenic agents' and to adapt existing legislation to the emerging problem of musculoskeletal complaints so as to take better account of ergonomics at the workplace. In

([171]) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards [COM(2006) 287 final]

accordance with Article 138 EC Treaty, European social partners have been consulted both on the protection of workers from risks related to exposure to carcinogens, mutagens and substances which are toxic for human reproduction and on musculoskeletal disorders at work in 2004. Although the subjects have not been taken up jointly by the cross-industry social partners, some sectors particularly concerned with these health and safety problems have responded to the first-phase consultations by launching own initiatives.

Crystalline silica

In the wake of the Commission consultation on carcinogenic agents in 2004, the risks of the exposure of workers to silica crystalline have caught the attention of several industry sectors. Seventeen European social partner and industrial organisations representing the **extractive industry** and other industrial sectors have negotiated the first multi-sectoral agreement on protecting workers against silica crystalline dusts. The agreement has been formally signed in April 2006 *(see box 5.2)*.

Box 5.2: Multi-sector negotiations on crystalline silica

In April 2006, the first agreement covering a number of industrial sectors in the history of European social dialogue was concluded on the theme of prevention of occupational exposure to respirable crystalline silica, a hazardous chemical agent. This autonomous agreement, to be implemented at national level in accordance with the procedures and practices specific to social partners and the Member States, is also the first in its kind signed in the field of health and safety at work.

The sectoral social partners IMA Europe, EMCEF, EMF, EUROMINES and 13 industrial organisations at European level, representing the mining industry and related industrial sectors (aggregates, cement, ceramics, extractive industry, foundries, glass, industrial minerals, mineral wool, mining, mortar, natural stones, pre-cast concrete), signed the text entitled '*Agreement on Workers' Health Protection through the Good Handling and Use of Crystalline Silica and Products Containing It'*.

Through the implementation of good practices, the agreement aims at improving the protection of over 2 million workers employed in the EU by the signatory sectors from exposure to respirable crystalline silica and at enhancing compliance with EU and Member States' existing workers health and safety legislation.

The agreement also provides recommendations and tools for monitoring of dust exposure, health surveillance, training and research. Each site will establish a monitoring system for the implementation of the good practices. For this purpose, an employee (e.g. the team leader of a site) will be specifically designated by the employer for each site. Employers will report progress made in the implementation process every second year, starting in 2008 (reporting of 2007 data). Each level will be involved in this reporting exercise, from the local sites to the sector associations of the 25 EU Member States. A bipartite monitoring council shall issue a summary report which will be forwarded to the signatory parties and their members, the European Commission and the national authorities responsible for workers' safety.

This text constitutes a strong commitment by the signatory parties. At the conclusion of the negotiations, employers' and workers' representatives as well as the Commission expressed their satisfaction regarding this positive development. They insisted that the successful negotiation paved the way for putting workers' health protection and exposure prevention at the centre of the signatory sectors' concerns and efforts.

The agreement will enter into force within six months, but will remain open for signature by employers and employees of sectors not yet involved and willing to join.

Musculoskeletal disorders

Musculoskeletal disorders represent one of the most important problems of health in the workplace in Europe. Following the Article 138 consultation, the social partners in the **agriculture** sector (EFFAT and GEOPA) signed an agreement in November 2005 on the reduction of the exposure of workers to the risk of musculoskeletal disorders. They recognise the considerable frequency of musculoskeletal disorders (MSD), defined as '*troubles affecting the main articulations of the human body [...] caused by repeated gestures, loading and uploading of heavy weights, whole body vibrations or bad postures',* in their sector and the negative consequences for workers, employers and social security systems. Aiming to maintain agriculture as an attractive sector for workers, they agree that additional measures are necessary.

The 'agreement', which in the typology proposed by the Commission can be defined as a framework of actions, calls on national social partners to implement concrete actions in two fields: first, improving knowledge about work-related MSD in agriculture; and second, setting up concrete prevention policies. To improve the knowledge of the phenomenon, it suggests that 'national observatories of agricultural workers health and safety' be created by social partners in each Member States with the support of the appropriate national bodies. Their task would be to centralise statistics on MSD and compile a register of good practices regarding the prevention of risks. A European-level observatory is also proposed.

As regards the organisation of risk prevention, the text suggests to the national member organisations to help organising national information and training programmes for workers and employers concerning the prevention of MSD with the objective of heightening awareness of the risks. Modules on MSD prevention should be integrated in initial and continuing training programmes, and employers in SME should be provided with methods and documents for carrying out the evaluation of MSD-related risks. Best practices gathered by the observatories should be rolled out to all farms and agricultural enterprises.

The framework of action foresees to set up a monitoring committee, within the sectoral social dialogue committee for agriculture, responsible for evaluating MSD prevention policies in the Member States and the follow-up of the text.

Social partners in the **telecoms** sector (UNI-Europa Telecom and ETNO) have recently completed a project on MSD which consisted in research covering existing scientific literature

and a survey of companies' working practices in this field. On this basis, they drew up good practice guidelines in which the outcomes of the research phase were integrated and set up a thematic website. ([172])

The project findings show that work in the telecommunications sector encompasses a range of activities which can be broadly divided into those relating to a service technician's work and those associated with an office or contact centre environment. In general terms, the former is more likely to include tasks such as manual handling, working at height and use of vibrating tools, whereas the latter is principally concerned with the use of display screen equipment and associated devices.

For both types of activities, the project illustrates general principles of good ergonomic practice that can be applied to work in other economic sectors as well. It identifies the types of MSD most likely to occur in the industry and the activities with which they are associated. It further details a number of telecommunications tasks, quantifying the MSD risks and highlighting a range of preventive measures employed by companies.

Working conditions in the maritime transport sector

The social partners at European level have been very active in the establishment and the adoption of the ILO consolidated maritime labour convention (CMLC), 2006. With a view to facilitating the implementation of the Convention, they have set up a specific working group in the framework of their social dialogue committee. It will analyse related issues, elaborate a joint initiative and possibly reach agreement on the adaptation of Community labour law.

3.4.3. Well-being at work

The abovementioned EU strategy for health and safety identifies new social risks linked to changing work organisation, and especially more flexible ways of organising working time and managing human resources on a more individual level. 'Emerging' illnesses such as stress, depression, anxiety, violence at work, harassment and intimidation are often caused by workplace-related circumstances and have a considerable impact on workers and companies. The past few years have therefore seen social partners focussing on issues related to well-being at work.

Stress at work

Further to the consultation of social partners on work-related stress in 2002, the cross-industry social partners signed their second autonomous agreement on the issue in October 2004. As in the preceding agreement on telework (see above), they stipulate that the agreement had to be implemented by all the member organisations of the signatory parties (UNICE/UEAPME, CEEP and ETUC), in accordance with the procedures and practices specific to social partners in each

([172]) http://www.msdonline.org

Member State. Moreover, the agreement had to be applied within three years of signature, i.e. in October 2007.

In terms of content, the agreement aims to increase the awareness and understanding of employers and workers of the phenomenon of work-related stress. It provides them with a framework to prevent or manage problems linked to stress at the workplace. The text contains a description of stress as a physical and psychological state, establishes responsibilities of employers and workers and identifies guidelines for preventing, eliminating and reducing stress-related problems.

From their previous experience with the telework agreement, the social partners had learned that a proper implementation can only be expected if the social partners at national level receive appropriate information and effective assistance from their European organisations. ETUC therefore developed a project that assisted national organisations in translating and understanding the text and in identifying and proposing methods to implement the agreement. The actions foreseen included the drawing-up of an interpretative guide of the agreement, aiming at helping their members to properly put the provisions of the agreement into practice.

One and a half year after the signature of the agreement, translation into most of the official languages and beyond (languages of the European Economic Area and the candidate countries) had been carried out or were under way. In some cases, the translated text had still to be approved by one or more national organisations. The agreement had generally been disseminated, but actions to inform affiliates of national organisations still had to be improved. In many countries, discussions had been launched bilaterally between employers and trade unions or in tripartite bodies. Real progress in the implementation of the text could, however, only be reported in a limited number of cases: national collective agreements giving guidelines to lower bargaining levels (Spain, Sweden), a guidance brochure drawn up by the national social partners and the relevant government department (UK) and planned cross-industry negotiations (Finland, Luxembourg, Poland): In some countries, the item will be dealt with in the respective tripartite social dialogue forum (Slovenia, Hungary).

General challenges in implementing the text include the fact that work-related stress is sometimes not perceived by national actors as a priority, next to high unemployment, increasing labour market flexibility, wages and restructuring. In a number of countries the issue of implementing the agreement in the public sector was raised, since the public employers are not always represented by the EU social partners. In general, the precedent of the telework agreement helped to pave the way for a smoother implementation process at national level. However, it also showed the difficulties and limits of this implementation method. A full evaluation in the form of the social partners' implementation report is expected by October 2007.

In the meantime, some sectoral social dialogue committees have joined in the efforts to implement the stress agreement. Referring explicitly to the cross-industry text, the social partners in the **electricity** (Eurelectric, EPSU and EMCEF) and the **construction** industries (EFBWW and FIEC) both issued joint texts, respectively in December 2004 and in January 2006, in which they adhere to the principles contained in the cross-industry agreement and undertake to monitor the follow-up within their sectors.

Violence and harassment

Further to the Article 138 consultation of the social partners on violence at the workplace and its effects on health and safety at work (January 2005), the **cross-industry** social partners held a seminar in May 2005, with the aim of undertaking a first exchange of views on how violence and harassment were being dealt with at the national level. The phenomenon was analysed under its triple dimension of physical and psychological ('bullying', 'mobbing') violence and sexual harassment. Both sides agreed that the European level could make a useful contribution, and there was a consensus that efforts should focus in the first instance on prevention and awareness-raising.

ETUC, CEEP and UNICE/UEAPME subsequently informed the Commission of their intention to launch negotiations on violence and harassment at work. After approval of negotiation mandates by their respective decision-making bodies, negotiations started in February 2006. The social partners expect to finalise them with the conclusion of their third 'autonomous agreement' in November 2006.

Social partners in the **sea transport** sector have also been addressing the topic of violence and harassment. In December 2004, they completed a project developing guidelines for shipping companies on eliminating workplace harassment and bullying. The guidelines have been widely disseminated throughout the sector and a video and CD-ROM training package have also been prepared. This initiative was also a contribution to implementing effective company policies on equal opportunities and diversity.

3.4.4. Corporate social responsibility

Corporate social responsibility (CSR) as an important factor of improving quality of work continues to attract and retain interest among the social partners. There is a widely shared understanding of the concept, in line with the definition offered by the Commission ([173]) as the effort of companies to integrate social and environmental concerns into their business operations and into their interactions with stakeholders on a voluntary basis. Social partners in different sectors choose to emphasise different aspects of CSR, while a common thread is a particular stress on the social pillar. In their joint texts, social partners across the sectors recognise and underline the contribution that CSR can make to adding value to and enhancing growth in their own sectors, as well as more broadly promoting the Lisbon goals. In its latest Communication on CSR, ([174]) the Commission indicated that it will continue to promote and support CSR initiatives by stakeholders, including social partners. The sectoral social dialogue committees are an important mechanism in this regard.

([173]) Commission Green Paper 'Promoting a European framework for corporate social responsibility' of 18 July 2001 (COM(2001) 366 final); Commission Communication 'Corporate social responsibility: a business contribution to sustainable development' of 2 July 2002 (COM(2002) 347 final).

([174]) Commission Communication 'Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility' of 22 March 2006 (COM(2006) 136 final).

In the **electricity** sector the social partners (Eurelectric, EPSU and EMCEF) published a joint declaration in December 2004 stipulating that further work be undertaken after their agreement to work on CSR. The partners plan to analyse the current approaches taken by the electricity companies to the question of CSR, focussing in particular on the social dimension. They planned to collect existing texts on CSR in the companies, analyse EU and international reference texts, publish a CSR report based on the Global Reporting Initiative (GRI) standards, analyse the critical success factors of CSR and analyse the social responsibility pillar of the companies according to the suggested performance indicators as developed by the GRI, in areas such as occupational health and safety and relations with communities and stakeholders. A working group was established for this purpose.

In the **postal sector** the European social partners (UNI Europa Postal and PostEurop) issued a joint statement on CSR in November 2005. This highlighted the expansion of the website on social responsibility to include a new collection of good practices relating to life-long learning and CSR more generally. The social partners committed themselves more generally to promoting CSR through daily business activities, raising awareness of CSR in the European postal sector through dialogue and exchange of information and familiarising members with existing good practices and initiatives.

In December 2004, the social partners in the **hospitality industry** (Hotrec and EFFAT) published an initiative on CSR encouraging action beyond the existing legal requirements in areas such as equal opportunities and working conditions. They plan to collect and disseminate best practices across a range of areas. In particular, in its self-proclaimed role as the 'living room' of society, the hospitality sector emphasises the importance of action against discrimination. Other areas of focus include flexible working arrangements, efforts to create sustainable jobs – alleviating the problems of seasonal work – and training. In order to implement, monitor and review developments, the European social partners invited national member organisations to disseminate and discuss the initiative and promised to regularly monitor progress in the suggested areas for acting. Best practices will also be regularly disseminated among national member organisations.

A joint statement from the **banking** social partners (FBE, ESBG, EACB and UNI-Europa) in May 2005 drew attention to the conference held in December 2005 at which best practices in training, learning and development; core labour standards; work-life balance; internal communications and equal opportunities were shared. The statement reiterated the commitments on life-long learning, encouraged improvements to internal communications and emphasised the importance of core standards in job security, discipline and grievance handling. They agreed to follow up the issue within their sectoral social dialogue committee.

The social partners in the **sugar** sector (EFFAT and CEFS) continue to publish annual monitoring reports on the Code of Conduct first drawn up in 2003. The second monitoring report in February 2005 highlighted the publication and dissemination of a brochure on CSR in the sugar industry which has been widely distributed both within the profession and externally. The third monitoring report in February 2006 underlined the efforts made by social partners and sugar companies to manage restructuring in a responsible way and presented three new examples of good practice. The 50 most up-to-date examples of best practice will also be kept on the website of the social partners.

Table 5.5: Social partner joint texts between January 2004 and February 2006

Sector	Title of joint text
Agreements implemented in accordance with Article 139(2): minimum standards	
Cross-industry	• Framework agreement on work-related stress, 8 October 2004
Extractive industry (and 11 industrial sectors)	• Agreement on workers health protection through the good handling and use of crystalline silica and products containing it, 25 April 2006
Railways	• Agreement on certain aspects of the working conditions of railway mobile workers assigned to interoperable cross-border services, 27 January 2004 • Agreement on the European licence for drivers carrying out a cross-border interoperability service, 27 January 2004
Process-oriented texts	
Agriculture	• European agreement on the reduction of workers' exposure to the risk of work-related musculoskeletal disorders in agriculture, 21 November 2005
Construction	• Joint recommendation on the prevention of occupational stress in the construction sector, 10 January 2006
Cross-industry	• Framework of actions on gender equality, 22 March 2005
Local & regional government	• Joint statement on telework, 12 January 2004
Joint opinions and tools	
Agriculture	• Health and Safety in Agriculture. best practices and proposals for action, 23 November 2004
Banking	• Joint Statement – Employment and Social Affairs in the European Banking Sector: Some aspects related to CSR, 18 May 2005
Chemical industry	• Joint Declaration on the establishment of a formalised sector dialogue committee for the European Chemical Industry, 27 September 2004 • Joint Position on REACH, June 2005 Texts adopted before the formal establishment of a sectoral social dialogue committee: • Memorandum of Understanding on Responsible Care, 19 February 2003 • Joint statement on the New European Chemicals Policy (REACH), 27 November 2003 • Joint Position Paper on Education, Vocational Training and Lifelong Learning in the European Chemical Industry, 10 September 2004
Civil aviation	• Joint Statement: Social Partners — Key Players in the Functional Airspace Blocks, 18 September 2004 (CANSO and ETF) • Joint Statement on Quality, Safety and Training in the Ground Handling Sector, 21 January 2005 (ACI Europe and ETF)

	• Statement on the Air Traffic Controllers Licence Draft Directive, 16 June 2005 (CANSO and ETF) • Joint statement on the South East European Functional Airspace Blocks Approach, 23 February 2006 (CANSO and ETF)
Cleaning industry	• Common recommendations of the European social partners for the cleaning industry, 1 March 2004 • Joint declaration: Selecting best value for the public procurement of cleaning services, 17 September 2004
Commerce	• Statement on promoting employment and integration of disabled people in the European commerce and distribution sector, 28 May 2004 • Commitment to support the European Youth Initiative, 16 March 2005 • Joint Statement on the Directive on Services in the Internal Market, August 2005
Construction	• Joint statement on the European Commission's proposal for a directive on services in the internal market, (COM(2004) 002), 2 April 2004 • Joint statement on the European Week for Safety and Health at Work, 30 April 2004 • Second joint statement on the European Commission's proposal for a directive on services in the internal market, 9 November 2004 • Joint Declaration on the occasion of the European Health & Safety Summit 2004 in Bilbao, 22 November 2004 • Joint Statement on Young People, 4 March 2005 • Third joint statement on the European Commission's proposal for a directive on services in the internal market, 19 May 2005
Cross-industry	• Joint declaration on the mid-term review of the Lisbon strategy, 15 March 2005 • Joint contribution on the EU Youth Initiative, 22 March 2005 • Lessons learned on European Works Councils, 7 April 2005
Electricity	• Joint statement on the future skills needs in the European electricity sector, 22 June 2004 • Joint statement: South East European Energy Community, 15 December 2004 • Joint declaration on work-related stress, 15 December 2004 • Corporate social responsibility and the European electricity sector, 15 December 2004
Extractive industry	• Joint statement on general questions of health and safety in raw materials extraction, 18 November 2004 • Joint statement: Need for a European Mineral Resources Strategy, 22 November 2005
Footwear	• Joint statement on marking of origin of footwear imported from third countries, 21 January 2006

Horeca	• Joint recommendation: Guidelines for training and development, especially in SMEs, in the hotel, restaurant and café sector, 11 June 2004 • An initiative for improving corporate social responsibility (CSR) in the hospitality sector, 10 December 2004 • Common reply to the Commission consultation (31 January 2005) on: '2006 – European Year of Mobility for Workers – Towards a European Labour Market', 2 March 2005 • Young people and the hospitality industry — Contribution to the European Youth Initiative, 21 March 2005
Leather/Tanning	• Joint declaration on the EU Origin Marking Scheme, 16 January 2006
Live performance	• Declaration on enlargement of the European social dialogue in the performing arts sector, 18 April 2004 • Joint declaration on the Unesco Convention on the protection and promotion of the diversity of cultural expressions in relation to the GATS-negotiations within the WTO, 23 November 2005
Local & regional government	• Joint statement on EU employment policy, 19 May 2005
Personal services	• Declaration on the evolution of professional hairdresser training in Europe, 21 September 2005 • Convenant on Health and Safety, in particular the Use and Handling of Cosmetic Products and their Chemical Agents, between European Social Partners in the Hairdressing Industry, 21 September 2005
Postal services sector	• Joint statement on Corporate Social Responsibility, 23 November 2005
Private security	• Joint declaration: Towards a European model of private security, 15 October 2004
Railways	• Recommendation on the revision of the Eurovignette Directive, 27 May 2004 • Report on the representation and better integration of women in the different professions of the railway sector, April 2005
Road transport	• Joint recommendations on employment and training in logistics, 31 March 2006
Sea fisheries	• Position regarding the Commission's proposal for a Council regulation on the European Fisheries Fund (COM(2004) 497 final), June 2005
Sea transport	• Guidelines to shipping companies: Equality of opportunity & diversity in the European shipping industry — Eliminating workplace harassment and bullying, 16 December 2004 • Report on the mapping of career paths in the maritime industries, 27 September 2005
Sugar	• Joint position: Commission Green Paper on preferential rules of origin, 2 April 2004
Tanning/leather	• Contribution of the social partners of the European leather industry

	to the EU spring summit, 24 March 2004
Telecommunications	• Guidelines for customer contact centres, 15 June 2004 • Good practice guidelines for the prevention of musculoskeletal disorders within the telecommunications sector, 20 October 2005
Procedural texts	
Horeca	• Rules of procedure of the Social Dialogue Committee in the hotel, restaurant and café sector at European level, 11 June 2004
Inland waterways	• Rules of procedure for the European sectoral social dialogue Committee in the inland waterway transport sector, 9 June 2005
Tanning/leather	• Procedural rules of the sectoral dialogue committee in the leather/tanning sector, 13 September 2004
Follow-up reports	
Cross-industry	• Second follow-up report on the framework of actions for the lifelong development of competencies and qualifications, 5 March 2004 • 2004 Report on social partner actions in Member States to implement Employment Guidelines, 5 March 2004 • Third follow-up report on the framework of actions for the lifelong development of competencies and qualifications, 22 March 2005 • 2005 Report on social partner actions on employment in Member States, 22 March 2005 • Evaluation report of the framework of actions for the lifelong development of competencies and qualifications, 25 January 2006
Sugar	• First Report on the Code of conduct on Corporate Social Responsibility, 26 February 2004 • Second Report on the Code of conduct on Corporate Social Responsibility, 28 February 2005 • Third Implementation Report (2005) on the Code of conduct on Corporate Social Responsibility, 28 February 2006

4. Strengthening working methods

Social dialogue is widely recognised as an essential element of European governance. Over the past few years, social partners have not only focussed on making progress on policy issues, but have strived to improve the functioning of social dialogue. The Commission communication of August 2004 ([175]) had identified key challenges that social partners have to face if they intend to improve the results and impact of European social dialogue. The communication suggested strengthening the links with other levels of social dialogue, mainly national and sectoral, but also in companies. This is particularly important to ensure a proper implementation of the so-called 'new generation texts', i.e. instruments used by social partners which they undertake to follow-up themselves, rather than relying on the EU institutions and Member States.

([175]) Commission Communication 'Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue' of 12 August 2004 (COM(2004) 557 final).

The communication also proposes a new typology of results of social dialogue which aims to make the implications as well as the rights and obligations resulting from social partner texts more transparent. It proposed broadly four categories of texts: agreements establishing standards in accordance with Article 139(2) of the EC Treaty (both directive-based and autonomous agreements); process-oriented texts (frameworks of action, guidelines, codes of conduct, policy orientations); joint opinions and tools; and procedural texts.

The social partners generally welcomed the Commission communication and followed many of the recommendations made. The cross-industry social partners have continuously developed their working methods to enhance the impact of their texts on workers and companies in the Member States. The follow-up of the implementation of their frameworks of action and autonomous agreements was frequently raised in their Social Dialogue Committee or specific working groups. Specific projects have been designed to improve the track record in implementation of texts. These efforts respond to the mutual interest of both sides, both to guarantee an as equal level as possible of implementation across the EU and to strengthen the credibility and reputation of social dialogue.

In many, though not all, instances, social partners have also followed the typology of results proposed by the Commission, in a joint effort to make the outcomes of social dialogue more comprehensible for their member organisations and third parties. The new work programme for 2006-2008 of the cross-industry social partners refers to the negotiation of an 'autonomous' agreement to be implemented by social partners, whereas the previous agreements (on telework and stress) were defined as 'voluntary'.

More generally, this work programme foresees a specific action of the EU social partners to '*further develop their common understandings of [their] instruments and how they can have a positive impact at the various levels of social dialogue'*. This work will be based on their experiences with the autonomous agreements on telework and stress as well as the frameworks of actions on lifelong learning and gender equality. The work programme also states that its '*quality of outcome [...] implies a renewed focus on jointly agreed measures accompanied by effective use and efficient organisation of follow-up provisions and monitoring activities'*.

Box 5.3: New social dialogue website

The European Commission has launched, in January 2005, a new website, dedicated to European social dialogue. It is both a source of information for the general public wishing to learn more about social dialogue and a valuable tool for social partners, researchers and other professionals who work on social dialogue issues on a day-to-day basis.

The website is part of the Commission's efforts to improve information and knowledge about social dialogue and industrial relations. It is available in English, French and German and contains several sections, both informative and practical.

Apart from a general introduction and background on the history, the functioning, different forms, legal basis of social dialogue and information on social partner organisations, the website contains more specific information on cross-industry social dialogue and the work of the sectoral social dialogue committees.

It also provides the following features:
- Studies on representativeness of social partners organisations and list of organisations consulted under Article 138 EC Treaty
- Recent Article 138 consultations
- Information on enlargement and capacity-building for social partner organisations in the new Member States and candidate countries
- Legal texts, communications and publications related to social dialogue
- Reports on industrial relations in European Commission
- Recent outcomes of European social dialogue (social partner texts, work programmes, etc.)
- Information on grants and the social dialogue budget headings
- Relevant news

An essential element is a new database that contains joint texts adopted by European social partners since 1985. There are currently over 400 entries, and texts can be searched for according to several criteria (sector, theme, type and addressee of text). The database is regularly updated with new texts adopted by social partners at cross-industry level or in the sectoral social dialogue committees.

The website is accessible via the European Commission's Europa website (section on employment and social affairs) or directly at:
http://ec.europa.eu/employment_social/social_dialogue/

4.1. Work programmes

The social partners, both at cross-industry and sector level, have strengthened the coherence and predictability of their respective social dialogue by adopting annual or multi-annual work programmes. This development has been encouraged by the Commission, since it improves transparency of the social dialogue and enhances possibilities for synergies between different levels and sectors.

The **cross-industry** work programme adopted at the Social Dialogue Summit in Genval (near Brussels) in November 2002 for the period 2003-2005 has, in the view of the social partners themselves, been '*useful to better focus the European social dialogue over the past three years and to enhance its autonomy'*. Social partners have carried out almost all of the 19 distinct activities foreseen. Among the work programme's greatest achievements are the successful negotiation of a framework agreement on work-related stress (2004) as well as the framework of actions on gender equality (2005). In terms of structural work, the social partners have successfully developed a capacity-building programme to assist social partners of the new Member States joining in the EU social dialogue.

Other important achievements include:
- three annual follow-up reports (2003-2005) and the evaluation report (2006) of the Framework of actions for the lifelong development of competencies and qualifications;

- two annual reports (2004, 2005) on social partner actions in Member States to implement the employment guidelines;
- two joint texts on restructuring ('orientations for reference', 2003) and European works councils ('lessons learned', 2006);
- joint studies on economic and social change in the 10 new EU Member States (2005-2006);
- a joint declaration on employment of people with disabilities (2003);
- the launch of the negotiations on violence at work (2006);
- monitoring of the implementation of the autonomous agreements on telework and stress;
- joint seminars on mobility (2003), restructuring (2003), gender equality (2004), European works councils (2004), active ageing (2005) and undeclared work (2005), based on a number of case studies.

The work programme has enabled the social partners to conduct a better medium-term planning of their joint activities and has strengthened the autonomous social dialogue. It has, however, not prevented the social partners from reacting to Commission consultations or jointly discussing other issues. Some initiatives that could not be fully developed in substance under their first work programme (e.g. youth, active ageing, and undeclared work) have been carried over to their next one.

The successful implementation of their first joint work programme has led social partners to continue this exercise. At the Social Dialogue Summit in September 2005, they formally started their discussions on the next agenda for social dialogue. At this occasion, the Commission communicated its ideas on the topics the new work programme should cover in its view, given the current challenges on the labour market: demographic change, flexicurity, restructuring and integration on the labour market. After some months of negotiation, a final draft was finally agreed at the Social Dialogue Committee in January 2006.

After final approval by the European organisations decision-making organs, the **Work Programme of the European social partners for 2006-2008** was presented to the Commission and the Council at the Tripartite Social Summit in March 2006. It is clearly centred on the Lisbon strategy and covers a wide range of issues, but, contrary to the last work programme, it does not constitute a 'shopping list' of individual initiatives. Instead, the authors decided to formulate it in a more strategic way, embedding it in the current challenges facing the EU. According to the text, '*the European social partners want to contribute to and promote growth, jobs and the modernisation of the EU social model'*. Rather than only listing the initiatives, the programme focuses on key challenges, in order to ensure that social dialogue deals with '*major concerns of Europe's workers and employers'*.

In detail, the social partners agreed on the following actions:

- The social partners will undertake a joint analysis of the key challenges facing Europe's labour markets, looking at issues such as: macroeconomic and labour market policies; demographic change, active ageing, youth integration, mobility and migration; lifelong learning, competitiveness, innovation and integration of disadvantaged groups on the labour market; balance between flexibility and safety; undeclared work.
- On that basis, they will make joint recommendations to the European and national institutions and will define priorities for a framework of actions on employment by social partners.

- They will negotiate an autonomous agreement, either on the integration of disadvantaged groups on the labour market, or on lifelong training.
- They will finalise their negotiations on an autonomous agreement on violence and harassment at work, aiming to conclude in November 2006.
- Regarding restructuring, they will extend their joint studies carried out so far in the new Member States to all Member States and will promote and evaluate their joint texts in this area ('orientations for reference' and 'lessons learned on EWC').
- The social partners will continue their work of capacity building of their member organisations in the new Member States and the candidate countries.
- They will continue to report on the implementation of their autonomous agreements on telework and on stress and to monitor the framework of action on gender equality.

The social partners clearly see this text as their agenda for the autonomous social dialogue and do not exclude taking up other topics. They state that they do not consider their work programme as an exhaustive list and '*may decide to up-date it in the light of developments in the EU. Furthermore they will continue to monitor the implementation of the European Growth and Jobs Strategy'*.

The Commission has welcomed the work programme as a useful contribution to the achievement of the Lisbon objectives, complementing the European institutions' and Member States' actions. In accordance with its role assigned by Article 138 EC Treaty, the Commission will provide its support for implementing the work programme. The Spring European Council of March 2006 welcomed the new multi-annual work programme as a '*valuable instrument'* in the context of the renewed partnership for growth and jobs.

Box 5.4: New cross-industry social dialogue work programme for 2006-2008

Work Programme of the European Social Partners 2006-2008

UNICE/UEAPME, CEEP, ETUC (and the liaison committee EUROCADRES/CEC) reiterate their support for the Lisbon Strategy aimed at turning Europe into the most competitive knowledge-based economy in the world, capable of sustainable economic growth, with more and better jobs and greater social cohesion. Europe's weakness in terms of growth and employment needs to be addressed in order to face the challenges of demographic change, globalisation and technological innovation.

The European social dialogue work programme for 2003-2005 has successfully contributed to the implementation of this strategy. It has also been useful to better focus the European social dialogue over the past three years and to enhance its autonomy. The European social partners notably negotiated two framework agreements on telework and work-related stress, two frameworks of actions on lifelong learning and gender equality and developed a programme to assist social partners of the new Member States joining in the EU social dialogue.

Through this second work programme for 2006-2008, the European Social Partners want to contribute to and promote growth, jobs and the modernisation of the EU social model. ETUC, UNICE/UEAPME and CEEP see this work programme as a means of further reinforcing the social partners autonomy. Its quality of outcome in the enlarged EU implies a renewed focus on jointly agreed measures accompanied by effective use and efficient organisation of the follow-up provisions and monitoring activities.

The European Social Partners believe that their new work programme should focus on Europe's major economic and social challenges, in order to ensure that the social dialogue at European level deals with the major concerns of Europe's workers and employers. They will employ a variety of tools in order to realise it.

In order to contribute to enhancing Europe's employment and growth potential and the impact of the European social dialogue, the social partners undertake to make a joint analysis on the key challenges facing Europe's labour markets, looking at issues such as

- macroeconomic and labour market policies,
- demographic change, active ageing, youth integration, mobility and migration,
- lifelong learning, competitiveness, innovation and the integration of disadvantaged groups on the labour market,
- balance between flexibility and security,
- undeclared work.

On that basis, they will:

1. decide appropriate joint recommendations to be made to EU and national institutions, and
2. define priorities to be included in a framework of actions on employment by the social partners, and
3. negotiate an autonomous framework agreement on either the integration of disadvantaged groups on the labour market or life long learning. In order to define their respective mandates, they will explore different possibilities.

Furthermore, the European social partners will

4. negotiate a voluntary framework agreement on harassment and violence in 2006;
5. 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;
6. 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;
7. report on the implementation of the telework as well as the work-related stress agreements and on the follow up to the framework of actions on gender equality;
8. based on the implementation of the telework and stress agreements and the frameworks of actions on the lifelong development of competences and qualifications and on gender equality, further develop their common understanding of these instruments and how they can have a positive impact at the various levels of social dialogue.

CEEP, UNICE/UEAPME and ETUC consider that this work programme does not constitute an exhaustive list. The social partners may decide to up-date it in the light of developments in the EU. Furthermore, they will continue to monitor the implementation of the European Growth and Jobs Strategy.

23 March 2006

The Commission has also urged the **sectoral** social partners to adopt annual or multi-annual work programmes as a means of better organising the work of their social dialogue committees. For 2005 and 2006, all sectoral social dialogue committees have drawn up joint work plans, albeit with variations in detail and ambition. Several themes are recurrent in a large number of these work programmes: training and lifelong learning, diversity and equal opportunities, restructuring, undeclared work, youth integration, corporate social responsibility and social dialogue in the new Member States and candidate countries. Table 5.6 shows the different issues covered by current or recent work programmes in the various sectoral social dialogue committees.

Table 5.6: Topics covered by sectoral social partners' work programmes

Topics / Sectors	Training/ lifelong learning	Restructuring	Demography (youth integration, active ageing)	Capacity-building new Member States	Health and safety	Genderequality / anti-discrimination	Corporate social responsibility	Working conditions (including telework)	Sectoral policy initiatives
Agriculture	x/f				x	f		x	x
Audiovisual	f			x/f					
Banking	x		f	x			x/f		
Chemical industry	f				x/f				x/f
Civil aviation	x/f	x/f							x/f
Cleaning industry					x				x
Commerce			x/f			x/f	x	x	
Construction	x/f		x/f		x			f	
Electricity	x	x				x	f	x	
Extractive industry	x				x/f		f		
Footwear		f					x		x/f
Furniture	f								
Horeca	x/f						f		
Hospital (new)									
Inland waterways	x							x	
Insurance	x								
Live performance	x			x/f	f				
Local and regional government				x		f		x/f	f
Personal services	f				x/f		x		
Postal services	f			f	f		x/f		
Private security							x		x/f
Railways	x/f			x		x/f		x	
Road transport	x/f								x/f
Sea fishing	x				x				x/f
Sea transport	x					x		x	f
Shipbuilding	x/f	x/f					f		
Steel (new)									
Sugar		x/f					x		x/f

Tanning and leather				x/f			x/f		x/f
Telecommunications	f				x/f	f	f	x	x
Temporary work	f			f		f			x
Textile and clothing	x/f	x/f		x/f			x/f		x/f
Woodworking	f			f					f

x = initiatives ongoing or carried out in past few years
f = future initiatives planned in work programmes

4.2. New sectoral social dialogue committees

There are currently 33 sectoral social dialogue committees covering over 50 % of the economy. Since mid-2004, three new sectoral social dialogue committees have been set up and another request is currently being examined by the Commission, in order to verify that the organisations submitting the demand are sufficiently representative of the economic sector they claim to represent. This check is carried out following the established criteria for representativeness as European social partner.

The sectoral social dialogue committee of the **chemical industry** was created in December 2004. Before that date the social partners of the chemical industry had already established an informal social dialogue through their common declaration of December 2002. The employees are represented by the European Mine, Chemical and Energy Workers Federation (EMCEF) which organises 128 European trade unions in 35 countries with more than 2.5 million members. The employers are represented by the European Chemical Employers Group (ECEG). The member organisations of the ECEG stand for companies that employ about 90 percent of the workers in the industry.

Before formally setting up their committee, the social partners signed a memorandum of understanding on Responsible Care in February 2003. The aim of this initiative is to improve and communicate the safety, health and environmental performance of the industry, thus protecting employees, neighbours, consumers and the environment.

In September 2004 the social partners agreed on a joint position paper on education, vocational training and lifelong learning in the European chemical industry. Therein they identify responsibilities and tasks both for the industry and the employees and their respective representatives – on company level, regional, national and European level. Wishing to further develop their initiatives in the field of training, they have set up a working group to deal with these issues. Other current issues are the follow-up of the Responsible Care initiative, industrial policy and health and safety at the workplace.

In June 2006, the 32nd sectoral social dialogue committee at EU level was launched for the **steel** industry, bringing together the European Metalworkers' Federation (EMF) and the European Confederation of Iron and Steel Industries (Eurofer). Eurofer was founded in 1976 and its members are steel companies and national steel associations throughout the European Union. EMF, established since 1971, is the umbrella organisation representing 65 metalworkers' trade

unions from 30 countries, including all 25 EU Member States. EMF already acts as European social partner in the shipbuilding social dialogue committee created in 2003

The steel industry's social partners have consolidated their dialogue for decades under the ECSC Treaty with the aim of boosting the global competitiveness of the European steel industry and stimulating job-creation. During the inaugural meeting, the social partners adopted their rules of procedure and their work programme for 2006-2008. The new committee will deal with the topics of health and safety through the exchange of good practices, the evolution of training needs and tools in the context of demographic changes and of competition for highly skilled workers, as well as the structural changes within the European and global steel industry.

Social partners from the **hospital** sector - the European Federation of Public Service Unions (EPSU) and the European Hospital and Healthcare Employers' Association (HOSPEEM) - launched the 33rd sectoral social dialogue committee in September 2006. EPSU and HOSPEEM had been working for five years - with the support of the European Commission - to formalise this sectoral social dialogue at European level. The new committee monitors the social, economic and employment consequences of EU policies in the health sector. It will also examine how demographic, technological and structural changes within hospitals in Europe affect employment. Their first work programme for 2006-2007 covers the areas of recruitment and retention of personnel in the hospital sector, the age profile of the hospital workforce and the new skill requirements for the workforce in the sector.

Social partners in the **gas** sector have submitted a request to formally establish a sectoral social dialogue committee. The Commission is currently examining the representativeness of the organisations. Reflections are ongoing on the prospects of establishing social dialogue in the field of **central public administrations**.

Table 5.7: Sectoral social dialogue committees

Sectors	Employees' organisations	Employers' organisations	Date of creation
Agriculture	EFFAT	GEOPA/COPA	1999
Audiovisual	EFJ, EURO-MEI, FIA, FIM	ACT, AER, CEPI, EBU, FIAPF	2004
Banking	UNI-Europa	EACB, ESBG, FBE	1999
Chemical industry	EMCEF	ECEG	2004
Civil aviation	ECA, ETF	ACI EUROPE, AEA, CANSO, ERA, IACA	2000
Cleaning industry	UNI-Europa	EFCI	1999
Commerce	UNI-Europa	Eurocommerce	1999
Construction	EFBWW	FIEC	1999
Electricity	EMCEF, EPSU	Eurelectric	2000
Extractive industry	EMCEF	APEP, Euracoal, Euromines, IMA	2002

Footwear	ETUF:TCL	CEC	1999
Furniture	EFBWW	UEA	2001
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
Sectors having submitted a formal request to create a committee			
Gas	EMCEF, EPSU	Eurogas	-

4.3. Use of financial instruments

The European Commission supports social dialogue, in accordance with the task assigned by Article 138 of the EC Treaty, by providing technical facilities for social dialogue committees and ensuring coordination between social partners and European institutions. It also funds, by means of three budget headings, various initiatives by social partners at European, national and regional/local levels as well as initiatives to improve knowledge of industrial relations.

As far as social partners are concerned, these project often focus on the preparation of European social dialogue through best practice and comparative studies or other research, on the elaboration of joint tools, on implementation and follow-up of European social dialogue results and finally capacity-building activities in favour of national social partner organisations, in particular in the new Member States and candidate countries (see Chapter 4).

4.3.1. Evaluation of the Financial Instruments in Support of European Social Dialogue

At the request of the Commission, an external evaluation of its financial instruments in support of European social dialogue was carried out in 2004-2005. The evaluation examined the results and impacts achieved to date of projects supported under the three social dialogue budget headings ([176]) over the period of 2000-2004 and identified ways in which the financial measures to promote social dialogue can be improved and adapted to meet the future needs of an enlarged EU.

Over the examined period, a total of EUR 141.2 million was allocated to projects across the three budget headings. Taking the period as a whole, commitments for budget headings 04 03 03 01 and 04 03 03 02 have been more or less equal and, together, account for just over four-fifths (81.1 %) of the European social dialogue financial instruments' commitments. Since 2000, there has been an increase of around 10 % each year in the overall level of commitments.

The evaluation shows that a large number of European social partner organisations benefited from Community support. A total of 1 011 projects were carried out by 525 different social partner organisations with approximately 185 000 direct beneficiaries, i.e. the participants in the various conferences, workshops and seminars held across the different projects.

Projects generally combined three main types of activity – research, capacity-building, conferences and seminars. The majority of activities contributed directly to one or more of the priorities of European social dialogue financial instruments, such as increasing participation in European social dialogue, supporting the implementation of the European Employment Strategy, increasing awareness of key European legislation, and helping social partner organisations to implement it.

Community added value was also judged to be high with a clear link between the activities supported by the European social dialogue financial instruments and key policies including the Lisbon Strategy, the new Social Policy Agenda and measures to promote better European governance. The evaluators also found that the additionality of the funding was considerable, i.e. that the majority of the actions carried out would not have taken place without the funding possibilities.

The report further underlines that many projects have supported objectives relating to EU enlargement by helping social partner organisations in these countries prepare for adoption of the Community *acquis*. This applies both to specific legislation on, for example, European Works Councils (EWC) but also to European social dialogue itself.

([176]) The three budget headings are: 04 03 03 01: Industrial Relations and Social Dialogue, established specifically to promote development of the social dialogue at cross-industry and sectoral levels; 04 03 03 02: Information and Training Measures for Workers' Organisations; and 04 03 03 03: Information, Consultation and Participation of Representatives of Undertakings, which aims at strengthening trans-national cooperation in the development of employee involvement in multinational undertakings and promoting and supporting the Community '*acquis*'.

The external evaluation, which has not been finalised yet, found that there was scope for wider dissemination of the results of project activities. More emphasis could be placed on the dissemination and sharing of information on project outcomes at a European level.

5. Conclusion

As underlined by its rapid development, European social dialogue remains an essential contribution to and instrument of European employment and social affairs policy. The partnership approach of the reinforced Lisbon Strategy for Growth and Jobs, encompassing European institutions, Member States, social partners and civil society is part of better and more participative governance at EU level. Social partners are key actors to drive forward the modernisation of the European social model at all levels.

Indispensable economic and social reforms in Europe will only be successful if employers and workers sign up to them. Their representatives share the responsibility with public authorities to meet the challenges of globalisation and ageing and their impact on the labour market. Co-operative and consensus-driven attitudes by all actors are crucial requisites to successful consultation, dialogue and negotiation.

In recent years European social partners, both at cross-industry and sectoral level, have delivered useful contributions to improve lifelong learning and to achieve equal opportunities between men and women. They have developed instruments to better anticipate and manage change and to promote health and safety and well-being at work.

In order to maintain and enhance its relevance in the years to come, European social dialogue will need to focus increasingly on strategies to tackle demographic change and to achieve better participation in the labour market, in particular of disadvantaged groups. High unemployment, in particular of young people and the ageing workforce are the main concerns of Europe's workers, companies and societies.

Social partners also need to ensure that the results of European social dialogue benefit its final beneficiaries, i.e. companies and workers. Better links and synergies between different levels of social dialogue have to be established, in particular to improve follow-up of social dialogue results at national and company levels. To achieve this goal, social partners have to further strengthen their working methods, in particular as dissemination of joint texts, monitoring and reporting of progress is concerned.

CHAPTER 6
REVIEW OF EUROPEAN LEGISLATION 2004-05

1. Introduction

Legislative action during the reference period was carried out in the areas of labour law, health and safety at work, anti-discrimination, equality between men and women and free movement of workers including social security issues. ([177])

Legislative acts were proposed or adopted with a view to recast existing legislation, in the fields of health and safety at work, equality between men and women and free movement of workers. This is in line with the European policy aiming at better regulation and simplification. Work is currently underway in the area of labour law aiming at consolidating, modernising and simplifying existing rules.

The Commission services deployed significant efforts in monitoring the correct implementation and application of the EU law. It is to be expected that these efforts will gain increased priority in the future, in the light of the significant legislative activity during the past few years and the massive extension of EU rules as a result of enlargement. The Commission's technical assistance was instrumental in the transposition and implementation of the relevant EU *acquis* in the Member States.

In the field of social dialogue, there was a new development: The European sectoral social partners concluded in January 2004 a European agreement concerning working conditions in the cross-border railway sector. At the request of the social partners, this agreement was later implemented by way of a legally binding Council directive.

2. Labour law

2.1. Working time

2.1.1. Review of the working time directive

On 22 September 2004, the Commission adopted a proposal amending the working time Directive 2003/88/EC. The Committee of the Regions and the Economic and Social Committee gave their opinions on this proposal on 14 April and 11 May 2005 respectively. The European Parliament had its first reading on 11 May 2005. Following this, the Commission presented on 31 May 2005 an amended proposal and which is currently under discussion before the Council. However, two consecutive Employment Councils could reach no agreement on the new proposal and a decision has been postponed to 2006.

([177]) For previous developments in legislation see Industrial Relations in Europe Report 2004, p. 109.

Box 6.1: Why a revision of the working time directive?

The original directive incorporated two important possible derogations:

- The 'opt-out' clause, permitting Member States not to apply the maximum 48-hour limit at all, on the basis of voluntary agreements with individual workers (Article18).
- The four-month reference period for calculating average working time can be extended to one year, although only in specific cases, on the basis of collective bargaining (Article 17).

The Commission was under a legal obligation to re-examine the two derogations within seven years of the Directive's implementation. In December 2003, it started the a consultation on revision of the Directive.

Furthermore, in the last five years, three important rulings by the European Court of Justice (the SIMAP, Jaeger and Pfeiffer cases), have confirmed that 'on-call working time' — when the employee must be available at work — should be defined as working time under the terms of the Directive. Compensatory rest time must be provided. Some Member States have resisted these judgements and used them as a reason for applying the opt-out, especially in the health sector, to doctors working on call in hospitals for example.

The main modifications of the May 2005 proposal are the following:

(a) On-call time

- a new paragraph allows the calculation of the inactive part of on-call time on the basis of an average number of hours or a proportion of on-call time;
- a new paragraph lays down that the inactive part of on-call time cannot be taken into account in calculating the 11 hours daily rest or the 24 hours weekly rest period.

(b) Reference period

The text now foresees that, in case of annualisation of the working time by law, Member States must take the measures necessary to ensure that:

- the employer informs and consults the workers and/or their representatives in good time concerning the introduction of such a reference period;
- the employer takes the measures necessary to avoid or overcome any risk relating to health and safety that could arise from the introduction of such a reference period.

(c) Opt-out

- Opt-out must be laid down by collective agreement or by law;
- Workers having opted-out cannot work more than 55 hours in any week;
- Opt-out will be available only for a period not exceeding three years following the date of implementation of the Directive by Member States (usually three years after adoption of the Directive);
- Member States making use of the opt-out may, 'for reasons relating to their labour market arrangements', ask for the option to be extended beyond the period of three years. The Commission shall decide on the response to this request, giving reasons for its decision.

(d) Reconciliation of work and family life

A new Article sets down that Member States should encourage the social partners to conclude agreements aimed at improving compatibility between working and family life. Member States should also take the measures necessary to ensure that employers inform workers in good time of any changes in the pattern or organisation of working time and that workers are able to request changes to their working hours and patterns, and that employers are obliged to examine these requests taking into account employers' and workers' needs for flexibility.

Box 6.2: The Dellas case as a new example of the Court rulings on on-call time ([178])

In successive rulings (SIMAP, ([179]) Jaeger, ([180]) Pfeiffer, ([181])) the European Court of Justice has held that on-call time performed by a worker where he is required to be physically present on the employer's premises must be regarded in its entirety as working time within the meaning of Directive.
In the case at issue, the French Conseil d'État asked the Court whether a strictly proportional system of equivalence, which consists in taking into account the total number of hours of presence and applying a weighting mechanism to them which reflects the lower intensity of work done during periods of inactivity, can be regarded as compatible with the objectives of the Directive.
The judgement of the Court was much-awaited, essentially in view of the on-going review of the Directive, but also because Advocate General Ruiz-Jarabo Colomer proposed in his opinion that the Court relaxes the definitions and allows the intensity of the work performed to be taken into consideration.
In its judgement of 1th December 2005, the Court did not follow the Advocate General's suggestion and clearly stated that the Directive 'does not provide for any intermediate category between working time and rest periods and (…) that the intensity of the work done by the employee and his output are not among the characteristic elements of the concept of 'working time'' (point 43). It reiterated that 'the fact that on-call duty includes some periods of inactivity is thus completely irrelevant'.
The Court therefore held that the Directive 'must be interpreted as precluding legislation of a Member State which, with respect to on-call duty performed by workers in certain social and medico-social establishments during which they are required to be physically present at their workplace, lays down, for the purpose of calculating the actual working time, a system of equivalence such as that at issue in the main proceedings, where compliance with all the minimum requirements laid down by that directive in order to protect effectively the safety and health of workers is not ensured'.

2.1.2. Sectoral working time regulation: the railway sector

On 18 July 2005 the Council adopted Directive 2005/47/EC, hereby giving a legal status to the concluded Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. ([182])

The year before, the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) had agreed on certain working conditions, in particular rest periods, working time and driving periods to be applied throughout the EU rail market. Subsequently, they requested the Commission to implement that agreement by way of a Council act, in accordance with Article 139 of the EC Treaty, making it thus binding in all Member States. Following this request, the Commission presented a proposal for a directive on this issue on 8 February 2005.

([178]) Judgement of the ECJ of 1 December 2005 in case C-14/04.
([179]) Judgement of the ECJ of 3 October 2000 in case C-303/98.
([180]) Judgement of the ECJ of 9 October 2003 in case C-151/02.
([181]) Judgement of the ECJ of 5 October 2004 in joined cases C-397/01 to C-403/01.
([182]) Previously, the Council has adopted similar working time directives based on a sectoral agreement (seafearers in 1998 and civil aviation in 2000).

The Directive is a major step forward in the development of social dialogue and strikes the right balance between employers' and workers' interests in the railway sector at a time when the international freight market is being opened up to competition.

Directive 2005/47/EC addresses the special needs of the specific group of rail workers engaged in interoperable cross-border services, who were excluded from the original 1993 working time directive but later covered by most of its provisions.

It gives these workers more protection by stipulating a daily rest period of 12 consecutive hours (instead of the 11 in the working time directive), daily breaks of between 30 and 45 minutes, and 24 'double weekly rest periods' (i.e. 48 hours instead of 24) in a year. It also lays down maximum driving periods of nine hours for a day shift and eight hours for a night shift.

It gives employers greater flexibility as it provides for the possibility of reducing the daily rest periods to nine hours instead of the eleven in the working time directive.

Greater flexibility is also introduced for rest periods away from home, which benefits employers but also reduces the amount of time rail workers will spend away from home.

2.2. Employee participation

2.2.1. Restructuring – Revision of the European Works Councils Directive

The issue of corporate restructuring and industrial policy is high on the agenda of the European Union, in line with the renewed Lisbon Strategy, built around the need to generate sustainable growth which benefits all. ([183]) The European Council of 22 and 23 March 2005 stated in particular that 'new forms of work organisation and greater diversity of contractual arrangements for workers and businesses, better combining flexibility with security, will contribute to adaptability. Emphasis should also be placed on better anticipation and management of economic change.' ([184])

The Commission adopted a Communication 'Restructuring and Employment' ([185]) on 31 March 2005. This Communication sets out the measures to be developed or strengthened around the various means that the Union can use regarding anticipation and management of corporate restructuring. It constitutes at the same time the second stage of the consultation of the social partners on corporate restructuring and European works councils.

The Commission's Communication highlights three areas where EU action can help: more focused coordination between EU policies (notably employment, industrial and enterprise, trade and competition policies); adapting the regulatory framework including a Green Paper on the

([183]) See also the section 3.2.2. in Chapter 5.

([184]) Point 33 of the Presidency Conclusions 7619/05.

([185]) Communication from the Commission Restructuring and employment – Anticipating and accompanying restructuring in order to develop employment: the role of the European Union' (COM(2005)120 final) from 31 March 2005.

Evolution of Labour Law in 2006; funding, in particular through a proposal to establish a fund aimed to provide support to areas and workers affected by restructuring; and developing partnerships.

As regards enterprise and industrial policy, the Commission continues to implement the revamped industrial policy which it proposed in April 2004 ([186]) and has issued a communication on the sectoral dimension of industrial policy. ([187]) In particular, this involves a reinforced sectoral and regional follow-up, as better anticipation of change is dependent on a better knowledge of sectors, their outlook, and the levers which can be used to promote growth and employment, in particular in the sectors likely to experience significant changes in the short term. As regards employment and training issues, it involves the European sectoral social dialogue committees where appropriate.

The second phase of consultation of the social partners on both restructuring and European works councils, included in the Communication 'Restructuring and Employment', consists of calling on the social partners to become more involved in the ways and means of anticipating and managing restructuring. They are the key players in terms of effective action on the restructuring front, the best way identified to effectively anticipate change being through social dialogue, involving the social partners (employer and employee organisations). The Commission is thus urging the European social partners to be more pro-active in tackling restructuring.

As early as January 2002, the Commission had made the social partners aware of the restructuring issue, asking them to pinpoint and develop throughout Europe instances of good practice in terms of restructuring. They subsequently spelled out reference guidelines for managing change.

In April 2004, the Commission launched a first phase of consultation on revising the European Works Councils' Directive. Around 750 European works councils are in operation, covering 13 million employees all over Europe. European works councils have an essential role to play in anticipating and managing restructuring operations. Here again, the social partners have undertaken a Europe-wide review to establish principles or guidelines based on an examination of existing councils.

In the light of this work and these contributions, the Commission takes the view that there is a need for more European social dialogue input on these two closely linked questions, as part of the partnership for growth and jobs which lies at the heart of the reinvigorated Lisbon Strategy. The Commission is therefore encouraging the European social partners to intensify ongoing work and to start negotiations with a view to reaching an agreement among themselves on the requisite ways and means for:

- implementing mechanisms for applying and monitoring existing guidelines on restructuring, and a discussion on the way forward;

([186]) Communication 'Accompagner les mutations structurelles: une politique industrielle pour l'Europe élargie' (COM(2004)274 final).

([187]) Commission Communication 'Implementing the Community Lisbon Programme: A Policy Framework to Strengthen EU Manufacturing — towards a more integrated approach for Industrial Policy" — COM(2005) 474 final of 5.10.2005; Commission Staff Working Paper 'Implementing the Community Lisbon Programme: A Policy Framework to Strengthen EU Manufacturing — towards a more integrated approach for Industrial Policy EU Industrial Policy — SEC(2005) 1215 of 5.10.2005; (available online at http://www.ec.europa.eu/enterprise/enterprise_policy/industry/industrial_2005.htm)

- encouraging adoption of the best practices set out in the existing guidelines on restructuring;
- promoting best practice in the way that European works councils operate, to make them more effective, more especially as regards their role as agents for change;
- devising a common approach to the other points in this Communication which are of concern to them, especially training, mobility, the sectoral dimension and the anticipatory aspect.

The Commission follows the work of the social partners and intends to look at the progress made at the 2006 Tripartite Social Summit.

2.2.2. Cross-border Mergers Directive

On 26 October 2005, the European Parliament and the Council adopted Directive 2005/56/EC on cross-border mergers of limited liability companies. ([188]) This directive regulates, among others, the issue of employee participation in the company resulting from the merger.

The Directive will facilitate mergers of limited-liability companies on a cross-border basis, which at present are impossible or entail prohibitive costs. It sets up a simple framework drawing largely on national rules applicable to domestic mergers and avoids the winding up of the acquired company. The Directive covers all limited-liability companies, with the exception of undertakings for collective investment in transferable securities (UCITS). There are special provisions for cooperative societies. Under the Directive, employee participation schemes should apply to cross-border mergers where at least one of the merging companies already operates under such a scheme. Employee participation in the newly created company will be subject to negotiations based on the model of the Directive on involvement of employees in the European Company (SE).

2.3. Temporary agency work

The Commission's proposal for a directive in this area is still blocked before the Council despite the efforts of the Dutch presidency to find a breakthrough at the end of 2004. The aim of the European Agency Workers Directive, is to create a kind of parity between the working conditions and benefits of temporary workers and permanently employed ones. It is a continuation of the policy of creating parity for all 'atypical' workers (as has been implemented for part-time workers).

The Directive proposes that there should be equal treatment of permanent and agency workers in respect of working time, pay, specified maternity rights and prevention of discrimination. The basic framework of the proposed directive is that:

- temporary agency workers should not be given less favourable basic employment conditions than a similar permanent worker, unless this is objectively justified. A temporary agency worker is only entitled to this protection after six weeks of working for the end user company. The basic employment conditions covered by this protection would include pay, the duration

([188]) OJ L 310 of 25.11.2005, p. 1.

of working time, night work, paid holidays, rest breaks and actions taken to combat unlawful discrimination;
- temporary agency workers should be kept informed of permanent vacancies available at the end user company;
- clauses preventing the temporary agency worker from joining the end user at the conclusion of the workers' assignment will be null and void.

The provision causing most alarm is the requirement of equal pay. As currently drafted, the directive would require that a temporary agency worker (with six weeks' service) be paid at the same rate as if they had been taken on by the end user as a permanent worker, by reference to the end user's pay scales and/or collective agreements.

The European Parliament and Council already adopted resolutions in favour of action to protect temporary workers more than 20 years ago. The European Commission submitted a draft Directive in 1982 that was never adopted.

Box 6.3: Chronology of the Temporary Agency Work Directive

In 1990, the Commission put forward proposals to create a minimum level of consistency between different types of contracts, and proposed legislation in three areas: part-time work, fixed-term contracts and temporary work.
In 1995, the Commission launched a process of consultation with the European social partners — employers' and workers' representatives — leading to the start of negotiations between the two sides a year later. The social partners reached agreement in the areas of part-time work and fixed-term contracts, which were formalised as EU Directives in 1997 and 1999 respectively.
In May 2000, the social partner organisations ETUC, UNICE and CEEP launched talks on a temporary work agreement, but after a year of negotiations it became clear that the employers were not going to accept that temporary agency workers' conditions should be on an equal footing with staff in the user company.
In the absence of a deal between the two sides of industry, **in 2002**, the European Commission put forward its own proposal for a Temporary Agency Work Directive.

2.4. Facilitation and monitoring of implementation in the Member States

2.4.1. Implementation/application reports

In 2004, Commission services prepared a working paper on the implementation of Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship. Furthermore, another report from the Commission dealt with the application of Directive 94/33/EC on the protection of young people at work ([189]).

2.4.2. Coordination of the transposition of directives

With a view to provide support to Member States in transposing directives, the Commission has been using the method, whereby a group of national experts is composed in order to coordinate

([189]) See, in this regard, http://ec.europa.eu/employment_social/labour_law/documentation_en.htm#23.

the implementation. Recently this has been the case for the implementation of the European Cooperatives Directive.

As was the case with Directives 94/45/EC (European Works Councils) and 2001/86/EC (workers' involvement in the European Company), the Commission set up an Expert Group composed of national experts and the social affairs counsellors in order to provide a forum for discussing the arrangements for the transposition into national legislation of Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. Since the transposition involves provisions with a transnational dimension, the Expert Group has endeavoured to seek ways of avoiding any contradictions and incoherencies between the various national systems by exchanging information and coordinating the transposition work to be completed by August 2006.

Given the similarities between the European Cooperatives Directive and the European Company Directive, the expert group based itself on the work already accomplished in preparing the transposition of the latter. Furthermore, it focused on the aspects which are particular to the European Cooperatives directive (e.g. Articles 8 and 9). A total of 3 days' meetings were held in 2005 on the basis of 18 working documents presented by the Commission.

The expert group achieved its objectives in the given timeframe. It is expected that its work will have contributed to a smooth transposition and implementation of a complex corpus of legal provisions. The minutes and working documents are now published online. ([190])

2.4.3. The challenge of enlargement

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 should cover not only the new Member States for the transposition and application of all directives in the field of labour law, but also the EU-15 Member States, for the more recent *acquis*.

The studies are being prepared by independent national experts and are expected to be finalised by April 2007.

The Commission is currently monitoring the transposition of the labour law *acquis* in the candidate countries. This monitoring is quite advanced as regards Romania and Bulgaria whose accession is envisaged for 2007. With regard to Croatia and Turkey, the screening exercise is under way.

In order to provide technical assistance to the acceding countries, DG Employment and Social Affairs organised, in collaboration with TAIEX, ([191]) several seminars on issues such as

([190]) These documents can be found online at: http://ec.europa.eu/employment_social/labour_law/documentation_en.htm#11.

([191]) TAIEX is the Technical Assistance and Information Exchange Instrument of the Institution Building unit of Directorate-General Enlargement of the European Commission. Its aim is to provide to the new Member States, candidate countries, and the administrations of the Western Balkans, short-term technical assistance, in line with the overall policy objectives of the European Commission, and in the field of approximation, application and enforcement of EU legislation.

information and consultation of workers and working time. These seminars brought together experts, representatives from the public administration and the social partners of the candidate countries, and permitted a detailed discussion and exchange of experience between the existing and future Member States.

3. Health and safety of workers

3.1. Risks arising from physical agents

3.1.1. Electromagnetic fields

On 29 April 2004, the European Parliament and the Council adopted Directive 2004/40/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). ([192])

The Directive lays down limit values for exposure to electrical, magnetic and electromagnetic fields which are static or magnetic or vary in time, with frequencies of up to 300 GHz, above which no worker may be exposed to. It also sets action values which require employers to take preventive measures as provided for in the Directive. Employers must ensure that workers exposed to this particular risk receive adequate information and training. The Directive also contains provisions concerning appropriate health surveillance for workers exposed to risks from electromagnetic fields. The new Directive applies to all areas of activity without exception.

3.1.2. Artificial optical radiation

On 5 April 2006, the European Parliament and the Council adopted Directive 2006/25/EC on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation). ([193])

The Directive on exposure of workers to optical radiations is the fourth and last separate directive following the decision in 1999 to split the Commission's original proposal for 'physical agents' directive. Separate directives on mechanical vibration, noise and electromagnetic fields have already been adopted. The Directive lays down exposure limit values for the exposure to artificial sources of optical radiation above which no worker may be exposed. It requires employers to carry out risk assessments and gives details on the measures the employer has to take to protect employees. The Directive also includes provisions on workers' rights to information, training, consultation and health surveillance. The Directive does not cover natural optical radiation, from sources such as the sun, but only covers artificial sources of optical radiation. It applies to all areas of activity without exception.

([192]) OJ L 159, 30.4.2004, p. 1.

([193]) OJ L 114, 27.4.2006, p. 38.

3.2. Carcinogens or mutagens

3.2.1. Directive 2004/37/EC on carcinogens or mutagens

On 29 April 2004, the European Parliament and the Council adopted Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work which is the codified version of Directive 90/394/EEC and of its two amendments (Directives 97/42/EC and 1999/38/EC). ([194])

The Carcinogenic Agents Directive 90/394/EEC has been amended twice in the past. The first time to include a binding limit value for benzene, the second one to extend the Directive to mutagens and include binding limit values for hardwood dust and vinyl chloride monomer. The three texts have been the object of a codification exercise leading to a unique consolidated text: Directive 2004/37/CE.

3.2.2. Consultation of the social partners on carcinogens, mutagens and reproductive toxicants

On April 2004, the Commission launched, in accordance with Article 138 of the EC Treaty, the first stage of the consultation of the social partners at Community level on the protection of workers from risks related to exposure to carcinogens, mutagens and reproductive toxicants at work.

The Commission has asked the social partners at European level on the possible direction 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.

3.3. Musculoskeletal disorders

On 9 November 2004, the Commission launched, in accordance with Article 138 of the EC Treaty, the first stage of the consultation of the social partners at Community level on musculoskeletal disorders at work.

Work-related musculoskeletal disorders are nowadays one of the major safety and health problems, which affects both women and men in all sectors of activity throughout the European Union; as a result, they also represent a major cost burden for industry and society.

At present, there is no specific legal provision focusing on work-related musculoskeletal disorders. However, several European Directives — such as Directives 89/391/EEC ([195]) (framework), 89/654/EEC ([196]) (workplace), 89/655/EEC ([197]) (work equipment), 90/269/EEC ([198])

([194]) OJ L 158, 30.4.2004, p. 50.
([194]) OJ L 183, 29.6.1989, p. 1
([195]) OJ L 393, 30.12.1989, p. 1.
([196]) OJ L 393, 30.12.1989, p. 13.

(manual handling of loads), 90/270/EEC ([199]) (display screen equipment) and 2002/44/EC ([200]) (vibration) — apply to musculoskeletal disorders and its prevention.

The Commission has asked the social partners at European level on the possible direction 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 arising or likely to arise from exposure to these risk factors in all workplaces. (see also section 3.4.2 of chapter 5 in this report)

3.4. Chemical agents

3.4.1. Directive 2006/15/EC

On 7 February 2006, the Commission adopted Directive 2006/15/EC establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC. ([201])

In implementation of Directive 98/24/EC, a second list of Community indicative occupational exposure limit values is established for 33 chemical agents listed in the Annex of the Directive. For any chemical agent for which indicative occupational exposure limit values are established at Community level, Member States are required to establish a national occupational exposure limit value taking into account the Community limit value, but may determine its nature in accordance with national legislation and practice.

3.4.2. Non-binding guidelines

On 21 December 2004, the Commission issued, in accordance with Directive 1998/24/EC, guidelines of a non-binding nature to assist Member States in pursuance of the Directive, and in drawing up their national policies on the protection of the health and safety of workers form the risks related to chemical agents at work.

These Guidelines cover analytical methods for the measurement of the indicative occupational exposure limit values of the chemical substances; identification, assessment and control of risks arising from the presence of hazardous chemical agents in the workplace; general principles for preventing risks related to hazardous chemical agents and specific prevention and protection measures for controlling these risks; and medical surveillance and biological monitoring of workers exposed to lead and its ionic compounds.

([198]) OJ L 156, 21.6.1990, p. 9.
([199]) OJ L 156, 21.6.1990, p. 14.
([200]) OJ L 177, 6.7.2002, p. 13.
([200]) OJ L 38, 7.2.2006, p. 36.

3.5. Violence at work

On 23 December 2004, the Commission launched, in accordance with Article 138 of the EC Treaty, the first stage of the consultation of the social partners at Community level on the protection of the health and safety of workers from violence at work. Questions of violence and harassment at the workplace are of growing interest in Europe.

In its communication on a new Community strategy on health and safety 2002-2006, the Commission announced that it would 'examine the appropriateness and scope of a Community instrument on bullying and violence at the workplace'. The Commission has therefore consulted the social partners at European level on the subject of all forms of violence at the workplace, including bullying. In this regard, the Commission was fully aware that the social partners at European level have already included the subject of harassment in their joint work programme 2003-2005. The Commission did not intend to take the place of the social partners, but to contribute to the discussion of the measures necessary with regard to violence at the workplace. Social partners' negotiations at cross-industry level started in February 2006, with the aim of concluding an autonomous agreement by end of 2006.

3.6. European Agency for Safety and Health at Work

On 24 June 2005, the Council adopted Regulation (EC) No 1112/2005 amending Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work. ([202])

This regulation has amended Regulation (EC) No 2062/94 with the aim of improving the efficiency and effectiveness of the Agency and its management structures.

3.7. Implementation progress and simplification of Health and Safety Directives

3.7.1. Practical implementation of Health and Safety Directives

On 5 February 2004, the Commission adopted a communication on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment). ([203])

This report examines how the Framework Directive of 1989 and five of its individual Directives have been transposed and are applied within the 15 old Member States. It also draws conclusions from the application — and in some domains rather the lack of proper application — for Europe's health and safety legislation and its impact on the economy and society.

([202]) OJ L 184, 17.7.2005, p. 5.

([203]) COM/2004/0062 final.

Box 6.4: Communication on the implementation of the Health and Safety at Work Directives

Prevention is the guiding principle for occupational health and safety legislation in the European Union. EU-wide minimum requirements for health and safety protection at the workplace have been adopted. The report examined how the framework directive of 1989 and five of its individual directives have been transposed and are applied within the Member States.

The EU legislation reportedly has had a positive influence on the national standards for occupational health and safety. The statistical evidence as well as the national reporting on achievements point to an important improvement in terms of health and safety protection.

Continued high risk areas largely coincide with the sectors and types of jobs on which the report underlines major shortfalls in proper application, showing the case of a consolidation of compliance with the health and safety *acquis* to further bring down the number of accidents. Sticking out are small and medium-sized enterprises. Also the public sector shows significant shortcomings. High-risk workers are also found amongst the young, those on temporary contracts and those with low qualifications.

The growing complexity of work processes, trends in working conditions and changes in the types of risks encountered as a result, call for a transparent and systematic approach to health and safety at work. Yet, with the exception of the bigger companies, safety and health are seldom an integral part of companies' overall management process.

To clarify and solve misunderstandings and to correct any defective situation that may occur in the application of the legislation is an urgent task. Labour inspectorates have a crucial role to play here: using labour inspectors as agents of change to promote better compliance in SMEs, first through education, persuasion and encouragement and through increase of enforcement, where necessary. The entry into force of the new EU health and safety legislation does not appear to have boosted the number of inspections. In their reports, the Member States point to a chronic lack of resources in their labour inspectorates to cover all aspects of the new legislation, particularly in the SMEs.

3.7.2. Simplification and rationalisation of implementation reports

During 2005, the Commission launched the first (1 April) and the second (11 October) stages consultations with the social partners at Community level on the simplification of the various final provisions of certain directives in the field of health and safety at work which provide that the Member States must report to the Commission, at regular intervals, on the practical implementation of the provisions of the directives concerned.

The final provisions of these directives prescribe different intervals for the submission of the national reports to the Commission, either every five years or every four years. These disparities in the periodicity of the different national reports on practical implementation make the exercise extremely complex and burdensome.

These disparities will be harmonised by a proposal of directive to be adopted by the Commission. The purpose of such a future proposal will be to harmonise the periodicity of the reporting exercise to five years and to include other health and safety directives, 'asbestos' directive (83/477/EEC), 'biological agents' (2000/54/EC) directive and the 'carcinogens or mutagens' directive (2004/37/EC), which, currently, do not provide for the drafting and submission of national reports.

Furthermore, it would be a unique implementation report, containing a general part with general principles and common aspects applicable to all the Directives, complemented by specific chapters which would cover aspects specific to the Directives in question.

4. Equality rights

4.1. Anti-discrimination directives: implementation and impact

The deadline for transposition of the two Anti-discrimination Directives adopted in 2000 expired in 2003, 1 May 2004 for the 'new' Member States. *All* the Member States had to amend their national legislation in order to transpose the Racial Equality and Employment Equality Directives.

The Commission places great emphasis on the application of these Directives in practice, and has examined the legislation of the Member States which transposes them. Without a full and correct transposition of the Directives, individuals will not be able to rely upon their right, under EU law, to non-discrimination. The Commission has also set up a network of independent legal experts in anti-discrimination law, to report on developments in the Member States. ([204]) Reports by the Commission on the application of the Racial Equality Directive and the Employment Equality Directive will be adopted in 2006 and transmitted to the European Parliament and the Council.

Directive 2000/43/EC ([205]) implements the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive'). This Directive covers direct and indirect discrimination, as well as harassment, in the fields of employment, education, social protection (including social security and healthcare), social advantages, goods and services (including housing) available to the public.

Directive 2000/78/EC ([206]) establishes a general framework for equal treatment in employment and occupation ('Employment Equality Directive'). This Directive prohibits direct and indirect discrimination, as well as harassment, in employment and training on the grounds of religion or belief, age, disability and sexual orientation. It includes specific requirements on reasonable accommodation for disabled persons.

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.

([204]) See, in this regard, http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm

([205]) OJ L 180 of 19.7.2000, p. 22.

([206]) OJ L303 of 2.12.2000, p. 16.

These Directives prohibit discrimination in the employment sphere (recruitment, employment and working conditions, promotion, pay, dismissal, vocational training, self-employment, occupation) on *all* grounds. They give bodies such as trade unions and associations the right to help victims of discrimination make formal complaints. In addition, the Member States must promote dialogue with the social partners in order to foster equal treatment and to encourage them to include anti-discrimination rules in collective agreements.

The Directives have broadened the scope of protection against racial discrimination beyond employment to cover other areas of daily life, such as education, social protection (including social security and healthcare), social advantages and access to goods and services (including housing). This was new for the majority of Member States. They have led to the establishment of new specialised bodies at national level, or the reinforcement of existing bodies, in order to provide assistance to victims of discrimination and to promote equality.

4.2 Equality between women and men

4.2.1. Recasting of seven7 equal treatment Directives

On 21 April 2004, the Commission adopted a proposal for a directive of the European Parliament and of the Council on the implementation of the principle of equal treatment of men and women in matters of employment and occupation (recast version). ([207])

The proposal simplifies and updates the existing Community legislation. It merges seven directives on equal treatment of men and women in the fields of pay, access to employment, vocational training, working conditions, occupational social security schemes and on the burden of proof in discrimination cases into one single coherent instrument. Beyond an exercise of mere consolidation, some limited substantive amendments have been introduced in order to modernise Community law and incorporate case-law of the European Court of Justice. After reaching political agreement on 8 December 2005, the common position was adopted in March 2006. On 1 June 2006, during its second reading, the European Parliament adopted a resolution approving the Directive. It was signed on 5 July 2006 and is presently awaiting publication in the Official Journal.

4.2.2. Equal treatment in the access to and supply of goods and services

On 13 December 2004, the Council adopted Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. ([208])

This Directive is based on Article 13 of the Treaty and establishes for the first time the principle of equal treatment of men and women outside the employment field. It prohibits direct and indirect discrimination as well as harassment based on sex, as regards access to and supply of

([207]) COM(2004) 279 final, 21 April 2004.
([208]) OJ L 373, 21.12.2004, p. 37.

goods and services. The use of sex-based actuarial factors in insurance resulting in different premiums for men and women is banned in principle, but Member States may decide not to apply the ban in cases where sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. Nevertheless, all Member States must ensure that insurance costs related to pregnancy and maternity (e.g. health insurance) are attributed equally to both men and women.

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 condition. 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 Member States that acceded to the EU in May 2004.

In this context, the Commission makes extensive use of its network of independent legal experts on the application of Community law on equal treatment between men and women. In the years 2004 – 2006, the network produced a comprehensive overview of national legislation transposing the equal treatment Directives in all the Member States in a series of bulletins. ([209]) It further provided in-depth reports on the transposition of Directive 2002/73/EC in general and of one of its central provisions obliging the Member States to establish bodies for the promotion of equal treatment.

5. Free movement of workers and social security

5.1. Free movement of workers

On 29 April 2004 the European Parliament and Council adopted Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU.

This directive brings together the complex body of legislation that existed in this area. It eliminates the need for EU citizens to obtain a residence card, introduces a permanent right of residence after five years, defines more clearly the situation of family members and restricts the scope for the authorities to refuse or terminate residence of EU citizens who come from another Member State. Member States had until 30 April 2006 to transpose this directive.

([209]) These are accessible on the Internet:
http://ec.europa.eu/employment_social/gender_equality/legislation/bulletin_en.html

5.2 Coordination of social security schemes

5.2.1. Regulation (EEC) No 647/2005

On 13 April 2005, Council and European Parliament adopted Regulation (EEC) No 647/2005 which is one of the yearly amending regulations of Regulation (EEC) No 1408/71 on the coordination of national social security schemes.

It is necessary to regularly amend Regulation (EEC) No 1408/71 in particular to update it in reaction to changes to national social security legislation and the case law of the Court of Justice of the European Communities. This helps to ensure that the application of the different national legislations does not adversely affect persons exercising their rights to free movement within the EU.

Regulation (EEC) No 647/2005 reduces in particular the number of special non-contributory benefits to which special coordination rules apply. These benefits, which are listed in Annex II a of Regulation (EEC) No 1408/71, had to be re-examined in the light of the criteria developed by the recent jurisprudence of the Court of Justice of the European Communities. As a result, the benefits which are no longer mentioned have to be exported, i.e. be paid to a person in another Member State.

5.2.2. Proposal for an implementing regulation to Regulation (EEC) No 883/2004

Further to the adoption of Regulation (EEC) No 883/2004 on 31 January 2006 the Commission has presented a proposal for its implementing regulation which is a pre-requisite for Regulation (EEC) No 883/2004 to apply.

The new Regulation (EEC) No 883/2004 on the coordination of social security schemes will eventually replace Regulation (EEC) No 1408/71. It fundamentally reforms and simplifies the rules for the coordination in the field of social security, thus improving the protection for the citizen. The proposal for the new implementing Regulation will have to be adopted by Council and European Parliament under the codecision procedure which may not be before the end of 2007.

The proposal defines essentially the procedures and steps which in practice are necessary to ensure a uniform application of the principles of coordination laid down in Regulation (EEC) No 883/2004. In particular, the procedures clarify the obligations of the social security institutions amongst each other as well as the mutual obligations between institutions and insured persons.

5.2.3. Proposal for Annex XI of Regulation (EEC) No 883/2004

The Commission adopted a further proposal regarding Regulation (EEC) No 883/2004: it concerns especially entries by Member States into Annex XI of this regulation.

Annex XI lists the special provisions which Member States may apply when applying their national legislation. It is necessary for the proper application of social security coordination rules, and thus the functioning of social security coordination in Member States.

5.3. Portability of supplementary pension rights

The Commission presented on 20 October 2005 a proposal for a directive on improving the portability of supplementary pension rights. This directive intends to support the Commission's 'Jobs and Growth' strategy by making it easier for workers to move jobs and countries. It comes at a time of increased focus on supplementary pensions in the EU, with many countries introducing reforms in anticipation of the effects of ageing populations.

The proposal is designed to reduce the obstacles to mobility within and between Member States caused by present supplementary pension schemes provisions. These obstacles relate to: the conditions of acquisition of pension rights (such as different qualifying periods before which workers acquire rights), the conditions of preservation of dormant pension rights (such as pension rights losing value over time) and the transferability of acquired rights. The proposal also seeks to improve the information given to workers on how mobility may affect supplementary pension rights.

5.4. European Health Insurance Card

The transitional period which was granted to a number of Member States following the launching of the European Health Insurance Card on 1 June 2004 ended on 31 December 2005. Therefore, the European Health Insurance Card is now distributed in all EU Member States as well as Iceland, Liechtenstein, Norway and Switzerland since 1 January 2006. This card replaces the E-forms which were previously needed to obtain healthcare during a temporary stay in a Member State other than the one of insurance.

6. Conclusion: future perspectives

The Commission announced, in its communication of 9 February 2005 on the Social Agenda 2005-2010, several actions in the area of labour law with a view to increasing the quality and productivity of work, and anticipating and managing change.

The publication of a Green Paper on the evolution of labour law, and the ensuing public debate that it will launch, will play a key strategic role for future developments in this field. The Green Paper is expected to analyse current trends in new work patterns and the role labour law can play in tackling these developments, by providing a more secure working environment and by encouraging more efficient transitions on the labour market. The Commission's objective in launching a debate in 2006 on the development of labour law complements its focus on simplification in the context of the broader Better Regulation initiative.

The Green Paper will draw *inter alia* upon a series of studies on the evolution of labour law in the EU-15 during 1992-2002. The country studies carried out by the independent experts at national level were complemented in 2004 by a synthesis report by Prof. Sciarra of Florence University. ([210]) Its conclusions were discussed at a Dutch Presidency conference on labour law which was held in Leiden on 30 September/1 October, 2004. The coverage of this series of studies on the evolution of labour law will be enlarged in order to include the 10 new Member States, Bulgaria and Romania. These new studies will be launched in 2006.

The report by Prof. Sciarra highlights key trends with which policy-makers in the EU have been confronted in recent years. These trends include:

- The relationship between law and collective agreement is evolving. Collective agreements function as important tools adjusting legal principles to specific situations. The relative importance of collective agreements has significantly increased over time.
- New forms of regulation have emerged, including in particular the open method of coordination. These new forms of regulation have in many instances been instrumental for pushing forward a number of positive initiatives.
- Developments in non-standard work such as agency work or economically dependent work are becoming more widespread. Together with more traditional forms of non-standard work like part-time or fixed-term work, these changes in work patterns pose continuing challenges for labour law and employment policy. They can have beneficial effects both for employers and employees on the condition that they are attractive and that a common 'floor of rights' is guaranteed.
- 'Flexicurity' and 'adaptability' are key concepts that should be supported by all relevant actors. A clear shift from the idea of 'job security' to 'employability' and 'employment security' can be observed. Training and lifelong learning are core aspects to make these concepts work. A performing social safety net and an active labour market policy are also important elements in this respect.

The following conclusions reflect the broad consensus among participants at the Dutch Presidency Conference about possible future orientations and issues to be examined:

- *Support for social dialogue:* Measures (both by Member States and the EU) to support the social dialogue should be taken at all levels and social partners should be empowered to fully play their role under changed circumstances; social dialogue should be promoted, while respecting the diversity of national solutions and principles like transparency and democracy.
- *Promoting adaptability:* Measures should be taken to increase the capacity to adapt to new situations and to allow for swift transitions between employment relationships. Increased flexibility should be complemented by appropriate and new forms of security ('flexicurity'), including social security systems and an active labour market policy, that ease transitions. There should be special attention given to lifelong learning.

([210]) See Chapter 2 for more discussion of the results of the these studies.

- *Inclusive labour law and fight against precarious employment situations:* Appropriate solutions are needed for non-standard work and to establish a minimum 'floor of rights' for all workers; particular focus should be put on economically dependent work and agency work; key issues include the promotion of a 'free choice' approach and ensuring that all those active in the labour market be entitled to equal rights and equal opportunities. At a minimum these rights should include health and safety, equality and a guarantee of quality in work.
- *Effective implementation of fundamental rights:* The implementation and demarcation of fundamental rights require particular attention. Consideration also needs to be given to ways to secure full and effective compliance with established rights to preventing them from being undermined.

In addition to the Green Paper, the Commission will proceed with the review of existing legislation wherever justified, in line with the Social Agenda 2005-2010. In particular, legislative work is expected to be carried out with the aim of updating Directive 2001/23/EC (transfer of undertakings), by taking into account cross-border transfers, and to consolidate the various legal provisions on workers' information and consultation.

CHAPTER 7
TRENDS AND POTENTIAL RISKS IN THE EU LABOUR MARKET ([211])

The need to put a stronger emphasis on job creation and economic growth is one of the main policy conclusions emphasised in the mid-term review of the Lisbon Strategy. While significant employment creation is expected to be associated with reaching the Lisbon employment targets, other developments are expected to generate economic growth such as the consolidation of an open market of goods in an enlarged EU-25, the liberalisation of services, and a progressive improvement in human capital as well as research and development. Economic growth could not be sustainable – and employment creation could not remain a long-term process – if it is not also based on strong educational and social policies.

In this perspective the present chapter aims to illustrate new possible risks in the evolving world of work in the EU. The analysis in this chapter will not address the question of employment and of the efficiency of the policies undertaken to fight unemployment per se but instead the impact of the policies implemented by governments, enterprises and social partners on the quality of employment. At the same time, the analysis will focus on non-standard working conditions in order to identify the factors that may create or reinforce the vulnerability of certain categories of workers. These categories would not fit the Lisbon target of creating 'more and better jobs' and represent a challenge to social cohesion and sustainability.

The first section provides a picture of the main trends in working and employment conditions as well as of the actions taken in this area. Then, section 2 identifies structural problems that some trends may create or reinforce. Finally section 3 discusses under which circumstances these structural problems could lead to an increased vulnerability for certain groups or types of workers.

1. Driving forces: push factors and policy incentives

1.1. Facts about flexibility of working conditions

Flexibility and flexible work are terms used to describe a wide range of work styles and employment practices. Broadly speaking, they are used to describe all kinds of employment which differ from the traditional 9-5 full time job with a permanent contract. The 'flexible' aspect of these types of jobs can in different instances relate more to the employees, or to the employer, or to both. That is, from the employees' point of view, flexible work may allow more freedom to organise their employment to fit in with other parts of their life. For an employer, the flexibility may come with the ability to organise labour resources more in line with the varying needs of customers, or with peaks and troughs of demand. In this context the chapter will focus on greater

([211]) Draft prepared by F. Eyraud and D. Vaughan-Whitehead, International Labour Organisation (ILO), on the basis of the information collected in an ongoing EC-ILO project The Evolving World of Work – Progress and Uncertainties in Working and Employment Conditions in Europe with the participation of I. Beleva and V. Tzanov (Bulgaria), V. Franicevic (Croatia), R. Vaskova (Czech Republic), H. Pedersen (Denmark), P. Mehaut (France), B. Nacsa (Hungary), A. Hamandia (Germany), S. Portet (Poland), A. Surubaru (Romania), R. Munoz de Bustillo Llorente (Spain), J. Lundberg (Sweden), and D. Grimshaw (UK).

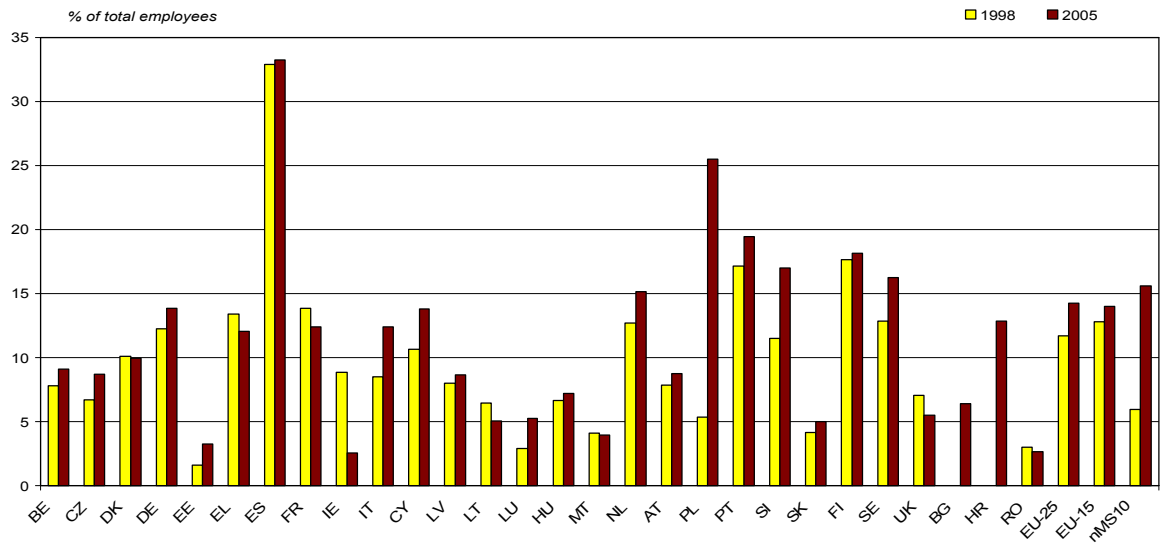
diversity in employment contracts (external numerical flexibility), including certain forms of self-employment and flexible working time arrangements (internal numerical flexibility). Finally also the related issue of low wage employment is presented as a form of work with potential precariousness in the context of combating poverty.

1.1.1. Greater diversity in employment contracts (external numerical flexibility)

Fixed-term contracts

The increase in fixed-term contracts occurred in the early 1990s in the EU Member States; only in the last few years have they begun to increase in most of the 10 new Member States and 3 candidate countries.

Figure 7.1: Employees on fixed-term contracts, 1998 and 2005



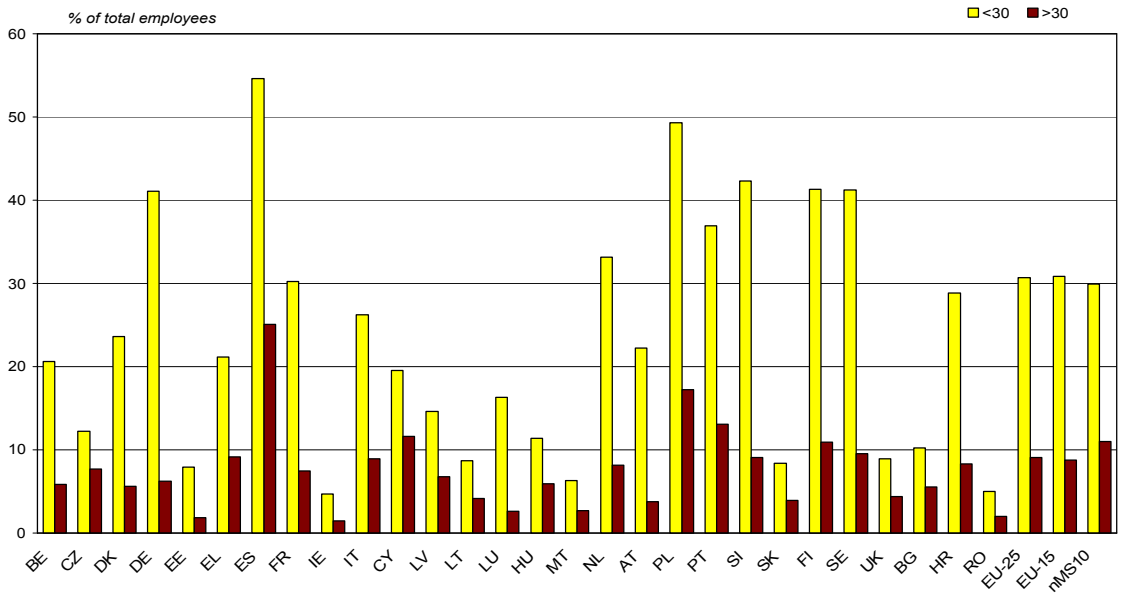
CY and MT: 1998 data are for 2000. Source: Eurostat, Labour Force Survey

While permanent contracts remain the most common labour contract form, fixed-term contracts are on the rise in the majority of countries. As a percentage of total employment, fix-term employment increases from 11.7 in 1998 to 14.2 in 2005 in the EU. The most noticeable increases occurred in Poland (from 5.4 of total employees to 25.5), Portugal (from 17.2 to 19.5), Sweden (from 12.9 to 16.2) and the Netherlands (from 12.7 to 15.2). Some countries display decreases, in particular Ireland (from 8.8 to 2.5) and the UK (from 7.0 to 5.5). A few countries present a percentage of fixed-term employment well above the average in 2005, i.e. Sweden (16.2), Slovenia (17.0), Finland (18.1), Portugal (19.5), Poland (25.5) and the well-known case of Spain with 33.3.

Fixed-term contracts in 2005 mainly concern young employees aged below 30 with 54.6 per cent of them being under such contracts in Spain, 49.3 per cent in Poland and 42.3 per cent in

Slovenia. The percentage of younger workers with this status has doubled since 1998 in these two countries. Also to be noted is that, in some countries, young women seem to be more affected than young men by this form of employment contract, especially in Slovenia, where 48 per cent of women under 30 are affected compared to 38 per cent of their male colleagues of the same age, but also in Finland (48 per cent for women and 36 per cent for men), Sweden (46 per cent versus 36 per cent), and even Cyprus (25 per cent against 15 per cent). The opposite seems to be true for Lithuania (12 per cent for men compared to 5 per cent for women) but also for Latvia. This may be because of the more permanent nature of employment contracts in the public sector where there is a higher proportion of women than men. As is shown in the following graph the share of fixed-term employment of all employees is less than 10 % for employees aged 30 years and over compared to more than 30 % for young persons.

Figure 7.2: Employees on fixed-term contracts by age group, 2005



Source: Eurostat, Labour Force Survey

Temporary agency work

Another form of temporary work should particularly be taken into consideration, although its share of total employment is still relatively low despite a rapid increase in the mid- to late 1990s in most Member States: agency work. Unfortunately, the quality of the data in this area is not fully satisfactory as not all agencies are included. ([212]) However, the following table based on CIETT statistics gives some interesting indications.

([212]) For a more detailed analysis of the statistical shortcoming, see European Foundation For the Improvement of Living and Working Conditions, temporary agency work in the European Union, EFILWC, 2002, 98p.

Table 7.1: Agency workers as a percentage of the total workforce, 2000 and 2004)

	BE	DK	DE	EL	ES	FR	IE	IT	LU	HU
2000		0.30	0.87		0.96	2.10	1.38			
2004	2.20	0.23	1.00	0.1	0.90	2.10	1.25	0.63	2.50	1.35

	NL	AT	PL	PT	SL	SK	FI	SE	UK
2000	4.50							0.96	4.7
2004	2.50	1.38	1.20	0.90	0.5	0.5	0.60	1.00	5.10

Source: CIETT (European Confederation of Private Employment Agencies)

Some form of inverse relationship appears to hold between the use of this type of job and fixed-term contracts; the UK being the main user here while featuring a relatively low rate of fixed-term work. Similarly, the decrease of agency work contracts in the Netherlands could be related to the increase in the use of fixed-term contracts.

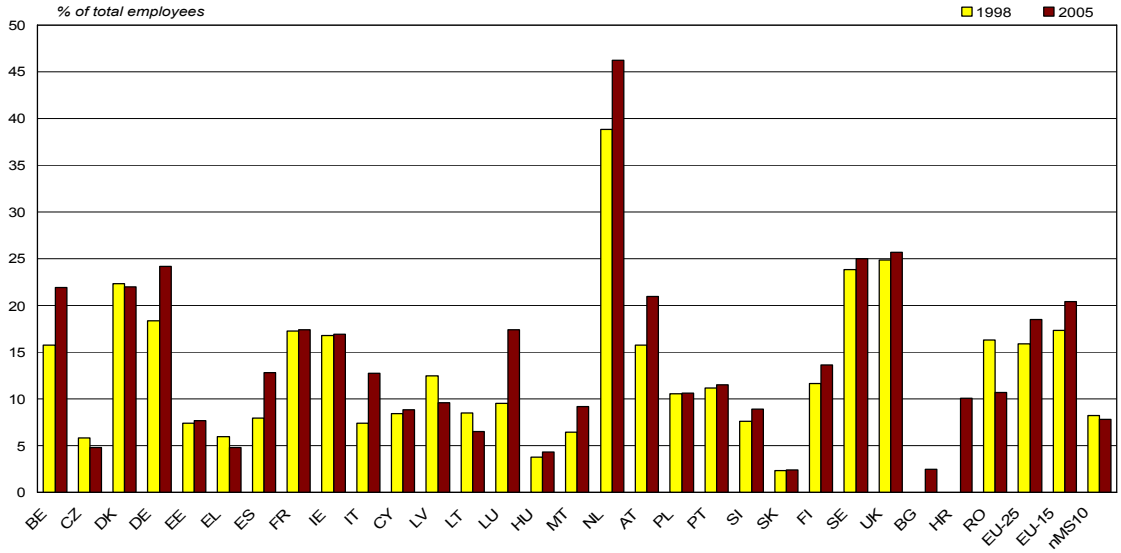
As for fixed-term contracts, agency work could be a port of entry on the labour market toward a more permanent contract. In Sweden for instance, some governmental surveys indicate that around 60 % of those who are hired through an interim agency end up getting employment at the interim agency's customer company. The rate is less than 50 % in the UK and estimated at 30 % in France. Being a 'regular' agency work employee could be a choice of working life. It is estimated that 20-25 % of employees in France chose this type of contract deliberately. However, in most cases temporary agency contracts are concentrated in low-skilled jobs. Temporary agency work is still a new form of employment in most of the new Member States. It is often considered that this is due to the use of other form of non-regular contract and particularly self-employment 'contracts'.

Part-time work

Part-time work has increased in most of the EU countries, from 15.9 % of the total employed population in 1998 (average among the 25 EU countries) to 18.5 % in 2005 in EU-25. However, disparity remains high among countries. Part-time work remains rare in all new EU Member States. The main reason is still the low level of wages, which explains workers' willingness to accumulate working hours to improve their income and living standards. ([213]) On the employers' side, this type of flexibility is not yet integrated in work organisation. Only a slight increase is to be noted during the period in these countries. Undoubtedly, Netherlands is by far the biggest user of part-time work with 46.2 % of the employees in 2005. In addition, the percentage has increased drastically: it was 38.8 % in 1998. Most of the northern European countries exhibit a high percentage (above 20 %): the U.K., Sweden, Germany, Austria, Denmark and Belgium. Apart from the Netherlands, the biggest increases affected Luxembourg (+ 7.9), Belgium (+ 6.1), Germany (+ 5.8), Italy (+.5,4) and Austria (+ 5.2).

([213]) Thus confirming the peculiar nature of part-time work in these countries already identified in EC Industrial Relations Report 2004.

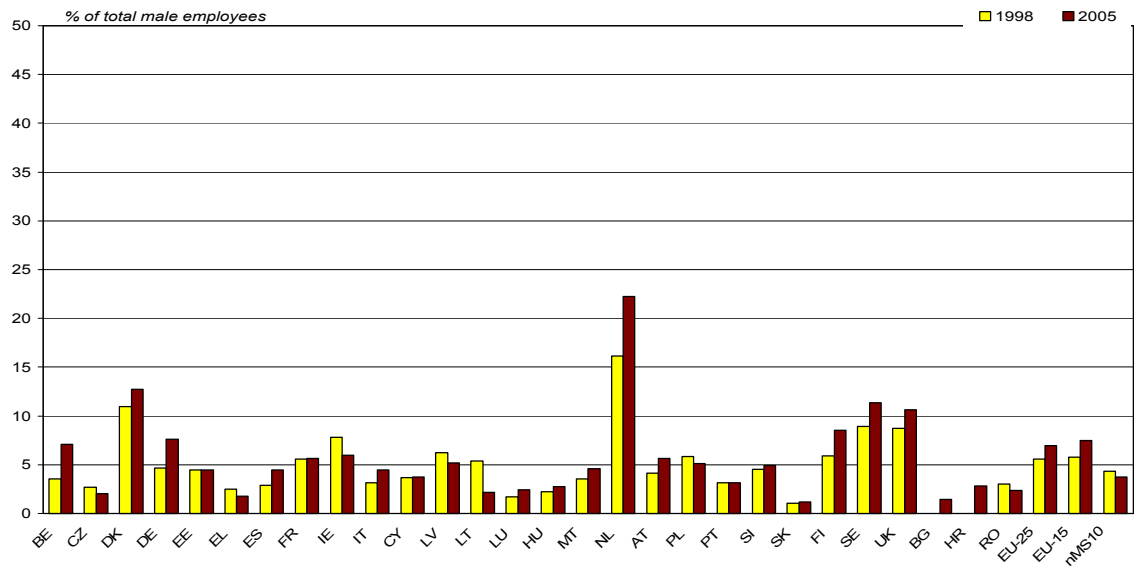
Figure 7.3: Part-time employment in the total economy, 1998 and 2005



CY, MT and PL:1998 data are for 2000; IE 2005 = 2004. Source: Eurostat, EU Labour Force Survey

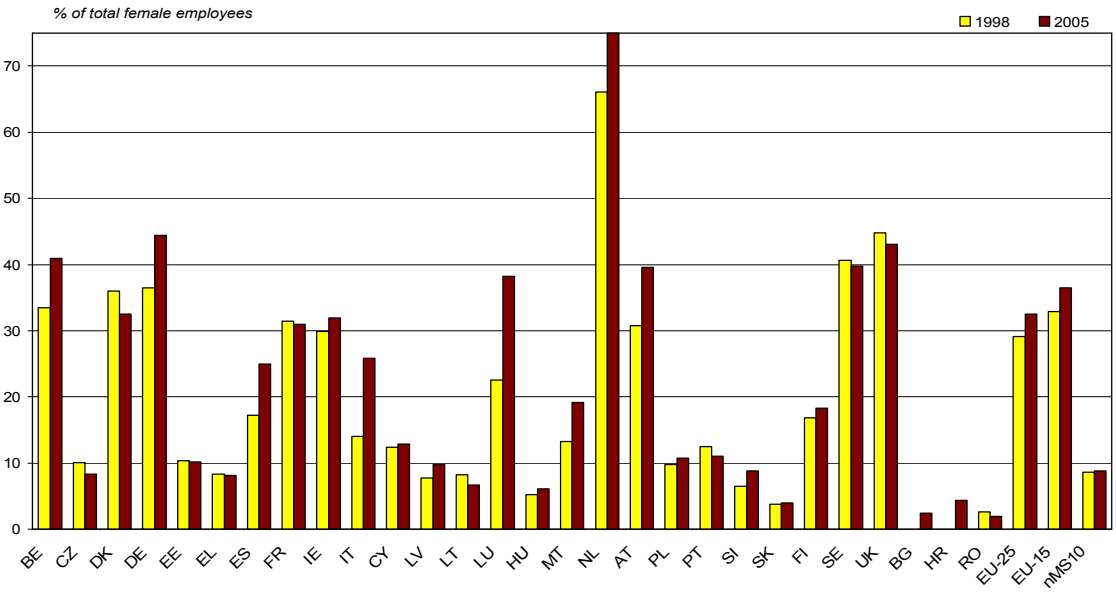
Even though there is an increase of men working part time (having reached in 2005 just over 10 % of employees in DK, SE and UK and more than 20 % in NL), particularly in the service sector, women constitute the big majority of part time workers and their share is increasing. The percentage of young workers is also rising (19.4 % of employees aged 15-29 on part-time contract in 2005 against 16.1 % in 1998) maintaining, to a lesser extent though, the gender pattern. In the service sector of the EU-15 in 2005, men aged 15-29 represent 19.4 % (10.2 for all men) and their female colleagues 33.2 % (38.2 for all women).

Figure 7.4: Male part-time employment in industry and services, 1998 and 2005



CY, MT and PL:1998 data are for 2000; IE 2005 = 2004. Source: Eurostat, Labour Force Survey

Figure 7.5: Female part-time employment in industry and services, 1998 and 2005



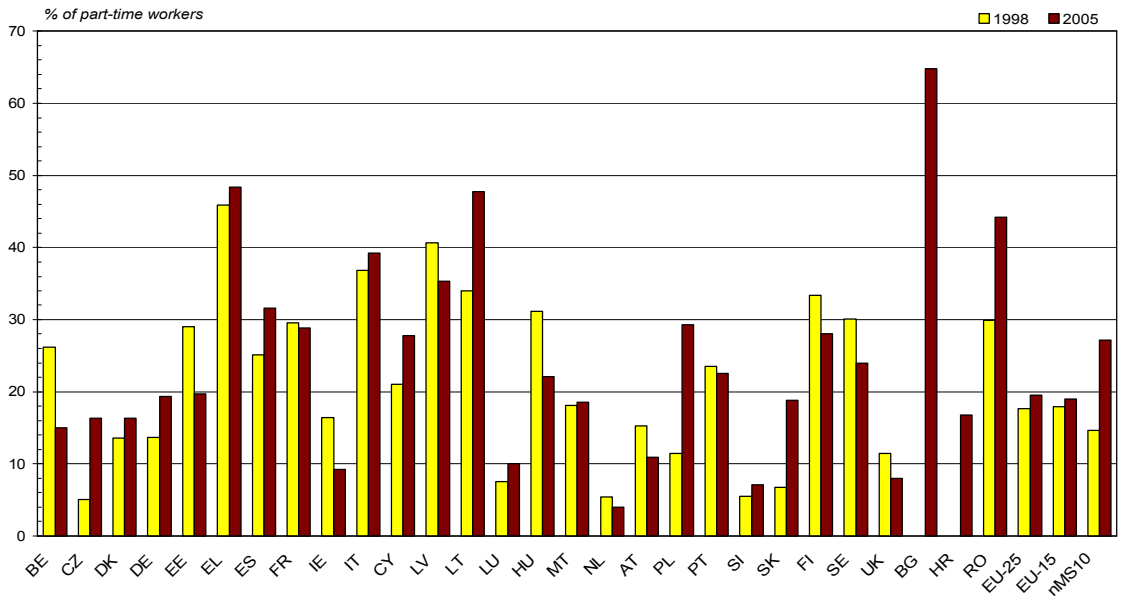
CY, MT and PL:1998 data are for 2000; IE 2005 = 2004. Source: Eurostat, Labour Force Survey

These increases are accompanying the growth of the service sector, and particularly activities such as hotel and restaurant work, service to the persons, etc., which allow forms of work organisation well suited to a segmentation of working time. For instance, in Sweden, a new type of arrangement has emerged where employees are on 'stand by' and only work when there is a need for extra work: the number of such part-time arrangements grew from 40 000 in 1990 to almost 145 000 by 2005. ([214])

Many countries have developed part time employment as a flexible arrangement to improve the labour market situation. At the same time it can also make workers more vulnerable when part time is imposed on them. According to the EU Labour Force Survey, up to 20 % of part time workers would prefer to work full time.

([214]) Nelander, S. and Goding, I, Anställningsformer och arbetstider, LO, 2005.

Figure 7.6: Proportion of employees working part-time because they could not find a full-time job, 1998 and 2005

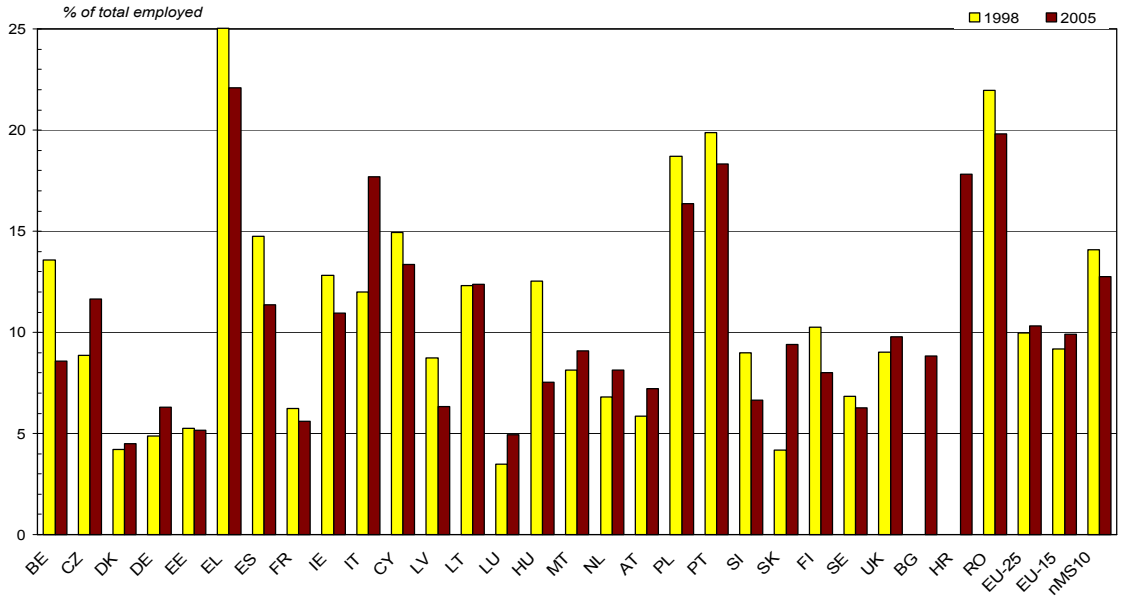


CY, MT and PL: 1998 data are for 2000; IE 2005 = 2004. Source: Eurostat, Labour Force Survey

Self-employed without employees

Self-employment is a very heterogeneous category. Self-employed people can be employers (self-employed with employees) or individual workers under a self-employment contract (self-employed without employees). A part of this last category is a flexible form of employment to which enterprises are increasingly having recourse. It is also a type of employment encouraged by some governments to help unemployed people to get a job, and particularly the young unemployed, as an alternative to salaried employment. Although the share of self-employed has fallen in many Member States the EU average has increased slightly over the last decade, representing 10.3 % of total employment in 2005 in the EU. However, quite large variations could be observed among countries, which are mainly due to variations in agriculture which generally represents the main part of the group of self-employed people without employees.

Figure 7.7: Self-employed without employees, 1998 and 2005



CY, MT and PL:1998 data are for 2000; IE 2005 = 2004. Source: Eurostat, Labour Force Survey

Outside agriculture where self-employed people without employees constitute 47 % of total employment in EU in that sector, this group of self-employed is also important (more than 10 % of the total employed) in construction (16 %), distribution (12 %), business services (16 %) and in personal and community services. (15 %) This is not to say that these shares are due to false self-employed. They reflect mainly the specific industrial structures of the countries. However, case studies show that this type of self-employed often represents employees in economic terms who have been requested by their employer to shift from a regular employment contract to a self-employed status. Data is hard to come by, for example in Italy it has been estimated that its incidence amounts to 28 % of self-employment, but in other countries, where this form of employment has been studied it stands at much lower levels. ([215]) Even though self-employment without employees does not represent a massive quantitative phenomenon, the trend is steady and defines a population of workers at risk. Some evidence seems to suggest that self-employment is often more of a survival strategy than a job-search strategy. A recent study came to the conclusion that self-employed in Spain are more at risk of becoming poor. ([216])

To conclude this short review of non-standard contracts: while they concern only a minority of workers, despite increasing trends in practically all the dimensions considered, these forms have become quantitatively as well as structurally a substantive feature of the labour market. It remains, however, difficult to evaluate precisely the percentage of precarious workers among them and the situation is quite diverse among Member States.

([215]) EU research on social sciences and humanities: Precarious employment in Europe, ESOPE, Luxemburg 2005.

([216]) Mercader-Prats, M., 'La pauvreté menace les jeunes espagnols au moment où ils s'émancipent', *Economie et Statistique*, INSEE, no 283-384-385, 2005, pp. 75-89.

1.1.2. Flexible working time arrangements (internal numerical flexibility)

Flexibility in working time

The most recent data on flexible working time arrangements are found in a comprehensive survey carried out by the European Foundation on the Improvement of Living and Working Conditions in more than 21 000 European workplaces with 10 or more employees ([217]). The main results are the following. Flexible working time arrangements are in operation in almost half (48 %) of workplaces with 10 or more employees in Europe. The degree of working time flexibility varies greatly between EU countries. For example, working time arrangements allowing the accumulation of hours are practised in more than 50 % of establishments in Finland and Sweden, but in only about 10 % to 15 % in Greece, Portugal or Cyprus. Some 61 % of managers state that higher job satisfaction results from the introduction of flexible working time arrangements. Even more than 70 % of the employee representatives support this appraisal. A better adaptation of working hours to the workload is reported by 54 % of managers and by over 60 % of employee representatives. Lower absenteeism (27 %) and a reduction in paid overtime (22 %) are other positive effects mentioned by managers. However, about 35 % of employee representatives mentioned a reduction in paid overtime. Generally, employee representatives confirm the assessments of managers in those workplaces where both were interviewed.

In 2001, one in five employees had flexitime, i.e. they could schedule their daily working hours beyond or below their contractual number of hours within certain limits. The credit hours can be accumulated – through for instance a working time banking account — and can be taken off as days of leave. The categories concerned may also vary by countries and by sectors. While men are generally more frequent users of flexitime in certain countries like France, Ireland and Finland, women were generally found to be more likely to use flexitime. In some sectors like banking flexitime is more prevalent among highly skilled, non-manual workers while in other sectors it can also be applied in more elementary occupations.

Shift work

In 2004, one employee out of five reported normally undertaking shift work in the EU. This number hides important differences by country but also by sector of activity – although less by gender. We can first observe a greater recourse to shift work in the new Member States and candidate countries (with a proportion of employees concerned that is nearly double the norm).

The countries where shift work is most widespread (in both industry and services) are Poland, Croatia, Slovenia, Slovakia and the Czech Republic. In Poland 40.6 % of women and men in industry and 37 % of men and 27 % of women in services are concerned by shift work. Poland is followed by Croatia (31 % for both gender in industry and 36 for men and 33 % for women in services) and Slovenia (31 % for women and men in industry; 31 and 29 % in services). More than one third of male and female employees in industry (slightly less in services) also work in

([217]) European Foundation fort he Improvement of Living and Working Conditions: Survey on working time and work-life, First results Dublin 2006. The survey was carried out between autumn 2004 and spring 2005 and covered are the former 15 and 6 of the new member States (CY, CZ, LV, HU, Pl and SI).

shifts in the Czech as well as in the Slovak Republic. In Latvia, shift work is more common in services, with 26 % of male and 22 % of female workers affected.

Table 7.2: Proportion of employees reporting working usually in shift work, 2004 (2000 in parenthesis)

	Industry Male	Industry Female	Services Male	Services Female
BE	19.8 (18.4) +	14.4 (12.2) +	6.9 (6.1) +	7.0 (5.7) +
CZ	31.2 (na)	34.9 (na)	28.1 (na)	26.4 (na)
DK	7.2 (5.1) +	6.2 (3.9) +	4.4 (6.2) -	6.1 (6.8) -
EE	19.0 (17.1) +	30.8 (29.8) +	20.2 (23.2) -	16.6 (20.2) -
EL	13.7 (9.8) +	10.9 (7.8) +	26.0 (18.4) +	15.8 (11.5) +
FR	19.6 (20.7) -	15.9 (16.6) -	6.4 (6.8) -	4.9 (5.5) -
IT	17.3 (18.2) -	14.2 (14.5) -	22.6 (21.7) +	18.1 (17.0) +
CY	4.2 (3.8) +	4.7 (4.4) +	13.4 (13.1) +	9.1 (7.6) +
LV	19.5 (na)	25.5 (na)	26.4 (na)	22.3 (na)
LT	11.7 (15.3) -	26.7 (33.5) -	11.7 (20.3) -	8.9 (5.4) +
HU	25.4 (25.6) -	28.0 (27.7) +	17.7 (15.6) +	15.7 (13.3) +
MT	26.3 (21.4) +	21.7 (23.2) -	25.3 (28.6) -	16.7 (12.2) -
AT	23.0 (20.4) +	16.5 (15.1) +	19.5 (17.3) +	16.6 (12.9) +
PL	40.6 (na)	40.6 (na)	36.5 (na)	27.7 (na)
PT	15.6 (7.1) ++	17.5 (4.4) ++	20.6 (11.6) ++	15.7 (12.9) +
SL	30.9 (28.8) +	38.7 (33.5) +	28.5 (28.7) -	30.8 (30.0) +
SK	31.7 (na)	38.4 (na)	26.5 (na)	21.7 (na)
FI	23.0 (23.9) -	22.3 (25.7) -	19.7 (21.0) -	26.8 (26.3) +
SE	19.1 (21.0) -	16.8 (18.8) -	17.7 (20.0) -	24.0 (29.8) -
UK	21.5 (19.8) +	8.7 (9.4) -	23.5 (18.7) +	17.2 (15.1) +
HR	31.2 (na)	31.7 (na)	36.3 (na)	33.3 (na)
EU-25	21.5	18.7	18.3	15.3
EU-15	19.1	13.7	16.8	14.0
nMS10	33.0	35.6	28.9	23.6

Source: Authors' comparative compilation from the working time data of the European Industrial Relations Review and other sources

Shift work concerns fewer workers in agriculture (8 % in EU) but is much more common for women in this sector and a widespread phenomenon in countries like the Czech Republic where 31 % of women in agriculture work in shifts.

The trend toward shift work is on the increase in the new EU Member States especially in the industrial sectors. For instance in Slovenia the proportion of female workers in shift work in industry has increased by 5 points between 2000 and 2004. Shift work does not seem to have expanded only in new EU Member States since it is also booming in Portugal (it doubled in industry and services both for male and female), but also in Greece and Austria. It slightly

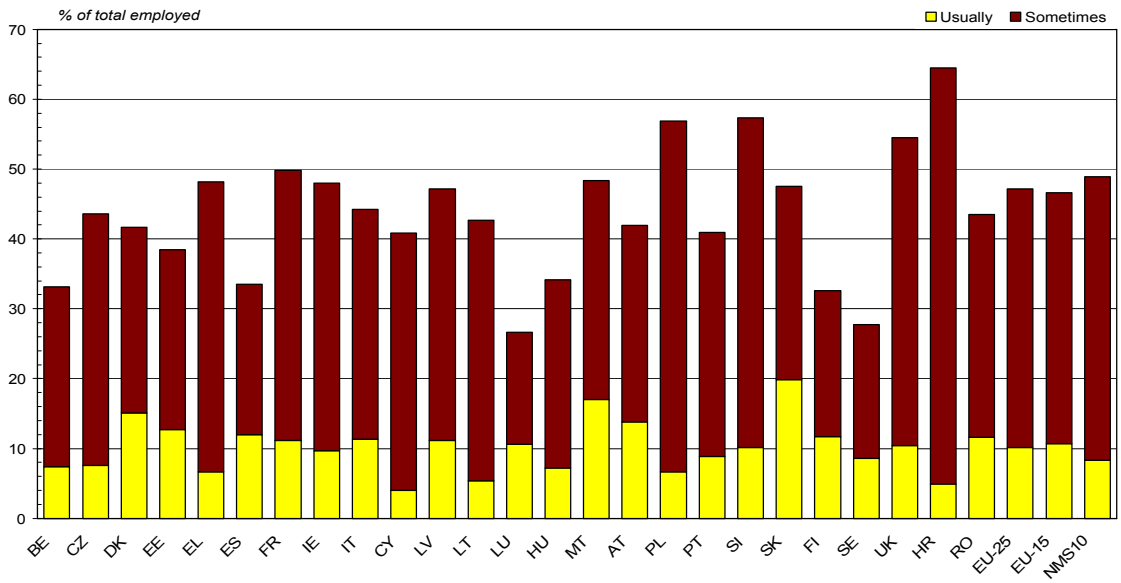
increased in the UK, Denmark and Belgium, whilst it decreased in France and Sweden. In the countries where this phenomenon had not yet developed extensively until 2000 it seems to be increasing significantly. In the countries where the process had already reached high levels in industry in 2000, it slightly decreased since then but tended to expand in the service sector. This is the case in Austria, for instance, where shift work has been increasing significantly in services – the highest rates being found in the health and social care sector (35.5 %), followed by hotels and restaurants (27.2 %). This means that women, who are predominant in the two service sectors, are particularly affected by shift work, a finding that is confirmed by the rate of progression of shift work in services in most countries.

This expansion of shift work practices is influencing working conditions such as working rhythms – often more intense in companies that have implemented shift work – and working hours – that may be less numerous because shared among different shifts. Shift work – especially for those doing their shift at night – also often leads to more difficulties in reconciling work and family life, since shifts are often combined with increased number of unsocial hours on Saturday or Sunday or both.

Weekend work

The increased recourse to shift work has also often led to a parallel development of week-end work. An indicator for working during weekends is the proportion of employees working both Saturday and Sunday.

Figure 7.8: Proportion of employees working both Saturday and Sunday, 2005



ES 2005 = 2004.

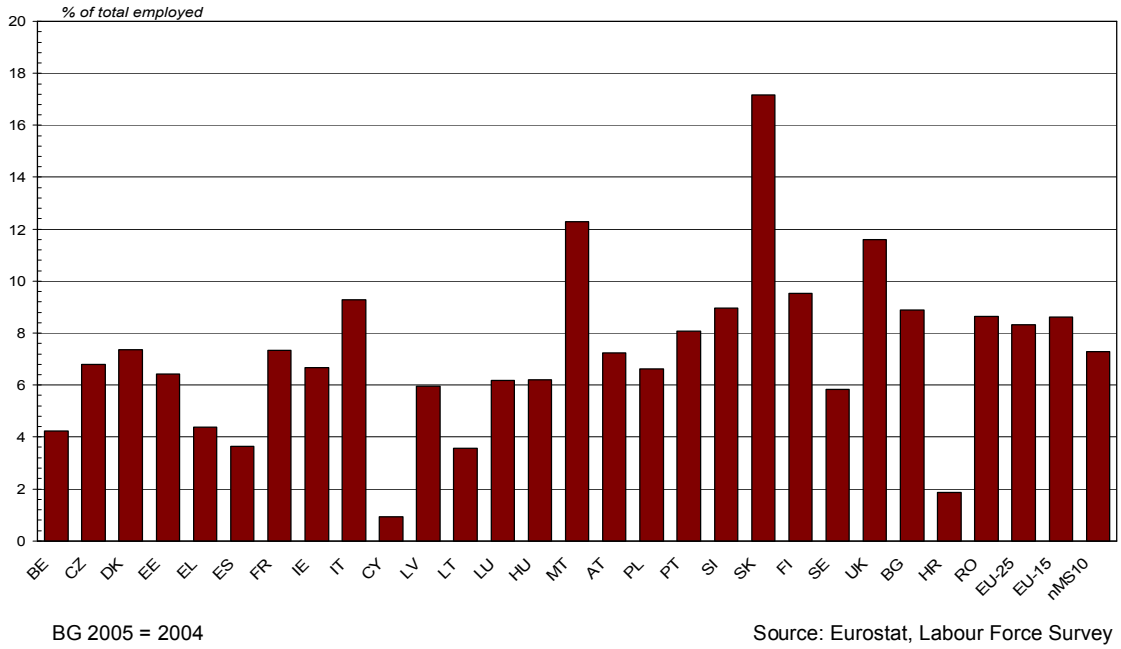
Source: Eurostat, Labour Force Survey

Sector-wise speaking working on both Saturday and Sunday occurs mostly in agriculture, followed by services and industry. In 2005 it was the most developed in Slovakia, Malta, Estonia, but also in Austria, Denmark, and France. Since 2000 it increased the most in Slovakia, Austria,

the Czech Republic, France and Italy. It also slightly increased in Slovenia, Croatia, Spain, Belgium and Portugal.

Night work

Figure 7.9 Proportion of employees usually working at night, 2005



BG 2005 = 2004

Source: Eurostat, Labour Force Survey

Night work is often developed along with shift work which generally involves night-shifts. Night work is most used in the Slovak Republic, Malta and in the UK, where more than 10 % of employees usually work at night.

Contract on stand by

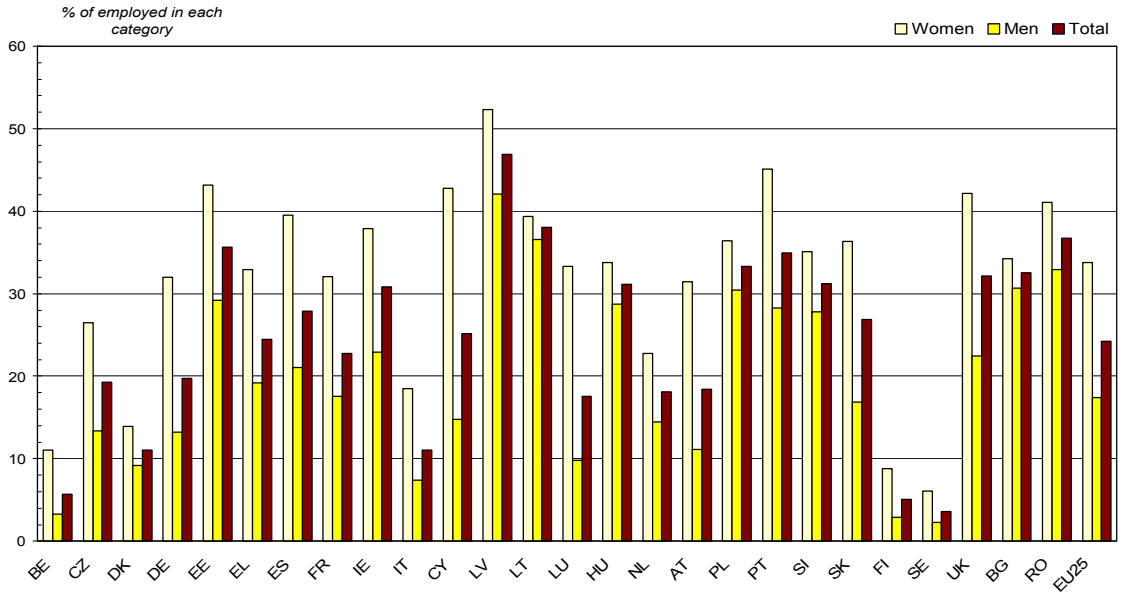
Contracts on stand-by – that is where employees have no control over their working schedule, nor over their employment schedule since they are both decided according to the demand of the company at its own discretion – have also been developing. Although they represent a small minority of workers on average (less than 2-3 %) they have been on the increase in certain countries; in particular the Netherlands where it concerns 2.5 % of men and 6 % of women and Sweden (respectively 2.5 and 4.5 %). They have been rapidly increased over recent years in Sweden. Similarly, in Austria they affect 5 % of all employees, and are much more frequent in sectors such as hotels and restaurants and community, social and personal services activities where they reach nearly 10 %.

1.1.3. The incidence of low wages

In addition to flexible employment contracts and working time arrangements the most recent data on low wages (less than 60 % of the average/median wage) is very illustrative. In fact, low wage employment and working poverty are among the main forms of precariousness in employment.

The following table shows that some of the new Member States as well as Bulgaria and Romania, but also Portugal and the UK have a high ratio of low-wage earners (more than 30 % of employees paid under 60 % of the average wage). On the other hand, in Denmark and Italy this share is 11 %, and in Belgium, Finland and Sweden below 6 % of all employees. The gap between men and women, affected by low wages, tends to be larger in the old Member States. All in all, while in the EU nearly 25 % of all employees are paid at less than 60 % of the average wage, this percentage is close to 17.4 % for men and nearly double (33.8 %) for women.

Figure 7.10: Employees on low wages, 2002



Source: Structure of Earnings Survey, 2002

Other more refined data tends to show that the share of employees at 60 % of the average wage is much higher for persons on fixed-term contracts than for permanently employed persons. In most Member States it is also clearly visible that younger persons up to 30 years are more often affected by low wages than persons older than 30 years. The differences according to age and contract duration are comparatively larger in the old Member States than in the new ones. Looking at a broad sector breakdown, low wages are especially common in distribution, hotels and restaurants as well as in business services. While nearly 32 % of all employees with a low level of education in the EU are in the low wage category (nearly 50 % of all female employees), 6.8 % of all employees with a high educational level only earn a low wage, for female employees this share is even more than 10 %. It has also to been observed that in certain cases minimum wage regulation is not complied with. In both cases the wages paid to these workers could be very low. Non-payment of wages is also a serious problem in some countries. This is particularly

the case in Poland. A report published by the Polish national labour inspectorate reveals that two out of three companies examined are still not paying their employees correctly. It seems that the situation has improved since 2002 in terms of non-payment of wages but deteriorated as regards the level of payment. More companies pay below the minimum wage. ([218]) What makes this situation quite worrying is that the first affected are workers coming from poorly developed areas.

1.2 Developments in labour market policy: boosting employment as the main target

Governments have played a central role in encouraging flexibility measures at enterprise level, generally with the aim of boosting employment and reducing unemployment. Social partners have also been active at all levels, national, branch and enterprises, depending on the countries.

Facilitating exit and entry …

In their attempt to fight unemployment, many governments in the EU have adapted their labour markets in a way that also promotes the different forms of atypical employment: temporary work, part-time, self-employment, etc. However, whilst this may lead to increased insecurity for workers concerning their future contractual relationship with the enterprise it may also lead to better security if this policy is recognised as effective in ensuring low unemployment rates. The best- and best-known — example is Denmark, which has taken a series of different measures to increase rotation between jobs by removing obstacles to hiring and firing employees. This has not lead to job insecurity as it has been based on a solid activation and safety net (the so-called Danish flexicurity system).

The pace, the focus and the depth of reforms aiming at introducing more flexibility have been quite disparate among countries. For instance, the probationary period after recruitment is quite diverse among member countries. From an average of 12 months in the UK, 9 to 12 (depending on the category) in Denmark, to 1 to 2 weeks in Italy or 1 to 2 months in France. Germany has also promoted flexibility, notably through financial and tax incentives but also through recourse to new employment forms: temporary work, self-employment and part-time work.

An increase in working time is dawning in many countries, mainly from the EU-15, under the justification of international competition and the need to maintain employment. There is first more flexibility concerning maximum working hours with new legislation and collective agreements for instance in Austria, France, and Germany allowing increases to such limits. Decentralisation of social dialogue also contributes to greater individual flexibility on working time. Government measures regarding retirement are also having an impact on the labour market for the oldest workers. After having encouraged early retirement in the restructuring process, most governments have radically changed direction, promoting postponement of the retirement age in order to cope with the consequences of an ageing society and the problem of financing pension and social security systems.

([218]) EIRR, February 2005, p. 19. See also Rapport de la Commission d'experts pour l'application des conventions et recommandations, 2006, OIT, Genève, p. 369.

However, governments as well as social partners have not moved in only one direction – encouraging more flexible forms of employment – but also in the other, that is, limiting the risks associated with these employment forms.

…while limiting the social cost of 'flexibilisation'

In the UK, often quoted as an example of labour market 'flexibilisation', the government recently decided to better monitor and control the activities of the so-called gang-masters (who specialise in the deployment of overseas workers). In 2005, it established a new agency, the Gangmasters Licensing Authority, which has the specific remit of curbing the exploitation of workers in industries such as agriculture and horticulture. It also stepped up efforts to regulate the whole interim agency world. Interim agencies' work has been heavily regulated in most countries. The Czech Republic introduced a law in 2004 protecting temporary workers in particular from the non-payment of social and health insurance; Germany implemented its first legislation on the matter in 1972. In the EU-15, the principle of non-discrimination against this category of worker is in force in countries like Finland, France, Greece, Italy, Austria, Portugal and Spain. Indeed, social partners have played a major role in elaborating collective agreements in what has become – because of its increasing size – a 'sub-sector'.

Action has also been taken against false self-employed status, in particular in the Member States that joined the EU in 2004. Indeed, it is prohibited by law but quite widespread in Hungary, for instance for truck drivers, security guards, journalists or in the building industry. It is also the case in the Czech Republic in several branches of the service sector. In these countries as in others, measures have been taken to reinforce labour inspections and sanctions. Undeclared work is also an area where governmental policies have been active. The case of Bulgaria deserves specific attention. The country managed to reduce drastically the number of employees without any form of contract (from 115 800 workers in 2000 to 73 400 in 2005).

Finally, many countries have tried to regulate fixed-term contracts before and after the 1999 EU Directive on the matter. Spain, for instance, has tried to limit the scope and excesses- of short-term contracts through three reforms of the labour law in 1994, 1997 and 2001. More recently, the Spanish Ministry of Labour proposed reforms that will allow temporary employment contracts to be converted into permanent ones, reducing the high number of temporary contracts. This would apply to workers who have two or more years' experience in any particular company and to workers who were originally recruited by temporary work agencies. A preliminary agreement on the proposals was signed by the Spanish government, the employers' organisations and the unions in April 2006. Polish law restricts the use of successive fixed-term contracts and requires employers to inform temporary workers about vacant permanent posts in their enterprises. Interestingly, some collective agreements have been very innovative. A national agreement has been concluded for 40 000 employees in Spain's telemarketing sector providing more security on a wide range of working conditions. It is stated for instance that the total number of structural staff on fixed-term contracts should not exceed 40 % of the permanent workforce. ([219]) However, agreements on job security generally take the form of concession bargaining introducing more flexibility in working time, work organisation or wages in favour of

([219]) EIRR, July 2005, pp. 27-29.

maintaining or increasing the number of jobs. Agreements of the Spanish type directly addressing the question of job contracts are less usual.

Working conditions for women are particularly affected by family constraints. Alongside greater flexibility, governments have also tried to ensure a better *work and family-life balance* through legislation on, for instance, parental leave, following EU directives in this regard. Legislation also tries to avoid the risk that working part-time leads to lower standards in term of conditions of employment and particularly wages and social benefits. Conversely a Danish law states that an employer cannot fire an employee who refuses to accept a part-time job. Measures regarding extended welfare services and especially childcare facilities, which have been implemented in most countries, could also greatly help the flexibility of the labour market.

Protecting the working poor

General wage moderation is encouraged in many Member States. Nevertheless, wage regulation by government as well as social partners is today more focused on issues like discrimination and low wages. Similarly to employment flexibility, wage containment is often considered a part of policies aimed at boosting employment. Low pay is in any case an indicator of low quality jobs whose consequences in terms of vulnerability should be analysed differently depending on the characteristics of particular jobs. In this context, the minimum wage appears is one of the most important income policy tools. ([220])

Table 7.3: Statutory Minimum Wages in Europe (2004)([221])

	Level of MW as % of AW	Change of MW in %		% of full time workers on MW		
		2001/2004	2001/2006	Total	Men	Women
BE	46 (2002)	4,0	8,2	:	:	:
CZ	39	17.5 (02/04)	32.8 (02/06)	2,0	2,1	3,0
EE	35	34.1 (02/04)	62.2 (02/06)	5,7	4,8	6,6
EL	:	14,3	24,9	:	:	:
ES	38	32,3	45,8	0,8	0,6	1,1
FR	:	6,3	8,2	15,6		
IE	50	17,2	28,1	3,1	2,7	3,9
LV	39	33,3	50,0	13.6 (2003)	13.1(2003)	14.1 (2003)
LT	38	16,3	27,9	12,1	:	:
LU	50	8,8	16,5	18,0	15,8	21,8
HU	41	6.0 (02/04)	25 (02/06)	8,0	9,5	6,4
MT	49	5.0 (02/04)	12.1 (02/06)	1,5	1,7	0,9
NL	46	7,2	7,9	2,1	1,6	3,8
PL	35	8,4	18,3	4,5	4,2	4,8

([220]) F. Eyraud and C. Saget, The fundamentals of minimum wage fixing, ILO, Geneva, 2005.

([221]) More to read: Eurostat, Statistics in Focus 9/2006 - Minimum Wages 2006

PT	41	9,2	15,4	5,5	4,0	7,5
SI	44	32,1	45,2	2,0	:	:
SK	34	9,2	23,9	1,9	0,8	1,2
UK	38	9,8	24,4	1,4	1,3	1,7
BG	43	37,9	83,9	5.1 (2002)	6.1 (2002)	4.2 (2002)
RO	34	60.0 (02/04)	:	12,0	11,4	12,8

MW = minimum wage, AW = average wage
All the figures are from 2004 unless otherwise indicated Source: Eurostat

The above table shows that minimum wages have been increased in most countries over the period. Progression has been particularly high in new EU Member States and candidate countries with the exception of Poland in the more recent period.

The percentage of workers covered by the minimum wage show that its role in protecting low-paid workers is quite variable among the countries. In France, Latvia and Romania, a significant proportion of workers is directly affected by the minimum wage. In the other countries its impact on low wages seems more limited. As more women than men are likely to have a low or very low wage, increases of minimum wages benefit more to women that men, reducing discrimination at the low levels of the wage scale.

2. Identifying structural drawbacks

The introduction of more flexibility aims primarily at increasing or saving jobs. In other words, flexibility does not refer primarily to job quality. This section addresses the job quality issue, making a distinction between two main potential drawbacks in the quality of employment: the long-term prospect of the jobs created and the sustainability of the working conditions of such jobs.

2.1. Poor long-term prospects for the jobs created

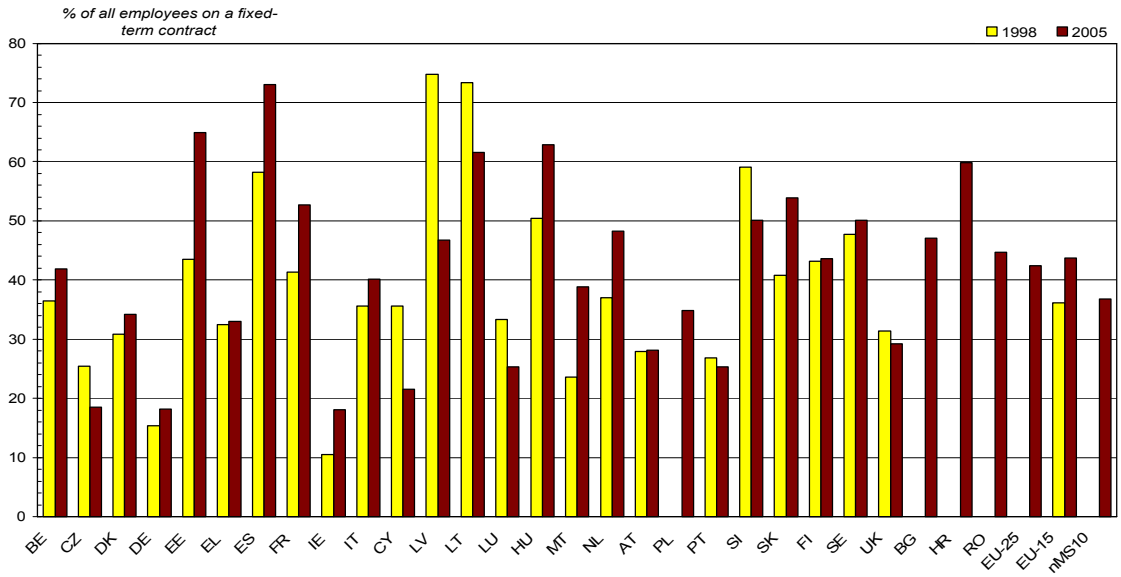
The basic reasoning behind the flexibilisation of labour contracts is that even short-term experience acquired by a series of precarious jobs may facilitate access to more secure jobs. The main risk with temporary contracts is that they may constitute traps that would undermine the long-term employability of these categories of workers. This is this potential drawback that is analysed in this section.

In most countries, temporary jobs, whatever the contracts, are low-skilled jobs. In addition, while traditionally restricted to a few specific sectors, like retail or agriculture, it is now spreading to all economic activities. In Germany, the rise of temporary work has mainly occurred in the low qualification segment of the labour force. ([222])

([222]) Jahn and Rudolph, 2002: 'Zeitarbeit ─ Teil I: Auch für Arbeitslose ein Weg mit Perspektive', *IABKurzbericht No 20 from 28.8.2002.* and 'Zeitarbeit ─ Teil II: Völlig frei bis streng geregelt: Variantenvielfalt in Europa', *IABKurzbericht No 21 from 29.8.2002*. Bundesanstalt für Arbeit.

The same is true for temporary agency work. In France, it is highly concentrated on low-skilled blue collars and young workers and even if fixed-term contracts can be used as a screening device for hiring, they are also more often ending in unemployment. Similarly, in the UK, agency jobs are mostly found in low-to-middle skilled occupations such as clerks, secretarial staff, routine operative, numerical clerks and despatch workers. Therefore, low-skill jobs make it difficult for these categories of workers to acquire enough qualifying experience in order to find better jobs. In 2005 in the EU, 42.5 % of fix-term contracts were less than 6 months and the percentage is increasing (from 36.2 in 1998 to 43.7 in 2005 in EU-15).

Figure 7.11: Share of employees on fixed-term contract of less than 6 months, 1998 and 2005



Source: Eurostat, Labour Force Survey

Even though the situation varies among countries, the percentage of workers on very short contracts is increasing in most countries. In addition, temporary contracts serve as a stepping-stone primarily for educated workers, while for workers with less education and for women, temporary contracts are often a dead-end job.

Studies in the UK suggest ([223]) that during the late 1990s employers reduced the scope of their internal labour market (with relatively secure and well-paid jobs) and shifted many jobs to the secondary labour market, entailing in many instances the contracting of temporary workers from employment agencies. By allocating the lowest skilled tasks to temporary workers, these have fewer opportunities to increase their skills through on-the-job training and they risk being trapped in a low-skilled jobs cycle. But this is also true of formal training. In most EU countries temporary workers have much less access to training. A recent study has shown that in EU15, enterprises invest less in training for temporary workers. ([224])

([223]) Grimshaw, D. and Carroll, M. (2006) 'Adjusting to the National Minimum Wage: constraints and incentives to change in six low paying sectors', *Industrial Relations Journal* 37 (1) pp. 22-47.

([224]) Nienhüser W. and Matiaske W., Temporary agency work in 15 European, Industrial Relations Journal, January 2006, pp. 64-77.

However, some countries have tried to cope with this situation. In Germany, in 2004, the government together with the social partners agreed on a three years national pact for training which contributes to drastically reduce the surplus of vocational training applicants. ([225]) In France, a national agreement and a new law introduced in 2003 and 2004 have tried to stimulate training by increasing the employers training levy. But the most significant measure is the establishment of an 'individual right to training'. Indeed, employers still decide on the content of the training making sure that it fits enterprises needs. This training runs during normal working hours. In addition, the reform has introduced an individual training leave allowing the employee, who is granted leave, to decide on the content of the training. ([226]) It remains that those who suffer the most from insufficient training are the categories of workers who need it the most: low educated, women, immigrants and temporary workers. ([227])

2.2. Inequality in working conditions

Non-standard jobs often lack long term prospects and may have drawbacks regarding other conditions of employment thus questioning their social and economic sustainability. The issue is a serious one as job-creation is mainly occurring in the sectors that tend to accumulate lower standards of working conditions, namely retail trade, hotel and restaurant, other service activities and domestic staff. ([228]) Not only is the share of temporary workers the highest, but wages are also comparatively low.

In the same vein, it should be noted that in many countries the public sector has jobs with low wages as well as precarious employment, particularly in the education and health sectors. In addition, the subcontracting of some public services to the private sector could lead to a situation where this outsourcing from the public to the private sector may increase the incidence of low paid jobs.

An increase in working hours, in shift and night work, in unsocial hours and other flexible working time arrangements has an important impact in two areas: health and safety and reconciling work and family life. Recent studies ([229]) have shown that these changes that are accompanying new ways of organising work have, in many cases, increased work intensity ([230]). The increased intensity of work has direct effects on health and safety. At the same time, there is a common trend in most EU Member States the number of occupational accidents that are serious or fatal has fallen, generally due to better prevention and information at enterprise level.

([225]) Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung (2005): *Die Chance nutzen – Reformen mutig voranbringen*, Jahresgutachten 2005/06.

([226]) For a more detailed summary of the reform, see the French monograph.

([227]) OECD, Employment outlook, 2003, Paris.

([228]) In these sectors, respectively over the period 2000-2005, job growth was in EU-25: +0.7, +2.8, +2.4 and +6.2 and job growth was negative in most of the other sectors.

([229]) See for instance Karin Halldén, 'Globalization, work intensity and health inequalities: A cross-national comparison' (Forthcoming in I. Lundberg (ed.): Work and social inequalities in health in Europe, 2005).

([230]) Work intensity is rather complex to identify, however, and even more complex to assess statistically. However, there are different sources of intensification: one is the pace of work that is working rhythms; another concerns the quantitative demands or workload resulting from a large number of assignments and deadlines. A rapid pace of work does not necessarily involve many deadlines. Finally, one should also try to identify qualitative aspects such as motivation, relations between colleagues, teamwork, and so on.

Accidents and work-related illnesses, however, are more widely extended across sectors, with a notable an increase in the number of accidents in the services sector. At the same time, there is an increase in the number of psychosocial illnesses due to stress and a poor psychosocial environment. In Denmark, the number of cases increased from 3 % of total occupational diseases in 1996 to 16 % in 2003. The reasons for this are diverse and not only linked to the work itself. The difficulty of balancing private and working life also plays a major role in the matter. Working time flexibility may help resolve the dilemma but could also be a negative factor when employees have a limited say in work organisation. Obviously the risk is high for precarious and/or unprotected workers. Working time flexibility, whatever the form, could increase new *health and safety* risks which may undermine the progress made on traditional work accidents. These new risks should be analysed not only at work but also in conjunction with the constraints of the private life. The way flexible work, or shift work is organised can thus make the whole difference for work and family balance, workers' satisfaction and thus productivity.

In a context of high unemployment and very low wages parents could be obliged to accumulate working hours in order to sustain their family. It is only in the public sector and in certain activities of the tertiary sector that parents have the choice to work less and thus have more flexibility in reconciling work and family.

Another example is the British economy that is suffering from a 'hidden brain drain' due to the very low pay and poor career prospects for part-time workers, who are predominantly female; a process that would lead to significant productivity losses. As a result most part-timers were found to work well below their potential, leading to a significant underuse of talent applying to some 5.6 million part-time workers or about a fifth of the entire British working population. 20 % of those reporting working under their potential also indicated not to have found any part time job that would use their skills, qualifications or experience, and nearly a fifth feel held back because career opportunities with their current employer are limited. ([231])

Decentralisation of collective bargaining may have an indirect negative impact on vulnerable workers. Taking the case of wages, in Germany, where the extension procedure is not as widely used as in Finland or Italy, the percentage of workers covered by branch agreements in retail for example is 55. ([232]) In Sweden and Denmark collective agreements are not as protective for temporary contract workers – especially those working through interim agencies – which explains the lower wages, longer working time and poorer conditions at work in general. At the same time, working under individual contracts or working longer and irregular hours (often at home if self-employed, or at night) also diminishes workers' participation in social dialogue. This is sometimes a problem for the union movement. A recent study made by the Finnish Institute on employees found that one important factor of the decrease of union membership in Finland is the fact that youth have difficulty to find a permanent job. ([233])

In conclusion, certain types of flexibility arrangements could produce drawbacks damaging workers and the quality of jobs. This is why it is essential that employment policies and collective

([231]) According to the recent report Britain's hidden brain drain, Equal opportunities Commission, London, 2005.

([232]) Euronline, Minimum wages in Europe, European Foundation, 2005, p. 15.

([233]) UIMM, Social International, decembre 2005, p.18.

agreements give due consideration to these qualitative aspects of jobs. The following and last section tries to identify at which stage and under which circumstances low standard working conditions put workers at risk.

3. Vulnerability: Long-term traps for some groups

When a worker is exposed to one type of risk this does not necessarily imply a long-term problem. In addition, while certain risks of vulnerability can neutralise each other, risks can also cumulate. When risks are frequently accumulated by certain categories of workers they may be channelled along some sort of 'vulnerability or risk vectors'; the combination of risks threatening these workers with remaining in some long-term exclusion situation or trap.

3.1. Individual risks do not always imply exclusion

Unemployment is undoubtedly the greatest risk. To ***remain excluded from the labour market*** often leads more quickly and deeply to social exclusion. ***Employment insecurity*****,** however, is another risk — notably through the multiplication of short-term contracts or self-employment with a higher risk of unemployment, etc. Other risks are more related to employment quality, like ***low wages***, ***working long hours or at unsocial hours or under stressful working rhythms,*** as well as being confronted with higher ***health and safety risks***. ***No access to training,*** as well as not having ***access to direct participation channels or social dialogue*** and collective agreements may obviously also influence all other conditions at work. These individual risks have been changing both in nature and also in their scope. They often hit the same – most vulnerable – categories of workers but also may affect new profiles of workers as well. In terms of the sustainability of employment-creation and quality of work as well as with a view to fostering more cohesion in society it would seem to be important to keep a close eye on developments with regard to the following groups on the labour market. These developments deserve also major attention in collective bargaining and social dialogue at all levels.

(1) First of all, **groups** usually considered to be the most vulnerable continue to remain under continuous exposure to the above identified risks.

Clearly, ***women*** are more affected by low wages (in EU-25: 33.8 % of women are low paid against 17.4 % of men) as well as young workers (in EU 25, 40.4 % of workers under 30 are low paid, against 19.3 % for workers above 30) ([234]). They are also often over represented among atypical forms of employment.

Young people continue to remain a category at risk. They are particularly exposed to precarious labour contracts and low wages. Measures taken to secure employment may further lower their working conditions. The temporary work contracts already mentioned mainly concern young employees aged under 30. Almost one third of the young employees in the EU work on a fixed term contract. (see figure 7.2 above for more detail).

([234]) All the following figures are from the Structure of earnings survey, 2002.

Older people are also more at risk. ([235]) They often have more problems in facing changes in organisation, on the labour market and working conditions. A new form of atypical employment contract had been introduced in Germany. Workers above 52 could easily and repeatedly be offered short-term contracts. But this regulation was found to violate the antidiscrimination principle by the European Court of Justice. Physical conditions at work also impact directly on their employment, and often on their decision to retire as shown in the UK and Sweden. ([236])

In some countries barriers to entry to the labour market are particularly strong for ***minority groups***. In Hungary, Slovakia and many other new and future EU Member States the Roma are the most affected. In Bulgaria ***ethnic minorities*** such as Roma or Turkish have a much lower level of employment security. ***Immigrants*** also appear to meet difficulties in the world of work of many Member States. In Sweden for instance there is a high percentage of working poor among the self-employed, a category dominated by immigrants who have great difficulties finding a place in the regular Swedish labour market.

Lower educated workers are also more at risk. This seems to be the case for instance with regard to interim agency work with the low-skilled temporary worker often being compelled to accept less favourable conditions and thus being more vulnerable.

(2) At the same time **new developments** put workers at risks.

A new risk, in particular in some new market economies from central and eastern Europe, is related to the ***restructuring process and privatisation*** that has led to massive layoffs and thus increased both the insecurity of employment and the unemployment risk. This has particularly affected young people, older people, but also women. Restructuring also increases the risk for managers and white collar workers, including a health risk from more pressure at work.

Employees in the services sector seem to be increasingly confronted by different types of risks. In this sector night work (cleaning teams etc.) and unsocial hours over the week-end (in supermarkets and other shops) are the most frequent. Moreover it is in services that there is the highest proportion of working poor (cleaning or other services to households or elderly and disabled people etc.).

Subcontracting, which often brings lower working conditions is also a process that deserves particular attention, especially when it is practiced on a large scale. More than 90 per cent of Romania's production in clothing is the result of sub-contracting for both large multinational groups and small foreign enterprises. A similar process is also observed in Bulgaria not only in textile but also wood industries.

(3) **Risks do not necessarily lead** to vulnerability. The case of low pay is rather illustrative. Moreover certain **risks can compensate other risks**. In the UK 2.1 million people reported that they 'are doing lower-skilled work than they are capable of because it is less demanding and

([235]) See the results of the 57th Eurobarometer survey of 15 European Union countries in A. Marsh and M. Sahin-Dikmen: *Discrimination in Europe*, 2003.

([236]) 'Factors affecting the labour market participation of older workers', Humphrey, A., Costigan, P., Pickering, K, Stratford, N. and Barnes, M., UK Department for Work and Pensions Research report No 200, 2003.

stressful than jobs they have had in the past'. ([237]) In this specific case the risk of over stress has been neutralised through a new job that may however bring new types of risks such as risks of lower pay or of inadequate training opportunities. In other cases long working time can be compensated by higher wage compensations.

Other examples can illustrate how one risk can counteract another one. While it is true that the *self-employed* for instance in Denmark – especially in construction, agriculture, services and retail – are more affected by more difficult working conditions – by lower pay, less access to training, and also much longer working time, involving greater stress, health consequences and work/life balance problems – their psychosocial work environment was found to be more satisfactory as they report more variation in the tasks performed.

In Sweden interim agency work has led many immigrants to accept adverse working conditions but has nevertheless allowed them to integrate into the labour market – thus reducing their risk of remaining unemployed. In certain new small service businesses of the new and future EU Member States high wages are associated with high employment insecurity. Highly qualified young workers generally get very good jobs and are well paid but suffer from very high stress.

3.2. Vulnerability vectors leading to social exclusion

Through a combination of risk factors, however, workers may find themselves in a situation of long-term social exclusion when they remain trapped along what could be called 'vulnerability vectors'.

For example, ***low pay*** does represent a possible entry into a vulnerability vector. Women are more affected by low wages, something however that should be analysed together with the huge differences that exist between permanent and temporary workers, women being over represented among this latter category of contracts. Indeed the wage precariousness factors are cumulative, the worst pattern being young women with temporary contracts. Education can then act as an additional discriminatory factor on the top of it: in the EU, 31.7 % low paid workers are low educated whereas the percentage for high educated is 6.8, the gap being again generally much smaller in high wages economies.

A specific at-risk process regarding women is also related to the combination between low pay and part-time work. Involuntary part-time work associated with the increasing rate of divorce can create vulnerable situations for women. Studies and statistics show that poverty mainly hits single mothers. In Sweden, the number of single parent households has increased by 30 % during the last decade, 80 % of these single parents being single mothers. Low pay and part-time jobs may therefore lead to unsustainable societal problems. Families with a high number of children are also at greater risks for instance in Poland or the UK, but also elsewhere in the EU. ([238])

Atypical employment can constitute a stepping stone to the labour market and thus represent an essential tool for escaping from vulnerability and social exclusion. On the other hand it can also

([237]) UK Equal Opportunity Commission, op. cit.

([238]) Economie et Statistiques, Les approaches de la pauvreté à l'épreuve des comparaisons internationals, No 383-384-385,INSEE, 2005, p. 60.

represent entry into a vulnerability vector when combined with other adverse conditions. For young workers, for instance, atypical employment seems to have influenced not only their wage levels but also several family-related matters. For instance the combination of low wages and irregular work contracts often impedes them from having access to housing.

Difficulties encountered by women in ***reconciling work and family life*** may also be significant. In some new Member States tougher labour markets seem to represent one major cause of lower employment rates of mothers with young children. In a context of high unemployment, with men ready to accumulate long hours for low wages, the new employers of private businesses hesitate to employ women who might leave to have children and thus not only interrupt their activity but also claim maternity leave and benefits.

In fact while the employment rate of women without a child under 6 was in 2005 slightly higher in the new Member States than in the EU-12 — 76,5 per cent compared to 74,7 per cent — this rate drops to 51 per cent as soon as women have a child under 6 compared to 61.6 per cent in the EU-12. In Hungary it even drops to 39 per cent, and in the Czech Republic and Slovakia 39 and 42 per cent respectively.

Table 7.4: Employment rate of women aged 25-49 with and without children under 6 and distribution by hours worked, 2005

	No child			One child		
		Working more than 30 hours	Working less than 30 hours		Working more than 30 hours	Working less than 30 hours
EU - 25	75,1	73,6	26,4	60,4	62,0	38,0
EU - 12	74,7	70,3	29,7	61,6	58,9	41,1
nMS-10	76,5	91,3	8,7	51,0	85,3	14,7
BE	75,8	67,9	32,1	70,7	65,4	34,6
CZ	85,5	96,4	3,6	38,7	87,8	12,2
DE	77,5	62,3	37,7	52,5	38,8	61,2
EE	86,3	94,4	5,6	53,7	88,5	11,5
EL	61,1	89,5	10,5	55,5	87,2	12,8
ES	64,0	80,6	19,4	57,3	72,4	27,6
FR	78,7	79,6	20,4	68,3	74,6	25,4
IT	62,2	72,4	27,6	54,8	63,6	36,4
CY	72,3	89,0	11,0	69,0	86,1	13,9
LV	81,8	92,1	7,9	56,0	86,2	13,8
LT	83,7	87,1	12,9	75,6	89,0	11,0
LU	73,7	70,3	29,7	65,7	59,6	40,4
HU	77,3	96,0	4,0	38,6	90,9	9,1
MT	33,1	72,5	27,5	29,4	75,7	24,3
NL	79,4	50,0	50,0	71,1	24,5	75,5

PL	70,9	86,3	13,7	57,9	81,2	18,8
PT	77,0	90,6	9,4	77,9	92,7	7,3
SI	85,1	96,0	4,0	84,9	96,7	3,3
SK	79,0	97,0	3,0	42,1	96,8	3,2
FI	84,3	91,4	8,6	71,2	88,4	11,6
UK	80,4	69,4	30,6	64,5	44,4	55,6

Source: Eurostat

4. Conclusion

Employment-creation is key to ensure prosperity in the EU. However, recent employment creation has also brought about a rise of atypical and precarious employment. The Joint Employment Report 2005/2006 of the European Commission and the Council notes that the current balance between flexibility and security in many Member States has led to increasingly segmented labour markets, with the risk of augmenting the precariousness of jobs, damaging sustainable integration in employment and limiting human capital accumulation. ([239]) This situation may lead to the creation of vulnerability traps not just for people that are excluded from the labour market but also for those that actually are employed, even if only occasionally.

Individualisation of employment conditions and pressure on companies and workers from increased competition especially combined with other societal developments – such as housing, changing family structures, with an increase in the number of single parents, and others – have put many workers at risk of social exclusion and have increased the number of the working poor.

It thus seems to be essential to pay more attention to the vulnerability vectors. In this respect, the quality of jobs created is one important factor, in terms of their durability, skills development opportunities, working conditions, including wages, as well as work and family life balance but also on the impact that jobs have on longer-term career and live prospects of the employees.

Increased vulnerability may well question in the end the social sustainability of working practices and deteriorate social cohesion. If employment was only created through new forms of flexibility at the margin of the labour market or if these were not accompanied by new forms of security this might have a negative influence on the long term economic growth potential and employment enhancement.

([239]) Council (Employment, Social Policy, Health and Consumer Affaires) (7347/06) Joint Employment Report 2005/2006.

CHAPTER 8
Industrial relations and economic performance: an overview of research results ([240])

The Lisbon agenda offers the strategic vision of a Europe which would reinforce its social cohesion while striving to become the most competitive knowledge economy. The social partners are invited to participate in the implementation and evaluation of this project. Notably the industrial relations' and related dimensions of competitiveness, notably those depending on social dialogue and involving its players, constitute the subject of this chapter.

The productive nature of social expenditures is an old question, as is that of the nature and measurement of wealth and private and social 'well-being'. Underlying the examination of the foundations of growth and competitiveness, that of the European social model becomes all the more crucial insofar as the present economic growth regime is often accompanied by an intensification of competition and inequalities. ([241]) It is legitimate to aspire to a social Europe, in the sense of a model of social equity, simply because this equity is an intrinsic value, that of justice. But economic efficiency is becoming a structural imperative, and the *social* dimension has to be justified not only in its own terms but in terms of economic efficiency and as a productive factor. Over the long run, can social expenditures be considered solely as *costs* or can they also be seen as *investments*? This question is addressed to all the economic and social players and in particular, the partners of the European Social Dialogue.

We shall begin by considering the main indicators evaluating and ranking the different countries in terms of growth and performance. We shall then examine the way industrial relations are regarded as factors of performance in the main empirical and theoretical studies. In a final section, we shall attempt to define and evaluate the place accorded to industrial relations in the Lisbon Strategy with regard to the issues arising from changes in the model of performance and social development.

1. Measurements and international comparisons of performance

Economic efficiency is generally measured in terms of the increase in the wealth produced. The traditional measurement of this increase is the GDP and its derived aggregates. The measurement of national accounts, instituted at the close of the Second World War, is universally employed by international bodies but subject to growing criticism.

There are now numerous alternatives to the increase in the GDP as the sole measurement. ([242]) These have essentially sought to broaden the classic approach by integrating a large number of other aspects of development — human, social, health and environmental. Behind this

([240]) This chapter was drafted by Professor Henri Nadel, University of Paris VII.

([241]) Cf. Com (2005) 299 final.

([242]) J. Gadrey and F. Jany-Catrice (2005) Les nouveaux indicateurs de richesse, Paris, La Découverte.

proliferation of indicators, however, lies dissatisfaction with the fact that traditional measurements do not represent, or no longer represent, the related elements of growth and social well-being. Some of them, notably the UNDP's human development' indicators, seek to estimate the outcome' of growth and not just the direct reading of performance in economic terms. In the context of an increasingly internationalised economy, other efforts are devoted, explicitly or implicitly, to the search for indicators of economic 'attractiveness', as is the case with the World Economic Forum indexes in particular.

Table 8.1 presents an analytical survey of the most prominent indicators. These must be viewed with caution, however. The more we depart from the traditional measurements of national accounting and international statistical standards and the more we add new dimensions, the more the indicator is fragile and the rankings subject to doubt. The quality of the sources, the choice of the data, the extent of the fields covered by the variable studied (well-being, human capital, social capital, security, poverty, health, education, etc.), the different kinds of weights used in the composition of the indexes, the fragility of certain forms of calculation, or even the use of opinion polls, make the results uncertain and often unstable.

Table 8.1:

GDP, GNP, etc. GDP/ capita, etc.	National account. International comparability	'…measures consumption incompletely, ignoring the value of leisure and longer life spans, … ignores the value of accumulation for future generations. As an average, GDP per capita gives no indication of the likelihood that an individual will share in prosperity nor of the degree of anxiety with which individuals contemplate their futures.' Osberg and Sharpe
GCI. (*Growth Competitiveness index)*	World economic forum.J. Sachs and J. Mac Arthur	3 pillars: quality of macroeconomic environment, state of public institutions, technological readiness. Combination of hard data and executive opinion survey, distinguishing *core* and *non-core* innovators, taking account of judicial independence and levels of corruption. Little room for labour standards.
Misery Tax	Forbes	Cumulates the top highest marginal rate in the various taxes. Index of 'attractiveness'
GCI' (*Global competitiveness index*)	IMD, Institute for Management Development	Ranks the ability of nations to create and maintain an attractive environment for investment. Built on a holistic approach of development encompassing multiple variables of economic growth, labour standard, employment, education, productivity and innovation.
HDI (*Human Development Index*)	UNDP	'going beyond income to assess the level of people's long-term well-being'.
Index of Social	Miringoff	'well-being of youth, accessibility of

Health		healthcare, the quality of education, and the adequacy of housing'
IWB, (*Index of economic Well-Being*)	Osberg and Sharpe, Center for the Study of Living Standards	Effective per capita consumption flows. Net societal accumulation of stocks of productive resources, Income distribution, economic security.
WISP *(Weighted Index of Social Progress)* 1970-2000, European ranking	Richard Estes**,** University of Pennsylvania	Education, health status, women's status, military expenditure, economy (including employment and income distribution), demography, environment, social chaos (political rights, corruption, war victims, refugees), cultural diversity and welfare effort.
PSI, *(Personal security index*)	Canadian Council on Social Development	Economic, health and Social welfare security Compares 'objective' indicators of personal security with more subjective results obtained through polling data.

This list is not exhaustive. The number of indicators is exploding and their evaluation is far from simple. If none of them explicitly takes into account the quality or characteristics of industrial relations, most integrate information on labour and social security standards. The weighting and monetarisation of qualitative variables is sometimes combined with subjective data. Certain bodies propose spreadsheets and invite the reader to simulate alternative weights.

The media success of certain indexes should not mask the methodological difficulties and numerous criticisms directed at the very principle of ranking and standardisation. And the utilisation of these comparative indexes is also called into question. A given country can thus receive an overall low rank because of a given attractiveness indicator when at sectoral or territorial level there are many contrary examples of foreign investments. The 'Tax Misery' index, for example, is a form of benchmarking which ranks countries in function of the simple adding up of the marginal tax rates (such as income and wealth taxes, social security contributions and VAT). On this basis, Hong Kong has the lowest ranking and arrives in first place and France in last place. But the 'Tax Misery' differences between individual States of the US can also be of the same order as those of the international index.

Table 8.2 illustrates the diversity of the results provided by certain indicators with regard to the competitiveness and performance of the European economies. (For this table, and throughout the rest of the chapter, we have limited ourselves to the Europe of 15 for reasons of homogeneity and availability of sources).

Table 8.2.

	GCI/ 2005 WEF	GCI/ 2005 WEF/ EU (15) ranking	IMD / 2005 World ranking	IMD / 2005 EU (15) ranking	Tax Misery Index 2003 Forbes / EU(15) ranking
Belgium	*31*	**13**	*24*	**10**	**14**
Denmark	*4*	**3**	*7*	**2**	**5**
Germany	*15*	**6**	*23*	**9**	**4**
Greece	*46*	**14**	*50*	**14**	**10**
Spain	*29*	**11**	*38*	**12**	**8**
France	*30*	**12**	*30*	**11**	**15**
Ireland	*27*	**10**	*12*	**4**	**1**
Italy	*47*	**15**	*53*	**15**	**12**
Luxemburg	*25*	**9**	*10*	**3**	**3**
Netherlands	*11*	**4**	*13*	**5**	**7**
Austria	*21*	**7**	*17*	**7**	**11**
Portugal	*22*	**8**	*45*	**13**	**6**
Finland	*1*	**1**	*6*	**1**	**9**
Sweden	*3*	**2**	*14*	**6**	**13**
UK	*13*	**5**	*22*	**8**	**2**

Sources: Growth Competitiveness Index (GCI), *World Economic Forum (WEF), Institute for Management Development (IMD), Forbes*.

At first glance, this table brings out heterogeneous results from one indicator to another with regard to the ranks of the different countries in the world indexes. A second look confirms the high ranking of the countries of northern Europe, which combine the criteria of performance and quality of social relations, although considerable differences are found there too. Finland (which is in 6th position in the IMD for 2005, behind the first-ranking US) comes out on top for the Europe of 15. However, it is ranked ninth in the 'Tax Misery' index, where Ireland arrives in first place. The countries of the centre and south of the Union are relatively dispersed depending on the indicators. Thus, a typology distinguishing the UK and Ireland from the countries of the north, centre and Mediterranean would be confirmed by the 'Tax Misery' index, where the first two come out ahead, but less clear-cut on the basis of the WEF index. ([243])

Table 8.3 compares UNDP data, and notably its 'Human Development' indicator for 2002 and 2003, to the classic GDP indexes (per capita GDP, in purchasing power parities).

([243]) There is a growing literature on the typology of welfare States in Europe. Two broad ranking systems may be singled out. The one stemming from the framework established by G. Esping-Anderson (1990) considers three models while the other would add a fourth 'anglo-saxon' model. Most authors also insist on the hypothetically dependent nature of these indexes: the historic specificity of the national trajectories often wins out over the illusion of a conversion towards one, two or three models of social protection systems. The typologies, for all their practical interest, should be used with caution.

Table 8.3

Country	HDI 2002. World ranking	HDI 2002:EU (15) ranking	HDI 2003 (World ranking)	HDI 2003:EU (15) ranking	GDP/Cap (World ranking)	GDP/Cap EU (15) ranking
Belgium	6	**3**	9	**4**	12	**4**
Denmark	17	**10**	14	**7**	15	**7**
Germany	19	**11**	20	**12**	13	**5**
Greece	24	**13**	24	**14**	29	**14**
Spain	20	**12**	21	**13**	23	**13**
France	16	**9**	16	**9**	15	**8**
Ireland	10	**5**	8	**3**	3	**2**
Italy	21	**14**	18	**11**	17	**9**
Luxembourg	15	**8**	4	**1**	**1**	**1**
Netherlands	5	**2**	12	**5**	10	**3**
Austria	9	**4**	17	**10**	14	**6**
Portugal	26	**15**	27	**15**	32	**15**
Finland	13	**7**	13	**6**	18	**10**
Sweden	2	**1**	6	**2**	20	**12**
UK	12	**6**	15	**8**	19	**11**

Sources:UNDP and OECD

Although the human development indicator is more pertinent to developing countries, because it attempts to draw on the social and educational factors of economic take-off, its dissemination and reputation are instructive for our argument. Overall, the European countries are at the top of this world index, which gives decisive weight to the democratic basis of social rights and labour and employment standards in the Union. The indicator turns out to be unstable, however: for example, from one year to the next, Luxembourg and Austria are classified in a very different way.

2. Competitiveness and economic performances: the place of industrial relations

As shown by attempts to define alternative or complementary indicators relative to those of the standard monetary wealth used to compare different countries worldwide, the social dimension of development is sought after as a condition of *development* or even *attractiveness*. Thus, education, training, fundamental and applied research, 'human capital', 'social capital', health and so on are seen by the international institutions as motors of performance and competitiveness. They are at once *inputs* of growth and *results* of processes — of long-term or very long-term development — sometimes stemming from non-measurable externalities (the universal advances of knowledge).

And this is the problem: there is no direct, immediate causal connection between democracy and social security on the one hand and performance on the other. But there is no contradiction either. The European social model, even if it is not always well defined, offers an undeniable programme for a model of democracy (which is not always the case for competitive, high-performance countries elsewhere in the world) whose members share the common values of citizenship, social rights, cohesion and social protection. The Charter of Fundamental Rights of the European Union, along with the other texts of EU Treaties, clearly marks this Community advance. These values constitute the exceptional nature of the European project and the Treaties call upon the partners of the Social Dialogue to participate actively in the definition of this European model.

There is a considerable body of theoretical and empirical literature dealing with the influence of different forms of industrial relations on performance in an increasingly internationalised world. It is noteworthy, moreover, that this question should become a preoccupation of the large international institutions, where countries of extremely different levels of development are represented. This is indeed a sign that, along with other institutions in society, they play or should play a major role.

The findings of these comparative studies carried out for all the countries in the world are relatively modest with regard to the impact of industrial relations on growth and economic performance. Very briefly stated, these studies do not indicate *one* model as the best means of promoting performance but reveal the importance of the configuration and *complementarity* between industrial relations and *other* institutions of labour, employment and social protection. This issue comes up again within the European Union, where it is necessary to articulate national industrial-relations systems and create European-scale coordinating bodies, to encourage the autonomy of the Social Dialogue and the participation of the social partners in the governance of the Union. Given the level of development of the European countries compared to most of the other nations in the world, as well as the Union's potentialities, we can only be rigorous in terms of quality. The main findings of these studies evaluating the impact of industrial relations on economic performances are summarised in Table 8.4.

Table 8.4: Economic performance and industrial relations, an analytical survey

	High unionism and/or high coordinated collective bargaining	Low unionism and/or low coordinated collective bargaining
Macro-economic outcome (unemployment, inflation, real wage flexibility, etc.)	Comparatively better performance in the 80 's and 90 's	Since then, low coordination tends to be worse than high coordination or no coordination at all
Employment growth	No robust answer	
Unemployment	Lower and less persistent in the 80 's and 90's	Since then, high bargaining coordination tends to reduce unemployment
Labour or total factor productivity, levels or growth	Indeterminate	Indeterminate

Profitability	Lower in US, UK, Japan, no assessment for the EU	No robust result in the recent period
Wage distribution	Compressed	Wider wage distribution
Fringe benefits	Higher	
Discrimination (especially gender)	No systematic difference nor determination	
Product market competition.	No substantive clear cut influence	
Multi unionism	Countries with competing unions tend to have worse results for unemployment and inflation.	
Hours worked	Lower, overtime work is better remunerated	Higher, overtime less remunerated
Job mobility	Voluntary job turnover is lower, long-term tenure is higher	
R and D spending in firms	Seems slightly lower in UK and USA in unionised firms, but not in other developed countries	
Training	Better	

Analysing the influence of industrial relations on performance entails the measurement of their impact on the quality of labour and employment standards. ([244]) It is not easy to disentangle the different factors (which would presume eliminating the social relations institutions in order to evaluate the resulting transformations of employment standards).

It is necessary to consider first of all the macroeconomic impact of the quality of the social relations of labour, followed by the consequences on one industry or sector and finally at the level of the firms, which can themselves be differentiated in several respects (even though good micro-economic performances do not automatically guarantee macroeconomic results going in the same direction). We have organised the survey in the following way: the different columns distinguish industrial-relations systems which are highly coordinated or have a high level of unionisation from those with little coordination, infrequent collective bargaining or low rates of coverage (in Europe, as elsewhere in the world, there is no necessary correlation between the rate of collective agreement coverage and union density).

The international comparison does not bring out any significant difference in performance between the countries reinforcing fundamental rights in the areas of industrial relations and those which prohibit or limit them. Fortunately, this aspect no longer concerns the EU but it clearly remains a problem at the level of international institutions (ILO, World Bank, etc.). A country's performance thus does not depend (in the short term at least) on the existence of social rights. We

([244]) 'Comparative studies reveal little systematic difference in economic performance between countries that enforce the two relevant labour standards (freedom of association and the right to collective bargaining) and countries that do not. This is partly a reflection of the difficulties of isolating the effects of labour standards from other determinants of economic performance and suggests that the impact of labour standards can perhaps best be analysed on a case-by-case basis' (Aidt T. and Tzannatos Z. (2002) Unions and Collective Bargaining: Economic Effects in a Global Environment, Washington DC, Worldbank).

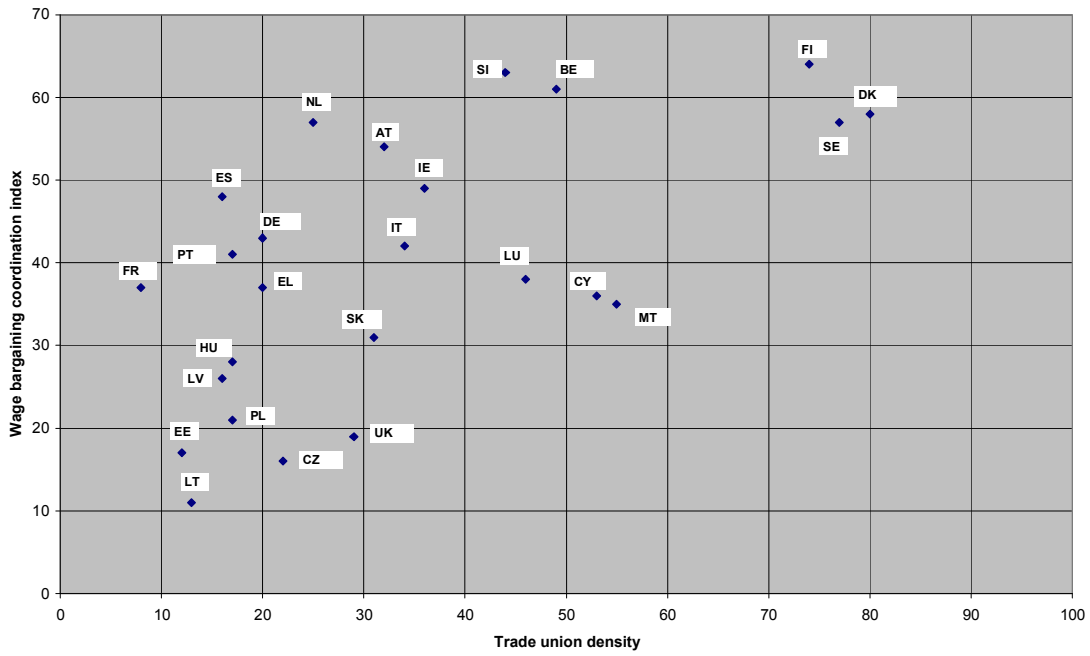
can obviously question the long-term viability of this situation but empirical studies do not provide answers on this point.

One close correlation should be emphasised: *union density goes hand in hand with more limited income inequalities and more limited wage distribution*. This principle is verified in Europe as elsewhere: equity is neither an obstacle nor a condition for performance or attractiveness, as we have seen, but union presence is a factor of wage cohesion.

Bargaining coverage is most often associated with an increase in real wages (albeit without any convincing impact on productivity), lower employment rates and higher inflation rates. As with density, the rate of coverage correlates with a more egalitarian distribution of wages.

The following graph gives an overview to better situate the various wage bargaining systems in relation to trade union density across the EU, notably in terms of the level of coordination.

Figure 8.1: Net trade union density and weighted wage bargaining coordination index, EU-25



Trade union density: see figures Chapter 1; Wage bargaining coordination index, calculated by Visser in Industrial relations in Europe 2004, p. 45 (see there for detailed information). The index takes into account the way peak federations of unions and employers at the national and or sector level coordinate the wage bargaining process in the country (explicit or implicit). The degree of coordination is furthermore weighted by the coverage rate of this collective bargaining process. Finally, the measure is for comparability reasons transformed to have an index ranging from 0 to 100. A higher figure on the index stands for a higher degree of coordination for which the detailed explanation depends on the level of coordination and the collective bargaining coverage rate.

The balance between the costs and advantages of having a dense, coordinated system or one which is weak and decentralised (supposing that the choice exists after the fact) has also

generated a vast literature. ([245]) The indicators selected for this evaluation are subject to controversy. But there is, however, consensus on one decisive principle: low coordination has usually led to poorer results than high coordination or no coordination at all.

However, in macroeconomic terms, the tests carried out at world level show few convincing relationships between industrial relations and macroeconomic performance. This is the case for unemployment, inflation and employment rates, for the real growth of wages, labour supply, reactivity to wage crises and for the flexibility of real wages. The same is true for labour productivity as well as for total productivity. ([246])

Once a country has a democratic system of association, regardless of the model, what is crucial is the *quality of the complementarity* between this system and the *other institutions* of labour, employment and social protection. In other words, 'It is the package of institutions that matters'. ([247]) This finding is common to various theoretical and empirical approaches to the social relations of labour and the analysis of the diverse trajectories of today's economies. ([248])

With regard to the micro-economic consequences of collective bargaining, their specific nature means that they can only be studied seriously case by case.

Most analytical studies arrive at similar, fairly modest conclusions:

— It is not possible to copy national models.
— The most efficient configuration consists of a system of negotiation and coordination of representative players which is densely implanted and covering a large part of the firms and employees.
— The participation of industrial-relations players in political and institutional debates offers a decisive means of improving the environment necessary for growth. Such a real participation implies that the different parties involved in social governance see this coordination as a common good.

This is clearly the meaning given to the Social Dialogue in the context of the European Employment Strategy, and it is one of the components of a desirable European Social Model.

([245]) Calmfors L., (1993) Centralisation of Wage Bargaining and Macroeconomic Performance: A Survey OECD Economics Department Working Papers 131; Henley, A., and Euclid Tsakalotos, E. (1993) Corporatism and Economic Performance: A Comparative Analysis of Market Economies, Vermont, Elgar Brookfield; Layard, R., Nickell, S. and R. Jackman (1991). Unemployment: Macroeconomic Performance and the Labour Market. Oxford, Oxford University Press; Visser J., (2004), Industrial Relations in Europe 2004, European Commission.

([246]) 'The least robust results relate to productivity, training and pay systems. The impact of unions on productivity levels (in terms of both labour productivity and total factor productivity) is empirically indeterminate' (Aidt T. and Tzannatos Z. (2002), Unions and Collective Bargaining: Economic Effects in a Global Environment, Washington DC, Worldbank).

([247]) Aidt T. and Tzannatos Z. (2002), Unions and Collective Bargaining: Economic Effects in a Global Environment, Washington DC, Worldbank.

([248]) Hall P. and Soskice D. (2001), Varieties of Capitalism: The Institutional Foundations of Comparative Advantage, Oxford, Oxford University Press; Boyer R., (2004), Une théorie du capitalisme est-elle possible?, Paris, Odile Jacob; Crouch C. (1993) Industrial Relations and European State Traditions, Oxford, Oxford University Press; Amable B. (2003) The Diversity of Modern Capitalism, Oxford, Oxford University Press, etc.

3. Industrial relations in Europe and the new growth regime

Dating from the emergence of industrial capitalism in the 19th century, the social relations rooted in longstanding national histories are now confronted by rapid, profound changes in a competitive, 'post-industrial' economy which is largely dominated by market finance and internationalisation, and where information technologies are transforming the modes of organisation and production. European integration is increasingly becoming a motor for the democratic political participation of the social partners, creating a space where they can enhance the value of their representativeness at national level, broaden it and reinforce it at EU level.

But the transformations of the new growth regime generate displacements of the role and place of industrial relations, which are found at the juncture of production relations and social protection systems. The forms of conflict and coordination between employees, employers and public authorities are changing. The role of the industrial-relations institutions is also being refocused, along with their fields of action and practices, notably in terms of collective bargaining. The importance of certain areas of negotiation is diminished and the sites of confrontation are displaced, notably towards the company. The new issues do not yet always have the same readability as the old ones, or the social partners have not yet addressed them.

The Lisbon Agenda indicates a group of strategic directions for the European social partners. The transition to a knowledge economy, the modernisation of the welfare State and increased competition following from globalisation and liberalisation are challenges to the traditional roles of employers organisations and trade unions in the management of the economy that they have to respond to in order to contribute to economic performance.

3.1. The transition to the knowledge economy underlines the importance of the 'human capital' approaches at the same time that it reinforces trends towards the *individualisation* of the employment relationship.

The factors of performance now lie more in collective and individual skills and competences, notably in the ability to replenish constantly changing knowledge, than in rigid organisational routines. Company and organisational flexibility and dense social networks are a necessity; the importance of the latter is particularly stressed by 'social capital' approaches. ([249]) Here, industrial relations are responsible for agreements concerning qualifications, wage scales and the definition and organisation of careers, the management of which depends on new principles. The authority of work collectives, which in principle requires cooperation between the social partners, is weak when subject to the principles of shareholder value and this situation might further weaken the notion of the 'learning' or 'socially responsible' company. The new regime involves more emphasis on the *individualisation* of skills and competences.

The logic of *employability* puts more emphasis on the individual responsibility of workers. They are now called upon to anticipate changes in qualifications and bear a part of the risk. The crucial issue here is a reorientation of labour relations towards a new partnership. Lifelong learning is a difficult process to coordinate collectively because it implies a differentiation among workers'

([249]) R.D. Putnam (2000) Bowling Alone: the Collapse and Revival of American Community, New York, Simon and Schuster.

individual abilities to train themselves. The creation of new methods of training and appropriation of skills, their codification, recognition and accreditation are becoming critical challenges for the social partners. For the unions, what is involved is a new service to be created and managed as well as a base of operations for their participation in the governance of the knowledge society. And symmetrically, for employers, there is a real opportunity to generate pro-active coordination with labour, where the goal of performance presumes relations based on confidence and loyalty.

This zone includes a decisive element, which has as yet been little explored: the role of industrial relations in the dynamics of innovation. The introduction of 'innovation-friendly industrial relations' in Europe has been studied by G. Van Gyes. ([250]) This research brings out the complexity of the industrial relations/innovation tandem and stresses that the workplace is the essential locus for the identification and construction of real participation between the social partners on this strategic point. After the Taylorist era, which exacerbated the division between planning and execution, the participation of wage earners in the dynamics of innovation is a real challenge. Indeed, it is difficult to imagine Europe becoming the most high-performance knowledge society while perpetuating the defects of the social division of a by gone era. Nor will innovation-friendly industrial relations be introduced without corresponding 'flexicurity' measures for the workforce beyond the individual workplace.

3.2. The crisis of the 'Welfare State' sums up the numerous challenges faced by European societies. Since the end of the post-World War II boom period, the challenge of sometimes rising inequalities remains to be faced in many member countries.

Social-protection costs have risen in proportion to the slowdown of growth and to increased expenses tied to unemployment and greater life expectancy. On the funding end, national social-protection policies are required to introduce profound reforms in a financially and socially sustainable way which often implies reducing and restructuring allocations and indirect incomes. This situation also constitutes a challenge for the social partners.

With the gradual change of the economic growth regime the rationale of social security is shifted. Its central principle would no longer be redistributive justice but rather social protection policy in a wide sense with a mission of fostering human resource investment, inclusion and social cohesion. The *activation* of social policies expresses this trend by also stressing the individual responsibility in the face of continuing adaptation to change. Challenges to stable professional careers are increasingly regarded less as reasons for acquiring lifelong *rights* than as *opportunities* in a constantly changing world. Thus, social protection is no longer understood as a safety net: in this complex period of transition social protection systems, rather than protecting from changes, would seek to provide the means for change.

Here we can also observe the challenges posed to industrial-relations models. The trend towards greater individual responsibility takes different forms, even though it is widespread among all the different ideas or national types of social protection in the countries of the Union. The adaptation and modernisation of national social protection systems thus involves the respective social

([250]) G. Van Gyes (2003) Industrial Relations as a Key to Strengthening Innovation in Europe, Innovation Papers nr. 36, European Commission, Luxembourg.

partners in various ways. It reduces trade unions' role of defending rights of their members and increases their responsibility for their members' employability. Employers seek to *invest* in their human capital, rather than facing increased labour costs through what seem to be less profitable social contributions. Here we may be facing complex challenges which require constant efforts to overcome certain contradictions between the individual and social returns of investment into human capital and social protection.

3.3. There can be a tension between the globalisation of economic activities and the national context of industrial relations. One manifestation of this phenomenon is visible in State intervention (however, to largely varying degrees of intensity) in the fixing of wages, and in particular minimum wages, direct participation in social pacts and the possibilities to extent negotiated agreements. ([251]) The same is true in the case of social policy, where state intervention takes multiple forms. J. Visser rightly insists on the weakening of the role of national sectoral negotiations 'from hard to soft law', which he sees as characteristic of industrial relations in Europe. The decentralisation of negotiations in the context of the single currency, the diversification of productive activities which blurs the notion of sector, the non-price dimension of competitiveness at international level are all factors which weaken sector-based negotiation or encourage employers to request exception clauses. ([252])

4. Conclusion

This short overview of various attempts to identify the role of and the challenges to industrial relation systems with regard to their impact on economic performance tends to show that we are faced with complex matters which forbid a simplistic approach and easy policy conclusions. The contested nature of indicators of economic performance and classifications of industrial relations systems makes a definitive statement of the relationship – particularly in quantitative terms – difficult to achieve.

However, while the existing empirical research on productivity, employment growth, product market competition and research and development spending gives either indeterminate or non-robust results, it appears that income inequalities and wage distribution are more limited, average wages, fringe benefits and training are higher and unemployment is on the whole lower and less persistent in systems with high union density and high coverage by collective bargaining. Most importantly, however, the complementarities and interrelationships between the system of industrial relations and the wider organisation of the society in economic and social terms largely makes it possible to reach different objectives of economic and employment performance in different ways depending on the national circumstances and pathways of adaptation.

As an answer to the challenge of globalisation European integration is based on the very idea of the need to establish a solid EU-wide entity where social cohesion permits addressing the

([251]) We also see the social partners abandoning their authority over certain domains of social security to the State (as is the case in France, for example).

([252]) 'In my view, the most significant recent institutional development in European industrial relations is the conflict over the use of opening, hardship, inability to pay, opt-out or drop-out clauses, allowing firms under certain conditions to negotiate or unilaterally apply lower pay rates or longer working hours with their workforce than what is stipulated in the sectoral agreement' (Visser J. (2004), Recent trends and persistent variations in Europe's industrial relations, Dutch Social and Economic Council, EIRO (http://www.ser.nl/publicaties/default.asp?desc=b23574))

dynamics of a world market beyond economic competition alone and building on the European values, which, inter alia, are based on solid social dialogue at all levels. This issue is strategic for the future of a social Europe and social dialogue processes in various forms undertaken at European level represent a means of coping with the global challenges at a level that adds to the purely national or sectoral ones.

The Lisbon Strategy encourages the European social partners to expand the field of their activities to take on the challenges of the knowledge economy, welfare State reform or globalisation. Their potential field of competence is vast and it is crucial that the political determination of the players be sufficiently engaged.